

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable Paul M. Burch, Circuit Court Judge

MARION ALEXANDER LINDSEY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-001271

APPENDIX

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INDEX

INDEX.....	i
TRIAL TRANSCRIPT.....	1
COURT REPORT'S INDEX.....	2
JURY QUALIFICATION.....	26
TESTIMONY (COMPETENCY HEARING)	
DR. PRATAP NARAYAN	
Direct Examination by Solicitor Willingham	126
Cross Examination by Mr. Bartosh.....	131
Redirect Examination by Solicitor Willingham	136
Recross Examination by Mr. Bartosh	137
DEFENSE MOTION NOT TO SEQUESTER JURY	139
DEFENSE MOTION FOR JURY NOT TO BE HANDLED BY SLED	139
DEFENSE MOTION FOR JURY TO PICK FOREMAN	140
DEFENSE MOTION TO BE SEATED NEAR JURY	140
TESTIMONY (VOIR DIRE)	
RODNEY PETTY	
Examination by The Court	176
Examination by Mr. Bartosh	185
Examination by Solicitor Gowdy.....	188
Examination by The Court	191
JOHN HOVELSRUND	
Examination by The Court	201
Examination by Mr. Bartosh	205
Examination by Solicitor Gowdy.....	207
SHERIL CUDD	
Examination by The Court	214
Examination by Mr. Bartosh	218
Examination by Solicitor Willingham	223

JOHN HOVELSRUND	
Examination by The Court	228
ASHLEY DRISCOLL	
Examination by The Court	231
Examination by Mr. Brennan	235
Examination by Solicitor Gowdy	236
RICKY LEE	
Examination by The Court	246
Examination by Mr. Brennan	250
Examination by Solicitor Barnett	257
CARLA HOWELL	
Examination by The Court	261
Examination by Mr. Bartosh	266
Examination by Solicitor Barnett	272
COLLOQUY REGARDING DOCUMENTATION TO SUPPORT	
DR. NARAYAN'S EVALUATION	277
TESTIMONY (VOIR DIRE)	
JANET PRASANLACK	
Examination by The Court	281
Examination by Mr. Bartosh	285
Examination by Solicitor Willingham	291
TAMMY QUEEN	
Examination by The Court	296
Examination by Mr. Bartosh	303
Examination by The Court	312
LUTHER CULPEPPER	
Examination by The Court	316
JON KRISHER	
Examination by The Court	317
Examination by Mr. Bartosh	322
Examination by Solicitor Barnett	326
Examination by Mr. Bartosh	330
Examination by Solicitor Barnett	331
COLLOQUY REGARDING PROSPECTIVE JUROR	332

TESTIMONY (VOIR DIRE)

ANGELA HALEY

Examination by The Court 338

DARCY THOMPSON

Examination by The Court 345

Examination by Mr. Brennan 350

Examination by Solicitor Willingham 352

TOMMY BROWN

Examination by The Court 361

Examination by Mr. Brennan 369

Examination by Solicitor Barnett 373

Examination by Mr. Brennan 381

JAMES GEDROIC

Examination by The Court 385

Examination by Mr. Bartosh 390

Examination by Solicitor Willingham 394

JOANN NETHERTON

Examination by The Court 398

Examination by Mr. Bartosh 405

Examination by Solicitor Willingham 412

TERESA GILBERT

Examination by The Court 426

EMMA ELLIS

Examination by The Court 430

Examination by Mr. Brennan 434

Examination by Solicitor Gowdy 440

Examination by The Court 450

SHIRLEY MCDOWELL

Examination by The Court 453

JAMES CREEL

Examination by The Court 460

Examination by Ms. Quimby 468

Examination by Solicitor Gowdy 478

MIGUEL MARTINEZ

Examination by The Court	482
Examination by Mr. Bartosh	498
Examination by Solicitor Gowdy	501

MARTHA SALLIS

Examination by The Court	502
Examination by Mr. Bartosh	507
Examination by Solicitor Barnett	513

DANNY GOMES

Examination by The Court	517
Examination by Mr. Brennan	521
Examination by Solicitor Barnett	524

TODD HILLSTOCK

Examination by The Court	552
Examination by Mr. Brennan	555
Examination by Solicitor Willingham	560

HAROLD MARCUM

Examination by The Court	563

BRENDA SMITH

Examination by The Court	567
Examination by Mr. Brennan	572
Examination by Solicitor Willingham	575

LORI BURNETT

Examination by The Court	579

LARRY MAULDIN

Examination by The Court	584
Examination by Mr. Brennan	589
Examination by Solicitor Barnett	592

ISABELL WILLIAMS

Examination by The Court	594
Examination by Mr. Brennan	598
Examination by Solicitor Barnett	603
Examination by The Court	611

MACKENZIE LEAKE

Examination by The Court	616

WILMA LANGFORD	
Examination by The Court	620
GARY MCHAM	
Examination by The Court	626
JERLYN MILLER	
Examination by The Court	634
RICHARD SMITH	
Examination by The Court	638
Examination by Mr. Brennan	643
Examination by Solicitor Barnett	650
Examination by The Court	653
COLLOQUY REGARDING PROSPECTIVE JUROR	659
TESTIMONY (VOIR DIRE)	
DONALD RAY	
Examination by The Court	660
Examination by Mr. Brennan	665
Examination by Solicitor Barnett	669
Examination by The Court	672
COLLOQUY REGARDING PROSPECTIVE JUROR	676
TESTIMONY (VOIR DIRE)	
JOHN POOLE	
Examination by The Court	679
Examination by Mr. Bartosh	689
Examination by Solicitor Gowdy	695
COLLOQUY REGARDING PROSPECTIVE JUROR	697
TESTIMONY (VOIR DIRE)	
JOHN POOLE	
Examination by The Court	701
DEAN ISRAEL	
Examination by The Court	706
Examination by Mr. Brennan	711
Examination by Solicitor Gowdy	715

COLLOQUY REGARDING PROSPECTIVE JUROR.....720

TESTIMONY (VOIR DIRE)

JEFFREY RHINEBERGER

Examination by The Court 724
Examination by Mr. Bartosh 728
Examination by Solicitor Gowdy.....734

KIM ROGERS

Examination by The Court 738
Examination by Mr. Brennan 743
Examination by Solicitor Gowdy.....746

COLLOQUY REGARDING PROSPECTIVE JUROR.....750

TESTIMONY (VOIR DIRE)

KEVIN CARTLEDGE

Examination by The Court 753
Examination by Mr. Brennan 758
Examination by Solicitor Willingham 761

COLLOQUY REGARDING PROSPECTIVE JUROR.....767

TESTIMONY (VOIR DIRE)

KENNETH REESE

Examination by The Court 769
Examination by Mr. Bartosh 773
Examination by Solicitor Barnett.....778

COLLOQUY REGARDING PROSPECTIVE JUROR.....782

TESTIMONY (VOIR DIRE)

KENNETH REESE

Examination by The Court 793

TIMOTHY BREWTON

Examination by The Court 797
Examination by Mr. Bartosh 804
Examination by The Court 807
Examination by Mr. Bartosh 808
Examination by Solicitor Barnett.....810

ALETHA MISENHEIMER	
Examination by The Court	815
COLLOQUY REGARDING PROSPECTIVE JUROR	820
TESTIMONY (VOIR DIRE)	
SAMUEL BARNWELL	
Examination by The Court	826
Examination by Mr. Brennan	830
Examination by Solicitor Willingham	835
COLLOQUY REGARDING PROSPECTIVE JUROR	838
TESTIMONY (VOIR DIRE)	
SAMUEL BARNWELL	
Examination by Solicitor Willingham	843
COLLOQUY REGARDING PROSPECTIVE JUROR	846
TESTIMONY (VOIR DIRE)	
JAMI STURGEON	
Examination by The Court	850
Examination by Mr. Bartosh	855
Examination by Solicitor Gowdy	861
MATTHEW SMITH	
Examination by The Court	865
JOSEPH FLOYD	
Examination by The Court	869
Examination by Mr. Bartosh	874
Examination by Solicitor Willingham	884
Examination by Mr. Bartosh	889
COLLOQUY REGARDING PROSPECTIVE JUROR	890
TESTIMONY (VOIR DIRE)	
JOANN NETHERTON	
Examination by The Court	897

LINDA FULLER	
Examination by The Court	909
Examination by Mr. Brennan	915
WILLIAM ATKINS	
Examination by The Court	921
MARVIN SMITH	
Examination by The Court	928
Examination by Mr. Brennan	932
Examination by Solicitor Gowdy	937
Examination by Mr. Brennan	943
Examination by Solicitor Gowdy	944
Examination by Mr. Brennan	949
JAMES COTTRELL	
Examination by The Court	950
COLLOQUY REGARDING PROSPECTIVE JUROR	954
TESTIMONY (VOIR DIRE)	
HEATHER SNITE	
Examination by The Court	955
MICHAEL DAWSON	
Examination by The Court	956
Examination by Mr. Bartosh	960
Examination by Solicitor Barnett	964
Examination by Mr. Bartosh	968
COLLOQUY REGARDING PROSPECTIVE JUROR	972
TESTIMONY (VOIR DIRE)	
PAM GARDNER	
Examination by The Court	982
Examination by Mr. Brennan	987
Examination by Solicitor Barnett	992
COURT'S REMARKS	995

TESTIMONY (VOIR DIRE)

JACKIE BARHAM

Examination by The Court	996
Examination by Mr. Bartosh	1000
Examination by Solicitor Willingham	1006

TESTIMONY (VOIR DIRE)

JUDY FOLK

Examination by The Court	1008
Examination by Mr. Brennan	1013
Examination by Solicitor Barnett	1020

COLLOQUY ON JURY SELECTION

1021

PREVIOUS MOTIONS RENEWED

1024

TESTIMONY (VOIR DIRE)

PATRICIA THOMAS

Examination by The Court	1026

THOMAS WILLIAMS

Examination by The Court	1031

AMANDA HAMBY

Examination by The Court	1034

STANLEY FIELDS

Examination by The Court	1036
Examination by Mr. Brennan	1041
Examination by Solicitor Barnett	1045

JEFFREY SEAY

Examination by The Court	1048
Examination by Mr. Bartosh	1054
Examination by Solicitor Gowdy	1061

ALONZO ROBINSON

Examination by The Court	1064
Examination by Mr. Bartosh	1069

MELODY RIDDLE	
Examination by The Court	1096
Examination by Mr. Brennan	1101
Examination by Solicitor Gowdy	1104
Examination by Mr. Bartosh	1107
COLLOQUY REGARDING PROSPECTIVE JUROR	1109
TESTIMONY (VOIR DIRE)	
JOYCE MARTIN	
Examination by The Court	1111
TRACY WHITAKER	
Examination by The Court	1116
SARAH SIMMS	
Examination by The Court	1121
WILLIAM PARNELL	
Examination by The Court	1128
Examination by Mr. Brennan	1132
Examination by Solicitor Willingham	1137
COLLOQUY REGARDING PROSPECTIVE JURORS	1141
TESTIMONY (VOIR DIRE)	
TRACY HOLLINGSWORTH	
Examination by The Court	1143
Examination by Mr. Brennan	1147
Examination by Solicitor Willingham	1156
BRANDON GREENWAY	
Examination by The Court	1160
Examination by Mr. Brennan	1165
COLLOQUY REGARDING PROSPECTIVE JUROR	1167
TESTIMONY (VOIR DIRE)	
JOSHUA BENNETT	
Examination by The Court	1169
Examination by Mr. Bartosh	1175

TRACY BROCK

Examination by The Court	1184
Examination by Mr. Bartosh	1195
Examination by Solicitor Gowdy	1215

COLLOQUY REGARDING PROSPECTIVE JUROR	1219

TESTIMONY (VOIR DIRE)

JOYCE MARTIN

Examination by The Court	1229

CAROLE HILL

Examination by The Court	1232
Examination by Mr. Bartosh	1237
Examination by Solicitor Gowdy	1240

COLLOQUY REGARDING PROSPECTIVE JUROR	1250

TESTIMONY (VOIR DIRE)

LINDA JONES

Examination by The Court	1263
Examination by Mr. Bartosh	1267
Examination by Solicitor Barnett	1275
Examination by Mr. Bartosh	1277

JANE VELLINES

Examination by The Court	1283
Examination by Mr. Bartosh	1287
Examination by Solicitor Willingham	1294

MATT KERN

Examination by The Court	1296
Examination by Mr. Bartosh	1300
Examination by Solicitor Barnett	1305

THADDEUS BECK

Examination by The Court	1307
Examination by Mr. Bartosh	1311
Examination by Solicitor Willingham	1316

OTIS CAMPBELL

Examination by The Court	1320

JAMES GENTRY	
Examination by The Court	1323
Examination by Mr. Bartosh	1327
Examination by Solicitor Gowdy	1333
COLLOQUY REGARDING JURY SELECTION	1339
COLLOQUY REGARDING ENHANCED 911 TAPE	1342
TESTIMONY (VOIR DIRE)	
RICHARD SMITH	
Examination by The Court	1349
JOANN NETHERTON	
Examination by The Court	1350
Examination by Solicitor Barnett	1351
COLLOQUY REGARDING EXAMINATION OF DEFENDANT BY THE PROSECUTION'S EXPERT WITNESS	1353
COLLOQUY REGARDING PRIOR MOTIONS	1355
TESTIMONY (VOIR DIRE)	
PAMELA BAGWELL	
Examination by The Court	1359
CLARA COPE	
Examination by The Court	1362
Examination by Mr. Bartosh	1368
THADDEUS BECK	
Examination by The Court	1373
THOMAS OLIVER	
Examination by The Court	1375
Examination by Mr. Bartosh	1381
Examination by Solicitor Willingham	1382
LEONARD COGDILL	
Examination by The Court	1384
Examination by Mr. Bartosh	1390
Examination by Solicitor Barnett	1396

MICHAEL WEEKS	
Examination by The Court	1398
Examination by Mr. Bartosh	1402
Examination by Solicitor Willingham	1404
Examination by The Court	1408
COLLOQUY REGARDING PROSPECTIVE JUROR	1409
TESTIMONY (VOIR DIRE)	
AMANDA MORTON	
Examination by The Court	1412
Examination by Mr. Bartosh	1416
Examination by Solicitor Barnett	1423
BRANDON GREENWAY	
Examination by The Court	1426
Examination by Mr. Bartosh	1427
JURY QUALIFICATION	1434
TESTIMONY (VOIR DIRE)	
JANET PRASANLACK	
Examination by The Court	1438
Examination by Mr. Bartosh	1441
JURY QUALIFICATION	1443
JURY SELECTION	1444
SWEARING-IN OF SELECTED JURORS	1454
COLLOQUY REGARDING 911 TAPE	1466
OPENING INSTRUCTIONS BY THE COURT	1487
OPENING STATEMENT BY SOLICITOR BARNETT	1499
OPENING STATEMENT BY MR. BRENNAN	1503
TESTIMONY	
FREDDY THOMPSON	
Direct Examination by Solicitor Barnett	1505

CHARLES CLAVENGER	
Direct Examination by Solicitor Barnett.....	1508
DIANNA DANIELS	
Direct Examination by Solicitor Gowdy.....	1510
CELESTE NESBITT	
Direct Examination by Solicitor Gowdy.....	1515
Cross Examination by Mr. Brennan.....	1538
<u>IN CAMERA</u> HEARING ON SCOPE OF MS. NESBITT'S TESTIMONY.....	1542
TESTIMONY	
CELESTE NESBITT	
Redirect Examination by Solicitor Gowdy.....	1554
HARVEY "BENNY" GODFREY	
Direct Examination by Solicitor Gowdy.....	1561
Cross Examination by Mr. Brennan.....	1576
GUY CARTER	
Direct Examination by Solicitor Barnett.....	1578
Cross Examination by Mr. Brennan.....	1581
DOUG BISHOP	
Direct Examination by Solicitor Willingham.....	1582
RANDY BOGAN	
Direct Examination by Solicitor Willingham.....	1585
Cross Examination by Mr. Brennan.....	1605
DANNY DEFREEZE	
Direct Examination by Solicitor Willingham.....	1608
Cross Examination by Mr. Brennan.....	1622
TESTIMONY	
DR. DAVID WREN	
Direct Examination by Solicitor Gowdy.....	1649
JURY MATTER	1660
COLLOQUY REGARDING DEFENDANT'S RIGHT TO TESTIFY.....	1662

TESTIMONY

JASON STEWART

Direct Examination by Mr. Brennan.....1668

VIRGINIA LINDSEY

Direct Examination by Mr. Brennan.....1674

CHRISTOPHER WILKINS

Direct Examination by Mr. Brennan.....1677

COLLOQUY REGARDING DEFENDANT'S RIGHT TO TESTIFY.....1680

CHARGE CONFERENCE.....1682

CLOSING ARGUMENT BY SOLICITOR GOWDY.....1696

CLOSING ARGUMENT BY MR. BRENNAN.....1703

CHARGE ON THE LAW.....1706

VERDICT.....1716

COLLOQUY REGARDING EVIDENCE DURING SENTENCING PHASE.....1724

OPENING INSTRUCTION.....1738

OPENING STATEMENT BY SOLICITOR WILLINGHAM.....1742

OPENING STATEMENT BY MR. BARTOSH.....1746

TESTIMONY

KIERAP.

Direct Examination by Solicitor Gowdy.....1749

Cross Examination by Mr. Bartosh.....1756

Redirect Examination by Solicitor Gowdy.....1757

Recross Examination by Mr. Bartosh.....1758

CELESTE NESBITT

Direct Examination by Solicitor Gowdy.....1759

(IN CAMERA) Direct Examination by Solicitor Gowdy.....1762

Cross Examination by Mr. Bartosh.....1783

RANDY BOGAN

Direct Examination by Solicitor Barnett.....	1792
Cross Examination by Mr. Bartosh.....	1802

DOUG BISHOP

Direct Examination by Solicitor Barnett.....	1803

MARY LYLES

Direct Examination by Solicitor Barnett.....	1806
Cross Examination by Mr. Bartosh.....	1808

SHARON SMITH

Direct Examination by Solicitor Barnett.....	1809
Cross Examination by Mr. Bartosh.....	1825
Redirect Examination by Solicitor Barnett.....	1828

TESTIMONY

CHRIS SMITH

Direct Examination by Solicitor Willingham.....	1829
Cross Examination by Mr. Bartosh.....	1845
Redirect Examination by Solicitor Gowdy.....	1860
Recross Examination by Mr. Bartosh.....	1861

BRIAN DUNCAN

Direct Examination by Solicitor Barnett.....	1862
Cross Examination by Mr. Bartosh.....	1865
Redirect Examination by Solicitor Barnett.....	1866

JANE MILLWOOD

Direct Examination by Solicitor Willingham.....	1866

ASHLEY HARRIS

Direct Examination by Solicitor Willingham.....	1869
Cross Examination by Mr. Bartosh.....	1877

CELESE NESBITT

Direct Examination by Solicitor Gowdy.....	1878

<u>IN CAMERA</u> DEMONSTRATION OF WITNESS WITH VEHICLE.....	1881

TESTIMONY

CELESTE NESBITT

Direct Examination by Solicitor Gowdy.....	1894

JURY VIEW DEMONSTRATION WITH VEHICLE 1895

COLLOQUY REGARDING JURY DEMONSTRATION WITH VEHICLE.....1896

TESTIMONY

JAMES SLIGH

Direct Examination by Solicitor Willingham 1908

Cross Examination by Mr. Bartosh.....1912

Redirect Examination by Solicitor Willingham 1914

Recross Examination by Mr. Bartosh 1916

BRIAN WHITE

Direct Examination by Solicitor Willingham 1917

Cross Examination by Mr. Bartosh.....1922

CATHY MULLINAX

Direct Examination by Solicitor Willingham 1924

Cross Examination by Mr. Bartosh.....1927

SARAH SIMMONS

Direct Examination by Solicitor Barnett.....1930

Cross Examination by Mr. Bartosh.....1938

STANFORD WILKINS

Direct Examination by Solicitor Willingham 1940

Cross Examination by Mr. Bartosh.....1946

JESSICA CANNON

Direct Examination by Solicitor Willingham 1947

MARTHA SMITH

Direct Examination by Solicitor Willingham 1951

STANLE STAGGS

Direct Examination by Solicitor Gowdy.....1954

Cross Examination by Mr. Bartosh.....1965

MOTION FOR DIRECTED VERDICT 1971

TESTIMONY

ANN HOWARD

Direct Examination by Mr. Bartosh.....1984

Cross Examination by Solicitor Barnett.....1989

Redirect Examination by Mr. Bartosh 1993

COLLOQUY REGARDING ANN HOWARD'S QUALIFICATIONS	1996
TESTIMONY	
DR. MARGARET MELIKIAN	
Direct Examination by Mr. Bartosh.....	2000
Cross Examination by Solicitor Willingham.....	2014
Redirect Examination by Mr. Bartosh	2042
VIRGINIA LINDSEY	
Direct Examination by Mr. Bartosh.....	2044
Cross Examination by Solicitor Gowdy.....	2060
BILL BURTON	
Direct Examination by Mr. Bartosh.....	2061
Cross Examination by Solicitor Gowdy.....	2068
Redirect Examination by Mr. Bartosh	2070
LEON MCDOWELL	
Direct Examination by Mr. Bartosh.....	2070
CHRIS WILKINS	
Direct Examination by Mr. Brennan.....	2072
Cross Examination by Solicitor Willingham.....	2076
STEVEN PILGRIM	
Direct Examination by Mr. Bartosh.....	2078
BESSIE SMITH	
Direct Examination by Mr. Bartosh.....	2080
COLLOQUY ON ADMISSIBILITY OF SUICIDE ATTEMPT	2083
COLLOQUY REGARDING DEFENDANT'S RIGHT TO TESTIFY	2085
CHARGE CONFERENCE.....	2091
CLOSING ARGUMENT BY SOLICITOR GOWDY	2106
STATEMENT BY THE DEFENDANT	2125
CLOSING ARGUMENT BY MR. BARTOSH.....	2131
CHARGE ON THE LAW.....	2148
JURY QUESTIONS.....	2164

VERDICT	2169
MOTIONS.....	2172
SENTENCING	2173
AGGRAVATING CIRCUMSTANCES VERDICT FORM.....	2177
DEATH SENTENCE.....	2178
AFFIRMATION OF DEATH SENTENCE.....	2179
REPORT OF THE TRIAL JUDGE.....	2180
APPLICATION FOR POST-CONVICTION RELIEF.....	2192
RETURN AND RULE 12(e) REQUEST FOR SPECIFICITY.....	2199
AMENDED APPLICATION FOR POST-CONVICTION RELIEF	2210
RETURN OF RESPONDENT’S AMENDED APPLICATION FOR POST-CONVICTION RELIEF	2217
PRE-TRIAL MOTION.....	2267
POST-CONVICTION RELIEF HEARING TRANSCRIPT	2285
TESTIMONY	
DOUGLAS BRANNON	
Direct Examination by Mr. Vieth.....	2295
Cross Examination by Mr. Zelenka	2313
Redirect Examination by Mr. Vieth.....	2346
TORA BRAWLEY	
Direct Examination by Ms. Norris	2354
Cross Examination by Mr. Zelenka	2369
Redirect Examination by Ms. Norris	2377
Recross Examination by Mr. Zelenka.....	2378
VINCENT BELL	
Direct Examination by Mr. Collins.....	2381
Cross Examination by Mr. Simon.....	2384
Redirect Examination by Mr. Collins	2389

LENORA TOPP:

Direct Examination by Mr. Vieth.....	2390
Cross Examination by Mr. Zelenka	2405
Redirect Examination by Mr. Vieth.....	2440

ROD TULLIS

Direct Examination by Mr. Collins.....	2446
Cross Examination by Mr. Zelenka	2464
Redirect Examination by Mr. Collins	2479

ROB AIKEN

Direct Examination by Mr. Vieth.....	2484
Cross Examination by Mr. Zelenka	2494
Redirect Examination by Mr. Vieth.....	2511

KAREN HATCHER

Direct Examination by Mr. Vieth.....	2513
Cross Examination by Mr. Zelenka	2540
Redirect Examination by Mr. Vieth.....	2579
Recross Examination by Mr. Zelenka.....	2586

BILL BURTON

Direct Examination by Mr. Vieth.....	2588
Cross Examination by Mr. Simon.....	2596
Redirect Examination by Mr. Vieth.....	2599

MRS. BURTON

Direct Examination by Mr. Vieth.....	2600
Cross Examination by Mr. Simon.....	2607

VIRGINIA LINDSEY

Direct Examination by Mr. Collins.....	2611
Cross Examination by Mr. Simon.....	2655
Redirect Examination by Mr. Collins	2667

BESSIE SMITH

Direct Examination by Mr. Collins.....	2672
Cross Examination by Mr. Simon.....	2702

STEVE PILGRIM

Direct Examination by Mr. Collins.....	2710
Cross Examination by Mr. Simon.....	2730
Redirect Examination by Mr. Collins	2736

TIM SIMS

Direct Examination by Mr. Collins.....	2737
Cross Examination by Mr. Simon.....	2758
Redirect Examination by Mr. Collins	2763

JAN VOGELSANG

Direct Examination by Mr. Vieth.....	2765
Cross Examination by Mr. Zelenka	2839

MARGARET MELIKIAN

Direct Examination by Mr. Vieth.....	2879
Cross Examination by Mr. Zelenka	2905
Redirect Examination by Mr. Vieth.....	2920
Recross Examination by Mr. Zelenka.....	2921

MOTION TO AMEND PCR APPLICATION	2926

APPLICANT'S EXHIBIT #1 (DEFENSE OF INDIGENTS VOUCHER).....	2937

APPLICANT'S EXHIBIT #2 (FINAL INVOICE)	2944

APPLICANT'S EXHIBIT #3 (LETTER FROM LENORA TOPP)	2946

APPLICANT'S EXHIBIT #4 (LETTER FROM LENORA TOPP)	2947

APPLICANT'S EXHIBIT #5 (LETTER FROM LENORA TOPP)	2948

APPLICANT'S EXHIBIT #6 (LETTER FROM LENORA TOPP)	2949

APPLICANT'S EXHIBIT #7 (INVESTIGATIVE REPORT)	2950

APPLICANT'S EXHIBIT #8 (MEDICAL RELEASE)	2951

APPLICANT'S EXHIBIT #9 (CV – TORA BRAWLEY).....	2953

APPLICANT'S EXHIBIT #10 (BILL – TORA BRAWLEY)	2957

APPLICANT'S EXHIBIT #11 (LETTER TO DR. MELIKIAN)	2958

APPLICANT'S EXHIBIT #12 (REPORT – DR. NARAYAN).....	2960

APPLICANT'S EXHIBIT #13 (NOTES)	2991

APPLICANT'S EXHIBIT #14 (NOTE – RUSTY CLEVINGER).....	3012

APPLICANT'S EXHIBIT #15 (REPORT OF TRIAL JUDGE).....	3013

APPLICANT'S EXHIBIT #16 (NOTES – PAM CRAWFORD)	3014
APPLICANT'S EXHIBIT #17 (NOTE - LENORA TOPP).....	3018
APPLICANT'S EXHIBIT #18 (NOTES)	3019
APPLICANT'S EXHIBIT #19 (NOTES)	3021
APPLICANT'S EXHIBIT #20 (INTAKE SHEET).....	3022
APPLICANT'S EXHIBIT #21 (NOTES)	3028
APPLICANT'S EXHIBIT #22 (NOTES)	3029
APPLICANT'S EXHIBIT #23 (INCIDENT REPORT).....	3030
APPLICANT'S EXHIBIT #24 (LETTER FROM S.C. CENTERS FOR EQUAL JUSTICE)....	3038
APPLICANT'S EXHIBIT #25 (NOTES)	3044
APPLICANT'S EXHIBIT #29 (REPORT – DR. JOHN C. DUNLAP)	3045
APPLICANT'S EXHIBIT #30 (REPORT – DR. VOGELSANG)	3046
APPLICANT'S EXHIBIT #31 (BILL – MARGARET MELIKIAN).....	3052
APPLICANT'S EXHIBIT #32 (ORDER).....	3053
RESPONDENT'S EXHIBIT #1 (STATEMENT OF VINCENT BELL).....	3055
RESPONDENT'S EXHIBIT #2 (NOTES - INTERVIEW WITH MARION LINDSEY).....	3056
RESPONDENT'S EXHIBIT #3 (RUBY NELL WRIGHT LINDSEY, INTERVIEW WITH MARION LINDSEY)	3062
RESPONDENT'S EXHIBIT #4 (NOTES - INTERVIEW WITH VIRGINIA LINDSEY).....	3067
RESPONDENT'S EXHIBIT #5 (NOTE TO STEPHANIE PERRY FROM LENORA TOPP) .	3070
RESPONDENT'S EXHIBIT #6 (MITIGATING CIRCUMSTANCES DOCUMENT).....	3071
RESPONDENT'S EXHIBIT #7 (DISCOVERY FROM SOLICITOR'S OFFICE).....	3072
RESPONDENT'S EXHIBIT #8 (WITNESS DOCUMENT)	3073
RESPONDENT'S EXHIBIT #9 (SUMMARY OF STATE'S WITNESSES).....	3075

RESPONDENT'S EXHIBIT #10 (SUMMARY OF STATE'S WITNESSES)	3080
RESPONDENT'S EXHIBIT #11 (DISCOVERY FROM SOLICITOR'S OFFICE)	3083
RESPONDENT'S EXHIBIT #12 (JURY PANEL DOCUMENT)	3085
RESPONDENT'S EXHIBIT #13 (EXPERT WITNESS LIST)	3089
RESPONDENT'S EXHIBIT #14 (NOTES)	3090
COURT'S EXHIBIT #1 (ABA GUIDELINES)	3109
PETITIONER'S POST-TRIAL MEMORANDUM	3284
RESPONDENT'S POST-HEARING MEMORANDUM OF LAW	3345
ORDER OF DISMISSAL	3536
MOTION TO RECONSIDER, ALTER AND AMEND	3728
RESPONDENT'S MEMORANDUM IN OPPOSITION TO PETITIONER'S MOTION TO RECONSIDER, ALTER AND AMEND	3738
ORDER DENYING MOTION TO RECONSIDER, ALTER OR AMEND	3751
PROPOSED ORDER OF DISMISSAL	3752
INDICTMENT	3944

THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

APPLICANT'S EXHIBIT #26 (AUDIOTAPE)
APPLICANT'S EXHIBIT #27 (PHOTOGRAPH)
APPLICANT'S EXHIBIT #28 (PHOTOGRAPH)

1 3:25 p.m.)

2 **THE COURT:** Any objection?

3 **MR. GOWDY:** No, sir.

4 **THE COURT:** Bring him back and get the next one
5 ready.

6 (WHEREUPON, Mr. Martinez enters at approximately

7 3:25 p.m.)

8 **THE COURT:** Mr. Martinez, I find that you are
9 qualified to serve as a juror in this case. Some time
10 around lunchtime tomorrow, we may start putting on
11 that recorded message that you can reach by calling
12 the telephone number that you were given yesterday
13 what our schedule is going to be. So stay in touch
14 with that recorded message by calling that number
15 around lunchtime tomorrow. And then continue to call
16 after that to see what the schedule is going to be and
17 we will also try to stay in touch with you. But
18 mainly you call that number. Yes, sir.

19 **MR. MARTINEZ:** How often do I call the number?

20 **THE COURT:** If you call it at lunchtime tomorrow
21 and it says that we will not need you until at least
22 Thursday morning, then maybe you call back around
23 7 o'clock tomorrow night and see what it says then.
24 But if you call and it says we think we're going to
25 need you around 4:00, you might want to call back and

1 3:00 and see what then says. Okay?

2 MR. MARTINEZ: All right.

3 THE COURT: Please remember my instructions not to
4 discuss this case with anybody and not to allow anyone
5 to discuss it with you. Don't read anything about it
6 and don't watch anything about it in the press. Now,
7 particularly with your sister, don't talk to your
8 sister about this case. Don't talk to her about
9 anything that relates to anything in this case
10 including her employment at the Public Defender's
11 office or anything like that. Okay?

12 MR. MARTINEZ: Yes, sir.

13 THE COURT: We will talk to you in a day or so.

14 MR. MARTINEZ: Thank you.

15 THE COURT: Thank you.

16 (WHEREUPON, Mr. Martinez exits at approximately
17 3:27 p.m.)

18 THE COURT: Bring 'em in.

19 (WHEREUPON, Martha Sallis, Juror number 240, enters at
20 approximately 3:27 p.m.)

21 MARTHA SALLIS

22 having previously been sworn, testified as follows:

23 EXAMINATION

24 BY THE COURT:

25 Q Ms. Sallis?

1 **A** Yes, sir.

2 **Q** Good afternoon. How are you?

3 **A** Great.

4 **Q** You remember yesterday that we put you under
5 oath.

6 **A** Yes.

7 **Q** You do?

8 **A** Yes.

9 **Q** You are still under oath today. Now since
10 yesterday when you left, has anybody talked to you about
11 this case or have you learned anything about this case from
12 watching the TV or reading the paper or have you talked to
13 anybody about this case?

14 **A** No.

15 **Q** We're going to need to ask you some questions.
16 We apologize if it seems like we are prying a little bit
17 into your privacy. But we have to do it. There aren't any
18 right or wrong answers to these questions. We just want
19 you to be open and honest with us and tell us how you think
20 and how you feel.

21 We're going to talk a little bit about a possible
22 sentencing phase. And the fact that we're talking about
23 the sentencing phase or possible sentencing phase doesn't
24 mean anything about this defendant or about this case, it
25 simply means that because we might get to that phase, we

1 need to ask you some things, some questions about some of
2 the issues that could come up during that phase.

3 If you are selected as a juror in this case, would you
4 be able to accept and apply the law precisely as I give it
5 to you and render a verdict in this case based solely on
6 the testimony and evidence that you hear here in this
7 courtroom?

8 A Yes.

9 Q You understand that in a criminal case such as
10 this, the State has the burden of proof and must prove the
11 defendant guilty beyond a reasonable doubt?

12 A Yes, sir.

13 Q Now, this is a murder case. Could you, based on
14 the facts and circumstances that are proven and in light of
15 the law as I will give it to you find the defendant either
16 guilty or not guilty depending on whether or not you think
17 the State has proven him guilty beyond a reasonable doubt?

18 A Yes.

19 Q Now, if you are on this jury and it moves into
20 the penalty phase after a verdict of guilty if that's what
21 happens, some other issues will come up. And that's what
22 we're going to talk about now. I'm going to tell you about
23 mitigating circumstances and aggravating circumstances.

24 Aggravating circumstances are facts, incidents or
25 details of an occurrence which the State of South Carolina

1 said make worse or aggravate the crime of murder.

2 Aggravating circumstances when accompanying a murder
3 increase the enormity of the crime, add to the injury of
4 the crime.

5 Mitigating circumstances, on the other hand, are facts
6 incidents or details of an occurrence that the State has
7 declared to reduce the severity of the crime of murder.
8 And those may be thought of as extenuating or reducing the
9 moral culpability or responsibility for the crime.

10 If you are on a jury in this case in the penalty
11 phase, you would have two options as to what the sentence
12 could be. The sentence could be a life sentence or the
13 sentence could be a death sentence. Could you, depending
14 on the circumstances and the facts that are proven during
15 the penalty phase of the trial or during the whole trial
16 including consideration of aggravating and mitigating
17 circumstances and the law as I will give it to you, could
18 you impose a life sentence?

19 A Yes.

20 Q Could you impose the death penalty?

21 A If circumstances warrant it.

22 Q Right, and let me --

23 A I never done that before.

24 Q Actually the question is premised on depending on
25 the facts and circumstances that are proven or that you

1 find and that would include any aggravating circumstances
2 or any mitigating circumstances. And without saying,
3 you're not telling us what you would do. We just want to
4 know if you could do it. You already told us that you
5 could impose a life sentence. That would depend on the
6 circumstances I would assume.

7 A Yes.

8 Q Now depending on the circumstances, could you
9 impose the death penalty?

10 A Yes.

11 Q All right. Now, if you were seated on the jury
12 in this case and if I sequester the jury or, in other
13 words, if I put you up in an hotel and don't let you go
14 home to your family for a couple of days, five or six days,
15 would that impose a terrible hardship on you?

16 A No.

17 Q Have you had a chance to go over the witness list
18 that I gave you?

19 A Yes.

20 Q Have you read every name on that list?

21 A Yes.

22 Q Is there anybody on that list whom you know or to
23 whom you are related?

24 A No.

25 Q Now, ma'am, do you know of any reason why you

1 could not give both the State and the defendant a fair and
2 impartial trial in this case?

3 **A** No.

4 **Q** Thank you. I'm going to let the lawyers ask you
5 some questions now and then I'm come back maybe and ask you
6 some more in a few minutes.

7 **EXAMINATION**

8 **BY MR. BARTOSH:**

9 **Q** Good afternoon, Ms. Sallis. My name is Mike
10 Bartosh.

11 **A** Good afternoon.

12 **Q** Are you a Post Mistress?

13 **A** A clerk.

14 **Q** A clerk at Star Tech?

15 **A** Correct.

16 **Q** How long have you been doing that?

17 **A** I been with the post office about 24 years. I
18 probably been a clerk for about 21 years.

19 **Q** Has it always been in Duncan?

20 **A** Except for the first two or three years.

21 **Q** Okay. Now, I was going over your questionnaire.
22 You said that your neighbor's common-law husband shot his
23 wife?

24 **A** It was actually her husband. It was about 18
25 years ago or something like that.

1 Q All right. And you were called as a witness, so
2 you had to give a statement?

3 A Right.

4 Q And did you witness the actual event?

5 A Yes.

6 Q Okay. Was the lady killed?

7 A Yes.

8 Q If this case, -- you also know something about
9 this case.

10 A Any time it has come up, I don't --

11 Q Do you know the basic facts of the case?

12 A I don't know the details.

13 Q Okay. Would it matter to you if it was a case
14 involving a man charged with shooting his wife?

15 A No.

16 Q Having experienced the other one before, would
17 that have an affect on you in trying to decide this case?

18 A No, sir.

19 Q You would be able to put that second or that
20 first incident out of your mind?

21 A Yes.

22 Q Okay. You also had answered that you or some
23 family member had been arrested by the sheriff's office?

24 A My son.

25 Q And what was that charge?

1 **A** He had a girlfriend and they had some problems.
2 Nothing was ever, they had only been dating for about five
3 or six weeks. She decided that, she came over to the
4 house. He was going skiing with some of his boys. And she
5 did not want him to go. She went home crying. Of course,
6 her family was upset. I said nothing happened. She was
7 mad cause he was going skiing with some friends.

8 So she called back and after she got her family upset
9 and they called over to our house to find out what the
10 problem was, she felt kind of bad because she knew nothing
11 had gone on. She was just mad because he was going. She
12 tried to make it sound like he hurt my feelings, we had
13 hurt her feelings. She -- instead of coming back over to
14 the house and saying I don't want you to go or whatever,
15 she had a friend call and ask him to come down to the
16 Harris Teeter which is like a block away.

17 And I thought, That's really strange. Why don't she
18 just come over here. We were all friends. I didn't
19 understand why he went down there. But he did. So she
20 parked really close to him. He was really, his car was
21 something he really took care of. He spit polished it
22 every day. She hit it on purpose. So he spit on her. She
23 had him arrested for spitting on her.

24 **Q** So criminal domestic violence?

25 **A** I don't think it came to anything. I think she

1 went up there and asked them to drop the charges because
2 she was mad at the time. That was not --

3 Q So that was -- I'm sorry. Go ahead.

4 A That was not a nice thing to do. And it's not in
5 his character to do that.

6 Q And would the fact that there are some
7 allegations of criminal domestic violence in this case,
8 would that affect your ability to be fair to both sides?

9 A No.

10 Q You also have an affiliation with law
11 enforcement?

12 A My husband contributes to the people that call
13 and ask for donations to help the victims. We are not
14 actually members but he does contribute.

15 Q Okay. Now, briefly, you understand how, the
16 judge has gone into it a little bit. You understand how
17 this trial works. It is a two-part procedure. The first
18 part is like a regular trial. The State puts up its
19 evidence. If the jury believes the State has proved its
20 case beyond a reasonable doubt, the jury would find him
21 guilty. If they don't believe it, they would find him not
22 guilty. And, of course, we would all go home.

23 If they find him guilty, then they go to the second
24 part of the trial which is the penalty phase. That is
25 basically the main thing we're talking about now is how

1 your views is, how you view capital punishment versus life
2 in prison. What you would be asked to do is there would be
3 aggravators that were presented by the State which would
4 try to show the crime more serious. There would be
5 mitigating factors presented by the defense which would try
6 to mitigate or lessen the culpability or the seriousness of
7 the crime by the defense.

8 Would you have any problem being able to sit and
9 listen to both sides and to be fair to both sides and to
10 base your decision based upon what you heard from both
11 sides not of any preconceived notion that you may have and
12 not upon an sympathy for one person or upon a desire to
13 punish another person? Would you be able to be completely
14 independent and neutral in being able to evaluate the
15 evidence that would be presented?

16 A I believe so.

17 Q Okay. You understand that the two choices, you
18 don't have to give death. There's always the option of
19 life. Life means life without parole. Should you get that
20 far and the jury decides life, Mr. Lindsey would never get
21 out of jail. Of course, the other side of the point is the
22 jury could find for death. Would you have any problem
23 listening to both sides fairly?

24 A No, sir.

25 Q And you would not have made up your mind or

1 anything like that prior to coming to court and the fact
2 that you know something about this would have no affect on
3 your ability to listen to the evidence and follow the
4 judge's instructions?

5 A No, sir.

6 Q Now, two quick questions. Everybody has to sign
7 the death sentence. If that's what the jury believes to be
8 the appropriate sentence, all twelve jurors would sign it.
9 If it came down to the point where eleven has signed, and
10 it comes to you, and knowing that when you sign that, you
11 are sentencing Mr. Lindsey to death, could you do it?

12 A I don't know.

13 Q Fair to say, you would have to wait and see til
14 you came to that point because you have never had that
15 experience before.

16 A Yes.

17 Q Now, the second question I've got to ask is if on
18 the other hand, there were eleven jurors, it has to be
19 unanimous. If these other eleven jurors have decided death
20 would be the appropriate sentence and you believe that life
21 would be the appropriate sentence, would you be able to
22 maintain your position and hold out against the pressures
23 of the other eleven and vote for death?

24 A Yes, sir. Everybody has an opinion. And if I
25 decide, then I'm going to stick to it.

1 **Q** If you believed death was appropriate, if you
2 believed death were appropriate, you could find it and you
3 could sign the sentencing sheet?

4 **A** Yes.

5 **MR. BARNETT:** May it please the Court, Your
6 Honor.

7 **THE COURT:** Yes, sir.

8 **EXAMINATION**

9 **BY MR. BARNETT:**

10 **Q** Ms. Sallis, my name is Barry Barnett. Along
11 with Trey Gowdy and Donnie Willingham, we will be
12 prosecuting this case for the State. Let me ask you a
13 couple of questions. I noticed when he asked you about the
14 death penalty, you said you didn't know. Why did you say
15 you didn't know?

16 **A** I never been in that position before. I don't
17 know. I just don't know.

18 **Q** About the death, excuse me.

19 **A** I never been in that position. I can't say what
20 I would do.

21 **Q** Your beliefs on the death penalty or whatever,
22 where would they come from or on what basis would you make
23 a determination about what you believe in the death
24 penalty?

25 **A** It has to be religious.

1 Q You realize and Mr. Bartosh asked you about
2 this, you realize that life means life without parole?

3 A Yes.

4 Q And that's always an option. You don't always
5 find death in cases just because they are guilty of murder.
6 Knowing that life without parole is an option, would you
7 ever find somebody guilty of the death penalty in any case?

8 A Yes.

9 Q You said it would have to be a cold-blooded
10 situation. Would you consider any other situation?

11 A I don't know. I would have to listen to the
12 facts.

13 Q I just have to ask you these questions. You
14 realize we need to find out what kind of juror -- like I
15 said, I know this is the first time you ever --

16 A Yeah.

17 Q I'm not trying to pry or whatever but obviously
18 when you're back in the jury room back there trying to
19 reach a verdict, we don't know what you would do at that
20 point. We would try to find out as much as we possibly can
21 now. In the facts and the circumstances that you would be
22 looking at during the case or whatever, would you be most
23 likely to return a life without parole verdict than a death
24 verdict based on what you are observing or based off your
25 beliefs?

1 **A** I believe in the death penalty. I don't know
2 what I would have to do. I don't like that part of it but
3 sometimes it's warranted.

4 **Q** I know. It's tough.

5 **A** It's hard to say. You don't know what you do. I
6 never been at this point.

7 **Q** It's just something you haven't looked at in that
8 situation. Like I said, if it came down to where you were
9 the last person that signed the death sentence, could you
10 do that if the case warranted that?

11 **A** Yes.

12 **MR. BARNETT:** One moment, Your Honor, please.

13 No further questions of this witness.

14 **THE COURT:** All right. Ms. Sallis, why don't you
15 step out in the hall for just one second please,
16 ma'am.

17 (WHEREUPON, Ms. Sallis exits at approximately
18 3:49 p.m.)

19 **THE COURT:** Any objection to Ms. Sallis?

20 **MR. BARTOSH:** No, sir.

21 **MR. BARNETT:** None from the State, Your Honor.

22 **THE COURT:** All right. Bring her back and get the
23 next juror ready.

24 (WHEREUPON, Ms. Sallis enters at approximately
25 3:50 p.m.)

1 **THE COURT:** Ms. Sallis, I find that you are
2 qualified to serve as a juror in this case. We're
3 going to be -- we won't need you for another day or
4 so, a day and a half or so. So you can go and be, uh,
5 go on about your life or whatever. Please remember my
6 instructions not to discuss this case with anybody,
7 not to allow anyone to discuss it with you. Don't
8 read about it. Don't watch anything on the TV about
9 it. Don't allow yourself to learn anything about this
10 case until you get back and start learning about it
11 here in the courtroom.

12 Start checking the recorded message. You were
13 given a phone number yesterday. Start checking that
14 message about lunchtime tomorrow to find out what we
15 think the schedule is going to be. And we will start,
16 when we get close, we will start putting something on
17 there about when we need you come back.

18 And keep in mind that we may keep you here for
19 five or six days. You will need to pack and bring
20 some stuff with you perhaps when you come. So you can
21 go now. Have a good day today. Tomorrow, we look
22 forward to seeing you soon.

23 (WHEREUPON, Ms. Sallis exits at approximately
24 3:50 p.m.)

25 (WHEREUPON, Danny Gomes, Juror number 106, enters at

1 approximately 3:50 p.m.)

2 **DANNY GOMES**

3 having previously been sworn, testified as follows:

4 **EXAMINATION**

5 **BY THE COURT:**

6 **Q** Mr. Gomes?

7 **A** Yes, sir.

8 **Q** How are you?

9 **A** Pretty good. How are you?

10 **Q** I'm doing fine. You remember that we put you
11 under oath yesterday?

12 **A** Yes.

13 **Q** You are still under oath today.

14 **A** Okay.

15 **Q** Now, since you left us yesterday, has anybody
16 talked to you about this case or have you learned anything
17 or seen anything about this case by reading the paper or
18 watching TV or anything?

19 **A** No, sir.

20 **Q** All right. I'm going to ask you some questions
21 and then the lawyers are probably going to ask you some
22 questions. We're not trying to pry into your private life.
23 But we do have to ask you these questions. There are not
24 any correct or incorrect answers to these questions. We
25 just want you to be open and honest with us. Tell us how

1 you think, tell us how you feel.

2 We're also going to talk about a possible penalty
3 phase. The fact that we're talking about a possible
4 penalty phase does not mean anything about this defendant
5 or about this case. It simply means that because we might
6 get into the penalty phase, we need to talk to you about
7 some of the issues that might come up.

8 If you were a juror in this case, could you accept and
9 apply the law as I would give it to you and render a
10 verdict in this case based solely on the testimony and the
11 evidence that you would hear and see here in this
12 courtroom?

13 A Yes, sir.

14 Q You could do that?

15 A Yes, sir.

16 Q You understand that in a criminal case, the State
17 has the burden of proof?

18 A Yes, sir.

19 Q And they must prove the defendant guilty beyond a
20 reasonable doubt?

21 A Yes, sir.

22 Q This is a murder case. Could you, depending on
23 the facts and circumstances that are proven and in light of
24 the law as I will give it to you, could you find the
25 defendant either guilty or not guilty depending on whether

1 or not you think the State has proven him guilty beyond a
2 reasonable doubt?

3 **A** Yes, sir.

4 **Q** If you are on the jury and we go into the penalty
5 phase because the jury has found the defendant guilty, some
6 other issues are going to come up. We're going to talk
7 about those now. Mitigating circumstances and aggravating
8 circumstances. Aggravating circumstances are facts,
9 incidents or details of an occurrence which the State of
10 South Carolina has declared to make worse or to aggravate
11 the crime of murder. Aggravating circumstances when
12 accompanying a murder increase the enormity of and add to
13 the injury of the crime of murder.

14 Mitigating circumstances, on the other hand, are
15 facts, incidents or details of an occurrence which the
16 State of South Carolina have declared to reduce the
17 severity of the crime of murder. Those may be seen to
18 extenuate or to reduce the degree of moral culpability or
19 responsibility.

20 Now, if you are on the jury and we get into the
21 penalty phase of the trial, you would have two options as
22 to your verdict and your sentence. First, you would have
23 the option of imposing a life sentence. And second, you
24 would have the option of imposing the death penalty. Could
25 you, based on the facts and circumstances that you see and

1 you find, including consideration of any aggravating or
2 mitigating circumstances and of course in light of the law
3 as I give it to you, could you return a verdict of a life
4 sentence?

5 A Yes, sir.

6 Q Could you return a verdict imposing the death
7 penalty?

8 A Yes, sir.

9 Q If I were to sequester this jury and you get on
10 the jury, would the fact that you have to be away from your
11 home and your family for five or six days, put up in a
12 hotel here in Spartanburg, would that be a tremendous
13 burden on you?

14 A No, sir.

15 Q Have you had a chance to go over the witness list
16 that I gave you?

17 A Yes, sir.

18 Q Did you read every name on that list?

19 A Yes, sir.

20 Q Do you know or are you related to anybody on that
21 list?

22 A No, sir.

23 Q Do you know of any reason why you could not be a
24 fair and impartial juror in this case and give both the
25 State and the defendant a fair and impartial trial?

1 **A** No, sir.

2 **Q** Now, I'm going to let the lawyers ask you some
3 questions. Then I may come back and ask you some questions
4 in a few minutes.

5 **MR. BRENNAN:** Please the Court, Your Honor.

6 **THE COURT:** Yes, sir.

7 **EXAMINATION**

8 **BY MR. BRENNAN:**

9 **Q** Mr. Gomes, good afternoon.

10 **A** Hello.

11 **Q** My name is Doug Brennan. I'm a defense attorney
12 here in Spartanburg. I, myself, Mr. Bartosh and Ms.
13 Quimby have an opportunity to defend Mr. Lindsey in this
14 manner. You attend Walford College, correct?

15 **A** Yes, sir.

16 **Q** What year are you?

17 **A** Excuse me?

18 **Q** What year in college are you?

19 **A** Sophomore.

20 **Q** Sophomore. And your dad either was at one point
21 or either is currently employed with the Spartanburg County
22 Sheriff's Department or the city police?

23 **A** He was 20 years ago.

24 **Q** He was a long time ago?

25 **A** Yes.

1 Q You and your dad ever talk about law enforcement
2 or that kind of thing?

3 A No, sir.

4 Q So your dad's employment as a law enforcement
5 would not affect or cloud your judgment at all?

6 A No, sir.

7 Q All right. Do you understand death penalty is
8 never mandatory in South Carolina?

9 A Yes.

10 Q Understanding that, there are three kinds of
11 jurors. There is the juror that if the defendant is found
12 guilty, he is always going to vote the death penalty.
13 There is a juror on the other side that if the defendant is
14 found guilty, even though he is found guilty, that juror is
15 going to impose a life sentence. Then there are those in
16 the middle that are willing to listen to the facts from
17 both sides and make a determination based on those facts
18 and those facts only. Which kind of juror are you?

19 A The one in the middle.

20 Q Okay. All right. Let's say that there is eleven
21 jurors, you being the twelfth. And those eleven have said
22 death penalty is appropriate, death penalty is appropriate.
23 But you have made a determination. You think the life
24 sentence is the correct sentence. Those twelve people are
25 ready to sign the verdict form. They are just waiting on

1 you. Could you stand your ground and say no, life is
2 appropriate?

3 A Yes.

4 Q You would not be affected by those eleven people?

5 A No, sir.

6 Q You understand, I've already mentioned it but do
7 you understand that you will be asked to sign a verdict
8 form? If the verdict was for the death penalty and you
9 were the twelfth juror, could you sign that form?

10 A I don't understand the question.

11 Q Eleven people have already signed it.

12 A Okay.

13 Q They are waiting on your signature. Your
14 signature is what is going to impose the death penalty,
15 could you sign that form?

16 A If I believe that.

17 Q Based on the evidence that you have heard, if you
18 believe that is appropriate, can your signature go on that
19 line? Can you sign it?

20 A No, sir.

21 Q You can't sign it?

22 A (Shakes head negatively.)

23 Q If you did not understand my question, I would do
24 the best to rephrase it.

25 A Okay.

1 **Q** Eleven other jurors have voted for death and have
2 signed it. You heard the evidence. And in this question,
3 you believe the death penalty is appropriate, can you sign
4 that form?

5 **A** Yes, sir.

6 **MR. BRENNAN:** One second.

7 Nothing further, Your Honor. Thank you.

8 **MR. BARNETT:** May it please the Court.

9 **THE COURT:** Yes, sir.

10 **EXAMINATION**

11 **BY MR. BARNETT:**

12 **Q** Mr. Gomes, my name is Barry Barnett. I, along
13 with Trey Gowdy and Donnie Willingham, are prosecuting this
14 case for the State. Just answer a few questions. I
15 noticed on your jury information form, you listed a
16 Maryland address. Is that where your parents live?

17 **A** Yes, sir.

18 **Q** And your father did work for the sheriff's
19 department or city police?

20 **A** Yes, sir.

21 **Q** What does he do now?

22 **A** He is chemist.

23 **Q** And what does you mother do?

24 **A** She works at the library.

25 **Q** Is that the library downtown?

1 **A** Yes.

2 **Q** And I notice that you go to St. Paul's Catholic
3 Church.

4 **A** Yes, sir.

5 **Q** How long have you been there, all your life?

6 **A** Yes, sir.

7 **Q** And does the Catholic, your beliefs on the death
8 penalty, is it affected by anything at the Catholic Church
9 or anything?

10 **A** The Catholic Church is against the death penalty,
11 but I am for it.

12 **Q** Do you know Mr. Bartosh by chance?

13 **A** He looks for familiar.

14 **Q** But you don't have any personal relation with him
15 or anything like that?

16 **A** No.

17 **Q** And you are presently at Wofford right now?

18 **A** Yes.

19 **MR. BARNETT:** Hold on one moment, Your Honor,
20 please.

21 Nothing else.

22 Thank you very much, sir.

23 **THE COURT:** Mr. Gomes, let me ask you to step out
24 in the hall for just a second please.

25 (WHEREUPON, Mr. Gomes exits at approximately

1 3:59 p.m.)

2 **THE COURT:** Any objection to Mr. Gomes?

3 **MR. BRENNAN:** Your Honor, we have one question
4 that we might need answered.

5 (WHEREUPON, there was a pause.)

6 **MR. BRENNAN:** No, Your Honor. We have none.

7 **THE COURT:** No objection from the defense?

8 **MR. GOWDY:** None from the State.

9 **THE COURT:** Bring him in.

10 (WHEREUPON, Mr. Gomes enters at approximately

11 4:00 p.m.)

12 **THE COURT:** Mr. Gomes, you are qualified to serve
13 as a juror in this case. We won't need you for a day
14 or so. So you can go about your business. We will
15 ask you to stay in touch with the recorded number that
16 you were given yesterday, the recorded message. You
17 can get to it by calling the number that you were
18 given yesterday. I'm starting to talk in circles.

19 So about lunchtime tomorrow, please check with
20 that number and see if there's any information on
21 there about when you should return. It's probably
22 going to be late Wednesday or early Thursday before we
23 need you.

24 Remember my instructions not to discuss this
25 case. Don't read about it. Don't watch anything on

1 TV about it. Don't allow anyone to discuss it with
2 you. When you come back, I'm going to ask you like
3 I'm going to ask all the jurors have you learned
4 anything or seen anything or heard anything about this
5 case or have you talked with anybody about it. And I
6 want you to be able to tell me no. All right. You
7 understand?

8 MR. GOMES: Yes, sir.

9 THE COURT: All right. You are free to go.

10 (WHEREUPON, Mr. Gomes exits at approximately

11 4:01 p.m.)

12 END OF VOLUME 1
13
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20
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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG) Case No(s) : 02-GS-42-0453
State of South Carolina)
Plaintiff,)
-VS-) TRANSCRIPT OF RECORD
Marion Lindsey) VOLUME 2 OF 4
Defendant.)

May 17, 2004
Spartanburg, South Carolina

B E F O R E:

HONORABLE JOHN C. FEW, Judge.

A P P E A R A N C E S:

TREY GOWDY, Esquire
Solicitor

BARRY BARNETT, Esquire
Assistant Solicitor

DONNIE WILLINGHAM, Esquire
Assistant Solicitor

MIKE BARTOSH, Esquire
Attorney for the Defendant

DOUG BRENNAN, Esquire
Attorney for the Defendant

KAREN QUIMBY, Esquire
Attorney for the Defendant

TERESA B. JOHNSON
OFFICIAL REPORTER

1	VOLUME 1 OF 4			
2		<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u> <u>RECROSS</u>
3	Exhibits Page			
4	Jury Qualification	26		
5	Competency Hearing			
6	Witness: Pratap Narayan			
7	by Mr. Willingham	126		
8	by Mr. Bartosh		132	
9	by Mr. Willingham			136
10	by Mr. Bartosh			137
11	Jury Qualification			
12	Juror: Rodney Petty			
13	by The Court	176		
14	by Mr. Bartosh	185		
15	by Mr. Gowdy	188		
16	by The Court	191		
17	Juror: John Hovelsrud			
18	by The Court	201		
19	by Mr. Bartosh	205		
20	by Mr. Gowdy	207		
21	Juror: Sheil Cudd			
22	by The Court	214		
23	by Mr. Bartosh	218		
24	by Mr. Willingham	223		
25	Juror: John Hovelsrud	228		

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
1				
2	Juror: Ashley Driscoll			
3	by The Court	231		
4	by Mr. Brennan	234		
5	by Mr. Gowdy	236		
6	Juror: Rick Lee			
7	by The Court	246		
8	by Mr. Brennan	250		
9	by Mr. Barnett	257		
10	Juror: Carla Howell			
11	by The Court	261		
12	by Mr. Bartosh	266		
13	by Mr. Barnett	272		
14	Juror: Janet Prasanlack			
15	by The Court	281		
16	by Mr. Bartosh	285		
17	by Mr. Willingham	291		
18	Juror: Tammy Queen			
19	by The Court	296		
20	by Mr. Bartosh	303		
21	by The Court	312		
22	Juror: Luther Culpepper			
23	by The Court	316		
24				
25				

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
1				
2	Juror: Jon Krisher			
3	by The Court	317		
4	by Mr. Bartosh	322		
5	by Mr. Barnett	326		
6	by Mr. Bartosh	330		
7	by Mr. Barnett	331		
8	Juror: Angela Haley	338		
9	Juror: Darcy Thompson			
10	by The Court	345		
11	by Mr. Brennan	350		
12	by Mr. Willingham	352		
13	Juror: Tommy Brown			
14	by The Court	361		
15	by Mr. Brennan	369		
16	by Mr. Barnett	373		
17	by Mr. Brennan	381		
18	Juror: James Gedroic			
19	by The Court	385		
20	by Mr. Bartosh	390		
21	by Mr. Barnett	394		
22	Juror: Joann Netherton			
23	by The Court	398		
24	by Mr. Bartosh	405		
25	by Mr. Willingham	412		

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
1				
2	Juror: Teresa Gilbert	426		
3	Juror: Emma Ellis			
4	by The Court	430		
5	by Mr. Brennan	434		
6	by Mr. Gowdy	440		
7	by The Court	450		
8	Juror: Shirley McDowell			
9	by The Court	453		
10	Juror: James Creel			
11	by The Court	460		
12	by Ms. Quimby	468		
13	by Mr. Gowdy	478		
14	Juror: Miguel Martinez			
15	by The Court	482		
16	by Mr. Bartosh	492		
17	by Mr. Gowdy	498		
18	Juror: Martha Sallis			
19	by The Court	502		
20	by Mr. Bartosh	507		
21	by Mr. Barnett	513		
22	Juror: Danny Gomes			
23	by The Court	517		
24	by Mr. Brennan	521		
25	by Mr. Barnett	524		

VOLUME 2 OF 4

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
1				
2				
3	Juror: Todd Hillstock			
4	by The Court	552		
5	by Mr. Brennan	555		
6	by Mr. Willingham	560		
7	Juror: Harold Marcum			
8	by The Court	563		
9	Juror: Brenda Smith			
10	by The Court	567		
11	by Mr. Brennan	572		
12	by Mr. Willingham	575		
13	Juror: Lori Burnett			
14	by The Court	579		
15	Juror: Larry Mauldin			
16	by The Court	584		
17	by Mr. Brennan	589		
18	by Mr. Barnett	592		
19	Juror: Isabell Williams			
20	by The Court	594		
21	by Mr. Brennan	598		
22	by Mr. Barnett	603		
23	by The Court	611		
24	—			
25				

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
1				
2	Juror: Mackenzie Leake			
3	by The Court	616		
4	Juror: Wilma Langford			
5	by The Court	620		
6	Juror: Gary McHam			
7	by The Court	626		
8	Juror: Jerlyn Miller			
9	by The Court	634		
10	Juror: Richard K. Smith			
11	by The Court	638		
12	by Mr. Brennan	643		
13	by Mr. Barnett	650		
14	Juror: Donald Ray			
15	by The Court	660		
16	by Mr. Brennan	665		
17	by Mr. Barnett	669		
18	by The Court	672		
19	Juror: John Poole			
20	by The Court	679		
21	by Mr. Bartosh	689		
22	by Mr. Gowdy	695		
23	by The Court	702		
24				
25				

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
1				
2	Juror: Dean Israel			
3	by The Court	706		
4	by Mr. Brennan	711		
5	by Mr. Gowdy	715		
6	Juror: Jeffrey A. Rhineberger			
7	by The Court	724		
8	by Mr. Bartosh	728		
9	by Mr. Gowdy	734		
10	Juror: Kim Rogers			
11	by The Court	738		
12	by Mr. Brennan	743		
13	by Mr. Gowdy	746		
14	Juror: Timothy Brewton			
15	by The Court	797		
16	by Mr. Bartosh	804		
17	by The Court	807		
18	by Mr. Bartosh	808		
19	by Mr. Barnett	810		
20	Juror: Aleta Misenheimer			
21	by The Court	816		
22	by Mr. Brennan	830		
23	by Mr. Willingham	835		
24				
25				

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
1				
2	Juror: Samuel Barnwell			
3	by The Court	826		
4	by Mr. Brennan	830		
5	by Mr. Willingham	835		
6	Juror: Jami Sturgeon			
7	by The Court	850		
8	by Mr. Bartosh	855		
9	by Mr. Gowdy	861		
10	Juror: Matthew Smith			
11	by The Court	865		
12	Juror: Joseph Floyd			
13	by The Court	868		
14	by Mr. Bartosh	874		
15	by Mr. Willingham	884		
16	by Mr. Bartosh	889		
17	Juror: Joann Netherton			
18	by The Court	897		
19	Juror: Linda Fuller			
20	by The Court	909		
21	by Mr. Brennan	915		
22	Juror: William Atkins			
23	by The Court	921		
24				
25				

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
1				
2	Juror: Marvin Smith			
3	by The Court	928		
4	by Mr. Brennan	932		
5	by Mr. Gowdy	938		
6	by Mr. Brennan	943		
7	by Mr. Gowdy	944		
8	by Mr. Brennan	949		
9	Juror: James Cottrell			
10	by The Court	950		
11	Juror: Heather Snite			
12	by The Court	955		
13	Juror: Michael Dawson			
14	by The Court	956		
15	by Mr. Bartosh	960		
16	by Mr. Barnett	964		
17	by Mr. Bartosh	968		
18	Juror: Pam Gardner			
19	by The Court	996		
20	by Mr. Brennan	987		
21	by Mr. Barnett	992		
22	Juror: Jackie Barham			
23	by The Court	996		
24	by Mr. Bartosh	1000		
25	by Mr. Barnett	1006		

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
1				
2	Juror: Judy Folk			
3	by The Court	1008		
4	by Mr. Brennan	1013		
5	by Mr. Barnett	1020		
6	Motions	1024		
7	Juror: Patricia Thomas			
8	by The Court	1026		
9	Juror: Thomas Williams			
10	by The Court	1031		
11	Juror: Amanda Hamby			
12	by The Court	1034		
13	Juror: Stanley Fields			
14	by The Court	1036		
15	by Mr. Brennan	1041		
16	by Mr. Barnett	1045		
17	Juror: Jeffrey Seay			
18	by The Court	1048		
19	by Mr. Bartosh	1054		
20	by Mr. Gowdy	1061		
21	Juror: Alonzo Robinson			
22	by The Court	1064		
23	by Mr. Bartosh	1069		
24				
25				

1	VOLUME 3 OF 4				
2		<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	Juror: Melody Riddle				
4	by The Court	1096			
5	by Mr. Brennan	1101			
6	by Mr. Gowdy	1104			
7	by Mr. Bartosh	1107			
8	Juror: Tracy Whitaker				
9	by The Court	1116			
10	Juror: Sarah Simms				
11	by The Court	1121			
12	Juror: William Parnell				
13	by The Court	1128			
14	by Mr. Brennan	1132			
15	by Mr. Willingham	1137			
16	Juror: Tracy Hollingsworth				
17	by The Court	1143			
18	by Mr. Bartosh	1147			
19	by Mr. Willingham	1156			
20	Juror: Brandon J. Greenway				
21	by The Court	1160			
22	by Mr. Brennan	1165			
23	Juror: Joshua Bennett				
24	by The Court	1169			
25	by Mr. Bartosh	1175			

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
1				
2	Juror: Traci Brock			
3	by The Court	1184		
4	by Mr. Bartosh	1195		
5	by Mr. Gowdy	1215		
6	Juror: Joyce Martin			
7	by The Court	1229		
8	Juror: Carole Hill			
9	by The Court	1232		
10	by Mr. Bartosh	1237		
11	by Mr. Gowdy	1240		
12	Juror: Linda Jones			
13	by The Court	1263		
14	by Mr. Bartosh	1267		
15	by Mr. Barnett	1273		
16	by Mr. Bartosh	1277		
17	Juror: Jane Vellines			
18	by The Court	1283		
19	by Mr. Bartosh	1287		
20	by Mr. Willingham	1294		
21	Juror: Matt Kern			
22	by The Court	1296		
23	by Mr. Bartosh	1300		
24	by Mr. Barnett	1305		
25				

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
1				
2	Juror: Thaddeus Beck			
3	by The Court	1307		
4	by Mr. Bartosh	1311		
5	by Mr. Willingham	1316		
6	Juror: Otis Campbell			
7	by The Court	1320		
8	Juror: James Gentry			
9	by The Court	1323		
10	by Mr. Bartosh	1327		
11	by Mr. Gowdy	1333		
12	Motions	1342		
13	Juror: Marvin Smith			
14	by The Court	1349		
15	Juror: Joann Netherton			
16	by The Court	1350		
17	by Mr. Barnett	1351		
18	Motions	1353		
19	Juror: Pamela Bagwell			
20	by The Court	1360		
21	Juror: Clara Cope			
22	by The Court	1362		
23	by Mr. Bartosh	1368		
24	Juror: Thaddeus Beck			
25	by The Court	1373		

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
1				
2	Juror: Thomas Oliver			
3	by The Court	1375		
4	by Mr. Bartosh	1381		
5	by Mr. Willingham	1382		
6	Juror: Leonard Cogdill			
7	by The Court	1384		
8	by Mr. Bartosh	1390		
9	by Mr. Barnett	1396		
10	Juror: Michael Weeks			
11	by The Court	1398		
12	by Mr. Bartosh	1402		
13	by Mr. Willingham	1404		
14	by The Court	1408		
15	Juror: Amanda Morton			
16	by The Court	1412		
17	by Mr. Bartosh	1416		
18	by Mr. Barnett	1423		
19	Juror: Brandon J. Greenway			
20	by The Court	1426		
21	by Mr. Bartosh	1427		
22	Jury Qualification	1434		
23	Juror: Janet Prasanlack			
24	by The Court	1438		
25	by Mr. Bartosh	1441		

		<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
1					
2	Jury Selection	1444			
3	Motions	1466			
4	Opening Statement				
5	by The Court	1487			
6	by Mr. Barnett	1499			
7	by Mr. Brennan	1503			
8	Witness: Freddy Thompson				
9	by Mr. Barnett	1505			
10	Witness: Charles Clavenger				
11	by Mr. Barnett	1508			
12	Witness: Diane Waters Daniels				
13	by Mr. Gowdy	1510			
14	Witness: Celeste Nesbitt				
15	by Mr. Gowdy	1515			
16	by Mr. Brennan		1538		
17	by Mr. Gowdy			1554	
18	Witness: Harvey Godfrey				
19	by Mr. Gowdy	1562			
20	by Mr. Brennan		1576		
21	Witness: Guy Carter				
22	by Mr. Barnett	1578			
23	by Mr. Brennan		1581		
24	Witness: Doug Bishop				
25	by Mr. Willingham	1582			

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
1				
2	Witness: Randy Bogan			
3	by Mr. Willingham	1585		
4	by Mr. Barnett		1605	
5	Witness: Dan Defreeze			
6	by Mr. Willingham	1608		
7	by Mr. Brennan		1622	
8		VOLUME 4 OF 4		
9	Witness: J. David Wren			
10	by Mr. Gowdy	1649		
11	Court Remarks to Defendant		1662	
12	Witness: Jason Stewart			
13	by Mr. Brennan	1668		
14	Witness: Virginia Lindsey			
15	by Mr. Brennan	1674		
16	Witness: Christopher Wilkins			
17	by Mr. Brennan	1677		
18	Court Remarks to Defendant		1680	
19	Requests for Charge	1682		
20	Closing Argument			
21	by Mr. Gowdy	1696		
22	by Mr. Brennan	1703		
23	Jury Charge	1706		
24	Verdict	1723		
25	Court Remarks	1738		

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
1				
2	Opening Statement			
3	by Mr. Willingham	1742		
4	by Mr. Bartosh	1746		
5	Witness: Kiara P.			
6	by Mr. Gowdy	1753		
7	by Mr. Bartosh		1756	
8	by Mr. Gowdy	1757		
9	Witness: Celeste Nesbitt			
10	by Mr. Gowdy	1759		
11	by Mr. Bartosh		1783	
12	Witness: Randy Bogan			
13	by Mr. Barnett	1792		
14	by Mr. Bartosh		1801	
15	Witness: Doug Bishop			
16	by Mr. Barnett	1803		
17	Witness: Marion Lyles			
18	by Mr. Barnett	1806		
19	by Mr. Bartosh		1808	
20	Witness: Sharon Smith			
21	by Mr. Barnett	1809		
22	by Mr. Bartosh		1825	
23	by Mr. Barnett			1828
24	Witness: Chris Smith			
25	by Mr. Willingham	1829		

		<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
1					
2	by Mr. Bartosh		1845		
3	by Mr. Willingham			1860	
4	by Mr. Bartosh				1861
5	Witness: Brian Duncan				
6	by Mr. Barnett	1862			
7	by Mr. Bartosh		1865		
8	by Mr. Barnett			1866	
9	Witness: Jane Millwood				
10	by Mr. Willingham	1866			
11	Witness: Ashley Harris				
12	by Mr. Willingham	1869			
13	by Mr. Bartosh		1877		
14	Witness: Celeste Nesbitt				
15	by Mr. Gowdy	1878			
16	Witness: James Sligh				
17	by Mr. Willingham	1908			
18	by Mr. Bartosh		1912		
19	by Mr. Willingham			1914	
20	by Mr. Bartosh				1916
21	Witness: Brian White				
22	by Mr. Willingham	1917			
23	by Mr. Bartosh		1922		
24	Witness: Cathy Mullinax				
25	by Mr. Willingham	1923			

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
1				
2	by Mr. Bartosh	1927		
3	Witness: Sarah Simmons			
4	by Mr. Barnett	1930		
5	by Mr. Bartosh	1938		
6	Witness: Stanford Wilkens			
7	by Mr. Willingham	1940		
8	by Mr. Bartosh	1946		
9	Witness: Jessica Cannon			
10	by Mr. Willingham	1947		
11	Witness: Martha Smith			
12	by Mr. Willingham	1951		
13	Witness: Stanley Staggs			
14	by Mr. Gowdy	1954		
15	by Mr. Bartosh	1965		
16	Witness: Ann Howard			
17	by Mr. Bartosh	1984		
18	by Mr. Barnett	1989		
19	by Mr. Bartosh	1993		
20	Witness: Margaret Melikian			
21	by Mr. Bartosh	2000		
22	by Mr. Willingham	2014		
23	by Mr. Bartosh	2042		
24	Witness: Virginia Lindsey			
25	by Mr. Bartosh	2044		

INDEX

547

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
1				
2	by Mr. Gowdy	2060		
3	Witness: Bill Burton			
4	by Mr. Bartosh	2061		
5	by Mr. Gowdy	2068		
6	Witness: Leon McDowell			
7	by Mr. Bartosh	2070		
8	Witness: Chris Wilkins			
9	by Mr. Brennan	2072		
10	by Mr. Willingham	2076		
11	Witness: Steve Pilgrim			
12	by Mr. Bartosh	2078		
13	Witness: Bessie Smith			
14	by Mr. Bartosh	2080		
15	Court Remarks to Defendant	2085		
16	Request for Charge	2091		
17	Closing Argument			
18	by Mr. Gowdy	2106		
19	by Mr. Lindsey	2125		
20	by Mr. Bartosh	2131		
21	Jury Charge	2148		
22	Jury Question	2164		
23	Verdict	2169		
24	Sentencing	2172		
25	Certificate of Reporter	2176		

EXHIBITS

548

1	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
2		STATE'S EXHIBITS		
3	S-1	9 mm casing	1486	1592, 1742
4	S-2	9 mm casing	1486	1592, 1742
5	S-3	9 mm casing	1486	1592, 1742
6	S-4	9 mm casing	1486	1592, 1742
7	S-5	Beretta 9 mm	1486	1570, 1742
8	S-6	Black clip	1486	1570, 1742
9	S-7	9 mm round	1486	1570, 1742
10	S-8	.38. special casing	1486	1598, 1742
11	S-9	.38 special casing	1486	1598, 1742
12	S-10	.38 special casing	1486	1598, 1742
13	S-11	Winchester .38 special	1486	1598, 1742
14	S-12	Federal .38 special casing	1486	1598, 1742
15	S-13	Taurus .38 special	1486	1597, 1742
16	S-14	Projectile	1486	
17	S-15	Projectile	1486	
18	S-16	Projectile	1486	1584, 1742
19	S-17	Projectile	1486	1584, 1742
20	S-18	Projectile	1486	1584, 1742
21	S-19	Projectile	1486	1602, 1742
22	S-20	R.P. live round	1486	
23	S-21	911 tape	1486	
24	S-21(a)	Enhanced CD	1486	1513, 1742
25	S-22	Photo	1486	1530, 1742

EXHIBITS

549

1	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
2	S-23	Photo	1486	1530, 1742
3	S-24	Photo	1486	1530, 1742
4	S-25	Photo	1486	1530, 1742
5	S-26	Photo	1486	1530, 1742
6	S-27	Photo	1486	1588, 1742
7	S-28	Photo	1486	1588, 1742
8	S-29	Photo	1486	1588, 1742
9	S-30	Photo	1486	1588, 1742
10	S-31	Photo	1486	1588, 1742
11	S-32	Photo	1486	1591, 1742
12	S-33	Photo	1486	1591, 1742
13	S-34	Photo	1486	1591, 1742
14	S-35	Photo	1486	1591, 1742
15	S-36	Photo	1486	
16	S-37	Photo	1486	1594, 1742
17	S-38	Photo	1486	1594, 1742
18	S-39	Photo	1486	1594, 1742
19	S-40	Photo	1486	1594, 1742
20	S-41	Photo	1486	
21	S-42	Photo	1486	
22	S-43	Photo	1486	
23	S-44	Photo	1486	
24	S-45	Photo	1486	
25	S-46	Photo	1486	1800

EXHIBITS

550

1	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
2	S-47	Photo	1486	
3	S-48	Photo	1486	1599, 1742
4	S-49	Photo	1486	
5	S-50	Photo	1486	1600, 1742
6	S-51	Photo	1486	
7	S-52	Photo	1486	
8	S-53	Photo	1486	
9	S-54	Photo	1486	1603, 1742
10	S-55	Photo	1486	1603, 1742
11	S-56	Photo	1486	1603, 1742
12	S-57	Photo	1486	
13	S-58	Photo	1486	1603, 1742
14	S-59	Photo	1486	
15	S-60	Photo	1486	
16	S-61	Photo	1486	1601, 1742
17	S-62	Photo	1486	1601, 1742
18	S-63	Photo	1486	1601, 1742
19	S-64	Photo	1486	1659, 1742
20	S-65	Photo	1488	1945
21	S-66	Photo	1488	1945
22	S-67	Photo	1488	1945
23	S-68	Photo	1488	1804
24	S-69	Photo	1488	1804
25	S-70	Photo	1488	1804

EXHIBITS

551

	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1				
2	S-71	X-ray	1488	1804
3	S-72	X-ray	1488	1804
4	S-73	Photo	1488	1800
5	S-74	Photo	1488	1770
6	S-75	Photo	1488	1770
7	S-76	Photo	1488	1774
8	S-77	Car seat	1488	1760
9	S-78	Booking card	1488	1937
10	S-79	Bond sheet	1488	1937
11	S-80	Indictment	1488	1952
12	S-81	Lab sheet	1488	1952

13

14

DEFENDANT' S EXHIBITS

15

No exhibits offered.

16

17

COURT' S EXHIBITS

18	C-1	Photo	1734
19	C-2	Photo	1734
20	C-3	Photo	1734
21	C-4	Photo	1734
22	C-5	Photo	2162
23	C-6	Jury Question	2165
24	C-7	Jury Question	2165

25

P R O C E E D I N G S (con't)

(WHEREUPON, Todd Hillstock, Juror number 127, enters
at approximately 4:01 p.m.)

TODD HILLSTOCK

having previously been sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q Mr. Hillstock, how are you, sir?

A Fine. And you?

Q I'm doing fine. You remember that we put you
under oath yesterday?

A Yes, sir.

Q And you are still under oath today.

A All right.

Q You understand that?

A Yes, sir.

Q Since you left us yesterday, has anybody talked
to you about this case, have you learned anything about it,
seen anything about it, read anything about it or have you
talked to anybody about this case?

A No, sir.

Q We're going to ask you some questions now. I'm
going to ask you some and then the lawyers are probably
going to ask you some also. We're not trying to pry into
your private life. But we do have to ask you these

1 questions. There are not any right or wrong answers to
2 them. We just want you to be open and honest with us.
3 Tell us what you think and tell us what you feel.

4 Now, we're going to get into talking about a possible
5 sentencing phase. The fact that we're talking about a
6 sentencing phase doesn't mean anything about this
7 defendant. It simply means that because we might get into
8 a sentencing phase, we need to know how you think and how
9 you feel about some of the issues that will come up or
10 could come up.

11 If you were a juror in this case, could you accept and
12 apply the law as I give it to you and render a verdict
13 based solely on the testimony and evidence that you see
14 here in this courtroom?

15 A Yes, sir.

16 Q You understand that in criminal cases, the State
17 has the burden of proof and must prove the defendant guilty
18 beyond a reasonable doubt?

19 A Yes, sir.

20 Q This is a murder case. Now, depending on the
21 facts and circumstances that are proven, could you find the
22 defendant guilty or not guilty depending on whether you
23 think the State has proven him guilty?

24 A Yes, sir.

25 Q And if the jury finds him guilty and if you are

1 on the jury and this case moves into the penalty phase,
2 then some other issues are going to come up. And we're
3 going to talk about those now.

4 Aggravating circumstances are facts, incidents or
5 details of an occurrence that the State has declared to
6 make worse or to aggravate the crime of murder. In other
7 words, aggravating circumstances when accompanying a murder
8 increase the enormity of a crime and add to the injury of
9 the crime.

10 Mitigating circumstances, on the other hand, are
11 facts, incidents, or details of an occurrence that the
12 State has declared to lessen or reduce the severity of the
13 crime. And those may be considered as extenuating or as
14 reducing the degree of moral culpability or responsibility.

15 Now, if you are on the jury during the penalty phase
16 of this trial, you will have two options as to your
17 verdict, two options as to what the sentence would be. You
18 could impose a life sentence or you could impose the death
19 penalty. Could you, depending on the circumstances and
20 facts that are proven or that you find or that you see and
21 considering any aggravating or mitigating circumstances,
22 certainly in light of the law as I will give it to you,
23 could you impose a life sentence?

24 A Yes, sir.

25 Q Could you impose the death penalty?

1 A Yes, sir.

2 Q Now, if you were to be on this jury and I were to
3 sequester you, in other words, keep you in a hotel away
4 from your family and your, and everything else for five or
5 six days, would that impose a tremendous burden on you?

6 A No, sir.

7 Q Have you had a chance to go over the witness list
8 that I gave you?

9 A Yes, sir.

10 Q Have you read every name on that list?

11 A Yes, sir.

12 Q Is there anybody on that list whom you know or to
13 whom you are related?

14 A No, sir.

15 Q Do you know of any reason why you could not give
16 both the State and the defendant a fair and impartial trial
17 in this case?

18 A No, sir.

19 Q All right. Now, I'm going to let the lawyers ask
20 you some questions. Then I may come back and ask you some
21 more in a few minutes.

22 A Okay.

23 MR. BRENNAN: Please the Court, Your Honor.

24 EXAMINATION

25 BY MR. BRENNAN:

1 Q Mr. Hillstock, my name is Doug Brennan. I'm a
2 defense attorney here in Spartanburg. Mr. Bartosh, the
3 gentleman sitting on the end. That's Ms. Quimby. And we
4 have the opportunity to defend Mr. Lindsey in this matter.
5 Sir, are you related to a Georgette Hillstock?

6 A (Shakes head negatively.)

7 Q No?

8 A I don't know anybody by that name.

9 Q Okay. Do you know or have you ever heard of Ruby
10 Nell Lindsey?

11 A No, sir.

12 Q Okay. You mentioned on your questionnaire that
13 you were or that you had been the victim of a lynching. Is
14 that correct?

15 A Yes, sir.

16 Q Could you describe that for me or tell me where
17 it happened.

18 A I can't remember what street it was on.

19 Q Was it here in Spartanburg?

20 A Yes, sir.

21 Q Okay. Was that crime reported to the police?

22 A Yes, sir.

23 Q Was anybody arrested?

24 A Yes, sir.

25 Q Okay. Is that case over? Has that person been

1 punished or were they found not guilty?

2 A It's over.

3 Q And what was the outcome of that case? Were they
4 convicted?

5 A Yes, sir.

6 Q Okay. As a result of that, of your being a
7 victim, did you ever meet with the Solicitor's office and
8 make a statement or did you meet with the victim's advocate
9 to discuss that case?

10 A I went to the Solicitor's office.

11 Q Do you remember who you met with?

12 A I can't remember his name.

13 Q Okay. How long ago was that?

14 A Within the last two years.

15 Q So relatively recently.

16 A Yes.

17 Q Okay. The fact that you had dealings with the
18 Solicitor's office, would that cloud your judgment in this
19 case? Can you put that aside and render a fair and true
20 verdict and sentence in this matter?

21 A Yes, sir.

22 Q Okay.

23 THE COURT: Wait. I didn't understand. Repeat
24 the question and let me hear his answer or tell me
25 what it was.

1 **MR. BRENNAN:** I asked him if he could set aside
2 his relationship with the Solicitor's office and
3 render and true and fair verdict and sentence.

4 **THE COURT:** All right. And he said yes.

5 **MR. BRENNAN:** Yes.

6 **THE COURT:** I'm sorry.

7 **MR. BRENNAN:** I'm sorry if I --

8 **THE COURT:** No problem.

9 **BY MR. BRENNAN:**

10 **Q** Do you have some current charges pending against
11 you?

12 **A** No, sir. They are not pending.

13 **Q** You are not awaiting trial or anything at this
14 point in time?

15 **A** No, sir.

16 **Q** Okay. All right. Do you understand that in
17 South Carolina, the death penalty is never mandatory?

18 **A** Yes, sir.

19 **Q** You understand that no jury has to sentence
20 somebody to death?

21 **A** Yes.

22 **Q** Okay. All right. Understanding that, it is said
23 that there are three kinds of jurors. There are those that
24 once the defendant is found guilty, that person, that juror
25 is going to sentence that defendant to death. Then there

1 are jurors on the other side that when the defendant, if
2 the defendant is found guilty, that set of jurors is going
3 to sentence him to life. And then there is the third set,
4 kind of in the middle. And they are those that listen to
5 the facts and make their own determination. And then based
6 on the facts and what they heard, they would vote life in
7 prison or death. Which kind of juror are you?

8 A Life in prison or death.

9 Q I'm sorry.

10 A The third choice.

11 Q The third choice, the one that's going to listen
12 to the stuff and then make a decision?

13 A Yes.

14 Q Okay. All right. Sir, my last question to you
15 would be if you are on this jury and if the defendant is
16 found guilty and you are in the sentencing phase, in fact,
17 you are making your decision, and eleven of the twelve
18 jurors, you are the twelfth, eleven of them have decided
19 that this defendant needs the death sentence but you have
20 said no, I believe the life sentence is the appropriate
21 sentence. So it's eleven people saying death. You say no,
22 it's life. Can you hold your ground and maintain that life
23 sentence?

24 A Yes, sir.

25 Q You can? You won't be swayed by those eleven

1 people?

2 A (Shakes head negatively.)

3 Q That's all. Thank you.

4 EXAMINATION

5 BY MR. WILLINGHAM:

6 Q Mr. Hillstock, going back to your lynching
7 charge here in Spartanburg, you don't know who the
8 prosecutor's name is?

9 A No.

10 Q Would have been Bob Coker?

11 A That's it.

12 Q Okay. How many times did you meet with him?

13 A Once or twice.

14 Q You didn't stand up yesterday when the judge
15 asked you if you knew anybody in the Solicitor's office.
16 Would you tell me why not?

17 A It slipped my mind.

18 Q I'm sorry.

19 A It slipped my mind.

20 Q It's slipped your memory. Mr. Hillstock, you
21 were charged in Cherokee County back in 2000. Is that
22 right?

23 A Yes, sir.

24 Q With grand larceny?

25 A Yes, sir.

1 Q Two counts, right?

2 A Yes, sir.

3 Q And breaking into a motor vehicle?

4 A Yes, sir.

5 Q Who was the prosecutor on that?

6 A I don't know -- I went to pre-trial.

7 Q You went to pretrial. Did you ever come to the

8 courthouse for roll call or things like that?

9 A Twice.

10 Q Okay. That was when?

11 A I don't remember.

12 Q You also have been convicted, this may not be the

13 same person. But it looks like you been in Greenville

14 County for shoplifting.

15 A Yes, sir.

16 Q And then in Spartanburg, you were arrested for

17 shoplifting, second offense and malicious injury to

18 personal property.

19 A Yes, sir.

20 Q What happened to those charges?

21 A In Greenville, I paid a fine.

22 Q Right. How about Spartanburg?

23 A In Spartanburg, I paid a fine.

24 Q Okay. Now, on that questionnaire that we had you

25 fill out and I believe the judge gave you an opportunity

1 yesterday to change anything that needed to be changed,
2 there was a question on here, have you, a family member or
3 a person close to you ever been accused of a crime. You
4 put n/a. I assume that's for non-applicable. Right?

5 A Right.

6 Q That ain't exactly so, is it?

7 A No.

8 Q Tell me why you didn't answer that question.

9 A I was tired at the time when I was filling this
10 out.

11 Q You were tired?

12 A Tired.

13 Q Tired at the time that you filled this out. How
14 about yesterday? Were you tired yesterday?

15 A No, sir.

16 Q Is there a reason you didn't come forward
17 yesterday and tell the Court that you needed to change that
18 questionnaire?

19 A I didn't think about it.

20 Q You didn't think about it yesterday either. I
21 have nothing further.

22 THE COURT: All right. Mr. Hillstock, please
23 step out in the hall for a moment.

24 (WHEREUPON, Mr. Hillstock exits at approximately
25 4:14 p.m.)

1 **THE COURT:** Yes, sir.

2 **MR. WILLINGHAM:** Judge, I don't think he's
3 qualified. I don't think he's been honest with us,
4 honest with the Court. He's been given every
5 opportunity to change his answers. He did not do it
6 yesterday. It slipped his mind. He was too tired.

7 **THE COURT:** Mr. Bartosh or Mr. Brennan.

8 **MR. BRENNAN:** Your Honor, I don't believe he is
9 qualified either.

10 **THE COURT:** Okay. Bring him out.

11 (WHEREUPON, Mr. Hillstock enters at approximately
12 4:14 p.m.)

13 **THE COURT:** Mr. Hillstock, we will not need your
14 services anymore in this case. We appreciate you
15 coming. You are free to go.

16 (WHEREUPON, Mr. Hillstock exits at approximately
17 4:14 p.m.)

18 **THE COURT:** Give us a juror.

19 (WHEREUPON, Harold Marcum, Jr., Juror number 173
20 enters at approximately 4:15 p.m.)

21 **HAROLD MARCUM, JR.**

22 having previously been sworn, testified as follows:

23 **EXAMINATION**

24 **BY THE COURT:**

25 Q Mr. Marcum. Uh, you recall that we put you

1 under oath yesterday. You are still under oath today.

2 A Yes, sir.

3 Q Since you left us yesterday, have you -- has
4 anybody talked to you about this case or have you learned
5 anything about this case whatsoever?

6 A No, sir. I have not.

7 Q Have you talked to anybody about the case?

8 A No, sir. I have not.

9 Q Now, we're going to ask you some questions about
10 the case. We want you to answer the questions. But there
11 are not any right or wrong answers. We're just trying to
12 figure out what you know. Please just be open and honest
13 with us. Tell us what you think and what you feel about
14 what we ask you.

15 We're going to have to talk a little bit about a
16 possible penalty phase. And the fact that we're talking
17 about a penalty phase does not mean anything about this
18 defendant or about this case. It simply means that because
19 we might get to the penalty phase, we need to know a little
20 bit about how you think and how you feel.

21 If you are a juror in this case, could you accept and
22 apply the law exactly as I give it to you and render a
23 verdict based solely on the testimony and evidence that is
24 presented here in this courtroom?

25 A I believe so, Your Honor.

1 Q You have any hesitation in telling me that?

2 A No.

3 Q You understand in a criminal case, the State has
4 to prove the defendant guilty beyond a reasonable doubt?

5 A I understand that.

6 Q This is a murder case. Depending on the facts
7 and circumstances that are proven during this case and in
8 light of the law as I will give it to you, could you find
9 the defendant either guilty or not guilty depending on
10 whether or not you think the State has proven him guilty
11 beyond a reasonable doubt?

12 A I believe so, Your Honor.

13 Q If you are on the jury and the case -- the jury
14 finds him guilty and it moves into the penalty phase, some
15 other issues are going to come up. And let's talk about
16 those now. Aggravating circumstances are facts, incidents
17 or details of an occurrence which the State has declared to
18 make worse or to aggravate a murder. In other words,
19 aggravating circumstances when accompanied by a murder
20 increase the enormity of or add to the injury of a crime of
21 murder.

22 Mitigating circumstances, on the other hand, are
23 facts, incidents or details of an occurrence that the State
24 has declared to reduce the severity of the crime of murder.
25 Those may be seen to extenuate or to reduce the degree of

1 moral culpability or responsibility.

2 If you are on the jury in the death penalty phase --
3 the penalty phase of a death penalty case, you would have
4 two options as to what your verdict would be, two options
5 as to what the sentence could be. You could impose a life
6 sentence or you could impose a death penalty. Could you,
7 depending on the facts and circumstances that are proven or
8 that you find and also considering any aggravating or
9 mitigating circumstance and certainly in light of the law
10 as I will give it to you, could you impose or return a
11 verdict for a life sentence?

12 A Yes, sir.

13 Q Could you impose the death penalty?

14 A I don't believe so, sir, Your Honor.

15 Q Why do you say that?

16 A I just -- I don't believe that it -- I don't
17 think I have it in me to say whether a man should live or
18 die. I just don't believe that I could.

19 Q All right.

20 THE COURT: Mr. Bartosh, do you have any
21 questions of this juror?

22 MR. BARTOSH: No, sir.

23 THE COURT: Mr. Gowdy?

24 MR. GOWDY: No, sir.

25 THE COURT: All right. Mr. Marcum, would

1 you step in the hall for just one second please.

2 (WHEREUPON, Mr. Marcum exits at approximately
3 4:18 p.m.)

4 **THE COURT:** You both agree he is not qualified?

5 **MR. BARTOSH:** Yes, sir.

6 **MR. BRENNAN:** Yes, sir.

7 **THE COURT:** All right. Bring him back.

8 (WHEREUPON, Mr. Marcum enters at approximately
9 4:18 p.m.)

10 **THE COURT:** Mr. Marcum, we certainly do
11 appreciate your being honest with us. Your services
12 will not be needed any longer. You are free to go.

13 **MR. MARCUM:** Thank you.

14 **THE COURT:** Thank you.

15 (WHEREUPON, Mr. Marcum exits at approximately
16 4:18 p.m.)

17 **THE COURT:** Okay. Let's take a break. Three
18 minutes.

19 (WHEREUPON, a short recess was taken at approximately
20 4:19 p.m.)

21 (WHEREUPON, the Court resumed at approximately
22 4:29 p.m.)

23 (WHEREUPON, Brenda Smith, Juror number 253, enters at
24 approximately 4:29 p.m.)

25 **BRENDA SMITH**

1 having previously been sworn, testified as follows:

2 **EXAMINATION**

3 **BY THE COURT:**

4 **Q** Good afternoon, Ms. Smith.

5 **A** Good afternoon.

6 **Q** How are you?

7 **A** Fine.

8 **Q** Good. You remember yesterday that we put you
9 understand oath.

10 **A** Yes, sir.

11 **Q** And you are still under oath today.

12 **A** Okay.

13 **Q** Since you left us yesterday afternoon, has
14 anybody talked to you about this case?

15 **A** No, sir.

16 **Q** Have you learned anything about this case from
17 the press, from the newspaper, from the TV, or from
18 anywhere else?

19 **A** No, sir.

20 **Q** And I assume you have not talked to anybody else
21 about the case?

22 **A** No, sir.

23 **Q** Now I'm going to ask you some questions. The
24 lawyers might also ask you some questions. We're not
25 trying to pry into your private life. We do have to ask

1 you these questions though. There are not any right or
2 wrong answers to the questions that we are going to ask
3 you. We just want you to be open and honest with us and
4 tell us how you think and how you feel.

5 A All right.

6 Q We're going to talk about a possible penalty
7 phase here. The fact that we are talking about the penalty
8 phase does not mean a thing in terms of this defendant.
9 It simply means that because we might get to the phase, we
10 need to know how you think and how you feel about some of
11 the things that could come up. Could you, if you were a
12 juror in this case, could you accept and apply the law
13 exactly as I will give it to you and render a verdict based
14 solely on the testimony and evidence that you would hear in
15 this courtroom?

16 A Yes, sir.

17 Q You understand that in a criminal case, the State
18 has the burden of proof and must meet that burden of proof
19 beyond a reasonable doubt?

20 A Yes, sir.

21 Q You know that this is a murder case?

22 A Yes, sir.

23 Q Could you, depending on the facts and
24 circumstances that you find to have been proven and of
25 course in light of the law as I will give it to you, could

1 you find the defendant either guilty or not guilty.
2 depending on whether or not you think the State has met its
3 burden of proof?

4 A Yes, sir.

5 Q If you are on the jury and we move into penalty
6 phase of the trial, some other issues are going to come up.
7 I'm going to talk to you about those now. Aggravating
8 circumstances are facts, incidences or details of an
9 occurrence which the State has declared to make worse or to
10 aggravate the crime of murder. Aggravating circumstances
11 when accompanying a murder increase the enormity of the
12 crime or add to the injury from the crime.

13 Mitigating circumstances, on other hand, are facts,
14 incidences or details of an occurrence which the State has
15 declared to lessen the severity of a crime of murder.
16 Those may be seen to extenuate or to lessen, to reduce the
17 degree of moral culpability or responsibility.

18 If you are on the jury in the penalty phase of a death
19 penalty trial such as this, you will have two options as to
20 what your verdict could be. You can vote for a life
21 sentence or you can vote for the death penalty. Could
22 you, depending on the facts and circumstances that you find
23 and considering any aggravating or mitigating circumstances
24 and of course doing so in light of the law as I would give
25 it to you, could you vote to impose a life sentence?

1 A Yes, sir.

2 Q Could you vote to impose the death penalty?

3 A Yes, sir.

4 Q If you are on the jury and if I sequester the
5 jury and if I were to put you up in hotel and keep you from
6 going home to you family for five or six days, would that
7 impose a tremendous burden on you?

8 A Yes, sir.

9 Q Tell me about that.

10 A Uh, I'll retract that. No, it would not.

11 Q Do you think that the other members of your
12 family could get by without you and that you will be okay
13 and everything would not just fall apart completely if you
14 were sequestered for five or six days?

15 A I will depend on them to do the right thing.

16 Q Ma'am?

17 A I will depend on them to do the right thing.

18 Q Have you had a chance to go over the witness list
19 that I gave you?

20 A Yes, sir.

21 Q Have you read every name on that witness list?

22 A Yes, sir.

23 Q Is there anybody on that list whom you know or to
24 whom you are related?

25 A No, sir.

1 Q Do you know of any reason why you could not give
2 both the State and the defendant a fair and impartial
3 trial?

4 A No, sir.

5 Q Okay. Ma'am, now I'm going to let the lawyers
6 ask you some questions. I may come back and ask you some
7 more questions.

8 MR. BRENNAN: May it please the Court, Your
9 Honor.

10 **EXAMINATION**

11 BY MR. BRENNAN:

12 Q Mrs. Smith, my name is Doug Brennan. I'm an
13 attorney here in Spartanburg. This is Mr. Bartosh and Ms.
14 Quimby. We have the opportunity to represent Mr. Lindsey.
15 Right off the bat when you were asked if you knew anybody
16 that was sitting at that table yesterday, you stood up.
17 Was it me that you knew?

18 A Yes, sir.

19 Q Okay. Would you tell the Court how you know me.

20 A I know Mr. Brennan. He was a student at USCS.
21 And he was also an employee as a student there. I knew
22 him when he worked in his family's business also.

23 Q We never done anything socially or anything like
24 that?

25 A No, sir.

1 Q Would your knowledge of me affect your ability to
2 render a fair and impartial decision in this matter?

3 A No, sir.

4 Q All right. Do you understand that in South
5 Carolina the death penalty is never mandatory?

6 A No, I didn't understand.

7 Q The jury in a sentencing phase has two options if
8 the defendant is found guilty. If the defendant is found
9 guilty, they have the option of life in prison and the
10 death penalty. Okay. So now, do you understand?

11 A I'm clear on that, yes.

12 Q All right. It is said that there are three kinds
13 of the jurors. There is the kind of juror that once the
14 defendant is found guilty will always sentence a person to
15 death. There are jurors on the other side that says, that
16 it is said that if the defendant is found guilty, they will
17 always impose the life sentence. And then there is group
18 in the middle that it is their desire to listen to the
19 facts and circumstances in the case and make their decision
20 as to life or death based on what they heard in that trial.
21 Tell me where you fall.

22 A Based upon the evidence of what I heard at trial,
23 I will make my decision.

24 Q So you are in that group in the middle. Is that
25 right?

1 **A** Yes.

2 **Q** Understanding that the death penalty is not
3 mandatory in South Carolina, let's assume for the second
4 that you are on the jury and eleven jurors have decided
5 that the death penalty is the right sentence. But you, the
6 twelfth juror have decided, No, I think the life sentence
7 is appropriate. Can you hold your ground and not be swayed
8 by those eleven jurors?

9 **A** I would have to discuss it with all of them and
10 find out.

11 **Q** Do you understand it is your decision?

12 **A** Yes.

13 **Q** Understanding that it is your decision alone, can
14 you not be swayed by those eleven?

15 **A** Yes, I can.

16 **Q** Okay. Ma'am, all right. I have to ask you some
17 questions. I apologize. I understand that they may be
18 upsetting. It is my understanding that you had someone
19 who may have been very dear to you killed about a year ago?

20 **A** Correct.

21 **Q** Is it possible for you to set aside those very
22 tender feelings in you and render a fair verdict in this
23 case?

24 **A** Those wounds are still strong.

25 **Q** I understand that. And I knew this person too.

1 Does her death weigh too heavily on you to allow you to be
2 fair in this matter?

3 A I don't think so.

4 Q Okay.

5 A No.

6 Q There was another -- I'm sorry. You said that
7 you didn't think -- on your questionnaire, you said you did
8 not know anything about this case. But yesterday I think
9 you said maybe you did know something about the case. So
10 in March when you filled out the questionnaire, you did
11 not. Did something happen? Did you read something? Did
12 you see something that gave you some knowledge about the
13 case between when you filled out the questionnaire and
14 today?

15 A Yes.

16 Q Can you set that stuff -- whatever you read or
17 whatever you heard, can you put that aside and listen only
18 to the evidence that will be presented in this courtroom?

19 A Yes, sir.

20 MR. BRENNAN: Nothing further. Thank you, Your
21 Honor.

22 EXAMINATION

23 BY MR. WILLINGHAM:

24 Q Ms. Smith, my name is Donnie Willingham. This
25 is Barry Barnett, Solicitor Gowdy. We are responsible for

1 prosecuting this case. Just a couple of very quick
2 questions. Mr. Brennan indicated that there was a choice
3 that the jury will have in the sentencing phase between
4 life without parole and death. I want to make sure that
5 you understand that death is never required. Nobody is
6 going to tell you that you have to vote for death.

7 A Yes, sir. I understand.

8 Q That means you can give a life sentence for any
9 reason or for no reason at all if that's what you want to
10 do.

11 A Yes, I understand.

12 Q Given that opportunity and given that choice
13 between the two, are there circumstances that you think you
14 could impose the death penalty?

15 A Yes, sir.

16 Q Okay. And if you decide the death penalty is
17 appropriate and the other eleven jurors agree that the
18 death penalty is appropriate, all twelve of you have to
19 agree, there will be a form that you have to sign. Could
20 you put your name on that form?

21 A Yes.

22 Q Could you be the last one to sign that form
23 knowing that without your signature, it would be carried
24 out.

25 A What did you say?

1 Q Could you be the last one to put your signature
2 on that form knowing that with your signature, it would be
3 carried out?

4 A Yes, sir.

5 Q You hesitated. And that's fine. I'm not here to
6 question your opinions or question your views. But you do
7 hesitate and I'm wondering why.

8 A I'm the one signing the form, the last person.

9 Q Right. But that seemed to cause you some
10 hesitation. I don't want to seem like it's a grave concern.
11 But it caused you some --

12 A It's a hesitation.

13 Q Could you tell me why you have that hesitation?

14 A I've never been asked to do that before.

15 Q Certainly. But you think under proper
16 circumstances, you could do that?

17 A Yes, sir.

18 MR. WILLINGHAM: Beg the Court's indulgence.

19 BY MR. WILLINGHAM:

20 Q As far as your relationship with Mr. Brennan, I
21 know you said that would not factor into your decision
22 making at all. You would not favor on side over the other?

23 A Right.

24 Q If you were to be a juror on this case and you
25 were to vote for death and if you ran into Mr. Brennan in

1 a social setting afterwards, would that cause you
2 discomfort?

3 **A** No, sir.

4 **Q** That would not cause you any hesitation at all?

5 **A** No, sir.

6 **Q** Thank you.

7 **THE COURT:** Ms. Smith, let me ask you to step
8 into the hall just one second please, ma'am.

9 (WHEREUPON, Ms. Smith exits at approximately
10 4:42 p.m.)

11 **THE COURT:** Any objection to Ms. Smith.

12 **MR. BRENNAN:** No.

13 **MR. BRENNAN:** No, sir.

14 **THE COURT:** Bring her back and get us another
15 juror.

16 (WHEREUPON, Ms. Smith enters at approximately
17 4:42 p.m.)

18 **THE COURT:** Ms. Smith, I find that you are
19 qualified to serve as a juror in this case. It is
20 going to be at least a day or so before we need you
21 back. Please start calling the telephone number you
22 were given yesterday. Call it about lunchtime
23 tomorrow. And when we get close to needing you, we
24 will put something on there about when we think you
25 we're going to need you.

1 Keep in mind we may sequester, that I may
2 sequester the jury. That means you're going to need
3 to be able to pack up and be here away from home for
4 five or six days. During the time that you are away,
5 don't read anything, don't watch anything about this
6 case, don't talk about the case, don't allow nobody to
7 talk to you about the case.

8 When you come back, I'm going to ask you whether
9 or not you talked to anybody or learned anything about
10 it. And I'm going to expect you to tell me that you
11 have not. We look forward to seeing you in a day or
12 so.

13 (WHEREUPON, Ms. Smith exits at approximately
14 4:44 p.m.)

15 (WHEREUPON, Lori Burnett, Juror number 39, enters at
16 approximately 4:44 p.m.)

17 **LORI BURNETT**

18 having previously been sworn, testified as follows:

19 **EXAMINATION**

20 **BY THE COURT:**

21 **Q** Ms. Burnett, we've got a Supreme Court Justice in
22 this courthouse who call himself Burnette. But you are
23 Ms. Burnett.

24 **A** (Nods head affirmatively.)

25 **Q** All right. You recall yesterday that we had put

1 you under oath and you are under oath again today still?

2 A Yes.

3 Q Since you left us yesterday, have you talked to
4 anybody about this case or has anybody talked to you about
5 the case?

6 A No, sir.

7 Q Have you have you read anything, seen anything or
8 learned anything about this case?

9 A No, sir. I'm going to ask you some questions
10 and the lawyers may also ask you some questions about this
11 case. And we're not trying to pry into your private life.
12 We do have to ask you these questions though. There are
13 no right or wrong answers. We just want you to be open
14 with us and honest us and tell us how you feel and how you
15 think.

16 We're going to get into some questions about a
17 possible penalty phase of this trial. The fact that we're
18 going to talk about a penalty phase does not mean anything
19 about this defendant or about this case. It simply means
20 that we know we might get there. And we need to know some
21 things about how you think and how you feel.

22 If you were a juror in this case, could you accept and
23 apply the law precisely as I will give it to you and render
24 a verdict based solely on the testimony and the evidence
25 that you will hear and see in this courtroom?

1 A Yes, sir.

2 Q You understand in a criminal case, the State has
3 the burden of proof and must meet that burden by proving
4 the defendant guilty beyond a reasonable doubt?

5 A Yes, sir.

6 Q You understand that this is a murder case?

7 A Yes, sir.

8 Q Could you, based on the facts and circumstances
9 that are proven and in light of the law as I will give it
10 to you, could find a verdict in this case of either guilty
11 or not guilty depending on whether or not you think the
12 State has met its burden of proof?

13 A Yes, sir.

14 Q If you are on the jury and the jury reaches a
15 verdict of guilty for murder, you would move into the
16 penalty phase of the trial. There are some issues that
17 are going to come up there that I'm going to talk to you
18 about now.

19 Aggravating circumstances are facts, incidences or
20 details of the occurrence which the State of South Carolina
21 has declared to make worse or to aggravate the crime of
22 murder. Aggravating circumstances, when accompanied by a
23 murder, increase the enormity of the crime of murder or add
24 to the injury caused by the crime of murder.

25 Mitigating circumstances, on the other hand, are

1 facts, incidences or details of an occurrence which the
2 State of South Carolina has declared to reduce the severity
3 of the crime of murder. These may be seen to extenuate or
4 to reduce the moral culpability or responsibility for the
5 crime.

6 If you on the jury in a penalty phase of a death
7 penalty trial, you would have two options as to what your
8 verdict could be. You could impose a life sentence or you
9 could impose the death penalty. Could you, depending on
10 the facts and circumstances that you find to exist and
11 considering any aggravating or mitigating circumstances and
12 certainly in light of the law as I will give it to, could
13 you vote to impose a life sentence?

14 **A** Yes, sir.

15 **Q** Could you vote to impose the death penalty?

16 **A** No, sir.

17 **Q** Why do you say that?

18 **A** I am a Christian and I just can't do that. I
19 mean, in the old testimony, it is taught an eye for an eye.
20 But that was under law. And we're under ransom. I can't
21 vote for it.

22 **THE COURT:** All right. Mr. Bartosh, do you
23 have any questions of this juror?

24 **MR. BARTOSH:** No, sir.

25 **THE COURT:** Mr. Gowdy?

1 **MR. BARTOSH:** No, sir, Your Honor.

2 **THE COURT:** Ma'am, we will not be needing your
3 services anymore. You are free to go. Thank you for
4 being so open and honest with us.

5 (WHEREUPON, Ms. Burnett exits at approximately
6 4:48 p.m.)

7 **THE COURT:** I assume there is no objection to
8 that.

9 **MR. BARTOSH:** No, sir.

10 **MR. GOWDY:** No, sir.

11 **THE COURT:** Keep the door close.

12 And let me just clear this up. I think I cleared
13 it up yesterday. But for all of these jurors as to
14 whom I have just asked you do you want to question
15 her, you have the right to question the juror. You
16 are just able to see that that juror is not qualified
17 and you are waiving that right, correct?

18 **MR. BARTOSH:** Well, I can see that juror does
19 not want to serve and does not believe in the death
20 penalty.

21 **THE COURT:** Right. And so you can see that
22 they are not qualified and you are waiving your right
23 to ask them questions under the statute?

24 **MR. BARTOSH:** Yes, sir.

25 **THE COURT:** Sir?

1 **MR. BARTOSH:** Yes, sir.

2 **THE COURT:** And you are satisfied that, when I
3 ask that and you have no questions, is it safe for me
4 to assume that you have no objection to that juror
5 being found unqualified?

6 **MR. BARTOSH:** Yes, sir.

7 **THE COURT:** All right. Bring us a juror.

8 (WHEREUPON, Larry Mauldin, Juror number 179, enters at
9 approximately 4:50 p.m.)

10 **LARRY MAULDIN**

11 having previously been sworn, testified as follows:

12 **EXAMINATION**

13 **BY THE COURT:**

14 **Q** All right. Mr. Mauldin, how are you this
15 afternoon?

16 **A** Doing fine, sir.

17 **Q** Good. You recall that we put you under oath
18 yesterday afternoon or yesterday morning?

19 **A** Yes, sir.

20 **Q** You are still under oath right now. Do you
21 understand that?

22 **A** Yes, sir. I certainly do.

23 **Q** Since you left us yesterday, have you talked to
24 anybody about this case or has anybody talk to you about
25 this case?

1 A No, sir.

2 Q Have you learned anything at all by either
3 hearing somebody talking about it or watching TV or reading
4 the newspaper or anything?

5 A No, I have not.

6 Q We're going to ask you some questions. I'm going
7 to start off. And then the lawyers might also ask you some
8 questions. We apologize if it seems a little bit like
9 we're prying into places we should not go. But we have to
10 ask you these questions. There are no right or wrong
11 answers to the questions. We just want you to be open and
12 honest with us and tell you tell us how you think and how
13 you feel.

14 We are going to talk about a possible penalty phase of
15 this trial. The fact that we're talking about the penalty
16 phase does not mean anything about this defendant or about
17 this case. It simply means that because we might get to
18 the penalty phase, we need to know some things about how
19 you feel and how you think on certain some issues.

20 If you are a juror in this case, can you accept and
21 apply the law exactly as I give it to you and render a
22 verdict based solely on the testimony and the evidence that
23 you will hear in this courtroom?

24 A Yes, I can.

25 Q You understand that in a criminal case, the State

1 has the burden of proving the defendant guilty beyond a
2 reasonable doubt?

3 A Yes, I do.

4 Q You understand that this is a murder case?

5 A Yes, I do.

6 Q Could you, based on the facts and circumstances
7 that you find to have been proven and in light of the law
8 as I will give it to you, could you find the defendant
9 either guilty or not guilty depending on whether or not
10 you think the State has met its burden of proof?

11 A Yes, I can.

12 Q If you are on the jury and you find the defendant
13 guilty, we would move into the penalty phase where some
14 issues are going to come up. And I'm going to talk to you
15 a little bit about that now. Aggravating circumstances are
16 facts, incidences or details of an occurrence that the
17 South Carolina has declared to make worse or to aggravate
18 the crime of murder. Aggravating circumstances when
19 accompanying a murder increase the enormity of the crime or
20 add to the injury caused by the crime.

21 Mitigating circumstances, on the other hand, are the
22 facts, incidences or details of an occurrence which the
23 State of South Carolina have declared to reduce the
24 severity of the crime of murder. Mitigating circumstances
25 may be considered as extenuating or as reducing the moral

1 culpability or responsibility for the crime.

2 If you are on the jury during the death penalty --
3 during the penalty phase of the death penalty case, you
4 will have two options as to what your verdict could be.
5 You could impose a life sentence or you could impose the
6 death penalty. Could you, based on the facts and
7 circumstances that you find to exist after listening to all
8 of the testimony and evidence and considering any
9 aggravating or mitigating circumstances and of course in
10 light of the law as I give it to you, could you vote for a
11 life sentence?

12 A Yes, I could.

13 Q Could you vote to impose the death penalty?

14 A Yes, I could.

15 Q If you are on this jury and if I sequester the
16 jury and order that you be put up in hotel and not allowed
17 to go home for five or six days, is that going to impose a
18 terrible burden on you?

19 A No, it would not.

20 Q Have you had a chance to go over the witness list
21 that I gave you?

22 A Yes, I did.

23 Q Did you read every name on that list?

24 A Yes, I did.

25 Q Do you know anybody or are you related to anybody

1 on that list?

2 A I do know two people on there.

3 Q Please tell me who you know.

4 A Jason Hilton who is the Sheriff's Deputy who I
5 have not seen in a few years. I had forgotten about him.
6 And Freddy Thompson who is over 911.

7 Q What about Mr. Thompson? What is your recent
8 relationship with him?

9 A The recent relationship is I was employed with
10 BellSouth. I maintained 911 equipment. And I had direct
11 contact with Mr. Thompson.

12 Q Are you still employed with BellSouth?

13 A No, sir. I retired four years ago.

14 Q During the last four years, have you had any
15 contact with Mr. Thompson?

16 A No, I have not.

17 Q Would the fact that you know -- what's the first
18 man's name?

19 A Uh, the first one? Jason Hilton.

20 Q Would the fact that you know Mr. Hilton and know
21 Mr. Thompson, would that interfere in any way with either
22 your ability willingness and your ability to give both the
23 State and the defendant a fair and impartial trial in this
24 case?

25 A Absolutely not.

1 Q Do you know of any reason why you could not give
2 both the State and the defendant a fair and impartial
3 trial?

4 A No, I do not.

5 Q All right, sir. I'm going to let the lawyers
6 ask you some questions. I might come back and ask you
7 some more in a few minutes.

8 MR. BRENNAN: May it please the Court, Your
9 Honor.

10 **EXAMINATION**

11 BY MR. BRENNAN:

12 Q Mr. Mauldin, how are you, sir?

13 A I'm doing fine.

14 Q My name is Doug Brennan. I'm an attorney here in
15 Spartanburg. Myself, Mr. Bartosh and Ms. Quimby are
16 representing Marion Lindsey in this matter. You mentioned
17 on your questionnaire that your home, actually, your studio
18 at one point had been broken into, is that correct?

19 A Yes. That is correct.

20 Q Were you there when the incident occurred?

21 A No, sir. I was at work.

22 Q You did not see whoever it was that broke in
23 there?

24 A No.

25 Q Was anyone ever arrested?

1 **A** No.

2 **Q** So there really has been no resolution to that
3 matter?

4 **A** No.

5 **Q** How long ago was that?

6 **A** About eight years ago.

7 **Q** Would you be able to set aside the anxiety and
8 maybe the feelings caused by that break in and focus and
9 render a true and fair decision in this matter?

10 **A** Most definitely.

11 **Q** All right. Sir, do you understand that the death
12 penalty is never mandatory in South Carolina?

13 **A** Yes.

14 **Q** Okay. It has been written and it has been said
15 that there are three kinds of jurors. There are those
16 jurors that if defendant is found guilty will always impose
17 the death penalty. There are those jurors that if the
18 defendant is found guilty will always impose a life
19 sentence.

20 Then there are those jurors that insist on listening
21 to the facts at the guilt phase. And based on what they
22 hear at the guilt phase, will render, will make their
23 decision as to whether it should be the death penalty or
24 life in prison. I need to know which one of those three
25 you are.

1 **A** The third.

2 **Q** Okay. All right. If you are seated on this jury
3 and you are in deliberation after the sentencing phase and
4 eleven jurors have made the decision that the death penalty
5 is proper. But based on what you heard, your decision is
6 that life is the proper sentence. Can you stand by your
7 decision in spite of those eleven jurors and continue to
8 hold your ground on that life sentence?

9 **A** Yes.

10 **Q** You will not be swayed by those eleven people?

11 **A** No. If I feel, if I feel truthfully that the
12 information has been given and I truthfully feel that life
13 is, then I will have to go with life.

14 **Q** Okay. You were in the Navy?

15 **A** Yes, sir.

16 **Q** Did you retire from the Navy?

17 **A** No, sir.

18 **Q** All right. Your brother is a police chief?

19 **A** He was the police chief. He was there
20 approximately six months. He left there and went with the
21 federal government investigating corrupt police forces
22 around the world. So he was only there six months.

23 **Q** How often do you see your brother?

24 **A** Maybe once a year. He lives in Key West now.
25 I don't see him that much.

1 Q How often do you talk to him?

2 A I talk to him once every three months.

3 Q Do the two of you ever talk about law
4 enforcement?

5 A No.

6 Q Does your relationship with your brother enter
7 into your opinions on the death penalty?

8 A No.

9 Q Thank you. That's all, sir. Thank you.

10 MR. BARNETT: May it please the Court.

11 THE COURT: Yes, sir.

12 **EXAMINATION**

13 BY MR. BARNETT:

14 Q My name is Barry Barnett. I will be prosecuting
15 the case along with Trey Gowdy and Donnie Willingham. We
16 will be representing the State. You worked for BellSouth.
17 Is that right?

18 A I did. I'm retired.

19 Q You're retired. And you been retired four years?

20 A Right.

21 Q And your wife, is she is still a teacher's aide?

22 A That's correct.

23 Q How long has she worked there?

24 A She's been there two going on 22 years.

25 Q Thank you very much.

1 **THE COURT:** Mr. Mauldin, step in the hall for
2 just a second please.

3 (WHEREUPON, Mr. Mauldin exits at approximately
4 5:00 p.m.)

5 **THE COURT:** All right, sir. Any objection to his
6 qualifications?

7 **MR. BRENNAN:** None, Your Honor.

8 **MR. BARNETT:** None from the State.

9 **THE COURT:** All right. Bring him back please.
10 Give us another juror.

11 (WHEREUPON, Mr. Mauldin enters at approximately
12 5:00 p.m.)

13 **THE COURT:** I find that you are qualified to
14 serve as a juror on this case. It is going to be a
15 day or so before we need you. Some time about
16 lunchtime tomorrow, please start calling the telephone
17 number that you were given yesterday. We will, when
18 we get ready, when we get close to needing you, we
19 will put information on there about when we think we
20 are going to need you back.

21 You keep in mind please that if I sequester the
22 jury. You are going to be needing to have some stuff
23 packed and ready to be with us for five or six days.
24 Obviously, don't talk about the case. Don't allow
25 anybody to talk to you about the case. Don't read

1 anything or watch anything that concern this case.

2 When you come back, I'm going to ask all the
3 jurors have you watched anything or learned anything
4 or talked about the case or anything. And I'm going
5 to expect you to be able to tell me no, that you have
6 not. All right. We look forward to seeing you in a
7 day or so. Thank you.

8 (WHEREUPON, Mr. Mauldin exits at approximately
9 5:00 p.m.)

10 (WHEREUPON, Isabell Williams, Juror number 294, enters
11 at approximately 5:00 p.m.)

12 **ISABELL WILLIAMS**

13 having previously been sworn, testified as follows:

14 **EXAMINATION**

15 **BY THE COURT:**

16 **Q** Good afternoon, Ms. Williams.

17 **A** Good afternoon.

18 **Q** How are you?

19 **A** Fine.

20 **Q** You recall that I put you under oath yesterday, I
21 suppose. And you're still under oath today.

22 **A** Yes, sir.

23 **Q** Since you left us yesterday, have you talked to
24 anybody or has anybody talked with you about this case?

25 **A** No, sir.

1 Q Have you learned anything, read anything or seen
2 anything about this case?

3 A No, sir.

4 Q I'm going to ask you some questions now and
5 probably the lawyers are also going to ask you some
6 questions in a few minutes. We're not trying to pry into
7 your private life but we need to talk to you about these
8 things.

9 A Okay.

10 Q There are no right or wrong answers to these
11 questions. We just want you to be open and honest with us
12 and tell us how you think and tell us how you feel.

13 A Okay.

14 Q We are going to talk about a possible penalty
15 phase. But the fact that we're talking about a possible
16 penalty phase does not mean anything about the defendant or
17 about this case. It simply means that because we might get
18 to the penalty phase, we need to ask you some questions
19 about some issues that might come up or will come up in
20 that phase. We want to know how you think and how you
21 feel about those issues.

22 A All right.

23 Q If you are a juror in this case, will you be able
24 to accept and apply the law precisely as I will give it to
25 you and render a verdict based solely on the testimony and

1 evidence that you see and hear in this courtroom?

2 A Yes, sir.

3 Q You understand that in a criminal case, the State
4 has to prove the defendant guilty beyond a reasonable
5 doubt?

6 A Yes, sir.

7 Q You understand this is a murder case?

8 A Yes, sir.

9 Q Could you, depending on the facts and
10 circumstances that are proven to you and in light of the
11 law as I will give it to you, could you find the defendant
12 either guilty or not guilty depending on whether or not you
13 think the State has proven the defendant guilty beyond a
14 reasonable doubt?

15 A Yes, sir.

16 Q Now we're going to talk a little bit about
17 possible sentencing phase issues. I'm going to tell you
18 about aggravating and mitigating circumstances.
19 Aggravating circumstances are facts, incidents, or details
20 of an occurrence that the State of South Carolina has
21 declared to make worse or to aggravate the crime of murder.
22 Aggravating circumstances when accompanying a murder
23 increase the enormity of the crime or add to the injury
24 from the crime.

25 Mitigating circumstances, on the other hand, are facts

1 incidents or details of an occurrence which the State of
2 South Carolina has declared to reduce the severity of the
3 crime of murder. Mitigating circumstances may be
4 considered as extenuating or as reducing the moral
5 culpability or responsibility for the crime.

6 If you are on the jury in the penalty phase of a death
7 penalty case such as this, you would have two options as to
8 what your verdict could be. You could impose a life
9 sentence or you could impose the death penalty. Could you
10 depending on the facts and circumstances that you find to
11 exist including any aggravating or mitigating circumstances
12 and of course in light of the law as I will give it to you,
13 could you impose a life sentence?

14 A Yes, sir.

15 Q Could you impose the death penalty?

16 A Yes, sir.

17 Q If you get on this jury and if the jury is
18 sequestered and required to stay in a hotel and be away
19 from your family for five or six days, is that going to
20 impose a terrible burden on you?

21 A No, sir.

22 Q Have you had a chance to go over that witness
23 list that I gave you?

24 A Yes, sir.

25 Q Have you read every name on that list?

1 **A** Yes, sir.

2 **Q** Do you know anybody or are you related to anybody
3 on that list?

4 **A** No, sir.

5 **Q** Ma'am, do you know of any reason why you cannot
6 both the State and the Defendant a fair and impartial trial
7 in this case

8 **A** No, sir.

9 **Q** I'm going to let the lawyers ask you some
10 questions now. And then I might come back and ask you some
11 more in a few minutes.

12 **A** Okay.

13 **EXAMINATION**

14 **BY MR. BRENNAN:**

15 **Q** Ms. Williams, how are you this afternoon?

16 **A** I'm fine.

17 **Q** Good. Thank you. My name is Doug Brennan. I'm an
18 attorney here in Spartanburg. Myself, Mr. Bartosh and Ms.
19 Quimby have the opportunity to represent Mr. Lindsey in
20 this matter. Yesterday during some of the general questions
21 when the big group was here, you were asked, if you knew
22 anything about this case. And you stood up.

23 **A** Uh-huh (affirmative).

24 **Q** Can you tell me what you know about this case?

25 **A** Just what I seen in 2002. That's it.

1 Q And what you seen, do you mean what you saw in
2 the newspaper and saw on TV?

3 A Yeah.

4 Q Based on what you saw and what you read, ma'am,
5 have you formed an opinion in this matter?

6 A No, because really I forgot all about it until he
7 came up yesterday.

8 Q Okay. So you would be able to set aside or forget
9 those things that you read about and maybe seen on TV and
10 limit your consideration to just the stuff that comes from
11 the witness stand?

12 A Yes, I could.

13 Q Okay. All right. Where do you work now?

14 A At the Death and Blind School.

15 Q How long have you been there?

16 A Five years.

17 Q Where did you work before that?

18 A At McDonald's.

19 Q McDonald's, which one?

20 A That was in Florida.

21 Q In Florida, okay. Have ever you ever worked in a
22 nursing home in Spartanburg County?

23 A No.

24 Q You ever worked in a textile mill in Spartanburg
25 County?

1 **A** No.

2 **Q** Okay. Yesterday again in those general questions,
3 you said that somebody in your family had been arrested,
4 someone in your family or close relations had been arrested
5 for CDV or assault or assault and battery?

6 **A** Uh-huh (affirmative).

7 **Q** Can you tell me about that?

8 **A** It was my cousin.

9 **Q** Okay.

10 **A** He was arrested for assault.

11 **Q** For assault?

12 **A** Uh-huh (affirmative).

13 **A** Did your cousin go to jail?

14 **A** Yes, he went to jail. But he didn't make time.
15 He just got out.

16 **Q** How long ago was that?

17 **A** Three or four years ago.

18 **Q** Was that here in Spartanburg?

19 **A** Yes.

20 **Q** Were you asked to make a statement or anything in
21 relation to that case?

22 **A** No.

23 **Q** You never had the opportunity or were called by
24 the solicitor's office to make a statement or any kind of
25 criminal investigation or anything like that?

1 A No.

2 Q Would that affect your decision-making ability in
3 this case, that arrest?

4 A No.

5 Q You also stood -- this may be the same thing.
6 But you stood when the question was asked have you or
7 anybody in your family been arrested by the Spartanburg
8 County Sheriff's Department or the Inman Police Department?

9 A Uh-huh (Affirmative).

10 Q Was that the same incident?

11 A Same incident.

12 Q So it wasn't you?

13 A No.

14 Q Ma'am, do you understand that in South Carolina,
15 a jury in a death penalty case never has to impose the
16 death penalty?

17 A Uh-huh (Affirmative).

18 Q Okay. So you do understand that the jury can
19 impose life?

20 A Yeah.

21 A With that understanding, ma'am, it is said that
22 there are three kinds of jurors. There are those jurors
23 that if the defendant is found guilty will always impose
24 the death penalty. There are those jurors on the other
25 side that if the jury is found guilty in a capital case

1 will always vote for life in prison. Then there are those
2 jurors that want to, before they make that decision, hear
3 all the evidence in the sentencing phase and then make
4 their decision.

5 A Uh-huh (affirmative).

6 Q Where do you fall?

7 A I want to hear all the evidence and then make a
8 decision.

9 Q So you are not leaning towards the death penalty
10 or towards life in prison?

11 A I want to hear it all first.

12 Q Just a couple more questions, ma'am. If you are
13 seated on this jury and if we get to the sentencing phase
14 and you are in the deliberation room and there are eleven
15 jurors and they have already said death penalty. Eleven of
16 them have already said death penalty. But you think it is
17 the other way. You think that it should be the life
18 sentence but you know those eleven people are saying the
19 other thing, can you stand your ground?

20 A Yeah, I can.

21 Q Can you hold your ground against those eleven
22 people?

23 A I could.

24 Q All right. Last question. Ma'am, when it comes
25 time for a verdict form, twelve people have to sign that

1 page. Now can you sign as the last juror knowing that that
2 signature would be what sends the man to the death penalty?

3 A Can I sign?

4 Q Yes.

5 A Yes, I can.

6 MR. BRENNAN: Nothing further. Thank you, Your
7 Honor.

8 MR. BARNETT: May it please the Court, Your
9 Honor.

10 THE COURT: Yes, sir.

11 EXAMINATION

12 BY MR. BARNETT:

13 Q Hi, Ms. Williams.

14 A Hi. How are you doing?

15 Q I'm fine. How are you?

16 A All right.

17 Q My name is Barry Barnett. Along with Solicitor
18 Trey Gowdy and Donnie Willingham, we will be representing
19 the State and prosecuting cases. I notice that you go to
20 Majority Church. Is that right?

21 A Yes.

22 Q Is Reverend Stiney the preacher there?

23 A Reverend Hillstock.

24 Q Hillstock, I'm sorry. And you work at the Deaf
25 and Blind School. Is that right?

1 **A** Uh-huh (affirmative).

2 **Q** Have you thought much about the death penalty
3 before this trial?

4 **A** No, I have not.

5 **Q** Where does your belief or your feelings about the
6 death penalty come from?

7 **A** What do you mean?

8 **Q** Have you ever thought about the death penalty
9 before this?

10 **A** No.

11 **Q** What are your feelings about the death penalty?
12 What would help form your opinion about the death penalty?

13 **A** If I had to do it, I would do it.

14 **Q** Would that be based off your background or
15 education, what you know? How would you form your opinion
16 about the death penalty? I'm not trying to ask a trick
17 question. I'm just trying to find out. Like I said, this
18 is the first time you and me met.

19 **A** Uh-huh (affirmative).

20 **Q** And I'm just trying to find out how you think
21 about the death penalty?

22 **A** I guess I have none.

23 **Q** Would you speak a little bit louder?

24 **A** I don't have no opinion either way.

25 **Q** In looking at the case and everything, looking at

1 the facts or whatever, you're going to be hearing the case
2 if you're on the jury. What would you base a death penalty
3 verdict on? Would you base it off your personal opinion?
4 Would you base it off, what would you base it off of? The
5 reason I am prying in there is because we just need to
6 know. Obviously, once you're in the jury room, after the
7 evidence has been heard, we cannot talk about it then.

8 A It would be my personal opinion.

9 Q Yes, ma'am. What is your personal opinion?

10 A I can't describe it right now.

11 Q I'm sorry. Could you talk a little bit louder.

12 A I just can't describe it right now.

13 Q Do you know what it is?

14 A Yes. Well, I don't know. But it is like if
15 someone kill someone or murder someone, put it like that
16 is what I'm saying.

17 Q You realize that once a person is found guilty of
18 murder in these type cases, there are two verdicts, life
19 without parole or the death penalty?

20 A Yes.

21 Q In looking at those two verdicts, if you
22 knew life without parole was an option and the option will
23 always be there, do you think that you could ever find
24 anybody guilty of the death penalty?

25 A Yes, I could.

1 Q Would that be -- what would that be based on,
2 ma'am?

3 A My opinion. If they were found guilty. That's
4 what I'm saying, you know.

5 Q Uh-huh (Affirmative). If they are found guilty,
6 you realize there are two options. I think the Judge has
7 described those to you?

8 A Yeah.

9 Q Would factors -- I guess, what is -- just in your
10 personal view of the death penalty, what would be your view
11 of the death penalty?

12 A I have no idea.

13 Q So you don't have any idea what it would be?

14 A No.

15 Q Is there a anything that would lead you to say
16 that you don't know? We are just wondering about, I know
17 you are trying to answer it. But without that answer, we
18 don't know, either side doesn't know. What makes you say
19 you don't know?

20 A I'm just saying I don't know. That's it.

21 Q And you don't know what you would do?

22 A If I have to, I would do the death penalty if I
23 had to.

24 Q Okay. When you say if you have to, you realize
25 that on a jury you don't have to do anything?

1 **A** From my opinion.

2 **Q** Uh-huh (affirmative). Yes, ma'am. And when
3 you have to, what would make you have to?

4 **A** Just when I hear all the evidence and
5 everything.

6 **Q** But you really don't know what, don't know
7 anything about it, is that right?

8 **A** Uh-huh (Affirmative).

9 **MR. BARNETT:** One moment, Your Honor.

10 **BY MR. BARNETT:**

11 **Q** I apologize for asking these questions, under
12 what circumstances would you think the death penalty is
13 appropriate?

14 **A** Like murder. Is that what you're talking about?

15 **Q** What types or what type situation?

16 **A** I don't know.

17 **THE COURT:** Let's move on. She's having
18 trouble thinking of circumstances that would justify
19 the death penalty. You have asked her the question.
20 She's tried to think of them. And she has not been
21 able to think of any.

22 **MR. BARNETT:** Yes, sir.

23 **BY MR. BARNETT:**

24 **Q** I think Mr. Brennan asked you about this. I
25 wanted to check back with you. Have you heard about this?

1 case through the TV or through the Newspaper?

2 A Like I told you, it was 2 years when I heard
3 about it. That was the only time that I had heard about it
4 was two years ago.

5 Q And two years ago, that's when you saw, that's
6 the last time you heard about it. Is that right?

7 A Right.

8 Q Who was your cousin that was charged?

9 A Deadra Willis.

10 Q Would that have any influence on any decision
11 you make here in court?

12 A No.

13 MR. BARNETT: One moment, Your Honor, please.

14 BY MR. BARNETT:

15 Q I just want to make sure that you understood,
16 and I know we talked about this before. But you realize
17 you never have to give the death penalty?

18 A Yeah.

19 Q You always have those two options if we get in
20 the sentencing phase. That will be that you give life
21 without parole or the death penalty. Do you understand
22 that?

23 A Yes.

24 Q Could you consider both of those options or do
25 you feel like you have to do something in that situation?

1 **A** I would consider both of them.

2 **Q** Would that be based on the facts that you saw in
3 the case?

4 **A** Yes.

5 **Q** You don't know what factors you would consider?

6 **A** No.

7 **Q** Thank you, ma'am. I'm sorry for having to ask
8 you those questions.

9 **THE COURT:** Ma'am, would you mind stepping
10 into the hall for just a second please.

11 (WHEREUPON, Ms. Williams exits at approximately
12 5:15 p.m.)

13 **THE COURT:** Any Objection?

14 **MR. BARNETT:** Yes, sir. The problem I have got
15 -- and it's a difficult situation questioning her.
16 And I appreciate Your Honor stepping in, but she has
17 no idea what she would do. She don't even have a
18 belief or can't tell a basis for that belief.

19 I don't know what kind of juror she is. I know
20 that answering those questions that she twice just
21 said basically I don't know. She would nod and kind
22 of shake her head. And she just didn't want to answer
23 the questions. I don't know if she could answer the
24 questions to be honest with you. You really could not
25 tell type juror she is. Based on that and the

1 inconsistent answers she gave, I think under State
2 versus Tyler she is not qualified.

3 **THE COURT:** Under State versus Tyler?

4 **MR. BARNETT:** Or any kind of case that would
5 talk about inconsistent statements. She is very
6 consistent. You don't know where she stands in
7 looking at the answers she gave. I tried to go back
8 into it a couple of times. She would never give that
9 answer. I think talking about beliefs and the death
10 penalty is a very key pertinent issue to talk about or
11 look at.

12 **THE COURT:** Mr. Bartosh.

13 **MR. BRENNAN:** Your Honor, we believe that she is
14 qualified. And quite to the contrary, we believe that
15 she was consistent with her answers always stating
16 that she could impose the death penalty. It wasn't
17 until the questions became more specific asked by Mr.
18 Barnett that she had trouble, Your Honor. And I can
19 understand not knowing a specific set of circumstances
20 upon which I would vote to send someone to death.
21 But she was consistent with her answers that she could
22 impose a death sentence. Therefore, I believe she is
23 qualified.

24 **MR. BARNETT:** Your Honor, if I get a chance, I
25 would like to reply to that for a second.

1 **THE COURT:** All right.

2 **MR. GOWDY:** The other thing is she wouldn't
3 even say if she would apply it to a 9/11 situation or
4 a child molester. We didn't get that. I did not get
5 specific enough because she couldn't not give me an
6 answer to it. We just do not know where she stands
7 with that. That is the problem I got with her
8 answers.

9 I don't know if she knows what the death penalty
10 involves or stands for. I know she's being exposed
11 to it for the first time. She could not even give me
12 that. If we don't have that information, I mean,
13 without that information, you can't be a qualified
14 juror.

15 **THE COURT:** All right. Well, I think she is
16 qualified but based on that last thing that you said
17 I'm going to ask her a few more questions to confirm
18 that or to see whether or not I am incorrect.

19 Bring her out please.

20 (WHEREUPON, Ms. Williams enters at approximately
21 5:17 p.m.)

22 **BY THE COURT:**

23 **Q** Ms. Williams, let me ask you a few questions if
24 you don't mind. You have told us that you are the type
25 kind of juror who would wait to see what the facts and

1 circumstances are before you will decide whether to vote to
2 impose a life sentence or impose the death penalty,
3 correct?

4 A Yes, sir.

5 Q Does that would mean that you -- do you have any
6 opposition to the death penalty?

7 A What do you mean by that?

8 Q Are you opposed to the death penalty?

9 A No.

10 Q Are you -- so you and I realize you said you
11 don't support the death penalty in every case. But you do
12 support the death penalty as a concept in general?

13 A Yes, sir.

14 Q Is there anything more than what I just said that
15 you are not opposed to the death penalty. You do support
16 the death penalty. Anything more to your view on the death
17 penalty that you can think of that you might want to tell
18 me?

19 A No, sir.

20 Q Can you think of anything that would get in the
21 way of your imposing the death penalty if you felt the
22 circumstances were appropriate?

23 A No, sir.

24 Q Let me make sure you -- I just want to talk to
25 you a little bit to make absolutely sure that you

1 understand what I'm talking about when I say the death
2 penalty. If this case gets pass the guilt phase, in other
3 words, if the jury in this case finds the defendant guilty
4 of murder, then we would move into the sentencing phase.

5 If the jury finds that the State has proven beyond a
6 reasonable doubt the existence of at least one -- and there
7 will only be one -- aggravating circumstance, then -- so
8 first of all, the jury's got to find the defendant guilty
9 of murder. Then the jury has got to find the existence of
10 an aggravating circumstance. Both of those have to be
11 found beyond a reasonable doubt. The State has to prove
12 them beyond a reasonable doubt.

13 If you get to that point as a member of the jury, then
14 the jury has the choice between a sentence of life in
15 prison. And that will mean of course that the defendant
16 will stay in jail and stay in prison for the rest of his
17 life and that he would actually die in prison at whatever
18 time.

19 On the other hand, the jury would have an option of
20 imposing the death penalty. What that means, of course,
21 is the State either by electrocuting the defendant in the
22 electric chair or by giving the defendant a lethal
23 injection of some type of drug that would kill him, that
24 the State would kill the defendant. That is what we call
25 the death penalty. You understand all of that?

1 **A** Yes.

2 **Q** Do you believe after hearing all of that if you
3 found the circumstances were right that you could vote to
4 impose a sentence on the defendant that would result in his
5 death because of electrocution or because of lethal
6 injection?

7 **A** Yes, sir.

8 **Q** You could do that. You have any hesitation in
9 that?

10 **A** No, sir.

11 **Q** Ms. Williams, I appreciate your answers. Let
12 me get you to stand back in the hall one more second
13 please. I will have you right back in here.

14 (WHEREUPON, Ms. Williams exits at approximately
15 5:21 p.m.)

16 **THE COURT:** Anything else?

17 **MR. BARNETT:** Nothing from the State.

18 **MR. BRENNAN:** Nothing.

19 **THE COURT:** All right. I think she is
20 qualified.

21 Bring her in.

22 (WHEREUPON, Ms. Williams enters at approximately
23 5:23 p.m.)

24 **THE COURT:** Ms. Williams, I find that you are
25 qualified to serve as a juror in this case. It is

1 going to be a day or so before we need you to come
2 back. So when you leave here now, you can be free and
3 do whatever you want to do at least for most of the
4 day tomorrow maybe all day tomorrow.

5 Please about lunchtime tomorrow start calling the
6 telephone number that you were given yesterday
7 morning. And as soon as we know something about when
8 we are going to need you back, we will put some
9 information on there that will kind of guide you about
10 when we need you to come back.

11 **MS. WILLIAMS:** Okay.

12 **THE COURT:** Keep in mind that you may have to
13 stay with us for five or six days. So you may need to
14 pack some clothes and get ready to do that.

15 **MS. WILLIAMS:** All right.

16 **THE COURT:** And during the time that you are away,
17 don't talk to anybody about this case. Don't allow
18 anybody to talk you about this case. Don't read
19 anything. And don't watch anything about this case.
20 When you come back, just like with all the jurors, I'm
21 going to ask you whether or not you had done that.
22 I'm going to expect that you will be able to tell me
23 no, that you have not talked to anybody and you have
24 not learned anything about the case.

25 **MS. WILLIAMS:** All right, sir.

1 **THE COURT:** Have a good day and we look
2 forward to seeing you in a day or so.

3 **MS. WILLIAMS:** Thank you. You, too.

4 (WHEREUPON, Ms. Williams exits at approximately
5 5:28 p.m.)

6 **THE COURT:** Bring us a juror.

7 (WHEREUPON, Mackenzie Leake, Juror number 160, enters
8 at approximately 5:28 p.m.)

9 **MACKENZIE LEAKE**

10 having previously been sworn, testified as follows:

11 **EXAMINATION**

12 **BY THE COURT:**

13 **Q** Ms. Leake, good afternoon to you, ma'am.

14 **A** Good afternoon.

15 **Q** You recall that we put you under oath yesterday
16 afternoon. And you are still under oath this morning, I
17 mean, this afternoon. It seems to me like this morning.
18 But it is this afternoon. And it's late.

19 **A** It is.

20 **Q** You understand you are still under oath?

21 **A** Yes.

22 **Q** Since you left us yesterday, have you talked to
23 anybody about this case or has anybody talked to you about
24 this case?

25 **A** No.

1 Q Have you learned anything about the case or read
2 anything or watched or seen anything?

3 A No.

4 Q Ma'am, we're going to ask you some questions. We
5 don't mean to be prying into your private life. These are
6 questions that we have to ask you. There are no right or
7 wrong answers to these questions. We just want you to be
8 open and honest with us. Tell us how you think and how you
9 feel.

10 We're going to talk a little bit about a possible
11 penalty phase. And the fact that we're talking about the
12 penalty phase does not mean anything about this defendant
13 or about this case. It simply means that because we know
14 we might get to a penalty phase, we need to ask you some
15 questions about how you think and how you feel on certain
16 issues.

17 If you are a juror in this case, could you accept and
18 apply the law exactly as I would give it to you and render
19 a verdict based solely on the testimony and evidence that
20 you would hear in this courtroom?

21 A I guess I could.

22 Q Ma'am?

23 A I guess so.

24 Q You think you could?

25 A I think I could.

1 **Q** All right. You realize in a criminal case, the
2 State has the burden of proof and they must prove the
3 defendant guilty beyond a reasonable doubt. You understand
4 that?

5 **A** Yes.

6 **Q** This is a murder case. You understand that?

7 **A** Yes.

8 **Q** Could you, based on the facts and circumstances
9 that you find to be proven and in light of the law as I
10 will give it to you, could you find the defendant either
11 guilty or not guilty depending on whether or not you think
12 the State has proven the defendant guilty beyond a
13 reasonable doubt?

14 **A** Yes.

15 **Q** If the jury finds the defendant guilty or murder,
16 then we would move into the penalty phase of the trial. So
17 I'm going to talk to you a little bit now about penalty
18 phase issues. I'm going to tell you about mitigating
19 circumstances and aggravating circumstances.

20 Aggravating circumstances are facts, incidents or
21 details of an occurrence which the State has declared to
22 make worse or to aggravate the crime of murder.
23 Aggravating circumstances when accompanying a murder
24 increase the enormity of the crime or add to the injury of
25 the crime of murder.

1 Mitigating circumstances, on the other hand, are
2 facts, incidents or details of an occurrence that the State
3 of South Carolina has declared to reduce the severity of
4 the crime of murder. And these serve to extenuate or to
5 reduce the degree of moral culpability or responsibility.

6 Now, if you are on the jury in a penalty phase of a
7 death penalty case like this, then you would have two
8 options as to what your verdict could be. You could impose
9 a life sentence or you could impose the death penalty.
10 Could you, depending on the facts and circumstances that
11 you find to exist and considering any aggravating or
12 mitigating circumstances and certainly in light of the law
13 as I will give it to you, could you impose a life sentence?

14 A Yes, sir.

15 Q Could you impose the death penalty?

16 A No, sir.

17 Q You could not?

18 A No.

19 Q Are you sure about that?

20 A Yes.

21 THE COURT: All right. Any questions you want to
22 ask this juror?

23 MR. BRENNAN: None, Your Honor.

24 MR. BARNETT: Not from the State, Your Honor.

25 THE COURT: All right. Ma'am, we will no longer

1 need your services in this case. We appreciate you
2 coming. You are free to go.

3 (WHEREUPON, Ms. Leake exits at approximately
4 5:32 p.m.)

5 **THE COURT:** One more. If y'all be quick, we might
6 actually be on schedule in a minute.

7 (WHEREUPON, Wilma Langford, Juror number 157, enters
8 at approximately 5:32 p.m.)

9 **WILMA LANGFORD**

10 having previously been sworn, testified as follows:

11 **EXAMINATION**

12 **BY THE COURT:**

13 **Q** How are you, Ms. Langford?

14 **A** All right.

15 **Q** You recall that we put you under oath yesterday
16 afternoon?

17 **A** Yes, sir.

18 **Q** Yesterday morning actually.

19 **A** Yes, sir.

20 **Q** And you are still under oath now.

21 **A** Uh-huh (affirmative).

22 **Q** Since you left us yesterday afternoon, have you
23 talked to anybody about this case or has anybody talked to
24 you about this case?

25 **A** No, sir.

1 Q Have you learned anything about the case?

2 A No. I don't watch the news.

3 Q You said you haven't watched the news or read the
4 paper or anything about the case?

5 A Not since I left here.

6 Q Well, thank you, ma'am. We're going to ask you
7 some questions now. We don't mean to be prying into your
8 private life. But we do have to ask you these questions.
9 These questions don't have right or wrong answers. We just
10 want you to listen carefully and be open and honest with us
11 and tell us what you think and what you feel.

12 A Okay.

13 Q We're going to talk about possible penalty phase
14 or sentencing phase of this case. And just because we're
15 talking about the sentencing phase doesn't mean anything
16 about this defendant or about this case. It simply means
17 that because we might get to that phase, we need to ask you
18 some questions about some issues that might come up and see
19 how you think and how you feel about those issues.

20 If you are a juror in this case, could you accept and
21 apply the law precisely as I would give it to you and find
22 a verdict based solely on the testimony and evidence that
23 you would find and see and hear in this courtroom?

24 A Yes.

25 Q You understand that in a criminal case, the State

1 has the burden of proving the defendant guilty beyond a
2 reasonable doubt?

3 A Yes.

4 Q And you understand this is a murder case?

5 A Yes.

6 Q Could you, depending on the facts and
7 circumstances that you find to be proven and in light of
8 the law as I give it to you, could you find the defendant
9 either guilty or not guilty depending on whether or not you
10 think the State has met its burden of proof?

11 A Yes.

12 Q Now, if you are on the jury and the jury finds
13 the defendant guilty of murder, we would move into the
14 penalty phase or the sentencing phase. So I'm going to
15 talk to you a little bit about some things that might come
16 up.

17 Aggravating circumstances are facts, incidences or
18 details of an occurrence which the State has declared to
19 make worse or to aggravate the crime of murder.

20 Aggravating circumstances when accompanying a murder
21 increase the enormity of the crime or -- excuse me -- add
22 to the injury of the crime of murder.

23 Mitigating circumstances, on the other hand, are
24 facts, incidents or details of an occurrence which South
25 Carolina has declared to reduce the severity of the crime

1 of murder. And these may be seen to extenuate or to reduce
2 the degree of moral culpability or responsibility for the
3 crime.

4 If you are on the jury in a penalty phase of a death
5 penalty case such as this one, you would have two options
6 as to what your verdict could be, two options as to what
7 the sentence could be. You could impose a life sentence or
8 you could impose the death penalty. Could you, depending
9 on the facts and circumstances that you find to exist and
10 considering any aggravating or mitigating circumstances and
11 considering the law as I will give it to you, could you
12 vote to impose a life sentence?

13 A Yes.

14 Q Could you vote to impose the death penalty?

15 A Yes.

16 Q Now, ma'am, if you were sequestered on a jury and
17 if I asked you to stay with us over here in a hotel for
18 five or six days and you weren't allowed to go home to your
19 family, would that impose a terrible hardship on you?

20 A It would right now.

21 Q Tell me why.

22 A I have a 12-year old great granddaughter that
23 lives with me and I have custody of her. I carry her to
24 school and back. And I don't really know -- her parents
25 don't live in Gre -- you know, close to me. They live

1 somewhere else. One in Spartanburg, one in Pickens. I
2 mean, you know.

3 Q Is there anyone else that lives in the house with
4 y'all?

5 A No, we live there by ourselves. We been there
6 for about five years by our self.

7 Q Do you have legal custody of that child?

8 A Yes. And school is going on right now.

9 Q And who helps the child with homework and all
10 that stuff?

11 A I do.

12 Q Now, just to think about what the possibilities
13 are, if I did it anyway and put you on the jury and
14 sequestered you, who would take care of the child?

15 A Right now, right this minute, I don't know. I
16 would have to get somebody. I would have to.

17 Q You don't think either one of the parents will
18 come over here and take care of her?

19 A I know the father wouldn't because he's never
20 seen her. And the mother lives in Spartanburg, works the
21 night shift. So I don't know.

22 Q The mother is your daughter?

23 A No, granddaughter. This is my great
24 granddaughter I'm raising.

25 Q Oh, yeah, yeah, yeah. Okay. All right. Ma'am,

1 why don't you step out in the hall for just one second
2 please.

3 **A** Okay.

4 (WHEREUPON, Ms. Langford exits at approximately
5 5:38 p.m.)

6 **THE COURT:** We have an equivalent of a request to
7 be excused.

8 **MR. BRENNAN:** We would have no objection.

9 **THE COURT:** All right. Bring her in.

10 Doggone, we are about a minute and 45 seconds
11 behind schedule. I am so embarrassed.

12 (WHEREUPON, Ms. Langford enters at approximately
13 5:39 p.m.)

14 **THE COURT:** Ms. Langford, you probably are
15 qualified to serve. We really hadn't gotten finish
16 with you yet.

17 **MS. LANGFORD:** Okay.

18 **THE COURT:** But because of your situation with
19 your granddaughter, your great granddaughter and
20 because of the possibility of me sequestering the jury
21 and understanding what a difficult situation that
22 would create for you, I'm going to excuse you.

23 **MS. LANGFORD:** Okay.

24 **THE COURT:** So you are free to go.

25 **MS. LANGFORD:** Thank you.

1 **THE COURT:** The problem is we don't have time for
2 a break. So bring us another juror. I'm just
3 kidding. When we finished the last group, we were 45
4 minutes behind. We took a 10 minute break.

5 Why don't you go ahead and call the jurors back
6 that are in the seventh panel and tell them to come on
7 in at 7:30. We will go ahead and deal with them
8 tonight.

9 (WHEREUPON, a short recess was taken at approximately
10 5:40 p.m.)

11 (WHEREUPON, the Court resumed at approximately
12 5:51 p.m.)

13 (WHEREUPON, Gary McHam, Juror number 187, enters at
14 approximately 5:51 p.m.)

15 **GARY McHAM**

16 having previously been sworn, testified as follows:

17 **EXAMINATION**

18 **BY THE COURT:**

19 **Q** Good afternoon, Mr. McHam.

20 **A** Good afternoon.

21 **Q** How are you?

22 **A** Okay. Thank you.

23 **Q** The stock market do okay today?

24 **A** It did better.

25 **Q** Better?

1 A Better. Thank you.

2 Q Well, it doesn't really affect me anyway. I just
3 like to know how everybody else in the world is doing. You
4 recall that we put you under oath yesterday?

5 A Yes, sir.

6 Q And you are still under oath today. You
7 understand that?

8 A I do.

9 Q Since yesterday when you left us, have you talked
10 to anybody about this case or has anybody talked to you
11 about this case?

12 A No.

13 Q Have you read anything or heard anything about
14 this case?

15 A No.

16 Q We're going to ask you some questions now. We
17 don't want to pry too deep into your private life. But I
18 hope you understand that we do have to ask you these
19 questions. There are not any right or wrong answers to
20 these questions. We just want you to be open and honest
21 with us and tell us how you think and how you feel.

22 A Okay.

23 Q If you -- and we're also going to talk about a
24 possible penalty phase. The fact that we're going to talk
25 about a possible penalty phase does not mean anything about

1 this defendant or about this case. It simply means that
2 because we might get to a penalty phase, we have some
3 questions that we need to ask you about some issues to know
4 how you feel and how you think on those issues.

5 If you are a juror in this case, would you be able to
6 accept and apply the law precisely as I give it to you and
7 render a verdict based solely on the testimony and the
8 evidence that you see and hear right here in this
9 courtroom?

10 A I think.

11 Q Is there some reason why you have a hesitation
12 about that?

13 A Because I'm from Inman. I grew up in Inman. I
14 followed the case in the papers.

15 Q All right. I'll tell you what, if it's just
16 that, we're going to explore that in detail in just a
17 minute. So let's just do it now.

18 A It's not just that.

19 Q All right. Apart from the fact that you have
20 heard stuff about this case and that you followed the case
21 as you say, is there anything else that causes you
22 hesitation in saying whether or not you could render a
23 verdict based solely on the testimony and the evidence that
24 you hear in the courtroom?

25 A I debated the capital punishment in undergraduate

1 school. The question was whether or not capital punishment
2 was a deterrent. And I did at that time form a very strong
3 opinion which I have held since then.

4 Q And what is that opinion?

5 A That I am in favor of it.

6 Q You are in favor of capital punishment?

7 A Yes.

8 Q All right. Well, let's do this then, I'm going
9 to keep on going sort of through my progression of
10 questions. And we're going to come to all of that.

11 A Okay.

12 Q And we will talk about it when we get to it. But
13 since you raised this point about you being from Inman and
14 you followed the case, let me talk about that.

15 A Okay.

16 Q If you were seated as a juror in this case, then
17 I would instruct you as I will the jury that your
18 responsibility is to set aside anything that you might have
19 learned or heard about the case before the trial began.
20 And you are to listen very carefully to the testimony and
21 the evidence that you will see and hear in the courtroom
22 and that you are to render a verdict based solely on that
23 testimony and that evidence that is presented to you in the
24 courtroom.

25 Now, for some people, they have become so intertwined

1 with the case and they perhaps have learned so much about
2 it and perhaps because you lived there, maybe you have been
3 emotionally affected by it that you can't do that. Do you
4 think, based on what you have heard and what you learned in
5 the time in which you followed the case that you could do
6 what I say and that is to set aside anything that you might
7 have learned about the case and render your verdict based
8 solely on the testimony and evidence that is presented to
9 you in the courtroom, do you think you can do that?

10 **A** I don't know.

11 **Q** All right. Well, let's explore that answer a
12 little bit. Maybe this is a tough one. I'm not sure
13 what questions to ask you. Why is that? That is not to
14 put you on the spot or challenge your answer because I do
15 appreciate your being candid with me. Tell me, if you
16 can, what it is that gives you the uncertainty as to
17 whether or not you can do that?

18 **A** You asked, so...

19 **Q** Please.

20 **A** The fact that the person was shot in front of
21 other people including children, the fact that the accused
22 is willing to bring those children through this ordeal of a
23 trial, I just think it's despicable. I understand the
24 rights of being, you are supposed to say you are not guilty
25 but I just think it is despicable.

1 Q All right, sir. Let's jump ahead just a little
2 bit then.

3 A Okay.

4 Q Let's say that just for the sake of this question
5 that in terms of deciding the guilt or innocence of the
6 defendant that you could be impartial and base your
7 decision based solely on what you hear in the courtroom and
8 that you were seated on this jury and you got past the
9 guilt phase because the jury found the defendant guilty of
10 murder. Now we are in the sentencing phase and you've got
11 two options.

12 Let me tell you a little bit about that. You have
13 some things to consider. Aggravating circumstances and
14 mitigating circumstances. Aggravating circumstances are
15 facts or incidents or details of an occurrence that the
16 State has declared to make worse or to aggravate the crime
17 of murder.

18 A Can you say that again please?

19 Q I said aggravating circumstances is anything, a
20 fact, an incident that has occurred in the past or details
21 of this incident or details of some other incident that the
22 State has said aggravate the crime of murder or make it
23 worse.

24 A Okay.

25 Q There's a list of them in the statute. I will

1 give you the ones that are appropriate. An aggravating
2 circumstance, when it is accompanied with a murder,
3 increases the enormity of the crime and adds to the injury
4 that results from the crime. A mitigating circumstance,
5 on the other hand, is a fact, incident or circumstance that
6 lessens the severity of the crime of murder. The State
7 has said that this, a mitigating circumstance might
8 extenuate or reduce the moral culpability or responsibility
9 for the crime.

10 A The State has said that.

11 Q There is a statute that says that. There is a
12 list of mitigating circumstances, a list of aggravating
13 circumstances and then you, as a member of the jury, may
14 come up with additional mitigating circumstances. You
15 might find something in this case that is not listed in the
16 statute that causes you to consider that as a mitigating
17 circumstance. If you are on that jury, you got two options
18 in the sentencing phase, life in prison and the death
19 penalty. Could you vote to impose a life sentence?

20 A I don't know how else to answer it other than I
21 don't know. It would have to be one heck of circumstances.

22 Q One heck of a lot of what? Mitigating
23 circumstances?

24 A Yes.

25 Q Let me get you to step in the hall just a second,

1 Mr. McHam.

2 (WHEREFORE, Mr. McHam exits at approximately
3 6:00 p.m.)

4 **THE COURT:** I hate to say that Mr. McHam has
5 figured out how not to be away from his stock
6 brokerage business for the next couple of weeks. But
7 I don't believe he is much qualified. Any opposition
8 to that?

9 **MR. BARTOSH:** No, sir. He can't get beyond
10 the --

11 **THE COURT:** Let me just see if the State has any
12 opposition to it.

13 **MR. WILLINGHAM:** No, sir.

14 **THE COURT:** All right.

15 **MR. BARTOSH:** He can not get beyond the
16 presumption of innocence.

17 **THE COURT:** Right.

18 Bring him in.

19 Or the right to remain silent.

20 (WHEREUPON, Mr. McHam enters at approximately
21 6:01 p.m.)

22 **THE COURT:** Mr. McHam, we appreciate you being
23 open with us. Because of your views, I think you're
24 not qualified to serve as a juror in this case. So
25 I'm going to excuse you. We will not need you any

1 more. Thank you very much, sir.

2 (WHEREUPON, Mr. McHam exits at approximately
3 6:01 p.m.)

4 **THE COURT:** Bring them in.

5 (WHEREFORE, Jerlyn Miller, Juror number 194, enters at
6 approximately 6:02 p.m.)

7 **JERLYN MILLER**

8 having previously been sworn, testified as follows:

9 **EXAMINATION**

10 **BY THE COURT:**

11 **Q** How you, ma'am?

12 **A** Fine.

13 **Q** Ms. Miller?

14 **A** Yes.

15 **Q** How are you this afternoon?

16 **A** All right. How are you?

17 **Q** You recall that yesterday that we put you under
18 oath?

19 **A** Yes.

20 **Q** You understand you are still under oath today?

21 **A** Yes, sir.

22 **Q** Since you left us yesterday, has anyone talked to
23 you about this case or have you talked to anybody about the
24 case?

25 **A** No, sir.

1 Q Have you read anything or heard anything or
2 otherwise learned anything about this case?

3 A No, sir.

4 Q We're going to ask you some questions now. We
5 don't mean to invade too much into your private life, but
6 we do have to ask you these questions. There are no right
7 or wrong answers to these questions. We just want you to
8 be open and honest with us and to tell us how you think and
9 how you feel.

10 We are going to talk about a possible penalty phase in
11 this trial. The fact that we are talking about a possible
12 penalty phase does not mean anything about this defendant
13 or about this case. It simply means that because we
14 realize that we might get there, we need to talk to you
15 about some of the issues that will come up and see how you
16 think and how you feel about those issues.

17 If you are a juror on this case, will you be able to
18 accept and apply the law precisely as I give it to you and
19 render a verdict based solely on the testimony and evidence
20 that you hear inside of this courtroom?

21 A Yes, sir.

22 Q Do you understand that the State has the burden
23 of proving the defendant guilty beyond a reasonable doubt?

24 A Yes, sir.

25 Q You understand that this is a murder case?

1 **A** Yes, sir.

2 **Q** If you are seated on the jury, could you,
3 depending on the facts and circumstances that are proven to
4 you and in light of the law as I will give it to you, could
5 you find the defendant either guilty or not guilty
6 depending on whether or not you think the State has proven
7 the defendant guilty beyond a reasonable doubt?

8 **A** Yes, sir.

9 **Q** If you are on the jury and the jury finds the
10 defendant guilty, we will move into the sentencing phase or
11 the penalty phase of the trial. I'm going to talk to you
12 about that for a little bit. Aggravating circumstances
13 are facts, incidences or occurrences which the State of
14 South Carolina has declared to make worse or to mitigate --
15 I'm sorry, to aggravate the crime of murder. Aggravating
16 circumstances when accompanying a murder increase the
17 enormity of the crime or add to the injury of the crime of
18 murder.

19 Mitigating circumstances, on the other hand, are
20 facts, incidences or details of an occurrence that the
21 State of South Carolina has declared to lessen the severity
22 of the crime of murder. Those may serve to extenuate or
23 to reduce the moral culpability or responsibility for the
24 crime.

25 If you are on the jury in the sentencing phase of a

1 death penalty trial like this one, you would have two
2 options as to what your verdict could be. You could vote
3 to impose a life sentence or you could vote to the impose
4 the death penalty. Could you, based on the facts and
5 circumstances that you find to be proven or to exist and
6 considering any aggravating and mitigating circumstances
7 and in light of the law as I will give it to you, could you
8 impose a life sentence?

9 A Yes.

10 Q Could you impose a death penalty?

11 A No, sir.

12 Q Let me why that is.

13 A I would say at one point in time when a person go
14 through a situation like this, they probably don't know
15 what they're doing until it is all over with.

16 Q Now, ma'am, under any circumstances, are you
17 telling me that you would not be able to impose the death
18 penalty under any circumstances?

19 A No, sir.

20 Q Is that what you're telling me?

21 A Yes, sir.

22 THE COURT: All right. Do you want to ask this
23 juror any questions, Mr. Bartosh?

24 MR. BARTOSH: No, Your Honor.

25 THE COURT: Solicitor?

1 **MR. GOWDY:** No, sir.

2 **THE COURT:** All right, ma'am. We will not be
3 needing your services in this case. You are free to
4 go.

5 **MS. MILLER:** Thank you.

6 (WHEREUPON, Ms. Miller exits at approximately
7 6:07 p.m.)

8 (WHEREUPON, Richard Smith, Juror number 257, enters at
9 approximately 6:07 p.m.)

10 **RICHARD SMITH**

11 having previously been sworn, testified as follows:

12 **EXAMINATION**

13 **BY THE COURT:**

14 **Q** Mr. Smith, good afternoon. How are you?

15 **A** Doing fine, Your Honor.

16 **Q** You recall that yesterday we put you under oath?

17 **A** Yes, sir.

18 **Q** You understand you are still under oath today?

19 **A** Yes, sir.

20 **Q** Since you left us yesterday afternoon, has
21 anybody talked to you about this case?

22 **A** No, sir.

23 **Q** Have you talked to anybody about it?

24 **A** No, sir.

25 **Q** Have you read anything or heard anything or

1 otherwise learned anything about this case?

2 A No, sir.

3 Q Mr. Smith, we have some questions to ask you now.
4 We apologize if it seems like it is an invasion into your
5 privacy. But we do have to ask you these questions.

6 A Yes, sir.

7 Q There are no right or wrong answers to these
8 questions. But we just want you to be open and honest
9 with us and to tell us how you think and how you feel.

10 A Yes, sir.

11 Q We are going to talk about a possible sentencing
12 phase. But because we're talking about a sentencing phase,
13 that doesn't mean anything about this defendant or about
14 this case. It simply means that because we might get
15 there, we need to ask you some questions about some issues
16 to see how you think and how you feel on those issues.

17 A Yes, sir.

18 Q If you are a juror in this case, would you be
19 able to, would you be able to accept and apply the law
20 precisely as I will give it to you and render a verdict
21 based solely on the testimony and the evidence that you
22 will see and hear in this courtroom?

23 A Yes, sir.

24 Q You understand the State has the burden of
25 proving the defendant guilty beyond a reasonable doubt?

1 **A** Yes, sir.

2 **Q** And you understand this is a murder case?

3 **A** Yes, sir.

4 **Q** Could you, depending on the facts and
5 circumstances that you find to be proven and in light of
6 the law as I give it to you, could you find the defendant
7 either guilty or not guilty depending on whether or not you
8 think the State has proven him guilty beyond a reasonable
9 doubt?

10 **A** Yes, sir.

11 **Q** If you are on the jury and the jury finds him
12 guilty of murder, we will move into the sentencing phase of
13 the trial. So now I'm going to talk to you a little bit
14 about some issues that will come up during that phase.
15 Aggravating circumstances are facts, incidences or details
16 of an occurrence that the State of South Carolina has
17 declared to aggravate or to make worse the crime of murder.
18 Aggravating circumstances when accompanying a murder
19 increase the enormity of the crime or add to the injury
20 caused by the crime.

21 Mitigating circumstances, on the other hand, include
22 facts, incidences or details of an occurrence that the
23 State of South Carolina has declared to reduce the severity
24 of the crime of murder. These serve to extenuate or to
25 reduce the degree of moral culpability or responsibility.

1 If you are on the jury in the penalty phase of a death
2 penalty case such as this, you would have two options as to
3 what your verdict should be or could be as to the penalty.
4 You could impose a life sentence or you could impose the
5 death penalty. Could you, depending on the facts and
6 circumstances that you find to exist, considering any
7 aggravating or mitigating circumstances and in light of the
8 law as I will give it to you, could you impose or vote to
9 impose a life sentence?

10 A Yes, sir.

11 Q Could you vote to impose the death penalty?

12 A Yes, sir.

13 Q If you get on this jury and if I order that the
14 jury be sequestered and if you are required to stay in a
15 hotel with us and not see your family and not go home for
16 five or six days, is that going to impose a terrible burden
17 on you?

18 A No, sir.

19 Q Have you had a chance to read over the witness
20 list that I gave you?

21 A Yes, I have.

22 Q Have you read every name on that list?

23 A Yes, sir.

24 Q Is there anybody whose name is on that list that
25 you have either know or are related to?

1 **A** Yes, sir.

2 **Q** Who is it?

3 **A** Witness number 6, Sergeant Doug Bishop; Witness
4 number 9, Investigator Randy Bogen; Witness number 43,
5 Sharon Diane Copeland; Witness 62, Lieutenant Brian
6 Duncan; and witness 78, Eric Wade Elder.

7 **Q** All right. Let me ask you about each one of those
8 people.

9 **A** Yes, sir.

10 **Q** Uh, tell me how you know these people.

11 **A** Sergeant Bishop, when I graduated from high
12 school, was working in the grocery business at that time.
13 He was employed at a drug store right next door to the
14 grocery store I was working at. We would talk and
15 socialize some outside of working hours, you know, like
16 high school and college kids would. We would play football
17 or, you know, just socialize a little bit in that manner.
18 We stayed in touch over the years.

19 **Q** Okay.

20 **A** Investigator Bowen grew up right down the road
21 from me. Did not know him that well. Knew him well enough
22 to say hello. We would speak. And we would probably play
23 a little neighborhood football back when we were in
24 elementary and junior high school.

25 Witness 43, Mrs. Copeland, I've known her and her

1 husband for several years. In fact, I was an usher in her
2 wedding. Witness 62, Lieutenant Duncan, I know him through
3 speaking with him socially at church. We attend the same
4 church. And witness 78, Eric Wade Elder is Mrs. Copeland's
5 son. And I know him in that manner, you know, from
6 visiting her home and he's there. And we've had several
7 occasions to talk.

8 Q All right. Now, considering that you know these
9 people, do you know of any reason why you cannot be a fair
10 and impartial juror in this case?

11 A No, sir.

12 Q Would the fact that you know these witnesses
13 interfere in any way with either your willingness or your
14 ability to give both the State and the defendant a fair and
15 impartial trial?

16 A No, sir. It would not.

17 Q I'm going to let the lawyers ask you some
18 questions now. Then I might come back and ask you some
19 more questions in a few minutes.

20 MR. BRENNAN: Please the Court, Your Honor.

21 THE COURT: Yes, sir.

22 EXAMINATION

23 BY MR. BRENNAN:

24 Q Mr. Smith, how are you doing today?

25 A Doing fine, sir.

1 **Q** Good. My name is Doug Brennan. I'm an attorney
2 from here in Spartanburg. Myself, Mr. Bartosh and Ms.
3 Quimby have the opportunity to defend Mr. Marion Lindsey
4 in this matter. Sir, you mentioned five witnesses that you
5 knew or have acquaintances with.

6 **A** Yes, sir.

7 **Q** Uh, the fact that you know these people, would
8 you be more inclined to assume that their credibility was
9 -- do you believe their credibility -- does your
10 relationship bolster their credibility?

11 **A** By me knowing them, yes, sir, I believe it does.
12 Because I know them well enough to believe they would tell
13 the truth. Yes, sir.

14 **Q** Okay. You are -- it's my understanding you are
15 the nephew of a gentleman named Wallace Dickerson?

16 **A** Yes, sir.

17 **Q** Did you know that he was a judge?

18 **A** Yes, sir.

19 **Q** All right. Did you ever have the opportunity to
20 speak with your uncle about courtroom procedure and
21 prosecuting cases and stuff like that?

22 **A** No, sir. I have not. I've seen him down here a
23 few times in the course of other business, but I have not
24 gone into any details about particulars about his job.

25 **Q** So never at Thanksgiving or anything did you talk

1 about his work?

2 A No, sir.

3 Q All right. So your relationship in your with
4 your uncle would not affect your ability to serve in any
5 way?

6 A No, sir.

7 Q Are you still undergoing any treatments or
8 medications for some emotional difficulties?

9 A No, sir.

10 Q You mentioned on your questionnaire some
11 information about the relationship between you and a former
12 girlfriend.

13 A Yes, sir.

14 Q How long ago was that?

15 A That was, let's see. '93 would have been 11
16 years ago.

17 Q So you are beyond that?

18 A Yes, sir.

19 Q All right.

20 A Yes, sir.

21 Q Can you tell me a little bit about the break up
22 of that relationship.

23 A We started dating in January of that year. We
24 did some things socially took some trips and all of that.
25 We were not as compatible as we initially thought we were.

1 Our educational levels were similar but I think the
2 impression I got was she was wanting things to proceed a
3 little bit faster than I was willing to proceed.

4 Q Okay.

5 A We mentioned that during the course of the
6 therapy sections or whatever you call them.

7 Q So you took counseling sessions after you broke
8 up, is that right?

9 A No, sir. That was before.

10 Q Okay. All right. Were there any disputes or any
11 incidences between the two of you after you were split up?

12 A No, sir.

13 Q So that break up with your girlfriend would not
14 cause you any problems in this jury service?

15 A - No, sir. No, sir.

16 Q Yesterday during the general questioning, you
17 were asked if you know someone who had been arrested for
18 CDV, assault and battery or a couple of other crimes. And
19 you stood.

20 A Or if I remember the question, if a family member
21 had been the victim of that.

22 Q There are actually two questions.

23 A Okay.

24 Q There was did you know anybody, have you or
25 anyone you knew ever been arrested before for criminal

1 domestic violence, assault and battery, assault with a
2 weapon or carrying a pistol. Those were the four
3 questions. And you stood for that.

4 A I might have misunderstood and I apologize to the
5 Court if I did. I did have a family member, my mother was a
6 victim of a mugging back in about 1987. I believe there was
7 an assault charge that came out of that. But nobody in my
8 family has been arrested or convicted.

9 Q So nobody that you know, you or nobody that you
10 know of have been arrested and charged with criminal
11 domestic violence?

12 A No, sir.

13 Q But your mother was the victim?

14 A Yes, sir.

15 Q Was there any arrest made as a result of that?

16 A I believe there was. The only result that I
17 know of that was that restitution was ordered.

18 Q Were you asked to make a statement in that case?

19 A No, I was not.

20 Q Were you a witness in that?

21 A No, I was not.

22 Q And you would be able to set aside the pain
23 caused by your mother as it relates to you in this jury
24 service?

25 A Yes, sir.

1 **Q** Okay. All right. You also stood when asked the
2 question if you knew someone or had any ties to Safe Homes
3 or some other organization of that nature.

4 **A** Yes, sir. I attend First Baptist North
5 Spartanburg. I believe one of our ministries is the support
6 of Safe Homes here in Spartanburg. We do donations and
7 occasional projects with them. I have made over the years
8 a couple donations to them.

9 **Q** You have actually made donations directly to Safe
10 Homes?

11 **A** Yes, sir.

12 **Q** Do you know what Safe Homes does?

13 **A** My understanding is I believe women and children
14 who are in abusive situations and they need to get out of
15 their homes in a hurry and they need to place to stay,
16 that's where they can be referred to is Safe Homes.

17 **Q** Okay. If there was evidence that came forward
18 in this matter that related to Safe Homes and their
19 endeavors or if there was evidence that implicated Safe
20 Homes, not that Safe Homes did anything wrong, but that
21 Safe Homes was contacted --

22 **MR. BARNETT:** I'm going to object at this point
23 because we are getting into facts of the case. That
24 is not what we are here for.

25 **THE COURT:** Can we let him finish the question?

1 **MR. BARNETT:** He can, Your Honor, but he said
2 something about contacting Safe Homes. That is not a
3 proper question.

4 **THE COURT:** All right. Sustained if that was the
5 question. Rephrase the question.

6 **MR. BARNETT:** Thank you, Your Honor.

7 **BY MR. BRENNAN:**

8 **Q** If Safe Homes plays a role in this case, because
9 you made donations and made and done benefits for them, can
10 you set aside your relationship with Safe Homes in this
11 matter?

12 **A** Yes, I can.

13 **Q** Do you understand that in South Carolina, the
14 death penalty is not mandatory?

15 **A** Yes, I do.

16 **Q** Are you prepared to listen to the facts from the
17 witness stand as they come from the witnesses and the
18 evidence presented before you and make your decision as to
19 guilt in this case?

20 **A** Yes, I am.

21 **Q** If the decision should be unanimous with the jury
22 that the defendant is guilty and we get to a sentencing
23 phase, are you again willing to wait and listen to the
24 aggravators and mitigating circumstances before you make a
25 decision as to life or death?

1. **A** Yes, I am.

2. **Q** You do not have an opinion at this time as to
3. life or death in this situation?

4. **A** No, I do not.

5. **Q** Do you have any knowledge about this case from
6. any source at this time?

7. **A** No, I do not.

8. **Q** One moment. Nothing further. Thank you.

9. **MR. BARNETT:** May it please the Court, Your
10. Honor.

11. **THE COURT:** Yes, sir.

12. **EXAMINATION**

13. **BY MR. BARNETT:**

14. **Q** Mr. Smith, I am Barry Barnett. Along with Trey
15. Gowdy and Donnie Willingham, we will be representing the
16. State in this case. I just want to ask you a few follow up
17. questions, okay?

18. **A** Sure.

19. **Q** You realize the judge will give you instructions
20. about credibility of witnesses and you would weigh and
21. determine the evidence based on what you thought was true
22. and not true. You understand?

23. **A** Correct. Yes, sir.

24. **Q** And you wouldn't -- basically you would look at
25. each witness and you would weigh their credibility and you

1 would look at that?

2 A Yes, sir.

3 Q And you wouldn't give one witness more deference
4 over another?

5 A That, I would not.

6 Q And are you a computer operator?

7 A Yes, sir.

8 Q And your wife works at Greer Heating and Air?

9 A Yes, sir.

10 Q And she's been there six years?

11 A Yes, sir.

12 MR. BARNETT: One moment, Your Honor, please.

13 I have no further questions of this witness, Your
14 Honor.

15 THE COURT: Mr. Smith, would you step in the hall
16 for just a second please.

17 (WHEREUPON, Mr. Smith exits at approximately
18 6:25 p.m.)

19 THE COURT: Any objection to his qualifications?

20 MR. BRENNAN: Yes, Your Honor. I believe that
21 because he testified that because of his knowledge or
22 his relationship with those several witnesses that
23 their credibility would be bolstered or he would take
24 more heavily what they would have to say from the
25 witness stand. I believe that that should disqualify

1 this witness, Your Honor.

2 **MR. BARNETT:** Your Honor, I disagree. I think
3 that in talking to him later on, he said he would
4 listen to you, Your Honor, and would not weigh one
5 witness over another and would listen and follow the
6 instructions you gave him.

7 **THE COURT:** Let me ask y'all this. The witnesses
8 that he named, of the witnesses that he named, which,
9 if any, are going to be witnesses whose credibility
10 are going to heavily come into play during the course
11 of this trial?

12 **MR. GOWDY:** Your Honor, Bogan and Bishop are
13 evidence collectors. Brian Duncan is on a sentencing
14 matter if we make it that far. And I would ask the
15 Court given the fact that I think Mr. Brennan had a
16 wonderful opportunity to follow up on that but he
17 neglected to do so. Mr. Barnett did.

18 I would invite the Court to consider clearing
19 this matter up as to whether this witness would give
20 any more credence to those witnesses that he knows. I
21 think clearly the answer is no. But if Mr. Brennan
22 has concern about that, I think the Court could
23 address it in about 45 seconds.

24 **THE COURT:** Bring him in.

25 (WHEREUPON, Mr. Smith enters at approximately

1 6:26 p.m.)

2 **EXAMINATION**

3 **BY THE COURT:**

4 Q All right. Mr. Smith, let me follow up and ask
5 you a few questions. I want to talk to you about some of
6 these potential witnesses that you know.

7 A Yes, sir.

8 Q Now, as a member of the jury, your responsibility
9 just like the responsibility of everybody else on the jury
10 is to evaluate the credibility of the witnesses based on
11 what you see and what you hear in the courtroom.

12 A Yes, sir.

13 Q So that if one of these people that you know was
14 testifying, as a member of the jury, you should look at,
15 you should watch that witness' testimony and listen to that
16 witness' testimony, observe his or her demeanor on the
17 witness stand, observe how he responds to questions. Are
18 his answers consistent or inconsistent? Does he appear to
19 have any motive to say something that would not be true?
20 Does he appear to be biased or prejudiced either for or
21 against the State or the defendant and to evaluate those
22 criteria and others in deciding whether or not you believe
23 that witness?

24 All of that comes to you as you sit here in this
25 courtroom over there in that jury box. Now, that is the

1 appropriate way to evaluate the credibility of witnesses.
2 But you have known some of these people for a good while.

3 A Yes, sir.

4 Q And so, and you've got relationships with them?

5 A Yes, sir.

6 Q And so if you are out in a casual conversation
7 with them, you talked to them and you believe them based on
8 what you see and -- I mean based on what you know about
9 them. But as a juror, it would not be proper for you to
10 come in here and say okay, I know this man, I know Officer
11 Duncan or I know Officer Bishop. And because I know him,
12 I'm going to accept his testimony as true and I'm not going
13 to consider the other factors that I'm supposed to consider
14 that relate to credibility. Now, will you be able to
15 evaluate the credibility of these witnesses that you know
16 based on what you see and hear in the courtroom?

17 A To be honest, Your Honor, since I know some of
18 them as long as I have, I do not believe that I could do it
19 solely on what I see or here in this courtroom. I believe
20 past relationships would come into effect at some point,
21 yes, sir. And I'm just being open and honest about that.

22 Q All right. If you were a member of the jury and
23 you are observing one of these witnesses that you know
24 testify and you see something or hear something that you
25 think would cause you concern about the credibility of that

1 witness, would you still believe their testimony just
2 because you know them and just because you previously
3 thought them to be a credible person?

4 A No, sir. I would bring it up in deliberation and
5 say this happened or I observed something that makes me
6 wonder about the credibility of that witness.

7 Q All right. Mr. Smith, let me ask you please to
8 step back into the hall. I will be back with you in just a
9 second.

10 (WHEREUPON, Mr. Smith exits at approximately
11 6:33 p.m.)

12 THE COURT: Did I cover everything that I needed
13 to cover?

14 MR. GOWDY: Yes, sir.

15 MR. BRENNAN: Yes, sir.

16 THE COURT: All right. What do you say now, Mr.
17 Barnett?

18 MR. BARNETT: Your Honor, I understand what he
19 said but when he gave the answers that he gave, that's
20 all I can say from that standpoint. The thing is I
21 think he would follow what the Court said and he would
22 follow or disregard it from that standpoint. We would
23 argue that he is qualified.

24 THE COURT: Yeah.

25 MR. BARTOSH: Your Honor, he said he would give

1 more credence to the folks that he knew because he
2 knew them.

3 **THE COURT:** Well, --

4 **MR. BARTOSH:** He would believe them over other
5 witnesses because he knew them.

6 **THE COURT:** Mr. Bartosh, that is not what he
7 said. That is not what he said. He said that he does
8 not believe that he would be able to completely set
9 aside the fact that he knows these witnesses. He did
10 not say that he would believe them more, did he?

11 **MR. BARTOSH:** Yes, sir. I believe he did.

12 **THE COURT:** I'm going to get the transcript
13 and I'm going to read it. And I'm going to figure out
14 what the law is on it. And I will rule when I get
15 ready.

16 **MR. BARTOSH:** Thank you.

17 **THE COURT:** Bring him in.

18 (WHEREUPON, Mr. Smith enters at approximately
19 6:35 p.m.)

20 **THE COURT:** Mr. Smith, I'm going to have to
21 reserve my ruling on whether or not you are qualified
22 to serve as a juror. So for now, I'm going to treat
23 you as a qualified juror. And I'm going to instruct
24 you that you should continue to not discuss this case.
25 Don't read anything about it. Don't listen to

1 anything about it. Don't let anybody talk to you
2 about it. And don't talk to anybody else about it.
3 Certainly don't talk to any of these witnesses whom
4 you know.

5 MR. SMITH: Yes, sir.

6 THE COURT: It's going to take us another day or
7 so to get through and get ready to be -- to actually
8 get back together. Somebody will be in touch with you
9 over that next day or so. So we will call you and let
10 you know what to do next.

11 MR. SMITH: I don't need to call the message line
12 or anything?

13 THE COURT: Well, it won't hurt you to call the
14 message line. If you call the message line, it will
15 tell you when -- it might tell you when we kind of
16 want the jury to come back. But because I have not
17 ruled on your qualifications, I will make sure that
18 somebody calls you personally.

19 MR. SMITH: Yes, sir.

20 THE COURT: And will they be able to reach you at
21 one of these numbers that you have given us? Your
22 home number and your business?

23 MR. SMITH: Yes, sir. Home number will be best
24 right now. I'm on, I guess you can say, leave from
25 work because of the uncertainty as to how long this

1 process would take.

2 **THE COURT:** Let me ask you this. Don't tell me
3 what it is. But do you have a cell phone number?

4 **MR. SMITH:** Yes, sir.

5 **THE COURT:** You don't have to give it to me. But
6 if you want me to, I will give you this sheet. This
7 is a copy of your juror information card. You can
8 write it down on the sheet. Nobody will know it
9 except me and my staff. And we will use it to contact
10 you when we need to. It will not become known to
11 anybody else in this courtroom.

12 **MR. SMITH:** That will be fine, sir.

13 **THE COURT:** Pass that to him and let him write his
14 cell phone inside the red circle that I've drawn.

15 **MR. SMITH:** Yes, sir.

16 (WHEREUPON, the juror complies.)

17 **THE COURT:** Thank you, Mr. Smith. We will be in
18 touch with you shortly.

19 **MR. SMITH:** May I ask you a question, Your Honor?

20 **THE COURT:** Yes, sir.

21 **MR. SMITH:** I know you said don't read any TV,
22 newspaper accounts or anything like that.

23 **THE COURT:** Uh-huh (affirmative).

24 **MR. SMITH:** And this may seem like a ridiculous
25 question but as far as other forms of media, would

1 observing shows like Law & Order or Perry Mason be
2 considered influential or anything like that? Maybe
3 it's not. I just wanted to be sure.

4 **THE COURT:** That's not a ridiculous question at
5 all. There's nothing -- there's no reason why you
6 should not watch any show you want to watch as long as
7 it does not relate directly to this case or relate to
8 this case.

9 **MR. SMITH:** Okay.

10 **THE COURT:** All right?

11 **MR. SMITH:** Thank you, Your Honor.

12 (WHEREUPON, Mr. Smith exits at approximately
13 6:35 p.m.)

14 **THE COURT:** Mr. Gowdy.

15 **MR. GOWDY:** Yes, sir.

16 **THE COURT:** When you were looking up duplicitous
17 in the dictionary, you didn't happen to find
18 tangentially, did you? I want to actually make sure
19 it's a word before I make much use out of it.

20 **MR. GOWDY:** Your Honor, it is a word. I can
21 vouch for that. And you used it correctly.

22 **THE COURT:** All right.

23 **MR. GOWDY:** I am not convinced 100 percent
24 that duplicitous is not a word.

25 **THE COURT:** Let's talk about Mr. Smith for a

1 second while he is fresh on our mind. I don't believe,
2 I believe that all he said was that he would not be
3 able to ignore the fact that he knows these witnesses
4 and has had an opinion about their credibility in the
5 past. But if ya'll got a talented pool of legal
6 researchers that is unparalleled by my observation in
7 the State of South Carolina.

8 So please don't make me go out and figure all of
9 this out by myself, get somebody to figure that out so
10 that I can at least have at my fingertips the correct
11 version of the law and that my overworked and
12 underpaid self and staff will not have to go out and
13 do it ourselves beginning at 9 o'clock tonight when we
14 get off duty.

15 Bring us a juror.

16 **MR. BARTOSH:** We'll put the research department
17 on it. We'll have something for you in the morning.

18 (WHEREUPON, Donald Ray, Juror number 223, enters at
19 approximately 6:36 p.m.)

20 **DONALD RAY**

21 having previously been sworn, testified as follows:

22 **EXAMINATION**

23 **BY THE COURT:**

24 **Q** All right. Mr. Ray, how are you this afternoon?

25 **A** All right. How are you doing?

1 Q Mr. Ray, you recall that we put you under oath
2 yesterday afternoon?

3 A Yes, sir.

4 Q You understand that you are still under oath this
5 afternoon?

6 A Yes, sir.

7 Q Actually, we put you under oath yesterday
8 morning. That is a minor detail. Since you left us
9 yesterday afternoon, have you talked to anybody about this
10 case or had anybody talked to you about this case?

11 A No, sir.

12 Q Have you read anything or seen anything or heard
13 anything about this case?

14 A This morning about 8 o'clock, it came on 92.5 and
15 I turned as soon as I heard name Lindsey.

16 Q As soon as you heard the name?

17 A Lindsey.

18 Q Well, that was a good move. Tell me what you
19 heard except for the name Lindsey. Anything?

20 A No, sir. I tried to turn it without even
21 thinking about it.

22 Q Did you hear any facts or stories or opinions
23 about the case?

24 A No, sir.

25 Q All right. The lawyers may want to follow-up

1 with you a little about that. I'm going to ask you some
2 more questions now. I'm not trying to pry into your
3 private life. But we do need to have answers. There are
4 no right or wrong answers. I just want you to be open and
5 honest with us and to tell us how you feel and how you
6 think.

7 We are going to talk about a possible sentencing
8 phase. The fact that we're talking about a possible
9 sentencing phase does not mean anything about this
10 defendant. It does not mean anything about this case.
11 It just means that we realize we might get to a sentencing
12 phase. We need to ask you some questions about some
13 issues that will come up in the sentencing phase if we get
14 there so we know how you think and how you feel.

15 If you are a juror on this case, will you be able to
16 accept and apply the law as I will give it to you and to
17 render a verdict in this case based solely on the testimony
18 and evidence that is presented to you here in this
19 courtroom.

20 A Yes, sir.

21 Q You understand the State has the burden of proof
22 in a criminal case and they must prove the defendant guilty
23 beyond a reasonable doubt?

24 A Yes, sir.

25 Q You understand this is a murder case?

1 A Yes, sir.

2 Q Could you, based on the facts and circumstances
3 that you find to be proven and in light of the law as I
4 will give it to you, can you find the defendant either
5 guilty or not guilty depending on whether or not you think
6 the State has proven him guilty beyond a reasonable doubt?

7 A Yes, sir.

8 Q If you are on the jury and if you get, if the
9 jury reaches a verdict of guilty as to murder, then you
10 would move on into the sentencing phase or the penalty
11 phase of the trial. Now I'm going to talk to you a little
12 bit about some of the things that's going to come up.

13 Aggravating circumstances are facts, incidences or
14 details of an occurrence that the State of South Carolina
15 has declared to aggravate or to make worse the crime of
16 murder. Aggravating circumstances when accompanying a
17 murder increase the enormity of the crime or the injury of
18 that results from the crime.

19 Mitigating circumstances, on the other hand, are facts
20 incidences or details about an occurrence that the State of
21 South Carolina has declared to lessen the severity of the
22 crime. And they serve to extenuate or to reduce the moral
23 culpability or responsibility for the crime.

24 If you are on a jury in a death penalty case in the
25 sentencing phase, you would have two options as to what

1 your verdict could be. Your verdict, as to what your vote
2 be. Your verdict could be for a life sentence or your
3 verdict could be for the death penalty. Could you,
4 depending on the particular facts and circumstances of the
5 case including the consideration of any aggravating and
6 mitigating circumstances and considering the law as I will
7 give it to you, could you return, could you vote to return
8 a verdict for a life sentence?

9 A Yes, sir.

10 Q Could you vote to return a verdict for the death
11 penalty?

12 A Yes, sir.

13 Q If you are on this jury and if I sequester the
14 jury and if you are required to spend several days, five or
15 six days in a hotel away from your home, could you do that
16 without it being any terrible burden on you?

17 A Yes, sir.

18 Q Have you had a chance to go over the witness list
19 that I gave you?

20 A Yes, sir.

21 Q Did you read every name on that list?

22 A Yes, sir.

23 Q Do you know anybody or are you related to anybody
24 on the list?

25 A When it says representative of the BMW, I know

1 someone that works at BMW.

2 **THE COURT:** Okay. Well that's probably just
3 going to be somebody to produce records, right?

4 **MR. BARNETT:** That's correct, Your Honor.

5 **BY THE COURT:**

6 **Q** So we don't know who that's going to be. Even
7 if they do testify, their credibility is not really going
8 to be an issue. So anybody else?

9 **A** No, sir.

10 **Q** Do you know of any reason why you cannot give
11 both the State and the defendant a fair and impartial
12 trial?

13 **A** No, sir.

14 **Q** You don't?

15 **A** No, sir.

16 **Q** I'm going to let the lawyers ask you some
17 questions now. Then I'm going to perhaps come back and
18 ask you some more questions in a few minutes.

19 **A** All right.

20 **MR. BRENNAN:** May it please the Court, Your
21 Honor.

22 **EXAMINATION**

23 **BY MR. BRENNAN:**

24 **Q** You have two kids, four and two.

25 **A** That's correct.

1 Q Do you have any information on this case? Have
2 you received any information newspaper, TV or anything?

3 A No, sir.

4 Q You attempted to tell the judge, and he said we
5 would come back to it later, that you may have heard
6 something since yesterday?

7 A Yeah. I heard, on the radio, I heard his name
8 come up about the case of the accused, I mean Mr. Lindsey.
9 And then I turned it off.

10 Q That was all you heard was the name?

11 A That was all I heard.

12 Q Based on what you heard, have you formed an
13 opinion this matter?

14 A No, sir.

15 Q Okay. All right. On your questionnaire, on
16 this jury questionnaire here, you said that, you left blank
17 or said no to have anyone in your family, you or anyone in
18 your family been arrested by the Spartanburg County
19 Sheriff's Department or the Inman Police Department. But
20 then yesterday when that question was asked, you stood up.

21 A Yes, because my sister, when she was in high
22 school, she got arrested for intoxication for being at a
23 basketball game. It caught my attention.

24 Q But it was not you, it was your sister?

25 A Right.

1 Q Is that the only person you know that's been
2 arrested by the sheriff's department?

3 A I think my dad was arrested when I was younger. I
4 don't know for sure but I think he has. I'm not absolutely
5 positive.

6 Q But you have never been arrested by the sheriff's
7 department?

8 A No, sir.

9 Q Have you been ever been arrested by the Inman
10 Police Department?

11 A No, sir.

12 Q When your sister was arrested, were you asked to
13 make a statement or anything like that?

14 A No.

15 Q So you never had the opportunity to work with the
16 Inman Sheriff, excuse me, the Spartanburg Sheriff's
17 Department in any form?

18 A Huh-uh (negative).

19 Q Okay. Thank you. All right. Sir, it is said --
20 first off, do you understand that in South Carolina, the
21 death penalty is never mandatory?

22 A Right.

23 Q The jury always has the option of life in prison
24 which means life until you are dead in prison or the death
25 penalty. You understand that?

1 **A** Yes.

2 **Q** With that in mind, it is said that there are
3 three kinds of jurors. Once the decision for guilt is
4 made, that juror is always going to vote to impose the
5 death penalty. There are jurors on the other side that
6 once the decision of guilt is made, those jurors are always
7 going to vote to impose life in prison. Then there is a
8 section in the middle. Those are the jurors that don't
9 know if it should be life or death until they hear the
10 testimony from the witness stand. Tell me which juror you
11 are.

12 **A** I'm in the, the third one.

13 **Q** You are in the third group?

14 **A** Yeah.

15 **Q** You don't have an opinion yet as to life or death
16 in this matter?

17 **A** No.

18 **Q** All right. I want to ask you one more question.
19 If you are on the jury and if we get past the guilt phase
20 and we are in the sentencing phase, you are back in the
21 jury room. There are twelve jurors. Eleven of them have
22 made the decision for the death penalty. But you, based on
23 what you heard, have decided that life is the proper
24 sentence to impose. Can you stand your ground or will you
25 be swayed by those eleven jurors?

1 **A** I will give my opinion. I'll stand my ground.

2 That is what I would do. I would stand my ground.

3 **Q** Nothing any of those eleven jurors could say
4 would change your mind?

5 **A** It would change my mind if they could -- it
6 probably would change mind.

7 **Q** So you would be affected by those eleven jurors?

8 **A** Yes, sir.

9 **MR. BRENNAN:** Nothing further, Your Honor.

10 **MR. BARNETT:** May it please the Court, Your
11 Honor.

12 **EXAMINATION**

13 **BY MR. BARNETT:**

14 **Q** My name is Barry Barnett. I am prosecuting the
15 case along with Trey Gowdy and Donnie Willingham. We will
16 be representing the State. Just follow up to Mr.
17 Brennan's question. I want to make sure you understood the
18 question --

19 **A** Okay.

20 **Q** -- and make sure from there. If I understood
21 right, he was asking you if eleven people voted for the
22 death penalty and you were the one holding out for life,
23 would you stand by your convictions or would you listen to
24 the other jurors and hear what they had to say also?

25 **A** Exactly. I would listen to what they had to say.

1 They may persuade me I guess. Hearing what they say to me
2 may make me understand I guess. I might have to go with
3 them.

4 Q But you wouldn't automatically go with them just
5 because all eleven voted the death penalty penalty?

6 A Right. I would have to hear what they had to say
7 about it first.

8 Q You would do the same thing -- if all eleven of
9 them voted for life and you were voting for death, would
10 you do same thing?

11 A Yes, sir.

12 Q So you would obviously part of the jury -- have
13 you ever been on jury duty before?

14 A I am come through it to be picked I guess. And
15 they sent me home and told me to call the number. And I
16 kept calling back. And they dismissed it.

17 Q So you would listen to what the judge said to
18 you. You would listen to the instructions he give you?

19 A Yes, sir.

20 Q Just like you did a little bit ago. If he
21 instructed you that you must listen to all the evidence and
22 make the decision based on what you understand, you would
23 do that?

24 A Yes, sir.

25 Q Also he would tell, possibly he would tell the

1 jurors that you obviously have to come to a unanimous
2 agreement. And possibly you would have to talk to each
3 other in order to decide which point of view and decide on
4 those. Is that what you were talking about?

5 A Yes, sir.

6 Q Obviously, if your point of view was one way and
7 some of the other jurors were another way, you would listen
8 to what they had to say.

9 A Right.

10 Q And would you express your views also?

11 A Exactly.

12 Q So you would communicate between two of you,
13 between the twelve of you and hopefully come to a
14 consensus?

15 A Right.

16 Q And you understand that as part of being a
17 juror --

18 A Right.

19 Q -- is to talk and discuss the evidence and that
20 sought of thing?

21 A Uh-huh (affirmative).

22 Q I want to ask you, I think you said your dad was
23 arrested possibly. I hate prying and asking these type
24 questions. But that just came up during Mr. Brennan's
25 questions. What was he arrested for? Do you know?

1 **A** I think it was like assault and battery. But I'm
2 not sure.

3 **Q** Was that involving a family member or somebody
4 else?

5 **A** I think it was somebody else.

6 **Q** It was a long time ago?

7 **A** Yeah.

8 **MR. BARNETT:** One moment, Your Honor, please.

9 No further questions, Your Honor.

10 Thank you, sir.

11 **THE COURT:** All right.

12 **MR. RAY:** Thank you.

13 **EXAMINATION**

14 **BY THE COURT:**

15 **Q** Mr. Ray, let me ask you a follow up question.
16 Let's put you back in this situation where you are in the
17 sentencing phase of this trial. And you have come to the
18 conclusion based on your discussions with everybody, you
19 are listening to the evidence, you have come to the
20 conclusion that you believe a life sentence is appropriate.
21 All right.

22 **A** Okay.

23 **Q** We're going to make that assumption. But the
24 other eleven members of the jury have come to the
25 conclusion that the death penalty is appropriate. Now, we

1 understand there's going to be continued discussion and
2 that you are going to be open-minded to what they have to
3 say. And you are going to listen to what they have to say
4 about whether or not you should change your mind just like
5 you expect them to listen to you about whether or not they
6 should change their mind. Right?

7 A Right.

8 Q That's what you're going to do. Now, at the end
9 -- tell me what your answer to that is.

10 A I feel like --

11 Q Well, hold on. I just said you are going to
12 continue into that discussion, right?

13 A (No response.)

14 Q Right?

15 A Right.

16 Q All right. Now, at the end of that discussion,
17 at the end of all the discussion that you think y'all could
18 possibly have about whether or not you are going to change
19 your vote, would you change your vote just because eleven
20 people of the jury are going to vote for the death penalty
21 and you are the only one standing on life or would you hold
22 firm?

23 A I would hold firm.

24 Q All right. So if your opinion stayed life, you
25 would hold firm?

1 **A** I would hold firm.

2 **Q** Right?

3 **A** Right.

4 **Q** But if they convinced you that death was
5 appropriate, you would change your vote?

6 **A** If they convinced me, yes, sir.

7 **Q** All right, sir. Step out in the hall for just
8 one second please.

9 (WHEREUPON, Mr. Ray exits at approximately
10 6:51 p.m.)

11 **THE COURT:** Any objection?

12 **MR. BRENNAN:** Yes, Your Honor. Based on State v.
13 Bennett, I understand that he answered your question
14 differently than he answered my question.

15 **THE COURT:** No, he didn't. He got caught up in
16 what my old boss Judge Anderson used to call legal
17 gotcha. You decided you didn't want that juror, so you
18 tried to box him into a hole that he didn't know how
19 to get out of. You didn't ask him, you did not ask
20 him would he vote for the death penalty just because
21 he's the only one who held the opinion of life.

22 And I read State versus Bennett. And that is
23 what that case is about. State versus Bennett
24 contemplates that someone who is the only person who
25 believes in the appropriateness of a life sentence who

1 would give up their position simply because they are
2 the only person or simply because they are in the
3 minority is not a qualified juror. But somebody who
4 would continue to engage in discussion and who would,
5 if not persuaded, change their vote is a qualified
6 juror. Anything you got to say?

7 **MR. BARNETT:** I agree, Your Honor. I feel like
8 he answered my questions that way and your questions
9 to. And that is basically, that's the same as being a
10 juror, you got to listen to all sides.

11 **THE COURT:** All right. He's qualified.

12 Bring him in.

13 (WHEREUPON, Mr. Ray enters at approximately
14 6:52 p.m.)

15 **THE COURT:** All right. Mr. Ray, I find that you
16 are a qualified juror. It's going to be a day or so
17 before we need you to come back. Please stay in touch
18 with us by calling the telephone number that you were
19 given yesterday morning. Hopefully some time around
20 lunchtime tomorrow, we'll be able to put some
21 information on that recording as to when we will need
22 you back.

23 Now, in the meantime, do just like you did when
24 the radio came on this morning. Don't let yourself be
25 exposed to any information about this case. Don't

1 read anything about it in the paper. Don't watch
2 anything about it on TV or listen to anything about it
3 on the radio. And if anybody tries to talk to you
4 about the case, don't let them do it.

5 Remember that if I sequester the jury, it's going
6 to require that you be away from your home for five or
7 six days perhaps. And you would need to be prepared
8 to pack some things that would last you that long.
9 All right?

10 **MR. RAY:** All right.

11 **THE COURT:** We will see you in a day or so.

12 **MR. RAY:** All right. Thank you.

13 (WHEREUPON, Mr. Ray exits at approximately 6:53 p.m.)

14 **THE COURT:** Let's walk down the hall and take a
15 short break. Something along the lines of those three
16 minutes that I was talking about a minute ago. We've
17 only got two more to go.

18 **MR. GOWDY:** The question that the Court had
19 with regard to Mr. Smith, if you want us to print up
20 some information tonight, I think I am prepared to
21 speak on it. If you want to, we can wait until
22 tomorrow morning. I think I know what the analytical
23 framework needs to be.

24 **THE COURT:** Well, tell me. Save me the suspense
25 of waiting around to hear what you have to say.

1 **MR. GOWDY:** I think a couple of things. You
2 clearly can not ask would you believe law enforcement
3 testimony over lay testimony. You clearly can not ask
4 would you believe an expert over a non-expert. You
5 can not do those things. I do think that it is proper
6 to ask when the issue is one of personal relationship,
7 I do think it is proper to ask would you view that
8 witness' credibility or testimony in a different light
9 than you would other peoples. Now having said that, I
10 think Mr. Smith gave mixed answers.

11 I think in light of that framework, if the Court
12 wanted to, I think the question for Mr. Smith is
13 accepting the fact that you have a relationship with
14 those people, we're not asking you because it would be
15 ridiculous to assume that you could put that
16 relationship aside for all accounts. But the issue is
17 would you judge their testimony by a different
18 standard than you would other peoples. If the answer
19 is yes, I think he is not qualified. If the answer is
20 no, I think he is qualified.

21 **THE COURT:** I don't -- I mean, that sounds mighty
22 good but I don't agree with that. And just having fun
23 thinking over it intellectually, in a lot of towns in
24 this state, you could have a trial where the, a
25 prominent citizen was a witness. And it would be

1 literally impossible, literally impossible to find a
2 juror, to find twelve jurors who did not have some
3 opinion about that witness.

4 Let's say for example that you went to -- had a
5 case down in Edgefield about ten years ago. It was an
6 automobile accident that occurred while Strom Thurmond
7 was home from Washington. And Strom Thurmond had
8 witnessed the accident. Now, what's the likelihood
9 that you could find twelve jurors, residents of
10 Edgefield County who did not hold Strom Thurmond in
11 such high regard that they would consider his stature
12 as a statesman in deciding whether or not to believe
13 his testimony. It is impossible.

14 And you can't expect people who know someone to
15 completely set that aside. Now, if what you're saying
16 is yeah, they can acknowledge that, they know that
17 person and they can be unable to take that out of
18 their mind and yet use the same procedure of
19 evaluating credibility that they would for another
20 witness, then you may be right.

21 But that's what I asked him. And I think what he
22 said was he would consider all of the things that I
23 will tell him and that his life experience would tell
24 him or criteria to judge the credibility of another
25 person even when he is judging his friend who is

1 sitting up there on the bench. But he could not
2 exclude from the analysis the fact that he knows him
3 and has previously known him to be a credible person.

4 In my view, that does -- in my, this is not a
5 ruling. This is what I think, but I don't think that
6 disqualifies him. But I will -- when I get, after I
7 have heard from the legal research department and the
8 public defender's office, I will rule. Okay. Short
9 break.

10 (WHEREUPON, a short recess was taken at approximately
11 7:00 p.m.)

12 (WHEREUPON, the Court resumed at approximately
13 7:06 p.m.)

14 **THE COURT:** All right. I'm ready when y'all are.
15 Bring us a juror.

16 (WHEREUPON, John Poole, Juror number 215, enters at
17 approximately 7:06 p.m.)

18 **JOHN POOLE**

19 having previously been sworn, testified as follows:

20 **EXAMINATION**

21 **BY THE COURT:**

22 **Q** How are you this afternoon, Mr. Poole?

23 **A** I am fine, sir. I hope you are.

24 **Q** I'm doing all right.

25 **A** You had a long day.

1 **Q** Ah, it's nothing. We're just getting started.
2 You recall that we put you under oath yesterday.
3 Somebody's turned the microphones up.

4 **THE COURT:** Did y'all just do that? Aren't I
5 sounding louder all of a sudden?

6 **THE BAILIFF:** Your usual tone of voice, sir.

7 **BY THE COURT:**

8 **Q** You recall that, uh --

9 **THE COURT:** Has it been like that all day?

10 **MR. GOWDY:** I don't hear any difference.

11 **MR. BARNETT:** I don't hear any difference.

12 **THE COURT:** All right. Maybe it has been a
13 long day.

14 **BY THE COURT:**

15 **Q** Mr. Poole, you recall we put you under oath
16 yesterday morning.

17 **A** Yes, sir.

18 **Q** You understand you are still under oath right
19 now.

20 **A** Yes, sir.

21 **Q** Since you left yesterday afternoon, has anybody
22 talked to you about this case or have you talked to anybody
23 about the case?

24 **A** No, sir.

25 **Q** Have you heard anything or read anything or seen

1 anything about this case?

2 A No, sir.

3 Q Now, we have some questions we're going to ask
4 you and we don't want to pry too deeply into your private
5 life. But we do have to ask you these questions.

6 A Not a problem.

7 Q There are not any right or wrong answers to these
8 questions. We just want you to be open and honest with us
9 and tell us how you think or how you feel.

10 A Yes, sir.

11 Q We're going to talk about a possible sentencing
12 phase. But because we are talking about a possible
13 sentencing phase, that does not mean anything about this
14 case or about this defendant. It just means that we
15 recognize that we might have to go into a sentencing phase.
16 We want to ask you some questions about some issues that
17 will come up if we get there to know how you think and how
18 you feel.

19 A I understand, sir.

20 Q If you are a juror in this case, could you accept
21 and apply the law precisely as I will give it to you and
22 render a verdict based solely on the testimony and the
23 evidence that you will hear right here in this courtroom?

24 - A I would certainly attempt to do so, yes, sir.

25 Q Do you think you can?

1 **A** Yes, sir.

2 **Q** All right. Now, you understand that in a
3 criminal case the burden of proof is on the State to prove
4 the defendant guilty beyond a reasonable doubt. Do you
5 understand that?

6 **A** Yes, sir. I understand that.

7 **Q** You understand that this is a murder case?

8 **A** Yes, sir. I understand that.

9 **Q** Could you, based on the facts and circumstances
10 that you find to be proven and in light of the law as I
11 will give it to you, can you find a verdict of either
12 guilty or not guilty depending on whether or not you think
13 the State has proven the defendant guilty beyond a
14 reasonable doubt?

15 **A** I don't know how to answer that. I guess my
16 response has to be I would attempt to do so. Yes, sir.

17 **Q** Let me break it down a little bit more.

18 **A** I gave a lot of information I read prior to
19 yesterday about these particular issues. It would be
20 difficult but, yes, sir, I would attempt to do so.

21 **Q** Why don't you, uh, when we asked you that
22 question yesterday, unless I am mistaken, you did not tell
23 us that you knew anything about this case. Maybe you
24 realized since then that this is a case that you know
25 about.

1 **A** I probably did not understand the question if you
2 asked about prior knowledge. I thought you asked about
3 knowledge since we came into the courtroom.

4 **Q** I see. But you have heard some things about
5 this case and you do believe that you know some things
6 about this case?

7 **A** I know what I read in the newspaper. But I
8 would not say that I know things about the case but what I
9 read in the newspaper.

10 **Q** I'm going to let the lawyers follow up a good bit
11 on that. I'm going to tell you a few things. And then
12 ask you some questions.

13 **A** Yes, sir.

14 **Q** If you are a member of the jury in this case, I
15 will instruct you that it is your responsibility to set
16 aside anything that you might know about this case,
17 anything you might have heard about this case before the
18 trial started.

19 **A** Yes, sir.

20 **Q** And that it would be your responsibility to come
21 into this courtroom with an open mind and with a clean
22 slate in terms of this case.

23 **A** Yes, sir.

24 **Q** And it is your responsibility to listen very
25 carefully to the testimony that is put before you and to

1 observe very carefully the evidence that is put before you
2 and in light of the law as I will explain it to you to
3 render a verdict based solely on that testimony and
4 evidence that is presented to you in this courtroom.

5 A Yes, sir.

6 Q Now we understand that there are some people who
7 for whatever reason have become so intertwined with a case
8 or who have learned so much about a case or who have
9 developed opinions about a case they cannot separate
10 themselves. They can't set that aside. Do you believe
11 that you will be able to set aside anything that you might
12 have learned or read about this case and any opinions that
13 you may have developed about this case and do as I direct
14 and render a verdict based solely on the testimony and
15 evidence that you would hear in this courtroom.

16 A Yes, sir.

17 Q Now, going back to question that I asked you a
18 minute ago, if you are on the jury and we get into the
19 trial, into the guilt phase, I will instruct you that the
20 defendant, and I'm instructing you now that the defendant
21 is presumed innocent. Can you accept that presumption of
22 innocence?

23 A Yes, sir.

24 Q I would then tell you about the burden of proof,
25 explain it in a little more detail, define murder for you,

1 explain to you what the elements of murder are and explain
2 to you any other aspect of the law that might become
3 relevant during the course of the trial. And then I would
4 tell you that in order to convict the defendant of murder,
5 in order for you to find the defendant guilty of murder,
6 you must find that the State has proven each and every
7 element of the crime of murder beyond a reasonable doubt.
8 If you found as a member of the jury that the State has
9 failed to prove one of the elements of murder beyond a
10 reasonable doubt, would you find the defendant not guilty?

11 A Yes, sir.

12 Q Sir?

13 A Yes, sir.

14 Q If you found that the State proved each and every
15 element of the crime of murder beyond a reasonable doubt,
16 would you find the defendant guilty?

17 A Yes, sir.

18 Q All right. Now if you are on the jury and the
19 jury finds the defendant guilty of murder, we would move
20 into the sentencing phase. Now, I'm going to discuss with
21 you some of the issues that would become relevant during
22 the sentencing phase. I'm going to talk to you about
23 aggravating circumstances and mitigating circumstances.

24 Aggravating circumstances are facts, incidents,
25 details of an occurrence the State of South Carolina has

1 declared to aggravate or to make worse the crime of murder.
2 In other words, aggravating circumstance when accompanied
3 by a murder increase the enormity of the crime, add to the
4 injury caused by the crime.

5 Mitigating circumstances, on the other hand, are
6 facts, incidences or details of an occurrence that the
7 State of South Carolina has declared to lessen the severity
8 of the crime of murder. And they serve to extenuate or to
9 reduce the moral culpability or responsibility of the
10 crime.

11 If you are on the jury and we get into the penalty
12 phase of the trial, you would have two options as to what
13 the sentence would be, as to what your verdict would be.
14 You can find that the defendant should receive a life
15 sentence or you can find that defendant should receive the
16 death penalty.

17 Could you, as an individual juror, depending on the
18 particular facts and circumstances that you find to exist
19 including consideration of any aggravating or mitigating
20 circumstances and certainly in light of the law as I will
21 give it to you, could you return a verdict or vote to
22 return a verdict for a life sentence?

23 A Yes, sir.

24 Q Could you vote to return a verdict to impose the
25 death penalty?

1 **A** Absolutely.

2 **Q** Now, if you are on this jury and if I decide to
3 sequester the jury and to put you up in a hotel and prevent
4 you from going home for about five or six days or some
5 period of time, would that impose a terrible hardship on
6 you?

7 **A** I have a 22-year-old severely retarded son that
8 functions at a six-month old level. Yes, sir. It would be
9 difficult.

10 **Q** Do you have other members of your family who
11 could step in and take care of him?

12 **A** I do have a wife.

13 **Q** Do you -- in your business, are you normally away
14 for several days?

15 **A** Not for that length of time, no, sir.

16 **Q** I'm sensitive to this. I want to know do you
17 believe that you could be sequestered as a jury for five or
18 six days?

19 **A** If that was your will, yes, sir, I would do.

20 **Q** If I decide to do that, that is what would take.
21 But the question will then be whether or not you are on the
22 jury. Do you think you could do that?

23 **A** If that is your will, yes, sir.

24 **Q** All right. Have you had a chance to read over
25 the witness list I gave you?

1 **A** Yes, sir.

2 **Q** Did you read every name on that list?

3 **A** Yes, sir.

4 **Q** Do you know anybody or are you related to anybody
5 whose names is on that list?

6 **A** I'm not related to any that I am aware of. But I
7 do know a few.

8 **Q** Could you tell me who you know.

9 **A** Benji Stephens, Rod Tillus. I know both of
10 them. I know a Bill Burton. I don't know if that's the
11 same one. But I do know a Bill Burton.

12 **THE COURT:** Do someone want to tell me something
13 a little bit more about Bill Burton?

14 **MR. BARTOSH:** Yes, sir, Your Honor. Bill
15 Burton is a, his father is a controller of Milliken.
16 He is the, he is a vice president or president of a
17 chemical company. He lives in Macon.

18 **THE COURT:** Macon, Georgia?

19 **MR. POOLE:** That's not the Bill Burton that I
20 know.

21 **BY THE COURT:**

22 **Q** All right. Now, you said Rod Tillus and Benji
23 Stephens.

24 **A** Benji Stephens.

25 **Q** Tell us very briefly, well I'm going to let the

1 lawyers go into that. Apart from what you just mentioned
2 about maybe knowing these people, do you know of any other
3 reason why you cannot be a fair and impartial juror and
4 give both the State and the defendant a fair and impartial
5 trial?

6 A No, sir.

7 Q I'm going to let the lawyers ask you some
8 questions. Then I'm going to come back and ask you some
9 more.

10 A Yes, sir.

11 **EXAMINATION**

12 **BY MR. BARTOSH:**

13 Q Mr. Poole, I am Mark Bartosh. Along with Doug
14 Brennan and Karen Quimby, we represent Marion Lindsey in
15 this case. When you first -- first of all, let me ask you
16 this, you stated that you knew something of this case?

17 A Yes, sir.

18 Q Can you tell me what it is you know about it.

19 A Basically what I read in the Herald Journal.

20 Q Just tell me.

21 A As I understood from Herald Journal, the
22 gentleman over here is being accused of shooting his wife.
23 She was on her way to the police station in Inman to try to
24 report that there had been some problem. And he found her
25 either in the parking lot there or somewhere, I don't know

1 exactly, and shot her, allegedly shot her with maybe some
2 other people, maybe some children that were witnesses or
3 something like that.

4 Q Okay. So you pretty much know all of the facts?

5 A I don't know that those are accurate. But that's
6 what I remember reading in the Herald Journal.

7 Q When you first started answering Judge Few's
8 questions about whether or not you could be fair or whether
9 or not you could find a person guilty or not guilty, you
10 hesitated.

11 A Yes, sir. I don't mean to be difficult. But I
12 think all of us bring prejudices in life to everything that
13 we do. Sometimes that makes it difficult for us to make
14 the appropriate decision.

15 Q That is what we are interested in is your
16 prejudices and your experiences in life. Is there
17 something about the facts of the case as you understand
18 them to be that would prevent you from being fair to both
19 sides and that would prevent you from finding if the State
20 has failed to carry its burden of finding Mr. Lindsey not
21 guilty?

22 A I can only respond, being totally honest with
23 you. I hope not. I would do my absolute best to try to
24 be impartial. But we all bring prejudices in life to
25 everything that we do.

1 **Q** All right. Well, to me, that would indicate that
2 you have, that there is something about the case that
3 bothers you.

4 **A** Basically what I read the newspaper.

5 **Q** Yeah. But something about it that bothers you to
6 a certain extent that it would affect your judgment or your
7 ability to listen to both sides and to render a fair and
8 just verdict?

9 **A** No, sir. I will do everything in my power to do
10 what the judge has asked me to do.

11 **Q** Now, you say everything in your power, what I'm
12 saying is you can't make a total commitment that you will
13 follow the judge's instructions to the letter?

14 **A** I will make a total commitment to try to do that.

15 **Q** To try to do that?

16 **A** Yes, sir.

17 **Q** But you would still have to try to do that. You
18 couldn't do it?

19 **MR. GOWDY:** Your Honor --

20 **MR. POOLE:** I can't answer that question.

21 **THE COURT:** Sustained.

22 **MR. GOWDY:** That's mis-characterizing of Mr.
23 Poole's testimony.

24 **THE COURT:** Sustain the objection.

25 **BY MR. BARTOSH:**

1 Q You understand too that either with what you read
2 and as Mr. Lindsey sits there today, he is presumed
3 innocent?

4 A Yes, sir. I understand that.

5 Q Do you accept that fact?

6 A Yes, sir. I do.

7 Q And if you were told that by the judge that under
8 the law, every person accused of crime no matter what that
9 crime is is presumed to be innocent, would you accept that
10 without reservation?

11 A Yes, sir.

12 Q Okay. And it would only be up until you believe
13 or until the jury decided that Mr. Lindsey was no longer
14 entitled to that presumption?

15 A Yes, sir.

16 Q But that can only happen if the State had proven
17 beyond a reasonable doubt that Mr. Lindsey was not
18 entitled to that presumption.

19 A I have never been involved in a case before. So
20 proven beyond a reasonable doubt or whatever the
21 terminology you just used, I am not familiar with that.
22 But I would certainly hope so.

23 Q The judge will define what a reasonable doubt is.

24 A I understand.

25 Q Generally, one definition I have heard of a

1 reasonable doubt is that it is a doubt that a reasonable
2 person, that would cause a reasonable person to hesitate to
3 act. That is the standard that the State is held to.
4 Now, would you be able to follow the standard without
5 reservation?

6 **A** I don't know how to respond to that question. I
7 certainly will do my best.

8 **Q** Well, in cases like this with all respect, Mr.
9 Poole, it is not I will do my best. It is whether or not
10 you would or you wouldn't. So what I'm asking you is and
11 if you don't know the answer to it, that's fine.

12 **THE COURT:** Let me intercede for a minute with
13 your permission.

14 **MR. BARTOSH:** Yes, sir.

15 **THE COURT:** If you would take a seat and let me
16 see if I can't make it a little more clear to Mr.
17 Poole.

18 Mr. Poole, we understand that all you can do, all
19 any of us can do is to do your best. So we certainly
20 appreciate that. Nobody is trying, nobody is going
21 try to get you to guarantee that you can do any one
22 thing or another thing. We have discussed some
23 issues with you, some prior knowledge and some things
24 that you read about this case, perhaps some
25 conclusions that you have reached.

1 The question that we need you to help us with is
2 whether or not you think that your prior knowledge,
3 the things you read, the conclusions that you might
4 have reached are going to interfere with your ability
5 to do your best and recognizing and observing the
6 presumption of innocence, the burden of proof, the
7 need and the requirement that you render a verdict
8 based solely on the testimony and evidence in this
9 case.

10 So we accept that you are going to do your best.
11 We are satisfied with that. Do you believe that these
12 other things that we talked about are going to
13 interfere with your ability to do this?

14 **MR. POOLE:** I have to be honest and say yes,
15 sir. I think they might.

16 **THE COURT:** All right.

17 **MR. POOLE:** And I hate to be difficult I realize
18 that --

19 **THE COURT:** That's not being difficult. We
20 appreciate you --

21 **MR. POOLE:** I've got to be honest with you.

22 **THE COURT:** So you think --

23 Any further voir dire, Mr. Bartosh?

24 **MR. BARTOSH:** No, sir. We would thank you for
25 your honesty.

1 **THE COURT:** Anything from the State?

2 **MR. GOWDY:** Your Honor, could I ask Mr.
3 Poole just a couple of questions?

4 **THE COURT:** Absolutely.

5 **MR. GOWDY:** Thank you, Your Honor.

6 **EXAMINATION**

7 **BY MR. GOWDY:**

8 **Q** Mr. Poole, you and I know each other. For
9 purposes of this, I'm going to call you Mr. Poole. Okay?

10 **A** That's quite all right, Mr. Gowdy.

11 **Q** Let me ask you this. We all come into situations
12 with preconceived notions and prejudices, if you will,
13 particularly when we have heard something about a matter.
14 In your line of work, I imagine that you have learned to
15 not believe everything that you have read in the
16 Spartanburg Herald Journal. Is that fair?

17 **A** Absolutely, sir.

18 **Q** Is it also fair that you would not believe
19 everything that you saw on Channel 7?

20 **A** Without a shadow of a doubt, sir.

21 **Q** So the fact that you have been exposed to
22 information ahead of time based on your experience and
23 background, there is absolutely no guarantee as to the
24 reliability of the information that you read or seen?

25 **A** I agree with that, yes, sir.

1 Q Do you believe that if His Honor, Judge Few, told
2 you, Mr. Poole, regardless of whether or not you think it
3 is the law, this defendant is presumed innocent, could you
4 follow what the judge said?

5 A Yes.

6 Q If His Honor told you that regardless of what
7 your personal beliefs are that the State had to prove its
8 case beyond a reasonable doubt even if you thought that
9 standard was too high or even if you did not agree with
10 that standard, if he told you I had to prove that
11 defendant's guilt beyond a reasonable doubt, would you
12 follow what the Court told you to do?

13 A He is the judge, yes, sir.

14 Q So you would follow the Court's instructions?

15 A I would follow the judge's instructions
16 absolutely.

17 Q And again, as the Court said, there is absolutely
18 now way anybody with any credibility can guarantee or
19 verify that they are going to do any one thing other than
20 their dead level best. What I hear you saying, Mr. Poole,
21 is that you would and you have proven to be an
22 extraordinarily conscientious prospective juror with your
23 answers, you would do your dead level best to follow
24 everything that this court told you to do in your function
25 as a juror?

1 **A** Yes, sir.

2 **Q** Thank you, Mr. Poole.

3 **MR. BARTOSH:** Your Honor, with all due respect
4 both to Mr. Poole and the Solicitor and the Judge --

5 **THE COURT:** You are entitled to ask some more
6 questions if you want to. Then we will have argument.

7 **MR. BARTOSH:** Your Honor, I did not hear --

8 **THE COURT:** I don't argument right now.

9 **MR. BARTOSH:** Well, I have no more questions.

10 **THE COURT:** Mr. Poole, step into the hall just
11 for a second please.

12 (WHEREUPON, Mr. Poole exits at approximately
13 7:35 p.m.)

14 **THE COURT:** Now I want argument.

15 **MR. BARTOSH:** Your Honor, what I heard Mr. Poole
16 tell the Court was that because of what he knew about
17 the case from whatever source that it would interfere
18 with his ability to be fair and impartial in this
19 case. And whether or not he believes what he reads
20 in the paper or whether or not he believes what he
21 hears on the television or sees on television, he
22 said, he told the Court that he believe that what he
23 knew about the case would impair his ability to be
24 fair and impartial in the case. Your Honor, we would
25 suggest that that would render him that he would not

1 be qualified. And I believe that was at the Court's,
2 that was at the Court's inquiry, Your Honor.

3 MR. GOWDY: I don't want to speak out of turn,
4 Your Honor. Your Honor, with the State versus Ricky
5 Caldwell where a prospective juror not only knew
6 something about the case but came into the courtroom
7 with a preconceived opinion about it. There are other
8 cases, uh, that are similar in its holding.

9 And I've got to say this, Your Honor, with all
10 due respect to Mr. Bartosh, when he stood up and
11 questioned this juror, he was trying to disqualify him
12 from the moment he stood up. This juror is as
13 thoughtful and conscientious as any juror we have had
14 for the past few days. He has struggled to provide
15 truthful answers to this court.

16 And the answers that I got from him were it is
17 fair to question the reliability of any information
18 that he has received outside this courtroom. And if
19 this court told him to do something that he would
20 follow your instructions. That excludes what he
21 thought the law ought to be or what the law might be.
22 He would follow your instructions.

23 So the fact that he has already formed an opinion
24 prior to coming in here, if he is able to disabuse his
25 mind of that opinion and be a fair and thoughtful

1 juror, which he told me he could be, then he is
2 qualified.

3 **MR. BARTOSH:** Your Honor, the reason that I
4 believe Mr. Poole to have some issues with this case
5 were both his misdemeanor, his demeanor on the witness
6 stand and also his answers to you during your colloquy
7 in the beginning. He seemed to hesitate. He seemed
8 to think. And then he would make an answer. It was
9 not straightforward.

10 **THE COURT:** Let me take that off the table. I
11 believe that I agree with Mr. Gowdy that this
12 prospective juror has gone, has displayed more sincere
13 credibility than any juror than I have had. And it is
14 -- this is not a ruling. We're going to get back to
15 discussing whether or not he was qualified. But I
16 believe what he says. And I believe that he has
17 struggled to be honest.

18 And it is almost like you get an almost honest
19 juror up here who wants to deal straight with us and
20 tell us what he really thinks and acknowledge just
21 like everybody knows that there are four walls to this
22 courthouse and a roof overhead that people bring
23 prejudices into the courtroom. And they can't
24 completely disabuse themselves of their -- I'm not
25 finish -- of their prejudices and the facts that they

1 might have learned beforehand.

2 He acknowledged that and he acknowledged that
3 honestly. And it's almost like anybody who's got the
4 gall to come in here and acknowledge that obvious fact
5 is a disqualified juror. So, I don't believe that he
6 attempted to in any way fool me or to trick me or to
7 trick this court or anything like that. I think,
8 when he hesitated, I believe he hesitated because he
9 wanted to give us an honest and sincere answer.

10 **MR. BARTOSH:** Your Honor, if you take by my
11 remarks that I am saying that he was in any way trying
12 to perpetrate a fraud or dissemble or anything like
13 that about what, I think you're exactly right. I think
14 what he was doing when he was answering those
15 questions is he was taking time to run those thoughts
16 through his mind and to try to explain what it was
17 that bothered him about the case.

18 Had he wanted to, he could have said no, there's
19 nothing in the world that bothers me about this case.
20 I could be fair. I could do everything. He did not
21 do that. He sat and he went through his conscience,
22 he went over the things that he felt that were
23 problems to him. He wanted the Court to know what
24 those problems were. I believe that's the reason
25 that he hesitated. And I believe that's the reason

1 why he sat and thought before he answered the Court.

2 I, in no way, and I don't know how anybody and
3 if they did take it could take from my remarks that I
4 think that he was trying to lie or trying to pull a
5 fraud on anybody. I think to take that from my
6 remarks, that is the farthest thing from the truth.
7 And I think you are right. He is probably the most
8 honest juror that we've had in here. That is shown
9 by his, I won't say it's almost like torture going
10 through and rolling through these things in his mind
11 to try to tell the truth, to try to give his feelings.
12 I think that is what he did.

13 There are things that he knows that are bothering
14 him and that he is trying to decide and to be honest
15 with everybody whether or not he can put those things
16 beyond the pail, I guess, if you want to call it and
17 be fair in this case. That is what this is all
18 about. For whatever reason, Mr. Poole was exposed to
19 some facts.

20 **THE COURT:** All right. Bring him back in here
21 please.

22 (WHEREUPON, Mr. Poole enters at approximately
23 7:37 p.m.)

24 **EXAMINATION**

25 **BY THE COURT:**

1 Q Mr. Poole, let me ask you a couple more
2 questions.

3 A Yes, sir.

4 Q Again we do appreciate your honesty with us. We
5 really do. Now I want to go back to the last question
6 that I asked. Then Mr. Gowdy followed up with that. We
7 will get into that in a little bit. I told you that the
8 important thing is for me, maybe I did not say it exactly
9 like this.

10 But I have got to evaluate with, based on what you
11 tell me, whether or not what you knew before this trial
12 began, what conclusions you might have reached before this
13 trial began, whether or not those things are going to
14 interfere with your ability to do your best as an impartial
15 juror and to make your decision based on what you hear in
16 the courtroom.

17 After that, I believe you told me, I can't remember
18 your exact words. But I think you told me you thought it
19 would or you thought it might. Then Mr. Gowdy went back
20 and pointed out that the things that you learned came from
21 a source that perhaps you have come to know is unreliable.
22 Like we all suspect the press sometimes of reporting things
23 that are not necessarily wrong but they just report what is
24 said.

25 In the Court, we've got rules of evidence. We have

1 things that, nothing comes before the jury unless it comes
2 by me first. If there is an objection, I rule on it and
3 some evidence that is sought to be put in does not come in.
4 So you might come into the case as a juror and go through
5 the whole trial and not hear some fact or some statement or
6 some opinion that you read in the paper.

7 Now, is -- and so I'm going to come back to the
8 question that I asked you a minute ago. We appreciate the
9 fact that you have said you would do your best just like is
10 all any of us can do. But I am very interested in your own
11 view of whether or not you and your ability to do your best
12 would be interfered with by what you have learned and what
13 you have known and the conclusions that you might have
14 reached before this trial began. So talk to me about that.

15 A Yes, Your Honor. I'm a very honest person
16 probably to a fault. Because of that, I'm trying to be as
17 honest with you as I possibly can be. I've also been in
18 the banking business for almost 30 years. I've dealt with
19 a lot of different situations. I know that prejudices
20 enter into decisions that all of us make including
21 decisions that I would make.

22 And as hard as I would try to do my absolute best to
23 do what you asked me to do and I understand the importance,
24 the absolute major importance of this whole case, I can not
25 sit here and tell you 100 percent that some prejudices

1 wouldn't enter into my mind.

2 Q Let me explore that just a little bit. What we
3 are talking about now is what you have learned about this
4 case and what you might have concluded from what you
5 learned.

6 A Yes, sir.

7 Q Now, you might call that prejudices but let's
8 call that something like information. Okay?

9 A And as you pointed out and I agree with you
10 completely, very possibly incorrect information.

11 Q Yeah. Let's say that you are sitting there in
12 the jury room and you are deliberating with other members
13 of the jury based on the evidence that you have heard in
14 the courtroom. And all of a sudden you realize in your
15 mind that there is something either additional to what you
16 heard in the courtroom or something different that you
17 heard in the courtroom that you read about or heard about
18 on the news or heard about in some conversation.

19 Would you be able to, at that point in time, as you
20 are sitting there in the jury room, would you be able to
21 take that little piece of information back out of your mind
22 because it was not admitted into evidence in this case? Or
23 would you, do you think that you would be influenced in
24 your deliberations and your thoughts in the jury room by
25 what you remember hearing or seeing before the case began?

1 **A** I understand your question absolutely and
2 completely. But I don't know the answer to that question,
3 Your Honor.

4 **Q** All right.

5 **A** Again, I apologize for appearing to be evasive
6 but I have to be honest with you.

7 **Q** Yeah. Okay. Let me get you to step back out in
8 the hall.

9 **A** Yes, sir.

10 (WHEREUPON, Mr. Poole exits at approximately
11 7:42 p.m.)

12 **THE COURT:** He's not qualified. Bring him back.

13 (WHEREUPON, Mr. Poole enters at approximately
14 7:42 p.m.)

15 **THE COURT:** Mr. Poole, we appreciate your honesty
16 with us. We appreciate you taking so much time to
17 explain your situation.

18 **MR. POOLE:** Well, I apologize for taking so much
19 of the Court's time.

20 **THE COURT:** No, no, no, no, no, no. You're not
21 taking up time. But we, I have decided that you will
22 no longer be needed as a juror in this case. So I'm
23 excusing you. I appreciate you coming. I appreciate
24 your honesty.

25 **MR. POOLE:** Yes, sir.

1 **THE COURT:** And I hope to see you under some
2 different circumstances some other time.

3 **MR. POOLE:** Yes, sir.

4 **THE COURT:** Bring us a juror.

5 (WHEREUPON, Mr. Poole exits at approximately
6 7:43 p.m.)

7 (WHEREUPON, Dean Israel, Juror number 138, enters at
8 approximately 7:43 p.m.)

9 **DEAN ISRAEL**

10 having previously been sworn, testified as follows:

11 **EXAMINATION**

12 **BY THE COURT:**

13 **Q** Mr. Israel, how are you, sir?

14 **A** Fine. Can I say something?

15 **Q** Yes, sir. That's what we are here for to hear
16 what you have to say.

17 **A** When you asked us all those questions the other
18 day, --

19 **Q** Uh-huh (affirmative).

20 **A** -- my wife has been arrested.

21 **Q** Okay. And you forgot to tell us about that.

22 **A** Yes, sir.

23 **Q** All right. The lawyers will explore that with
24 you in just a minute. We appreciate very much your coming
25 in here just like I invited you to and supplementing your

1 answers to the questions that I had asked you before.

2 Thank you.

3 A Uh-huh (affirmative).

4 Q Now, you recall that we put you under oath
5 yesterday. And you understand you are still under oath
6 now?

7 A Yes, sir.

8 Q Since yesterday, have you talked to anybody about
9 this case or have anybody talked to you about the case?

10 A No, sir.

11 Q Sir?

12 A No, sir.

13 Q Have you read or heard or seen anything about the
14 case?

15 A No.

16 Q Now, I'm going to ask you some questions. And
17 then the lawyers are going to ask you some questions. We
18 apologize if these intrude too much into your privacy but
19 we do have to ask these questions. There are no right or
20 wrong answers. We just want you to be open and honest with
21 us and tell us how you think and how you feel.

22 We are going to get into a discussion of a possible
23 sentencing phase. The fact that we're getting into that
24 discussion about sentencing does not mean anything about
25 this defendant or about this case. It simply means that

1 we realize that we might get into a sentencing phase. We
2 want to ask you some questions about some things that will
3 come up so we can learn how you think and how you feel
4 about those subjects.

5 If you are a juror in this case, would you be able to
6 accept and apply the law precisely as I will state it to
7 you and to render a verdict based solely on the testimony
8 and the evidence that is introduced before you in this
9 courtroom?

10 A Yes, sir.

11 Q Do you understand that in a criminal case such as
12 this, the State has the burden of proving the defendant
13 guilty beyond a reasonable doubt?

14 A Yes, sir.

15 Q Do you understand this is a murder case?

16 A Yes, sir.

17 Q And do you understand -- I'm sorry. Let me back
18 up. Wrong question. Could you, depending on the facts and
19 circumstances that you find to have been proven and in
20 light of the law as I will give it to you, could you find a
21 verdict of either guilty or not guilty depending on your
22 view of whether or not the State has proven a defendant
23 guilty beyond a reasonable doubt?

24 A Yes, sir.

25 Q If you were on the jury in this case and if the

1 jury finds the defendant guilty of murder, we would move
2 into the sentencing phase of the trial. I'm going to talk
3 to you now about some issues that will come up during
4 sentencing if we get there. I'm going to talk to you about
5 aggravating circumstances and mitigating circumstances.

6 Aggravating circumstances are facts, incidents or
7 details of an occurrence that the State of South Carolina
8 has declared to aggravate or make worse the crime of
9 murder. Aggravating circumstance when accompanied by a
10 murder increased the enormity of the crime or add to the
11 injury caused by the crime.

12 Mitigating circumstances, on the other hand, are facts
13 or incidents or details of an occurrence that the State of
14 South Carolina has declared to lessen the severity of the
15 crime of murder. And they may be considered to extenuate
16 or to reduce the degree of moral culpability or
17 responsibility.

18 If you are on the jury during the sentencing phase of
19 a death penalty, you would have two options as to what your
20 verdict could be. Your verdict can be for a life sentence
21 or your verdict could be for a death penalty. Could you, as
22 a member of that jury, depending on the particular facts
23 and circumstances that you find to exist and considering
24 any aggravating or mitigating circumstances and considering
25 the law as I would give it to you, could you return a

1 verdict voting for a life sentence?

2 A Yes.

3 Q Could you vote to return a verdict for the death
4 penalty?

5 A Yes.

6 Q Now, if you are on the jury in this case and if I
7 sequester the jury, would the fact that you have to be away
8 from your home for five or six days staying in a hotel with
9 us, would that put a tremendous burden on you?

10 A No..

11 Q And you had a chance to go over the witness list
12 that I gave you earlier?

13 A Yes, sir.

14 Q Have you read every name on that list?

15 A Yes, sir.

16 Q Is there anybody on that list who you know or to
17 whom you are related?

18 A No, sir.

19 Q Do you know of any reason why you could not give
20 both the State and the defendant a fair and impartial trial
21 in this case?

22 A No, sir.

23 Q I'm going to let the lawyers ask you some
24 questions now. Then I may ask you some more questions
25 later.

1 MR. BRENNAN: Please the Court.

2 EXAMINATION

3 BY MR. BRENNAN:

4 Q Mr. Israel, how are you doing this evening?

5 A Fine. Thank you.

6 Q Thank you for your patience. My name is Doug
7 Brennan. I'm an attorney here in Spartanburg myself. Mr.
8 Bartosh and Ms. Quimby have the opportunity to represent
9 Mr. Lindsey in this matter. Sir, yesterday when you were
10 asked if you knew anything about this case and when all the
11 group was here, you stood up.

12 A Yes, sir.

13 Q Can you tell us what it was?

14 A Just what I read in the newspaper. I didn't know
15 any details.

16 Q Can you tell me what you do know?

17 A I read it about a month or so ago. There was a
18 write-up in the paper about three death penalties.

19 Q So it was an article about three different cases?

20 A Yes.

21 Q Okay. Based on the portion of that article that
22 referred to my client, have you formed an opinion in this
23 matter?

24 A No.

25 Q Will you be able to forgot or wipe away the

1 information that you learned in that article about this
2 case, relating to this case and make your decision based
3 solely on what you hear from that witness stand and those
4 pieces of paper and other documents?

5 **THE COURT:** Let me ask him that.

6 I did not realize, Mr. Israel, that you had
7 answered that question that you knew something about
8 the case. That is my fault. I have been meaning to
9 ask that question of all the people who indicated they
10 knew something about the case.

11 If you get on the jury in this case, I will
12 instruct you that your responsibility is to set aside
13 any knowledge that you may have about what happened or
14 anything that you may have read about what happened
15 and to come into this courtroom with an open mind and
16 a clean slate in your mind and to render, to listen
17 very carefully to the testimony in evidence that is
18 presented here, listen to the law that I give you and
19 to render a verdict based solely on the testimony and
20 evidence that you have presented to you in this
21 courtroom under my supervision. Of course, that will
22 be done in light of the law as I give it to you.

23 Now, do you believe that you will be able to do
24 that, to take those things that you might have heard
25 before the trial began out of your mind and to render

1 a verdict based on just what you hear and see in this
2 courtroom?

3 MR. ISRAEL: Yeah.

4 THE COURT: All right. You can follow up on that
5 if you want to.

6 MR. BRENNAN: Thank you, Your Honor.

7 BY MR. BRENNAN: .

8 Q I do have one follow-up question. If you make
9 this jury and you are seated on this jury and you're in the
10 jury box and you -- in a criminal trial, the State goes
11 first. So you will have this information in your mind.
12 Will the evidence presented by the State be adding to the
13 information that you already have or will you be able to
14 set that aside and start at zero, start with a clean slate?

15 A I believe so. I feel like I know nothing about
16 this trial.

17 Q Thank you, sir. That is fine. Sir, you
18 mentioned on your questionnaire that you were the victim of
19 breaking into motor vehicles. Did someone break into your
20 car?

21 A Yeah.

22 Q How long ago was that?

23 A Maybe about 10 months or so ago.

24 Q Was anybody arrested?

25 A No.

1 Q Was it reported to the police?

2 A Yes.

3 Q Does the fact that you were violated in that form
4 and that your car was broken into, does that affect your
5 ability to render a fair judgment in this matter?

6 A No.

7 Q Okay. All right. Do you understand, sir, that
8 in South Carolina the death penalty is not mandatory?

9 A No.

10 Q In South Carolina, if someone is convicted, if
11 someone is found guilty of murder, the jury then has the
12 choice of the death penalty or life. Do you understand
13 that you do not have to impose that?

14 A Yes, sir. I understand.

15 Q With that in mind, sir, it is said that there are
16 three kinds of jurors. There are those that if the
17 defendant is convicted will always impose the death
18 penalty. There are those that if the defendant is
19 convicted will always impose a life sentence. Then there
20 is the group in the middle that says I want to wait and
21 hear the specific facts of the case before I say death
22 penalty or life sentence. Are you an always death, an
23 always life or are you in the middle?

24 A I'm probably in the middle.

25 Q Okay. Sir, my last question. For a moment,

1 assume that you're on the jury. You are in deliberations
2 in the sentencing phase. You are back in the jury room.
3 Eleven jurors have made a decision that the proper sentence
4 is the death penalty. But based on what you heard here in
5 this courtroom, your decision is life is proper. You've
6 got eleven that have said death, you're the one that said
7 life. Would you be swayed by the fact that they have made
8 a decision for death or will you be able to stand your
9 ground and maintain your decision that life is proper?

10 A If that is what I believe, that's what I'll do.

11 Q You will not be swayed by their decision?

12 A (Shakes head negatively).

13 MR. BARNETT: Nothing further. Thank you, Your
14 Honor.

15 MR. GOWDY: May it please the Court, Your
16 Honor.

17 THE COURT: Yes, sir.

18 EXAMINATION

19 BY MR. GOWDY:

20 Q Good evening.

21 A Good evening.

22 Q My name is Trey Gowdy. I'm with the solicitor's
23 office. That's Donnie Willingham to your left. Barry
24 Barnett in the middle. Together, the three of us will be
25 prosecuting this case in behalf of the State of South

1 Carolina. The hour is late, so my questions will be brief.
2 You were good enough, first of all, to fill out this
3 question which contains a lot of personal information.

4 I believe when you walked in tonight, you might have
5 also volunteered an additional piece of personal
6 information which I'm not going to go into other to ask
7 this, which agency was involved with the incident that you
8 cited to the Court when you walked in? Which law
9 enforcement agency?

10 A Spartanburg County.

11 Q How long ago did that take place?

12 A 8 or 10 years.

13 Q Do you believe that you and your family were
14 treated fairly by the Spartanburg County Sheriff's
15 Department?

16 A Yes.

17 Q The fact that they may be involved in the
18 investigation in this case would not would not affect you?

19 A No.

20 Q Okay. Final question, if I understood what you
21 told His Honor, if you were selected for service of this
22 jury and after hearing all of the evidence, you thought
23 life was proper punishment, that's what you will vote for?

24 A Yes, sir.

25 Q If you thought death was the proper punishment,

1 that is what you will vote for?

2 A Yes.

3 Q You could do either one depending on what you
4 thought was right?

5 A Absolutely.

6 Q Based on what you thought was right, you would
7 sign your name to that verdict form and pass it up to the
8 judge?

9 A Yes, sir.

10 Q Thank you, Mr. Israel. I appreciate you answering
11 my questions. Have a good evening.

12 THE COURT: Mr. Israel, please step out in the
13 hall for just a few seconds please.

14 (WHEREFORE, Mr. Israel exits at approximately
15 8:01 p.m.)

16 THE COURT: Any objections to his qualifications?

17 MR. BRENNAN: None, Your Honor.

18 MR. GOWDY: None from the State, Your Honor

19 THE COURT: None from either side.

20 Bring him back.

21 (WHEREFORE, Mr. Israel enters at approximately
22 8:01 p.m.)

23 THE COURT: Mr. Israel, I find that you are a
24 qualified juror in this case. It is going to be a
25 day or so before we are ready to begin. So I want you

1 to stay in touch with us by calling the telephone
2 number that you were given yesterday morning. Some
3 time around lunch or maybe in the afternoon tomorrow,
4 we will start putting some information on that number,
5 on that recording as to what, when we think we will be
6 ready for you to come back. So keep checking it and
7 we will also try to stay in touch with you if we need
8 to. Your primary source of information is to call
9 that recorded number.

10 During the next day or so before you come back,
11 please do not discuss this case with anyone. Don't
12 allow anyone to discuss it with you. Don't read
13 anything, watch anything or listen to anything about
14 this case. When you come back, I'm going to ask you
15 and all of the jurors if you have been able to keep
16 yourself from any discussions about the case and from
17 learning anything about the case. I want you to be
18 able to tell me that you have. All right. We will
19 see you in a couple of days.

20 (WHEREUPON, Mr. Israel exits at approximately
21 8:02 p.m.)

22 **THE COURT:** All right. Anything else you want to
23 take up now before we go home?

24 **MR. GOWDY:** Nothing from the State, your Honor.

25 **MR. BARTOSH:** I would like to see you, Your

1 Honor.

2 THE COURT: All right, sir. I will be back in my
3 office.

4 We will resume tomorrow morning with Panel 7 at 9
5 o'clock. We have got either 18 or 19 jurors.

6 MR. GOWDY: (Nods head affirmatively.)

7 THE COURT: How many do you think we need?

8 MR. BARTOSH: 41.

9 MR. GOWDY: 37.

10 MR. BARNETT: 37.

11 MR. BARTOSH: 12 plus 10 is 22 plus 5 is 27.

12 Usually, they go with three alternates.

13 THE COURT: If we go with three, that means we
14 need 39 people.

15 MR. BARTOSH: It is two a piece. That is six.
16 Plus one a piece --

17 MR. GOWDY: You get two. I get one. That's three
18 for every alternate we get.

19 THE COURT: Four for every alternate.

20 MR. GOWDY: So that's 18.

21 THE COURT: You have got to count the one that's
22 not chosen.

23 MR. GOWDY: 39

24 THE COURT: 39 is the minimum if we're going to
25 get three alternates.

1 **MR. BARTOSH:** Yes, sir.

2 **MR. GOWDY:** And we're sitting on 18 or 19
3 depending on Mr. Smith.

4 **THE COURT:** Right. So unless the panels tomorrow
5 are just overflowing with quickly qualified jurors, we
6 probably are going to be engaged in this process on
7 Thursday morning. Okay. It is not too late ask me
8 anything. It is going to take me another 15 minutes
9 to get up the strength to get out of this chair unless
10 some of y'all want to come up here and help me get up.

11 **MR. GOWDY:** I'll be delighted to, Your Honor

12 **THE COURT:** Okay. Brooke just gave me sufficient
13 motivation to get out of the chair.

14 **MR. GOWDY:** I won't ask what she said.

15 **THE COURT:** We'll go off the record.

16 (WHEREUPON, the Court adjourned at approximately 8:15
17 p.m.)

18 (WHEREUPON, the Court resumed on May 19, 2004 at
19 approximately 9:15 a.m.)

20 **THE COURT:** Before we get started with jurors, as
21 you all know, we had I think four jurors who were
22 summoned, who returned questionnaires, right, who
23 didn't show up on Monday. Four out of about how many,
24 a hundred and sixty something?

25 **THE CLERK:** 161.

1 **THE COURT:** 161 did show up. Four did not show
2 up. By the way, we reported that to the Guinness Book
3 of World Records as the highest percentage of juror
4 attendance on the first day of a term of court in the
5 history of the western world. But what do we do about
6 those four is the next question. We've had -- the
7 Clerk's office has been calling them. Sheriff's
8 deputies have been sent out to try to retrieve them.
9 We have one on the building right now. And we haven't
10 heard from the other three?

11 **THE CLERK:** We can't find two. But one has been
12 calling all week.

13 **THE COURT:** I told them to keep trying to get
14 them. I figure we can still qualify -- we can still
15 easily go through the initial qualification and then
16 go through this process if y'all want to.

17 **MR. GOWDY:** They are not part of the panels
18 that exist now?

19 **THE COURT:** That is correct. They have not been
20 put into the panels that we are talking to now.

21 **MR. GOWDY:** They would be added to the very
22 end. I can not imagine a scenario where we would get
23 to the very end of these panels.

24 **MR. BARTOSH:** I agree, Your Honor. We're going
25 to have a jury before we get to the end of these

1 panels.

2 **THE COURT:** Do you consent to let those jurors be
3 transferred to a different term of Court or something
4 like that?

5 **MR. BARTOSH:** Yes, sir.

6 **THE COURT:** All right. Transfer them to a
7 different term of court. Let me ask this question,
8 Ashley. How did this message from Richard Smith come
9 to your possession?

10 **THE CLERK:** He called me.

11 **THE COURT:** He talked to you?

12 **THE CLERK:** Yes.

13 **THE COURT:** And tell me what he told you.

14 **THE CLERK:** He told me that he did not know if
15 that would matter or not in his qualification process.
16 He knew of a murder in 1977. That's what he told me.

17 **THE COURT:** Knew the family?

18 **THE CLERK:** Yes. The lady went to prison for it.
19 He didn't give any details or anything.

20 **THE COURT:** All right. So -- thank you.

21 Either side would have the opportunity if you
22 wanted to to question Mr. Smith about that if I rule
23 him qualified based on what we already know.

24 There is a TV camera in the courtroom that has
25 been pointed out by defense counsel back in chambers.

1 And apparently there is some desire to discuss how if
2 at all we deal with that during the rest of the jury
3 qualifications. Right?

4 **MR. BARTOSH:** Yes, sir. Uh, my understanding
5 is that after discussing the matter with you and with
6 the Solicitor that the Court intends to inform the
7 jurors that the equipment is not operative, is not
8 turned on and that at no time during any part of this
9 proceeding will their images be broadcasted.

10 **THE COURT:** I don't want to make a big deal out of
11 this. Why don't we just turn the camera to the side
12 and have nobody standing over there so that anybody in
13 their right mind can tell that it's not filming them.

14 **MR. BARTOSH:** I would have no objection to
15 that.

16 **THE COURT:** All right. Does anybody feel
17 comfortable going over there and manipulating that
18 complicated looking device or should we get the
19 cameraman to do it?

20 **MR. GOWDY:** Judge, I think they are standing
21 right --

22 **THE COURT:** Okay.

23 (WHEREUPON, there was a pause.)

24 **THE COURT:** How about just turn it to the side.
25 It still looks like it's pointing at us. Yeah. That

1 looks good. Thank you.

2 Okay. Newton's Laws are hard at work with me
3 this morning. Things at rest tend to remain at rest
4 until acted on by a superior force. And I just need
5 some motivation to go ahead and get that first juror
6 in here.

7 **MR. GOWDY:** Your Honor, we are almost half
8 way home.

9 **THE COURT:** Well, bring him in then since we are
10 almost half way.

11 I don't mean to suggest that I'm not enjoying
12 this. It is not unenjoyable. We had a long day
13 yesterday. All right.

14 (WHEREUPON, Jeffrey Rhineberger, Juror number 225,
15 enters at approximately 9:25 a.m.)

16 **JEFFREY RHINEBERGER**

17 having previously been sworn, testified as follows:

18 **EXAMINATION**

19 **BY THE COURT:**

20 **Q** Mr. Rhineberger, good morning, sir.

21 **A** Good morning.

22 **Q** How are you?

23 **A** Great.

24 **Q** You recall that we put you under oath Monday
25 morning.

1 A (No response.)

2 Q You do?

3 A Yes.

4 Q And you understand you are still under oath
5 today?

6 A Yes, sir.

7 Q Since you left us Monday afternoon, has anyone
8 talked to you about this case or have you talked to anybody
9 about the case?

10 A No, sir.

11 Q Have you learned anything or read anything or
12 heard anything about this case?

13 A No, sir.

14 Q We're going to ask you some questions now. We
15 don't intend to invade your privacy but it is necessary for
16 us to ask these questions. There are not any right or
17 wrong answers to these questions. We just want you to be
18 open and honest with us, tell us how you think, tell us how
19 you feel.

20 We are going to talk a little bit about a possible
21 sentencing phase. But just because we're talking about a
22 sentencing phase, that doesn't mean anything about this
23 case or about this defendant. It simply means that we
24 recognize we might get to that phase. And we have some
25 questions we need to ask you that relate to some of the

1 issues that will come up if we get there. If you are a
2 juror in this case, can you accept and apply the law
3 precisely as I will give it to you and render a verdict in
4 this case based solely on the testimony and evidence that
5 you see and hear in this courtroom?

6 A Yes, sir.

7 Q You understand that the State has the burden of
8 proof in a criminal case and they must meet that burden
9 beyond a reasonable doubt?

10 A Yes, sir.

11 Q You understand this is a murder case?

12 A Yes, sir.

13 Q Can you, depending on the facts and the evidence
14 that you find to be proven in light of the law as I will
15 give it to you, can you find a verdict of either guilty or
16 not guilty depending on whether or not you think the State
17 has met its burden of proof?

18 A Yes, sir.

19 Q If the jury reaches a verdict of guilty on
20 murder, then we will move into the sentencing phase. I'm
21 going to talk to you a little bit about that. During the
22 sentencing phase, we would have some evidence regarding
23 aggravating circumstances and mitigating circumstances.

24 Aggravating circumstances are facts or incidents or
25 details of an occurrence that the State of South Carolina

1 has declared to aggravate or to make worse the crime of
2 murder. Aggravating circumstances, when accompanying a
3 murder, increase the enormity or add to the injury of the
4 crime of murder.

5 Mitigating circumstances, on the other hand, are facts
6 or incidents or details of an occurrence that the State of
7 South Carolina has declared to lessen the severity of the
8 crime of murder. They serve to extenuate or reduce the
9 moral culpability or responsibility for the crime.

10 If you are a juror in a death penalty case in the
11 penalty phase, you would have two options as to what your
12 verdict could be. Your verdict could be for a life
13 sentence or your verdict could be for the death penalty.
14 Could you, sitting as a juror, considering the facts and
15 circumstances that you find to exist or that have been
16 proven including any aggravating or mitigating
17 circumstances and in light of the law as I will give it to
18 you, could you return a verdict voting for -- I'm sorry.
19 Could you vote to return a verdict for a life sentence?

20 A Yes.

21 Q Could you vote to return a verdict for the death
22 penalty?

23 A Yes.

24 Q If I sequestered this jury and require you to be
25 put up in a hotel for five or six days, would that impose a

1 terrible burden on your family?

2 A No.

3 Q Have you read over the witness list that I gave
4 you this morning when you came in?

5 A Yes, sir.

6 Q Have you read every name on that witness list?

7 A Yes, sir..

8 Q Is there anyone on that list whom you know or to
9 whom you are related?

10 A No, sir.

11 Q Is there any reason that you know of why you
12 cannot give both the State and the defendant a fair and
13 impartial trial?

14 A No.

15 Q All right. Mr. Rhineberger, I'm going to allow
16 the lawyers to ask you a few questions. Then I may come
17 back and ask you a few more in a few minutes.

18 THE COURT: Mr. Bartosh.

19 MR. BARTOSH: Thank you, Your Honor.

20 EXAMINATION

21 BY MR. BARTOSH:

22 Q Good morning, Mr. Rhineberger.

23 A Good morning, sir.

24 Q I am Mike Bartosh. I am a lawyer here in
25 Spartanburg. Along with Doug Brandon and Karen Quimby, we

1 are representing Marion Lindsey in this case. There are a
2 couple of questions that I would like to ask you that you
3 filled out on your application. Monday I guess it was,
4 you indicated that you knew someone in our office?

5 A Yes, sir.

6 Q Can you tell us who that is.

7 A I know Karen.

8 Q Have long have you been, are you friends over a
9 long period of time?

10 A I would say it has been six years since we
11 talked. We were friends like I said several years ago.
12 Six or seven years.

13 Q You lost contact?

14 A Yes, sir.

15 Q And it's been about five or six years since you
16 had any contact with her?

17 A Yes, sir.

18 Q Also you noted that your mother had been robbed.

19 A Yes.

20 Q Was it an armed robbery? Was it a weapon?

21 A No.

22 Q Can you describe the circumstances?

23 A Basically she had come home from lunch and
24 somebody was in the house rummaging through the stuff.
25 She thought was it me home from college and kind of called

1 my name. And when nobody answered she went back to check
2 and the guy busted through and ran out of the door.

3 Q Was she injured?

4 A No.

5 Q Was the person ever arrested?

6 A Yes.

7 Q He was prosecuted?

8 A Yes.

9 Q You also said that you or a family member had
10 been arrested by the sheriff's department and the police
11 department?

12 A Yes, sir.

13 Q Can you tell me about that?

14 A Yes, I have a younger brother who was arrested
15 for DUI.

16 Q And that has been resolved?

17 A Yes, sir.

18 Q Now, also you said that a family member had been
19 the victim of an assault or CDV, are you referring to your
20 mother?

21 A Yes.

22 Q Is there anyone else in your family who had been
23 a victim of an assault or criminal domestic violence?

24 A Yes.

25 Q Can you tell me about that?

1 **A** My brother was also held up by gunpoint and
2 robbed. His buddy's car was taken from him.

3 **Q** You had two family members who had been victims
4 of a robbery?

5 **A** Yes.

6 **Q** One was an armed robbery?

7 **A** Right..

8 **Q** I think you said your father had been employed in
9 the Greenville County Detention facility?

10 **A** That's correct.

11 **Q** Is he employed there now?

12 **A** No, sir.

13 **Q** How long ago, how long has it been since he was
14 left there?

15 **A** I would say it's probably been three or four
16 years.

17 **Q** Okay. You have any other family members that are
18 employed in law enforcement?

19 **A** No, sir.

20 **Q** Now the judge has described basically the, how
21 this thing is going to work. What we're trying to do is
22 we are trying to sort of get an idea about your thoughts
23 about the death penalty and your thoughts about life and
24 death and things like that.

25 As His Honor said, this is a two part system. The

1 first part is just like a regular trial. If you are picked
2 for this jury, you will sit over there in the jury box.
3 The State will present its evidence just like it normally
4 would. They would have to convince all twelve of the
5 folks on the jury that Mr. Lindsey is guilty of murder.
6 And they would have to prove that beyond a reasonable
7 doubt.

8 If the jury does not believe that, if they do not
9 believe that Mr. Lindsey, that the State has met its
10 burden, then we all go home okay. If they do carry their
11 burden in the opinion of the jury, then it moves into a
12 second phase. In that phase as the judge has told you,
13 they will be presenting some aggravating circumstances by
14 the State presented to convince you that the death penalty
15 is an appropriate punishment. We will be presenting
16 mitigating circumstances which we hope will convince the
17 jury that life is the appropriate punishment.

18 Now life means life. Mr. Lindsey, if he receives
19 life, if it goes that far and he receives life, he would
20 never get out of jail. He would die in the Department of
21 Corrections. Could you keep an open mind and listen to
22 both sides and be fair to the State in their presentation
23 of the aggravating circumstance and be fair to the defense
24 in their presentation of the mitigating circumstances?
25 Could you be fair and listen to both sides?

1 A Yes, sir.

2 Q Are you predisposed to either side?

3 A No, sir.

4 Q You are willing to listen to both sides with an
5 open mind?

6 A Yes, sir.

7 Q The judge is going to tell you when we start out
8 that Mr. Lindsey even as he sits there now is presumed
9 innocent. That is not a legal fiction. That is a real
10 substantial right. And should you be picked for the jury,
11 you would take an oath and swear to accept the law as to
12 judge gives it to you. So would you be able to accept
13 the fact that Mr. Lindsey even now is presumed to be
14 innocent.

15 A Yes, sir.

16 Q Okay. Do you know anything about this case at
17 all?

18 A No, sir.

19 Q You have not been exposed to any media or
20 anything like that?

21 A No, sir.

22 Q Okay. Now, there is a form, a sentencing sheet
23 if it does go to a penalty phase and the jury decides upon
24 the appropriate punishment, there's a form that every juror
25 has to sign. And of course if it is death, then every

1 juror has to sign for death. It has got to be unanimous.
2 If it turned out that the jury decided that it was the
3 death penalty and all eleven jurors had signed the form and
4 it came time that it was passed around to you and it came
5 time for you to sign that form and knowing that by signing
6 that form you were committing Mr. Lindsey to death, could
7 you do that?

8 A If I believed that the case was strong enough, I
9 could.

10 Q You would have to wait and hear what the facts
11 were and that is what you would base your decision on?

12 A Yes, sir.

13 Q Thank you.

14 MR. GOWDY: May it please the Court.

15 THE COURT: Yes, sir.

16 EXAMINATION

17 BY MR. GOWDY:

18 Q Good morning.

19 A Good morning.

20 Q My name is Trey Gowdy. I'm with the Solicitor's
21 office along with Donnie Willingham to your left, Barry
22 Barnett in the center. We are what they call the
23 prosecutors. We work on behalf of the State of South
24 Carolina and the prosecution of this case.

25 I just have a couple questions because the judge did a

1 very nice job of asking you questions that I would
2 ordinarily ask. You were good enough on Monday and again
3 today to tell us that you knew one of the defense
4 attorneys. The last thing in the world I want to do given
5 the fact that I just met you is ask you any personal
6 questions.

7 But having said that, what both sides are looking for
8 are twelve folks that could be fair and listen to evidence
9 and make up their mind based on what happened in this
10 courtroom as opposed to any friendships or what have you
11 outside the courtroom. I feel certain you can appreciate
12 that. So, having said that, how long have you known Ms.
13 Quimby and can you tell me the nature of your relationship?
14 Did you go to school together, did you work together?

15 A It has been probably six years. I thought about
16 it Monday trying to figure it out. Friends of friends.
17 Right after school basically. I'd say we were acquainted
18 for 6 months to a year. And I have not talked to her after
19 six years.

20 Q Okay. I know you can appreciate that in the
21 limited time you and I will have this morning, I've got to
22 make up, I've got to make a decision. And I have no reason
23 to believe that you are going to be anything other than
24 fair but I have to ask. Are you satisfied that if you were
25 seated on this jury that whatever friendship you had with

1 her in the past you could set that aside and be fair to the
2 folks sitting at the table and base your decision just on
3 what happens in this courtroom and not on anything that
4 happened in the past?

5 A Absolutely.

6 Q Thank you. A couple more quick questions. I
7 notice that you work for a company ECMD, Incorporated?

8 A Yes, sir.

9 Q What do y'all do?

10 A We manufacture building materials. I'm a
11 regional sales manager for the doors and window department.

12 Q Is that an industry that's located in Woodruff?

13 A No, the company itself is out of North Carolina.
14 I am a sales rep that covers the upstate South Carolina and
15 Georgia.

16 Q Okay. My final question to you, Mr.
17 Rhineberger, and I appreciate your patience. If you were
18 seated on this jury and if you thought that life was the
19 proper punishment, that is what you would vote for. Is
20 that right?

21 A Yes.

22 Q If you thought that death was the proper
23 punishment, that is what you would vote for?

24 A Yes.

25 Q You would base that on what happened in this

1 courtroom and whether or not the State has proven its case
2 to you beyond a reasonable doubt?

3 **A** Yes.

4 **Q** I appreciate you answering my questions. Thank
5 you very much.

6 **THE COURT:** Mr. Rhineberger, do you mind
7 stepping in the hall for just a second please.

8 (WHEREUPON, Mr. Rhineberger exits at approximately
9 9:48 a.m.)

10 **THE COURT:** Any objection to his qualifications?

11 **MR. BARTOSH:** No, sir.

12 **MR. GOWDY:** No, sir.

13 **THE COURT:** Bring him in and get us another
14 juror.

15 (WHEREUPON, Mr. Rhineberger enters at approximately
16 9:48 a.m.)

17 **THE COURT:** Mr. Rhineberger, I find that you
18 are a qualified juror to serve in this case. It is
19 going to be at least late today probably tomorrow
20 before we get to you. So I'm going to let you go now.
21 Stay in touch with us by calling the telephone number
22 that you were given on Monday morning. There will be
23 a recorded message on that line that will tell you
24 about our progress and will tell you when we will
25 expect to need you back.

1 When you come back, you need to bring or be ready
2 to bring at least some clothes and whatever you will
3 need to be put in hotel for five or six days.
4 Continue to not talk about the case. Do not allow
5 anyone to talk to you about the case. Don't read,
6 listen to or watch anything about this case. We will
7 see you either late today or hopefully some time
8 tomorrow.

9 **MR. RHINEBERGER:** Yes, sir.

10 **THE COURT:** Have a good day.

11 (WHEREUPON, Mr. Rhineberger exits at approximately
12 9:49 a.m.)

13 (WHEREUPON, Kim Rogers, Juror number 232, enters at
14 approximately 9:49 a.m.)

15 **KIM ROGERS**

16 having previously been sworn, testified as follows:

17 **EXAMINATION**

18 **BY THE COURT:**

19 **Q** Good morning, Ms. Rogers?

20 **A** Good morning.

21 **Q** How are you?

22 **A** Fine. How are you?

23 **Q** You -- I'm doing fine. You recall that on Monday
24 morning we put you under oath?

25 **A** Yes.

1 Q You are still under oath right now. Since we
2 let you go Monday afternoon, have you talked to anybody
3 about this case or has anybody talked to you about this
4 case?

5 A No.

6 Q Have you read or seen or heard anything about
7 this case since then?

8 A No.

9 Q We're going to ask you some questions. We don't
10 mean to pry too deep into your private life. But we do
11 need to ask you these questions. These questions don't
12 have right or wrong answers. We just want to know how you
13 think or how you feel.

14 We're going to talk a little bit about a possible
15 sentencing phase. The fact that we're talking about a
16 sentencing phase does not mean anything about this
17 defendant or about this case. It simply means that we
18 recognize that we might get to a sentencing phase. We
19 need to ask you some questions about some of the issues
20 that will come up so that we know how you think and how you
21 feel.

22 If you are juror in this case, can you accept and
23 apply the law precisely as I give it to you and render a
24 verdict based on the testimony and evidence that you hear
25 in this courtroom and disregard anything you may have known

1 about this case before the trial started?

2 A Yes.

3 Q You understand that in a criminal case such as
4 this, the State has the burden of proof and must prove the
5 defendant guilty beyond a reasonable doubt?

6 A Yes.

7 Q You understand this is a murder case?

8 A Yes.

9 Q Can you or could you find, depending on the facts
10 and circumstances that you find to be proven and in light
11 of the law as I will give it to you, could you find the
12 defendant guilty or not guilty depending on whether or not
13 you think the State has met its burden of proof?

14 A Yes.

15 Q If the jury were to find the defendant guilty of
16 murder, we will move into second phase or the penalty phase
17 of the trial. There are several things that will come up
18 at that the phase. I'm going to talk to you a little bit
19 about those now. Aggravating circumstances. Aggravating
20 circumstances are facts or incidents or details of an
21 occurrence that the State of South Carolina have declared
22 to aggravate or make worse the crime of murder.
23 Aggravating circumstances increase the enormity of the
24 crime of murder or add to the injury resulting from the
25 crime.

1 Mitigating circumstances, on the other hand, are facts
2 instances or details of occurrence that the State has
3 declared to lessen the severity of the crime of murder.
4 They serve to extenuate or reduce the moral culpability or
5 responsibility for the crime.

6 If you are a juror in the sentencing phase of a death
7 penalty case such as this, you would have two options as to
8 what your verdict could be. It could be you could vote
9 for a life sentence or you could vote for a death of the
10 death penalty. Could you, depending on what you found to
11 have been proven and the facts and circumstances that you
12 find to exist considering any aggravating or mitigating
13 circumstances and considering the law that I will give to
14 you, could you vote to impose a life sentence?

15 A Yes.

16 Q Could you vote to impose the death sentence?

17 A Yes.

18 Q If I make you or if you become a member of this
19 jury and if I sequester the jury and you are required to
20 stay in the hotel for five or six days, is that going to
21 impose a terrible hardship on you?

22 A No.

23 Q Have you had a chance to go over the witness list
24 that I gave you a few minutes ago?

25 A Yes.

1 **Q** Have you read any name on that list?

2 **A** Yes.

3 **Q** Is there any name on that list whom you know or
4 to whom you are related?

5 **A** One person, Celeste Nesbitt.

6 **Q** Celeste Nesbitt. Do you mind telling me how you
7 know Ms. Nesbitt or are you related to her?

8 **A** I worked with her at BMG Distribution.

9 **Q** You work with her now?

10 **A** No.

11 **Q** How long ago did you work with her?

12 **A** About three years ago.

13 **Q** Three years. In the three years since then, have
14 you had any contact with Ms. Nesbitt?

15 **A** No.

16 **Q** Do you know of any reason why you cannot be a
17 fair and impartial juror and give both the State and the
18 defendant a fair and impartial trial?

19 **A** No.

20 **Q** Ma'am, I'm going to let the lawyers ask you some
21 questions now. Then I'm going to come back in a few
22 minutes and ask you some more.

23 **MR. BRENNAN:** Please the Court, Your Honor.

24 **THE COURT:** Yes, sir.

25 **EXAMINATION**

1 **BY MR. BRENNAN:**

2 **Q** Good morning, Ms. Rogers.

3 **A** Good morning.

4 **Q** My name is Doug Brennan. I'm an attorney from
5 here in Spartanburg. Myself, Mr. Bartosh and Ms. Quimby
6 have the opportunity to represent Mr. Lindsey in this
7 matter. I apologize that there are some questions that I
8 have to ask. We don't mean to pry. We just need to know.
9 On your questionnaire, you listed or stated that it was
10 your uncle that had been murdered, your mother's brother?

11 **A** Yes.

12 **Q** Can you tell me when that was?

13 **A** Probably about 15 years ago.

14 **Q** Okay. Were you close to that gentleman?

15 **A** Yes.

16 **Q** Okay. Was anyone ever arrested for that?

17 **A** Yes.

18 **Q** And did that person -- is that person now in
19 jail?

20 **A** Yes.

21 **Q** Did the fact that your uncle or your mother's
22 brother was murdered, did that have an affect on the
23 formation of your opinion as to the death penalty?

24 **A** No.

25 **Q** It did not?

1 **A** No.

2 **Q** Would you be able to set aside your feelings for
3 your uncle and what happened to him and render a decision
4 based solely on the evidence that is presented here today
5 or here in this trial?

6 **A** Yes.

7 **Q** Okay. You also said that somebody that you knew
8 was accused of shoplifting?

9 **A** Yes.

10 **Q** And were you asked to make a statement about
11 that?

12 **A** No.

13 **Q** No? Have you ever made a statement concerning
14 any shoplifting or perhaps your uncle's death to the law
15 enforcement officers?

16 **A** No.

17 **Q** No. On your questionnaire, you said that, you
18 told the Court that you didn't know anything about this
19 matter. But then on Monday when the group was asked if you
20 had any knowledge about this case, you stood up. Can you
21 tell me what you heard and where you heard it.

22 **A** All I know is from the newspaper and Channel 7.

23 **Q** And based on what you've read in the newspaper
24 and heard on Channel 7, have you formed an opinion of this
25 matter?

1 A No.

2 Q Will what you know about this matter have any
3 affect on your ability to render a fair decision?

4 A No.

5 Q You previously served on a jury, is that right?

6 A Yes.

7 Q It was a civil case. All right. You understand
8 this is going to be quite a bit different than that?

9 A Yes.

10 Q This case will be divided into two forms, you
11 understand that?

12 A Yes.

13 Q Now, ma'am, do you realize that in South Carolina
14 the death penalty is never mandatory?

15 A Yes.

16 Q Do you have a preconceived opinion as to the
17 death penalty?

18 A No.

19 Q Okay. Is there any time that you would always
20 vote for a death penalty?

21 A No.

22 Q Is there any time that you would always vote for
23 a life sentence?

24 A No.

25 Q All right. One last question, ma'am, if you are

1 seated on this jury and if the defendant is found guilty,
2 you are in a sentencing phase. If there are eleven jurors,
3 you being the twelve, eleven jurors who have decided that
4 the death penalty is proper. But based on what you heard
5 in this courtroom, your decision is that the proper
6 sentence should be life in prison. Can you stand your
7 ground and stay with that decision for life or would you be
8 swayed by the mere fact that those other eleven have voted
9 for death?

10 A I would have to stay with my opinion.

11 Q Thank you, ma'am.

12 MR. GOWDY: May it please the Court?

13 THE COURT: Yes, sir.

14 EXAMINATION

15 BY MR. GOWDY:

16 Q Good morning, Ms. Rogers.

17 A Morning.

18 Q How are you?

19 A Fine.

20 Q My name is Trey Gowdy. I'm with the Solicitor's
21 office here in Spartanburg. That is Donnie Willingham to
22 your left and Barry Barnett in the center. We are what
23 they call prosecutors. We will be prosecuting this case on
24 behalf of the State. I, too, want to thank you for filling
25 out the jury questionnaire. I know it asked a lot of

1 questions that we are not usually used to answering and
2 strangers don't usually ask one another. I'm going to be
3 as brief as I can. You mentioned that you used to work
4 with Celeste.

5 A Yes.

6 Q Do you mind if I ask you did y'all work closely
7 together. Do you consider yourself to be a friend of hers?

8 A Well, we didn't work close together. It was two
9 different departments. We might have went over every like
10 three months to help out on certain projects.

11 Q This was at BMG?

12 A Yes.

13 Q She is going to be a witness in this case. Is
14 there anything that arose as a result of y'all's working
15 relationship that would tend to make you view her testimony
16 differently than you would anybody else's?

17 A No.

18 Q Do you still have any contact with her?

19 A No.

20 Q Okay. What are your views or opinions on the
21 death penalty?

22 A I mean, you just have to take the case and view
23 and go from there.

24 Q Is it fair to say that based on religion or
25 politics or morality you are not automatically opposed to

1 it?

2 A Right.

3 Q And it is also fair to say that you don't
4 automatically like the old testaments says, an eye for an
5 eye and a tooth for a tooth. Every murder doesn't deserve
6 the death penalty.

7 A No.

8 Q Can you imagine that there are some murders that
9 do warrant the death penalty?

10 A Yes.

11 Q And if the State were able to prove to you that
12 this is one of those cases, would you be able to vote for
13 death?

14 A Yes.

15 Q And sign your name to a document and pass it up
16 to the judge saying that's what your position is?

17 A Yes.

18 Q I think Mr. Brennan asked you this question. If
19 he did, I apologize for asking again. I was trying to
20 write and think at the same time. I don't do that very
21 well sometimes. I have a note that you stood up and said
22 you had some prior knowledge of the case.

23 A Yes. Through the newspaper and Channel 7.

24 Q But whatever that prior knowledge was, you can
25 separate yourself from that and be a fair and unbiased

1 juror if you were picked in this case?

2 A Yes.

3 Q Thank you, Ms. Rogers. I appreciate you
4 answering my questions.

5 THE COURT: Ms. Rogers, would you mind stepping
6 in the hall for just a minute please, ma'am?

7 (WHEREUPON, Ms. Rogers exits at approximately
8 10:08 a.m.)

9 THE COURT: Any objection to her qualifications?

10 MR. BRENNAN: No, Your Honor.

11 MR. GOWDY: No, sir.

12 THE COURT: Bring her back in.

13 (WHEREUPON, Ms. Rogers enters at approximately
14 10:05 a.m.)

15 THE COURT: Ms. Rogers, I find that you are a
16 qualified juror to serve in this case. It's going to
17 be at least this afternoon possibly if not probably
18 tomorrow before we get ready for you to come back.
19 Please stay in touch with us by calling the telephone
20 number that you were given Monday morning. Some time
21 around lunchtime, we'll start putting some information
22 on there about when we think we're going to need you
23 back.

24 Keep in mind that I may sequester the jury in
25 which case, you will need to be ready to bring

1 clothing or whatever else you need for five or six
2 days to stay in a hotel. Continue to avoid talking to
3 anybody about this case or reading or hearing or
4 watching anything about this case. We look forward to
5 seeing you back here either this afternoon but
6 probably tomorrow. All right. Thank you, ma'am.

7 (WHEREUPON, Ms. Rogers exits at approximately

8 10:05 a.m)

9 **MR. WILLINGHAM:** Your Honor, we have a matter we
10 need to take up before the next juror.

11 **THE COURT:** All right. Go ahead.

12 **MR. WILLINGHAM:** Your Honor, I was looking through
13 the information and everything. I realize the RAP
14 sheet. This gentleman coming up has an active warrant
15 on him from Georgia. And I just verified that.

16 **THE COURT:** How do you -- do you propose that we
17 get Jack to come up here and put him in handcuffs and
18 take him on off to the detention center or what?

19 **MR. WILLINGHAM:** I don't know. Let me speak with
20 defense counsel real quick.

21 (WHEREUPON, there was a pause.)

22 **THE COURT:** That's going to be a shock to him.

23 **MR. WILLINGHAM:** That's why I'm bringing it up
24 now.

25 **THE COURT:** What do you say, Mr. Bartosh?

1 **MR. BARTOSH:** Well, I don't know what to say,
2 Your Honor. This is the first time anything like this
3 has ever come up. The guy's got an active warrant and
4 he's on the jury.

5 **THE COURT:** Well, setting aside for a moment the
6 interesting question of whether or not we either allow
7 or direct the warrant to be served, do we consider
8 putting him on the jury?

9 **MR. BARTOSH:** They may not come and get him.
10 That's the other thing. It's an identity charge.

11 **MR. WILLINGHAM:** It's an identity charge, whatever
12 that is, in Georgia. I don't know if that's false
13 information. I don't know what an equivalent would be
14 in our state.

15 **THE COURT:** I don't think it makes any difference
16 what it is. If he's not convicted of it, he is, as we
17 have been repeatedly asking everybody to recognize,
18 presumed innocent. But the question is, we are fixing
19 to put him on a jury. And law enforcement has got
20 something of a responsibility to serve on him a
21 warrant that they know to exist. In which case, he
22 would no longer be able to serve on a jury if he is in
23 custody. There's a hold on him right or what is it?

24 **MR. WILLINGHAM:** It's just on NCIC as an active
25 warrant from Georgia.

1 **THE COURT:** So how would y'all normally handle
2 that, Jack? You've got somebody who comes in as a
3 juror with an active warrant. You serve the warrant,
4 don't you?

5 **THE DEPUTY:** We've got to get the warrant and
6 serve it on him.

7 **THE COURT:** So you wouldn't do anything about it
8 right now?

9 **THE DEPUTY:** Put him in custody.

10 **THE COURT:** Huh?

11 **THE DEPUTY:** Yes, sir. Put him in custody and get
12 a warrant and serve it on him.

13 **THE COURT:** Normally, you would take him into
14 custody right now?

15 **THE DEPUTY:** Right, if they'll extradite him.

16 **MR. BARTOSH:** See that's --

17 **THE DEPUTY:** I can verify that within our
18 department. I can check and verify that he's got to.

19 **MR. BARTOSH:** Could we do that, Your Honor, and
20 see if Georgia has any intention of coming to get him
21 if he is in custody?

22 **THE COURT:** How quickly can you verify that?

23 **THE DEPUTY:** In a minute.

24 **THE COURT:** All right. Why don't we just get the
25 next juror then.

1 **THE BAILIFF:** So Your Honor, you want to skip this
2 juror?

3 **THE COURT:** We will go to Kevin Cartledge if that
4 suits you all.

5 **MR. BARTOSH:** Yes, sir.

6 **MR. GOWDY:** Your Honor, with Mr. Bartosh's
7 permission, can I pass up two letters that Former
8 Solicitor Gossett handed me in connection with jurors
9 coming up this afternoon? There are letters from
10 doctors that he wanted me to make available to the
11 Court.

12 **THE COURT:** I prefer to see them when they come
13 up. You've shown them to him?

14 **MR. GOWDY:** He knows about them.

15 **THE COURT:** All right.

16 (WHEREUPON, Kevin Cartledge, Juror number 49, enters
17 at approximately 10:09 a.m.)

18 **KEVIN CARTLEDGE**

19 having previously been sworn, testified as follows:

20 **EXAMINATION**

21 **BY THE COURT:**

22 **Q** Mr. Cartledge?

23 **A** Yes, sir.

24 **Q** Good morning.

25 **A** How are you doing?

1 Q How are you doing?

2 A All right.

3 Q Did you, uh, did you put that shirt in the wash
4 with something that faded on it? Those shirts are not
5 normally brown. Are they?

6 A No, sir.

7 Q I'm just kidding you. You recall that we put
8 you under oath Monday morning?

9 A Yes, sir.

10 Q You understand you are still under oath right
11 now?

12 A Yes, sir.

13 Q Since you left us Monday afternoon, has anyone
14 talked to you about this case or have you talked to anybody
15 about this case?

16 A No, sir.

17 Q Have you learned or heard or listened to or
18 watched anything about this case?

19 A No, sir.

20 Q We're going to ask you some questions now. We
21 don't mean to try to pry too deep in your private life but
22 we do have to ask you these questions. These questions
23 don't have right or wrong answers. We just want you to be
24 open and honest with us and tell us how you think and how
25 you feel.

1 We going to talk about a possible sentencing phase.
2 The fact that we're going to talk about a sentencing phase
3 does not mean anything about this defendant or about this
4 case. It just means that we recognize that we might get
5 to the sentencing phase and we need to ask you some
6 questions about some issues that will come up so we know
7 how you think and how you feel.

8 If you are a juror in this case, can you accept and
9 apply the law precisely as I will give it to you and render
10 a verdict based solely on the testimony and the evidence
11 that you hear in this courtroom disregarding anything that
12 you may have known or heard before you got here?

13 A Yes, sir.

14 Q You understand that in a criminal case, the State
15 has the burden of proof and must prove the defendant guilty
16 beyond a reasonable doubt?

17 A Yes, sir.

18 Q You understand that this is a murder case?

19 A Yes, sir.

20 Q Could you, depending on the facts and
21 circumstances you find to have been proven and in light of
22 the law as I will give it to you, could you find the
23 defendant either guilty or not guilty depending on whether
24 or not you think the State has met its burden of proof?

25 A Yes, sir. I can.

1 Q If you are a juror in this case and the jury
2 finds the defendant guilty of murder, we will move into a
3 sentencing phase. In the sentencing phase, some other
4 issues are going to come up. I'm going to talk to you
5 about those now.

6 Aggravating circumstances are facts, incidences or
7 details of an occurrence that the State of South Carolina
8 has declared to aggravate or to make worse the crime of
9 murder. Aggravating circumstances increase the enormity
10 of the crime or add to the injury that is caused by the
11 crime.

12 Mitigating circumstances, on the other hand, are
13 facts, incidences or details of an occurrence that the
14 State of South Carolina has declared to reduce the severity
15 of the crime of murder. They serve to extenuate or to
16 reduce the moral culpability or responsibility for the
17 crime.

18 Could you, well, hold on a second. If you are a juror
19 in the sentencing phase of this case, you would have two
20 options as to what your verdict could be. You could have
21 a verdict for the life sentence. Or you can have a
22 verdict for the death penalty. Could you, depending on
23 the facts and circumstances that you find to exist
24 considering any aggravating or mitigating circumstances and
25 considering the law as I give it to you, could you vote to

1 impose a life sentence?

2 A Yes, sir.

3 Q Could you vote to impose the death penalty?

4 A Yes, sir.

5 Q If you are a juror in this case and I sequester
6 the jury and put you in a hotel for five or six days, is
7 that going to impose a terrible hardship on you?

8 A No, sir.

9 Q Have you had a chance to go over the witness list
10 that I gave you this morning?

11 A Yes.

12 Q Do you know anybody or are related to anybody on
13 that list?

14 A No.

15 Q Do you know of any reason why you cannot be a
16 fair and impartial juror in this case?

17 A I went to school with --

18 Q With the defendant?

19 A Yes.

20 Q With Mr. Lindsey?

21 A Yes, sir.

22 Q Tell me about that. Well, I'll tell you what, is
23 there any other reason other than that?

24 A No, sir.

25 Q I'm going to let the lawyers ask you about that.

1 I'm going to let them ask you those and some other
2 questions right now. All right, sir.

3 **MR. BRENNAN:** May it please the Court, Your
4 Honor.

5 **EXAMINATION**

6 **BY MR. BRENNAN:**

7 **Q** Mr. Cartledge, how are you doing this morning?

8 **A** All right.

9 **Q** My name is Doug Brennan. I am an attorney from
10 here in Spartanburg. Myself, Mr. Mike Bartosh and Ms.
11 Quimby have the opportunity to represent Mr. Lindsey.
12 You mentioned that you went to school with Mr. Lindsey at
13 some point?

14 **A** Yes, sir.

15 **Q** Would you tell us where.

16 **A** Junior High.

17 **Q** You remember what grade? How long of a period
18 of time?

19 **A** We had our 10-year anniversary, I mean my 10-year
20 class reunion this year.

21 **Q** Okay.

22 **A** It was about seventh or eighth-grade.

23 **Q** Do you remember when you were in the 7th or 8th
24 grade spending time with Mr. Lindsey?

25 **A** No.

1 Q You spent time with him?

2 A No, just his face and name.

3 Q The fact that you knew him back then, would that
4 affect your ability to render a fair decision in this
5 manner?

6 A No.

7 Q You remember anything in particular about Mr.
8 Lindsey from the 7th or 8th grade?

9 A No.

10 Q On your questionnaire, there was some questions
11 about have you or any family members ever being arrested by
12 the Spartanburg County Department or the Inman Police
13 Department. You put no on the questionnaire. But then
14 when asked that question Monday in the general pool, you
15 stood up?

16 A Right.

17 Q I'm sure that you just thought of something since
18 you filled that out. And that's fine. But can you tell me
19 who it was that was arrested and by which department?

20 A Spartanburg County. My uncle has been and my
21 dad has been.

22 Q How long ago has those arrest been?

23 A It has been a while.

24 Q Because your dad and your cousin have been
25 arrested by the Sheriff's Department has that biased your

1 opinion maybe against the State?

2 A No.

3 Q You can put that aside and still be fair and
4 listen to the evidence that is presented here in court?

5 A Yes.

6 Q You put that you get your news from the upstate..
7 Was that the upstate section of the Spartanburg Herald?
8 What does the upstate mean?

9 A On the computer.

10 Q Upstate.com?

11 A Yes.

12 Q Gotcha. How long have you served in the army?

13 A Six years.

14 Q Do you have an opinion about the death penalty?

15 A No.

16 Q So you weren't -- you haven't -- did your service
17 in the army affect your thinking on the death penalty?

18 A No.

19 Q You understand that in South Carolina the death
20 penalty is never mandatory?

21 A Yes, I understand.

22 Q Will you be able to sit in the jury box if you
23 should be seated in the jury and listen to the evidence
24 presented by both the State and the defense and make your
25 decision should we get to the sentencing phase as to life

1 or death?

2 A Yes.

3 Q Is there a case that you will always vote for
4 death?

5 A No.

6 Q Is there a case that you will always vote for
7 life?

8 A No.

9 Q My last question is, if you were on the jury and
10 we were on the sentencing phase and you were in the jury
11 room deliberating, the other eleven jurors have all made
12 their decision. And their decision is the death penalty
13 is proper. But based on what you have heard, you decided
14 that life was proper. Can you stand your ground and
15 maintain your vote of life and not be swayed by the mere
16 fact that those other eleven have voted for death?

17 A Yes.

18 Q You can stand your ground?

19 A Yes.

20 Q Nothing further.

21 MR. WILLINGHAM: May it please the Court, Your
22 Honor.

23 THE COURT: Yes, sir.

24 EXAMINATION

25 BY MR. WILLINGHAM:

1 **Q** Mr. Cartledge, my name is Donnie Willingham.
2 This is Barry Barnett. This is Mr. Gowdy. We will be the
3 prosecutors on this case. I want to follow-up a little bit
4 about, you said you have family members that have been
5 arrested by the Sheriff's office?

6 **A** Yes.

7 **Q** You said your dad and the uncle?

8 **A** Yes.

9 **Q** What were they arrested for?

10 **A** My dad, assault with his hands.

11 **Q** Were those things that were prosecuted in
12 magistrate's court or did they come to big court, do you
13 know?

14 **A** I am not sure.

15 **Q** As far as you know, were they treated fairly by
16 the sheriff's office?

17 **A** Yes.

18 **Q** If a prosecutor was involved, they were treated
19 fairly?

20 **A** Yes, sir. That I know of.

21 **Q** I just want to make sure. We've got sheriff's
22 deputies that are going to be testifying in this case. I
23 just want to know if they were treated fairly and if they
24 didn't leave a bad taste in your mouth based on that
25 experience.

1 **A** Yes.

2 **Q** And you could be fair?

3 **A** Yes, I can be.

4 **Q** I also want to ask about your relationship with
5 Mr. Lindsey. You said you went to school with him?

6 **A** Just passing.

7 **Q** Did you have classes together?

8 **A** No.

9 **Q** Now, if we get to the penalty phase, the State is
10 going to be asking the jury to put Marion Lindsey to death
11 as the appropriate punishment. Do you realistically think
12 that you can sit in judgment of somebody that you knew
13 before you came in here today?

14 **A** Yes.

15 **Q** You would not hold that against us the fact that
16 you knew him?

17 **A** No.

18 **Q** You would not hold it against him?

19 **A** No.

20 **Q** I understood in your questions earlier that you
21 could vote for life or death either way depending on the
22 circumstances?

23 **A** Yes.

24 **Q** There is going to be a form that you are going to
25 have to sign at the end of the phase. You are going to

1 have to put your name down on a piece of paper saying that
2 you believe that the death sentence would be appropriate.
3 Could you sign your name on that form?

4 A Yes.

5 Q I believe Mr. Brennan asked you what your opinion
6 on the death penalty was and I don't know if I remember or
7 heard your answer. What was your answer?

8 A If it is applicable, yes.

9 Q You understand the death penalty is never going
10 to be required?

11 A Right.

12 Q The judge would never tell you you have to impose
13 the death penalty. No other juror will tell you you have
14 to impose the death penalty. You will always have a choice
15 between life without parole and death. Now understanding
16 you have that choice, could you still impose the death
17 penalty in certain circumstances?

18 A Yes.

19 Q Where do your views on the death penalty come
20 from?

21 A Where my --

22 Q Is it church or is it life experience? Where
23 does it come from?

24 A Just life experiences.

25 Q Have you thought about it much before you came in

1 this court?

2 A No.

3 Q Have you talked to your friends or family members
4 about it?

5 A Yeah, in conversation.

6 Q What has been the topic of that conversation that
7 had taken place?.

8 A If the situation is for it, yes. That wasn't my
9 decision at the time. But if I had to make the decision,
10 yes.

11 Q I don't think I understand that answer. I may
12 just be slow. But tell me what you mean by that. At the
13 time, that was not your decision but now?

14 A In general conversation.

15 Q Okay.

16 A Not this case. Certain other cases.

17 Q Okay.

18 A If it was applicable to it, yes.

19 Q You think you can do it?

20 A Yes.

21 Q Thank you.

22 THE COURT: Mr. Cartledge, do you mind
23 stepping out in the hall for just a second please.

24 (WHEREUPON, Mr. Cartledge exits at approximately
25 10:22 a.m.)

1 **THE COURT:** Any objection to his
2 qualifications?

3 **MR. BRENNAN:** None, Your Honor.

4 **MR. WILLINGHAM:** No, sir.

5 **THE COURT:** Bring him in please.

6 (WHEREUPON, Mr. Cartledge enters at approximately
7 10:22 a.m.)

8 **THE COURT:** I find that you are qualified to
9 serve as a juror in this case. We will not need you
10 to come back until at least this afternoon, possibly
11 tomorrow. Please stay in touch with us by calling
12 the telephone number that you were given on Monday
13 morning. Beginning sometime after lunch today or
14 shortly after lunch, we will start putting some
15 information on that recording as to when we would need
16 you back.

17 Remember you may be sequestered. You may need
18 to be ready to bring clothes for five or six days so
19 that you can stay in hotel. You will not be allowed
20 to stay home. Remember not to discuss the case with
21 anyone, not to allow anyone to discuss the case with
22 you. Do not read, listen to or watch anything about
23 this case. We look forward to seeing you either this
24 afternoon or tomorrow. Have a good day.

25 (WHEREUPON, Mr. Cartledge exits at approximately

1 10:23 a.m.)

2 MR. BARNETTE: May it please the Court, Your
3 Honor.

4 THE COURT: Yes, sir.

5 MR. BARNETTE: On Mr. Reese, Your Honor, the
6 jail was nice enough to inform us that they would not
7 extradite on that charge.

8 THE COURT: So that means they will not pick him
9 up?

10 MR. BARNETTE: They will not pick him up. Yes,
11 sir.

12 THE COURT: Well, y'all want to go ahead and
13 qualify him or seek to.

14 MR. GOWDY: Did he represent on his
15 questionnaire that he had a pending warrant, Your
16 Honor?

17 THE COURT: He may not know.

18 MR. GOWDY: I can see why not with this RAP
19 sheet. I'm sure it gets confusing.

20 THE COURT: Does he have a long RAP sheet?

21 MR. GOWDY: As many charges as he's got.

22 THE COURT: He doesn't have anything that
23 disqualifies him though, does he? Any convictions?

24 MR. BARNETTE: May we approach the bench?

25 THE COURT: Yes, but let's keep it on the

1 record.

2 MR. BARNETTE: Yes, sir. I just need to show
3 you the RAP sheet and then we'll put it on the record.

4 THE COURT: Okay.

5 MR. BARNETTE: On his questionnaire, he admitted
6 to CDV, DUI and DUS, Your Honor. But he also has, in
7 Florida, he has a cocaine charge that was not
8 mentioned. He had been arrested for it. He had never
9 been charged.

10 THE COURT: Was he convicted of it?

11 MR. BARNETTE: It does not show disposition.

12 THE COURT: Did we talk to him about this on
13 Monday?

14 THE CLERK: Cartledge?

15 THE COURT: No, not Cartledge, Reese.

16 THE CLERK: No.

17 MR. BARNETT: Let me double check. I don't think
18 he stood up.

19 THE CLERK: He never.

20 MR. WILLINGHAM: No, he didn't. I rechecked
21 that.

22 THE COURT: Didn't stand up about what?

23 MR. BARNETTE: When you asked the question about
24 being charged before with anything. He did admit to
25 DUI, DUS, and CDV on his questionnaire. He did not

1 mention anything about the cocaine charge in Florida,
2 obviously not the one in Georgia.

3 **THE COURT:** Are any of those convictions?

4 **MR. GOWDY:** The Georgia one is not. The one
5 in Florida does not show a conviction.

6 **MR. BARTOSH:** We can ask him. Perhaps he
7 thought it was convictions.

8 **THE COURT:** Huh?

9 **MR. BARTOSH:** Perhaps he thought it was
10 convictions.

11 **THE COURT:** All right. I'm just going to go
12 ahead and go through it normal. And let you do what
13 you want to do.

14 **MR. BARTOSH:** Thank you.

15 **MR. BARNETTE:** Thank you, Your Honor.

16 **THE COURT:** Bring him in.

17 (WHEREUPON, Kenneth Reese, Juror number 224, enters at
18 approximately 10:26 a.m.)

19 **KENNETH REESE**

20 having previously been sworn, testified as follows:

21 **EXAMINATION**

22 **BY THE COURT:**

23 **Q** Mr. Reese, good morning.

24 **A** Good morning.

25 **Q** You recall that we put you under oath on Monday

1 morning?

2 A Yes, sir.

3 Q And you are still under oath right now. You
4 understand that?

5 A Yes, sir.

6 Q Have you talked to anybody about this case or has
7 anybody talked to you about this case since Monday
8 afternoon?

9 A No, sir. I have not.

10 Q Have you learned anything or read anything or
11 watched anything or heard anything about this case?

12 A No, sir.

13 Q We're going to ask you some questions now.
14 These questions don't have right or wrong answers. We
15 just want you to be open and honest with us and tell us how
16 you think or how you feel. We going to talk about a
17 possible penalty phase. But because we're talking about
18 that, does not mean anything about this defendant or about
19 this case. It just means that we may get to that phase.
20 And we need to ask you some questions about some issues
21 that may come up if we do.

22 A Yes, sir.

23 Q If you are a juror in this case, can you accept
24 and apply the law precisely as I give it to you and render
25 a verdict based solely on the testimony and evidence that

1 you see and hear in this courtroom disregarding anything
2 that you learned or heard or seen before the trial started?

3 A Yes, sir.

4 Q You understand that in a criminal case such as
5 this the State has the burden of proving the defendant
6 guilty beyond a reasonable doubt?

7 A Yes, sir.

8 Q You understand this is a murder case?

9 A Yes, sir.

10 Q Can you, depending on the facts and circumstances
11 that you find to have been proven and in light of the law
12 as I will give it to you, can you vote, can you find the
13 defendant either guilty or not guilty depending on whether
14 or not you think the State has met its burden of proof?

15 A Yes, sir.

16 Q If this case gets into a sentencing phase, there
17 are some other issues that will come up. I will talk to
18 you about those now. Aggravating circumstances are facts,
19 incidents or circumstances that the State has declared to
20 aggravate or to make worse the crime of murder.
21 Aggravating circumstances increase the enormity of the
22 crime of murder and add to the injury from the crime.

23 Mitigating circumstances, on the other hand, are facts
24 instances or details of an occurrence that the State of
25 South Carolina has declared to lessen the severity of the

1 crime of murder. They may be considered as extenuating or
2 as reducing the degree of moral culpability or
3 responsibility for the crime. If you are a juror in the
4 sentencing phase of a death penalty phase, you will have
5 two options is what your verdict could be. Your verdict
6 can be for a life sentence, or the verdict can be for the
7 death penalty.

8 Could you, depending on the facts and circumstances
9 that you find to exist, considering any aggravating or
10 mitigating circumstances, considering the law that I will
11 give to you, could you vote to impose a life sentence?

12 A Yes, sir.

13 Q Could you vote to impose the death penalty?

14 A Yes, sir.

15 Q If you are on this jury and if I sequestered the
16 jury and if I put you up in hotel and don't let you go home
17 for five or six days, is that going to impose a terrible
18 burden on you?

19 A No, sir.

20 Q Have you had a chance to go over the witness list
21 that I gave to you?

22 A Yes, sir.

23 Q Do you know anybody or are you related to anybody
24 on that list?

25 A No, sir. Not by name.

1 Q You don't recognize any one of those?

2 A No, sir.

3 Q Do you know of any reason why you could not give
4 the State and the defendant a fair and impartial trial?

5 A No, sir.

6 Q All right. I'm going to let the lawyers ask you
7 some questions. . I may ask you some more in a minute.

8 **EXAMINATION**

9 **BY MR. BARTOSH:**

10 Q Mr. Reese, I'm Mike Bartosh from the Public
11 Defender's office. And along with Karen Quimby and Doug
12 Brennan, we represent Marion Lindsey in this case today.
13 There are just a few questions I would like to ask you from
14 the answers you gave us on the questionnaire.

15 A Okay.

16 Q You are working now?

17 A Yes, sir.

18 Q You do contracting work?

19 A I'm a carpenter. Yes, sir.

20 Q You work for yourself?

21 A Yes, sir.

22 Q You do subcontracting?

23 A Uh-huh (affirmative).

24 Q You say you have a six grade education?

25 A Yes, sir.

1 Q Can you read and write?

2 A Very well..

3 Q Since you are in the contracting business, you
4 frame houses?

5 A Yes.

6 Q You able to make due with that?

7 A Yes, sir.

8 Q You have no trouble with that?

9 A No.

10 Q Do you know or have you heard anything about this
11 particular case?

12 A No, I have not.

13 Q You know nothing about it?

14 A No.

15 Q The one thing you did put on your application too
16 is that you have a hearing problem.

17 A It was when I was a child. I had surgery.

18 Q It has corrected it?

19 A It is well taken care of.

20 Q You don't have any problems with that?

21 A No, sir.

22 Q Just a few more questions, Mr. Reese. You get
23 your news mostly from Channel 7?

24 A When I watch it, yes, sir. I hardly do.

25 Q All right. Now as the judge explained to you,

1 this is going to be a, if it goes all the way, it is going
2 to be two-part process. The first part is just like a
3 normal trial. The jurors will sit there. The State will
4 present evidence. And it has the burden of convincing all
5 twelve jurors beyond a reasonable doubt that Mr. Lindsey
6 is guilty of murder. If they do not carry the burden or
7 if the jury does not believe that they carried the burden
8 and they find Mr. Lindsey is not guilty of murder, we all
9 go home, okay.

10 However if it does, if the jury does find that the
11 State has met its burden beyond a reasonable doubt, then we
12 move into the second phase. In that phase, that is to
13 decide what the penalty should be. There are only two
14 penalties. There's life in prison. When we say life in
15 prison now in this state, we means life in prison. He
16 would die in the Department of Corrections. No parole.

17 Or death. Of course, death will either be by lethal
18 injection or electrocution. But those are the two
19 possibilities. However, there never has to be -- death is
20 never mandated. You always have the option of choosing
21 life. Okay?

22 A Uh-huh (affirmative).

23 Q What the State will do is they will present what
24 they consider to be aggravating circumstances.
25 Circumstances that make the murder worse. Of course they

1 will be doing that to try to convince the jury that the
2 death penalty is the appropriate penalty. Of course what
3 we are going to be doing is we're going to be presenting
4 mitigating circumstances or circumstances we feel mitigate
5 or lessen the culpability of Mr. Lindsey in this matter.

6 If you're chosen, you're going to be sitting over
7 there listening to all of that testimony both from the
8 State and from the defense. Would you be able to keep an
9 open mind during the entire process, even all the way
10 through from the trial, from the guilt phase to the penalty
11 phase, and just base your decision on what you hear in this
12 courtroom and what you hear from that witness box.

13 A Yes, sir.

14 Q Would you be able to do that?

15 A Yes, sir.

16 Q Would you be fair to both sides?

17 A Very fair.

18 Q As you know under our system of the laws and it
19 is not just the legal fiction, it is a real and substantial
20 right that everybody enjoys no matter what they are charged
21 with. As Mr. Lindsey sits there, he is presumed innocent
22 of this crime.

23 A Yes, sir.

24 Q He is entitled to the presumption until the jury
25 decides he is no longer entitled to it. Would you accept

1 that?

2 A Yes, sir.

3 Q Okay. If we go to a guilt phase, if it comes time
4 and the decision is death, everyone on the jury is going to
5 have to sign the sentencing sheet. Let's suppose that all
6 eleven that signed the sheet voted for death. They passed
7 the sheet to you. You are going to be the last, the 12th
8 juror that signs, knowing that once you put your name to
9 that, you have condemned Mr. Lindsey to death. Could you
10 do that?

11 A Yes, sir.

12 Q Okay. Do you believe that you are -- what are
13 your views on the death penalty? Let me ask you that.

14 A I never really thought about it much. I thought
15 it all depends on the nature of the crime and things of
16 that nature. Personally you don't want to put anybody to
17 death. But if that is what it comes down to and that's the
18 way I feel about it, that's the way I'll pick.

19 Q If you feel the case warrants it, you would do
20 it?

21 A Yes, sir.

22 Q If you don't feel the case, the facts and
23 circumstances warrant the death penalty, you will vote for
24 life?

25 A (Nods head affirmatively.)

1 **Q** But you will base it up what you hear?

2 **A** The facts.

3 **MR. BARTOSH:** That's all I have.

4 **MR. BARNETT:** May it please the Court, Your
5 Honor.

6 **THE COURT:** Yes, sir.

7 **EXAMINATION**

8 **BY MR. BARNETT:**

9 **Q** Mr. Reese, my name is Barry Barnett. Along with
10 Trey Gowdy and Donnie Willingham, we are prosecuting this
11 case for the State. I just want to follow up on some
12 questions that Mr. Bartosh asked you. You said, I don't
13 want to put anybody to death. What's the basis of your
14 view on that or the basis for that statement?

15 **A** The basis for that statement is no man wants to
16 kill anybody. You know what I mean?

17 **Q** Uh-huh (affirmative).

18 **A** Like you said, if the facts show that that's what
19 it is, then that's what it is.

20 **Q** Let me ask you this. If you came and there was
21 eleven people that were going to vote for death and they
22 signed what they call the end of the case and what we call
23 the death penalty, and you are the twelfth name and you've
24 got to sign that form knowing that you're going to be the
25 twelfth person signing it and then handing it to the Judge.

1 The Judge doesn't have anything to do with the sentencing
2 phase. It would have to be the jury. Based on what you
3 feel like, do you feel like you can sign that under those
4 circumstances?

5 A Yes, sir. If I thought the facts were leading to
6 that and that's what it was, that's what I would vote for.

7 Q Let me ask you this. I was going through your
8 form and everything. I noticed Mr. Bartosh asked you
9 about your, is it your left ear?

10 A Yes, sir.

11 Q Are you still having trouble hearing out of that?

12 A No, sir.

13 Q I know you wrote it down on your questionnaire.
14 And you been working at the time this was filled out,
15 working construction --

16 A Yes, sir.

17 Q -- at the time you filled this out. Are you
18 still working for them?

19 A No, sir. We finished the house last week.

20 Q Okay. Where do you live at Mr. Reese?

21 A In Pacolet.

22 Q In Pacolet. What other places have you lived
23 before that?

24 A I traveled with a carnival for a lot of my life.

25 Q You lived with a carnival. So you went through

1 different stages..

2 **A** That's right.

3 **Q** You ever been to Florida?

4 **A** Yes, sir. I have.

5 **Q** And I think you were born in Memphis, is that
6 right?

7 **A** Yes, sir.

8 **Q** And the judge asked a question about if you been
9 convicted or whatever or been charged before or whatever.
10 I noticed you didn't stand up.

11 **A** No.

12 **Q** And you have been charged with offenses, isn't
13 that correct?

14 **A** Yes, but not for over a year. It's never been
15 for anything more than a year.

16 **Q** You remember the judge specifically asking
17 questions about CDV?

18 **A** Yes, sir.

19 **Q** About all of that. You didn't stand up at that
20 time, did you?

21 **A** No.

22 **Q** But you had been convicted of those offenses.

23 **A** One CDV, yes.

24 **Q** And you've been convicted of Driving under the
25 Influence and Driving under Suspension. Is that right?

1 A Uh-huh (affirmative).

2 Q And in Florida, you've been charged with cocaine?

3 A Yes, sir.

4 Q Why didn't you put that on your form or why
5 didn't you inform the Judge of that on Monday?

6 A Well, he was potentially going towards family and
7 friends and such. I didn't know it was directly towards
8 individuals.

9 Q You realize your questionnaire said you.

10 A Uh-huh (affirmative).

11 Q And family and friends, you would think that
12 would also apply to you, isn't it? But you didn't stand
13 up.

14 A Uh-huh (affirmative).

15 Q Is there any other offenses that you've been
16 charged with that you didn't tell the Court about?

17 A Not that I know of, sir. I mean, I traveled a
18 lot and done a lot of things.

19 Q You been charged with simple assault before?

20 A Assault and battery, yes.

21 Q And you didn't put that on your application, I
22 mean, on your questionnaire, did you?

23 A I don't guess.

24 Q You didn't inform the Court about that either,
25 did you?

1 **A** (Shakes head negatively.)

2 **Q** Thank you, Mr. Reese, for answering my
3 questions.

4 **MR. BARNETT:** Thank you, Your Honor.

5 **THE COURT:** Mr. Reese, let me get you to step out
6 in the hall for just a second please.

7 (WHEREUPON, Mr. Reese exits at approximately
8 10:41 a.m.)

9 **THE COURT:** I noticed on his form, he said he did
10 not make it pass the sixth grade. Did we ask him
11 about that?

12 **MR. BARTOSH:** I asked him in the --

13 **THE COURT:** Just now?

14 **MR. BARTOSH:** Just now.

15 **THE COURT:** He said he finished the sixth grade.

16 **MR. BARTOSH:** He said he finished the sixth
17 grade if I remember correctly, Your Honor. He said he
18 could read and write very well.

19 **THE COURT:** I heard that.

20 **MR. BARNETT:** Your Honor, he didn't put that on
21 his application.

22 **MR. BARTOSH:** He did or did not?

23 **MR. BARNETT:** Did not.

24 **MR. BARTOSH:** We have it on our --

25 **THE COURT:** It's on his juror information card.

1 What's the -- what's the -- I think I know the State's
2 position.

3 **MR. BARNETT:** Yes, sir. I mean, he had --

4 **THE COURT:** What's the defendant's position?

5 **MR. BARTOSH:** Your Honor, he's qualified.

6 **MR. BARNETT:** No, sir. He's not. Here he's
7 lied. He said he made it -- he said I did not make it
8 past the sixth grade. That's on his form. That's
9 been pointed out. He told Mr. Bartosh he did make it
10 past the sixth grade. He did not stand up during your
11 question. His conviction in Florida --

12 **THE COURT:** We don't know if it is a conviction,
13 do we?

14 **MR. BARNETT:** A charge alone on top of that. He
15 did not stand up during your questioning about CDV
16 specifically on Monday.

17 **THE COURT:** Before -- there's no doubt in my mind
18 after watching him and listening to him and talking to
19 him today that he concealed information not
20 accidentally. You are saying that that disqualifies
21 him?

22 **MR. BARNETT:** Yes, sir. Cause he has to follow
23 your instructions. I don't think he has.

24 **THE COURT:** Let's see if we can't avoid making up
25 any law and let's see if we can't find some law that

1 says that misrepresenting some fact during jury
2 qualification is grounds for disqualification of a
3 juror.

4 **MR. BARNETT:** Yes, sir. Your Honor, the other
5 thing too is if he's being dishonest on this, how do
6 we know he's honest on the rest of his answers.
7 That's the problem with qualifying him as a juror. We
8 have to have honest answers, just like we had the
9 juror yesterday, Mr. Poole.

10 **THE COURT:** I fully understand all of that. I've
11 got this disability that I operate under most of the
12 time. That is, I want to know what the law is before
13 I rule.

14 **MR. BARNETT:** Yes, sir.

15 **THE COURT:** And I can see how the law ought to be
16 that if he lies, he ought to be disqualified. But I
17 want to see it on paper.

18 **MR. BARNETT:** Yes, sir.

19 **MR. GOWDY:** You want a case that it is not an
20 abuse of your discretion to disqualify a juror for
21 misrepresentation during the voir dire process?

22 **THE COURT:** Well --

23 **MR. GOWDY:** I think the standard is clearly
24 it's within your discretion as to whether or not -- I
25 mean, inconsistent answers alone is a basis for Your

1 Honor to disqualify a juror. That alone.

2 **THE COURT:** No, that's not correct. Inconsistent
3 answers when they relate to a subject that is such
4 that it might cause me to question whether his belief
5 will substantially interfere with his ability to carry
6 forth my instructions as a juror, that disqualifies
7 him.

8 But if he says something like I have a hearing
9 problem in my left ear, but it was taken care of in an
10 operation many years ago, but now I hear crying, but
11 only two months ago, he wrote on his application, on
12 his questionnaire that he can't hear out of his left
13 ear, that is not an inconsistency that is going to by
14 itself disqualify him. It is perhaps evidence of
15 dishonesty. Then the dishonesty might disqualify him.
16 That's what I want to explore.

17 **MR. GOWDY:** Well, I was incorrect to use the
18 word inconsistency when I should have used the word
19 dishonesty. That is in fact what we are talking
20 about.

21 **THE COURT:** Okay. All right.

22 **MR. BRENNAN:** Your Honor, I believe it's going
23 to be State versus Kelly. Both the trial judge must
24 ask the potential juror whether a biased opinion
25 against any party is expected and required of the

1 juror. When answered truthfully that they would
2 expose in general questioning any matters that could
3 potentially disqualify them from the case for any
4 reason, it is therefore imperative that the juror's
5 answers be truthful and complete.

6 **THE COURT:** Let me see that. You've got a copy of
7 the case or is that just --

8 **MR. BRENNAN:** We've got a --

9 **THE COURT:** I can tell you that I'm very concerned
10 about his credibility. I'm particularly concerned
11 about the fact that he didn't reveal that cocaine
12 charge down in Florida. That is an important fact
13 that both sides would want in evaluating whether or
14 not they should exercise peremptory challenge. And
15 the fact that he didn't disclose that and that he was
16 inconsistent in his answers about his hearing problem
17 which also is a fact that both sides would want to
18 know.

19 I'm a little concerned about the hearing problem,
20 that maybe he really doesn't hear out of one ear. But
21 then once he got in here, he decided that he wanted to
22 be on this jury. And so he's trying to take away
23 anything that might cause somebody to strike him. So
24 now, he does hear out of both ears.

25 Mr. Barnett questioned him about the charge down

1 in Florida. And then, set him up, very properly by
2 asking him are there any other charges that you
3 haven't told us about. He said not that I know of.
4 And of course, Mr. Barnett knew there was an assault
5 and battery charge from Florida. So Mr. Barnett
6 asked him about that. He said, Oh, yeah. I do have
7 an assault and battery. Did I get that wrong, Mr.
8 Barnett?

9 MR. BARNETT: No, sir. You are correct.

10 MR. GOWDY: And the domestic violence. He
11 has a conviction.

12 MR. BARTOSH: He revealed that though.

13 MR. GOWDY: Not yesterday, not Monday, he
14 didn't.

15 MR. BARTOSH: It's in his --

16 THE COURT: It's in his form.

17 MR. BARNETT: It's in his form.

18 MR. BARTOSH: Yeah, as Mr. Gowdy pointed out
19 when we were discussing the question about the arrest,
20 with a RAP sheet like that, perhaps it does get
21 confusing. I know what my view of the facts and
22 evidence are. I just want to see the law before I
23 rule.

24 MR. BRENNAN: Yes, sir. State versus Kelly.

25 THE COURT: Do you know Mr. Kelly?

1 **MR. BARTOSH:** Very well.

2 **THE COURT:** Should we call him and consult him
3 about the facts and the legal conclusions in the
4 opinion?

5 **MR. BARTOSH:** The facts in that case, Your
6 Honor, was that the foreman of the jury had failed to
7 disclose that when he was a student in Winthrop, he
8 had chartered a bus to go down to a Roaches execution.
9 There was a photograph in the paper where he was
10 holding up a paper saying "CCI Where Roaches Check In
11 but Don't Check Out".

12 **THE COURT:** Okay.

13 **MR. BARTOSH:** I know Mr. Kelly --

14 **THE COURT:** I am going to take a break and go
15 and read this case.

16 **MR. BARTOSH:** I know Mr. Kelly very well.

17 **THE COURT:** Thank y'all.

18 (WHEREUPON, a short recess was taken at approximately
19 10:47 a.m.)

20 (WHEREUPON, the Court resumed at approximately
21 10:56 a.m.)

22 **THE COURT:** All right. You know, Kelly and
23 Gulledge are cases where the situation arose after the
24 jury had been seated and the State -- or in that case
25 or in those two cases, the defendant had missed their

1 opportunity to exercise peremptory challenges based on
2 a complete set of information. Now, I think that is a
3 significant distinction to this situation.

4 What the Supreme Court says in Kelly is that the
5 Court's inquiry, and this was afterwards, focuses on
6 the type of information that was concealed not on the
7 fact that the information was concealed. So it might
8 be kind of like a Brady violation. If it comes up
9 before trial, there's no harm. If it comes up after
10 trial, then you have to go through this analysis to
11 see whether it was prejudicial to the defendant.

12 At this point, at least you think you know
13 everything he did not say. It is true there maybe
14 other stuff out there that he had not told you that he
15 was supposed to tell you. I don't know. I am
16 concerned that I don't have the authority to
17 disqualify him for lying. So I am not going to do
18 that until I'm satisfied that I can.

19 **MR. BARNETT:** The only thing I would ask, he is
20 under oath, if he is lying, he committed a perjury.
21 To me, there is no question that he should be
22 disqualified based on that.

23 **MR. GOWDY:** Your Honor, not only do I think
24 you have the authority to disqualify him, I think you
25 have to power to order him in contempt of court.

1 **THE COURT:** That's another thing I thought of
2 a minute ago. I can certainly disqualify him by
3 putting him in the detention center for about 60 days,
4 then he cannot serve. But let's just -- we're not in
5 any hurry. We don't have to decide is right now, do
6 we?

7 **MR. GOWDY:** No, sir.

8 **MR. BARNETT:** No, sir.

9 **THE COURT:** All right. I would like an
10 opportunity to read this case more thoroughly.

11 **MR. BARNETT:** Your Honor, we would like an
12 opportunity to look up more cases.

13 **THE COURT:** This other cases cited in here
14 State versus Gullede came up on a mistrial question
15 during the trial. The information, I don't find a
16 distinction between the type of information in Kelly
17 and the type of information here. There's no
18 distinction. This is a concealment of an arrest and
19 a charge of cocaine that would be a felony if it would
20 result in a conviction. That is information that is
21 crucial to both sides in deciding whether or not they
22 would like to exercise a peremptory challenge.

23 **MR. GOWDY:** In Kelly, I don't have Kelly
24 before me. But was this prospective juror
25 affirmatively asked questions that had he been

1 truthful that information would have been revealed, or
2 was that PCR a situation in which the attorneys were
3 not effective for asking?

4 **THE COURT:** It is a direct appeal I believe.
5 But here is the only distinction that I see between
6 Kelly and where we are right now. The only
7 distinction that I see is that the question comes up
8 in our case before you would exercise your peremptory
9 challenges. The question came up in Kelly after the
10 trial.

11 The defense had been denied the opportunity to
12 exercise its peremptory challenge based on a complete
13 set of information. The defense in Kelly clearly is
14 prejudiced by not being able to exercise peremptory
15 challenge. My question that I don't know the answer
16 to yet is are you prejudiced or the defense prejudiced
17 in this case because now you do have the information
18 that you could use in deciding whether or not to
19 exercise peremptory challenge.

20 **MR. GOWDY:** Your Honor, if this juror had
21 answered in a certain way, we wouldn't be talking
22 about peremptory challenges because they would just
23 flat-out not qualified.

24 **THE COURT:** How was that?

25 **MR. GOWDY:** How do we know that his answers to

1 any other questions are truthful in light of the fact
2 that he has been so dishonest --

3 **THE COURT:** We don't know. But there's
4 nothing that he lied about so to speak the truth of
5 would disqualify him that we know about.

6 **MR. GOWDY:** I do not think or I cannot find a
7 rule that suggest that so long as you lie to the Court
8 about things that are actually material, you can serve
9 on a jury if you lie about other things.

10 **THE COURT:** It is material. I am saying that
11 it is material. What he a lied about is material.
12 What you are saying or what I think you are trying to
13 say is there should be no distinction when the juror's
14 lie is uncovered before jury selection from when the
15 juror's lie is uncovered after jury selection. That
16 is why I am.

17 **MR. GOWDY:** That's part of what I'm saying.
18 But what I'm saying is Kelly would have been a flat-
19 out qualifier. The answers to the questions were they
20 flat-out disqualifiers or was it just information that
21 Mr. Bartosh or the defense attorneys would want to
22 have and exercise their peremptory challenges. What
23 I'm saying here is lying to a court, failure to stand
24 up in response to questions, failure to be candid
25 until you are confronted with your record is a lie.

1 And that disqualifies that person for jury service and
2 it could in theory put them on California Avenue.

3 **THE COURT:** You might be right.

4 Bring him in.

5 I've got a couple of more questions I want to ask
6 him.

7 Mr. Bartosh, you never asked him about exactly
8 how far he went in school on voir dire?

9 **MR. BARTOSH:** I asked him. He said he went as
10 far as the sixth grade.

11 (WHEREUPON, Mr. Reese enters at approximately
12 11:04 a.m.)

13 **EXAMINATION**

14 **BY THE COURT:**

15 **Q** All right. Mr. Reese.

16 **A** Yes, sir.

17 **Q** Let me follow-up a little bit on a few things.
18 How far did you go in school?

19 **A** Seventh-grade.

20 **Q** Did you finish the six grade?

21 **A** Yes, sir.

22 **Q** All right. Now this thing down in Florida, you
23 were charged with possession of cocaine?

24 **A** Yes, sir. I was 17 at the time.

25 **Q** What happened to that charge?

1 A I was under age. I worked for a carnival.
2 There was nothing they could really do with me, you know,
3 because I was underage. I never been in trouble before
4 that so they let me go.

5 Q Did they take you to the Juvenile Court and the
6 Juvenile Court let you go?

7 A No, sir. There was no courts in involved.

8 Q They just dropped the charge?

9 A (Nods head affirmatively.)

10 Q Sir?

11 A Yes, sir.

12 Q What had you done?

13 A Purchased some cocaine from an undercover. That
14 is about what it amounts to.

15 Q Okay. Now, the other, you got in some trouble in
16 Georgia, right?

17 A For drunken charges?

18 Q I'm asking you.

19 A I honestly cannot recall. I'd say yeah. I been
20 to jail in Georgia. I remember that much.

21 Q What have you been to jail in Georgia for?

22 A It had to be over drinking.

23 Q Where was the assault that you mentioned?

24 A Here about 7 or 8 months ago.

25 Q Is that still pending?

1 **A** No, sir. It has all been taken care of.

2 **Q** All right. I am going to have to do some thinking
3 about whether or not you are qualified and about what to do
4 here. I'm going to let the bailiff take you back and put
5 you in a different jury room. We will try to get your
6 situation resolved as quickly as we can. They're going to
7 put you into a --

8 **THE COURT:** You've got another room you can put
9 him in back there.

10 **THE BAILIFF:** Yeah. We'll take care of it.

11 **THE COURT:** All right. We will see you in a few
12 minutes. Sir? Oh, okay.

13 (WHEREFORE, Mr. Reese exits at approximately
14 11:06 a.m.)

15 **THE COURT:** Okay. Let's get the next juror out
16 here.

17 You know, I might ought to just let him go. I
18 don't think I'm going to have time over the next
19 couple of hours to address this. Any objection to
20 that?

21 **MR. GOWDY:** Not from the State.

22 (WHEREUPON, Timothy Brewton, Juror number 29, enters
23 at approximately 11:06 a.m.)

24 **THE COURT:** Any objection from the defense?

25 **MR. BARTOSH:** Yes, sir. Oh, you mean not to

1 disqualify him but to let him --

2 **THE COURT:** Right. Just to let him be on his own
3 while I --

4 We're not talking about you, Mr. Brewton. We're
5 talking about somebody else.

6 **THE COURT:** Just to let him be on his own while I
7 make up my mind.

8 **MR. BARTOSH:** Yes, sir. I have no objection.

9 **THE COURT:** All right. Go and get that, is he
10 still down here.

11 **THE BAILIFF:** He's down the hall.

12 **THE COURT:** Can you bring him back in here?

13 Mr. Brewton, let me let you just stand in the
14 hall for a second.

15 (WHEREUPON, Mr. Bruton exits at approximately
16 11:06 a.m.)

17 (WHEREUPON, Mr. Reese enters at approximately
18 11:06 a.m.)

19 **THE COURT:** Mr. Reese, it is probably going to
20 take me a little while to make up my mind on this. I
21 might have to do a little work. I am going to let you
22 go on and go back to your job or whatever you do.
23 Don't discuss this case with anybody just like from
24 yesterday. Don't discuss the case with anybody.
25 Don't let them discuss the case with you. Don't read

1 anything or listen to anything or watch anything about
2 this case. All right?

3 MR. REESE: Yes, sir.

4 THE COURT: Do you have -- we've got a home and
5 business telephone numbers. We will be able to reach
6 you at one of those numbers?

7 MR. REESE: Yes, sir.

8 THE COURT: Where were you in the seventh grade?

9 MR. REESE: Where was I?

10 THE COURT: Yeah.

11 MR. REESE: Ellisville, Mississippi.

12 THE COURT: All right. Okay. We will see you,
13 we will talk to you in a little bit.

14 (WHEREUPON, Mr. Reese exits at approximately
15 11:07 a.m.)

16 THE COURT: Bring in Mr. Brewton.

17 (WHEREUPON, Mr. Brewton enters at approximately
18 11:07 a.m.)

19 TIMOTHY BREWTON

20 having previously been sworn, testified as follows:

21 EXAMINATION

22 BY THE COURT:

23 Q Good morning, sir.

24 A How are you doing?

25 Q I'm doing fine. We put you under oath on Monday

1 morning. You recall that?

2 A Yes, sir.

3 Q You understand that you're still under oath right
4 now?

5 A Yes, sir.

6 Q Have you talked to anybody about this case or has
7 anybody talk to you about the case?

8 A No, sir.

9 Q Have you learned anything or heard anything or
10 read anything or seen anything about this case since
11 Monday?

12 A No, sir.

13 Q We're going to ask you some questions about some
14 different things. We don't mean to invade into your
15 privacy, but we do have to ask you these questions. The
16 questions don't have right or wrong answers. We just want
17 you to be open and honest with us and tell us how you think
18 or how you feel about these subjects.

19 We're going to talk about a possible penalty phase.
20 The fact that we're talking about that does not mean
21 anything about this defendant. It doesn't mean anything
22 about this case. It just means that we realize we may
23 have to get into this phase. And we want to ask you some
24 questions about some things that might come up.

25 If you are juror in this case, can you accept and

1 apply the law precisely as I will give it to you and render
2 a verdict based solely on the testimony and evidence that
3 you hear in this courtroom disregarding anything that you
4 may have learned or seen before the trial started?

5 A I will try.

6 Q What gives you hesitation?

7 A Because I've seen some stuff about it before this
8 happened.

9 Q Before when? When did you see something?

10 A A long time ago back what it happened. I
11 remembered it and I've seen it.

12 Q Do you remember a lot about what you saw? Just
13 tell me yes or no.

14 A Yes.

15 Q You do?

16 A (Nods head affirmatively.)

17 Q You remember the details about what you saw?

18 A Yeah.

19 Q All right. Now let me tell you what your
20 obligations would be as a juror if you were drawn, if you
21 are selected to serve. Your obligation would be listen
22 very carefully to what you hear and what you see in this
23 courtroom, to watch very carefully what you see in this
24 courtroom and to listen to the law as I will give it to
25 you.

1 What I will do is I will explain to you that the
2 defendant is presumed innocent. Right now, the defendant
3 is innocent. The State has the burden of proof and must
4 meet that burden of proof beyond a reasonable doubt. I
5 will explain to you the elements of the crime of murder.
6 I will explain to you any other issues that come up, legal
7 issues that come up that would relate to the defendant's
8 guilt. And then explain to you that the State has got to
9 prove all of the elements of murder in this courtroom
10 beyond a reasonable doubt.

11 Then after you have heard all of the testimony and
12 evidence and heard the law and heard the arguments of the
13 lawyers, you would be expected to go back into the jury
14 room and render a verdict based solely on the testimony and
15 evidence that you heard and saw in the courtroom. You
16 will be expected to set aside anything that you may have
17 heard or learned before the trial began.

18 Some people cannot do that because perhaps they have
19 become so intertwined with the case before the trial
20 started. They have learned so much. Maybe they have
21 drawn conclusions they can not get rid of. Some people
22 cannot render a verdict just on what they hear in the
23 courtroom. Do you think that you will be able to render a
24 verdict based solely on what you hear and see in the
25 courtroom and in light of the law as I will give it to you?

1 **A** I'm not 100 percent sure that I could.

2 **Q** I don't know that we expect 100 percent
3 certainty. Are you confident that you can do that?

4 **A** (No response).

5 **Q** Let me turn the question around a different way.
6 Do you believe that what you saw and what you heard before
7 now would interfere with your ability to render a verdict
8 based solely on what you see and hear in the courtroom?

9 **A** I cannot be for sure. I'm being honest. You
10 asked me to be honest.

11 **Q** Right, and I appreciate it. I certainly do.

12 **A** I mean, how can I make that assumption?

13 **Q** Let me let you stand in the hall for just a
14 second.

15 **A** Okay.

16 (WHEREUPON, Mr. Brewton exits at approximately
17 11:15 a.m.)

18 **THE COURT:** Do y'all want to voir dire him? Do
19 you want me to keep going? Do you want to stop?

20 **MR. BARTOSH:** Your Honor, I think it is clear
21 from his reactions and also from his answers to your
22 questions and that he's agonizing over those questions
23 that --

24 **THE COURT:** In the interest of time, I just want
25 to know -- I don't want argument. I just want to know

1 if you are ready to quit now or do you want me to keep
2 going?

3 **MR. BARTOSH:** I'm ready to quit.

4 **MR. BARNETT:** I would like to ask a few
5 questions, Your Honor, if given the chance.

6 **THE COURT:** What I will do because both sides
7 are entitled to have voir dire. I'm going to go ahead
8 and finish my questions and then turn it over to
9 y'all.

10 (WHEREUPON, Mr. Brewton enters at approximately
11 11:15 a.m.)

12 **BY THE COURT:**

13 **Q** Mr. Brewton, I'll ask you a few more questions
14 then I'm going to let the lawyers ask you some questions.

15 **A** Okay.

16 **Q** If you were on the jury in this case and the jury
17 found the defendant guilty of murder, you will move into
18 the sentencing phase of the trial. In the sentencing
19 phase, you would consider aggravating circumstances and
20 mitigating circumstances. Aggravating circumstances are
21 facts, incidences or details of an occurrence that South
22 Carolina has declared to aggravate or to make worse the
23 crime of murder. Aggravating circumstances increase the
24 enormity of the crime and add to the injury that results
25 from the crime.

1 Mitigating circumstances, on the other hand, are
2 facts, incidences or details of an occurrence that the
3 State has declared to reduce or lessen the severity of the
4 crime of murder. Mitigating circumstances may be
5 considered as extenuating or as reducing the moral
6 culpability or responsibility for the crime.

7 If you are on the jury in the sentencing phase of a
8 death penalty case, you will have two options as to your
9 verdict, life sentence or death penalty. Could you,
10 depending on the facts and circumstances that you find to
11 exist, considering any aggravating or mitigating
12 circumstances and considering the law as I give it to you,
13 could you find or vote to impose a life sentence?

14 A If I found him guilty?

15 Q Yes.

16 A No.

17 Q Now when you say, that does that mean that if the
18 defendant was found guilty, you would automatically impose
19 the death penalty?

20 A If he is guilty, he is guilty.

21 Q Under South Carolina Law, just because he's
22 guilty does not mean that he gets the death penalty. He is
23 entitled to have a fair and impartial juror listen to the
24 testimony that I will allow in during the sentencing phase
25 and to exercise discretion and decide fairly and

1 objectively whether or not he should get the death penalty.
2 Would you be willing to do that?

3 A Yeah. I can do that.

4 Q I'm going to let the lawyers follow up with you
5 about that. I'm going to stop there and let them ask you
6 some questions.

7 THE COURT: Mr. Bartosh.

8 MR. BARTOSH: Thank you, Your Honor.

9 EXAMINATION

10 BY MR. BARTOSH:

11 Q Mr. Brewton, I'm Mike Bartosh. I practice law
12 here. Along with Doug Brennan and Karen Quimby, we
13 represent Mr. Lindsey. The first thing I would like to say
14 is I appreciate your honesty. This is a very difficult
15 thing to have to go through. And these are very serious
16 matters. I appreciate your honesty. What we are trying
17 to do is to qualify jurors as best we can. And we know it
18 is not possible to get 100 percent blank slate, --

19 A All right.

20 Q -- but as close to a blank slate as we can. We
21 want people who can be fair and impartial because they know
22 nothing of the case. They are not taking anything into
23 the case with them because they have no idea of what is
24 involved, who the personalities are or anything like that.
25 That is what this is all about. Okay?

1 A (Nods head affirmatively.)

2 Q Now, as the judge told you, he's going to
3 instruct you at the very beginning of the case, should you
4 be selected as a juror, that Mr. Lindsey is under our law
5 -- and it is not a legal fiction, it is a real and
6 substantial right -- is presumed to be innocent. Were you
7 to be selected as a juror, you would take an oath that you
8 would accept that. You would view him as he sits there as
9 being innocent. He would remain innocent. He would
10 remain with that presumption only up until all twelve folks
11 of the jury decide that he is no longer entitled to it.
12 Now could you do that?

13 A I'm not sure.

14 Q Okay.

15 A I'm being honest. I don't know.

16 Q Once again, I want to thank you for your honesty.
17 I understand nobody likes to sit and talk about being on
18 the death penalty juror. It is something that nobody
19 likes. I appreciate it. I guess what my real question
20 is is do you have knowledge of the case?

21 A Yes.

22 Q Has that knowledge caused you to form an opinion
23 of what should happen?

24 A It has caused me to form an opinion.

25 Q Would you tell us what that opinion is.

1 **A** From what I heard, it seems like he has done it.

2 **Q** So you believe as he sits there, he is guilty?

3 **A** From what I know right now of my knowledge.

4 **Q** Okay. Of your knowledge, he is guilty?

5 **A** (Nods head affirmatively.)

6 **Q** You consider him to be guilty?

7 **A** From what I know. I don't know the other side,
8 but yes.

9 **Q** Okay. What I am saying is from what you know he
10 is guilty?

11 **A** Yes.

12 **Q** Would you be able to put that opinion aside
13 during the trial?

14 **A** That is what I am not sure about.

15 **Q** Do you think it will cause you to look at things
16 differently? Would it affect your ability to render a fair
17 and impartial verdict? When we say impartial, what we
18 mean is we mean that the only things you can consider.

19 **A** I would try. You asked me the same thing a
20 while ago. I will try. I don't know until I'm there.
21 There's no way from me to answer that.

22 **Q** Okay, but it is possible that you could do it?

23 **A** It is possible. I don't know. I know something
24 about the case.

25 **Q** That has affected you?

1 **A** That has affected my judgment. Yeah.

2 **Q** Okay. That's all I have.

3 **THE COURT:** Let me ask you another question if
4 the State does not mind.

5 **MR. BARNETT:** Yes, sir.

6 **MR. BREWTON:** Okay.

7 **EXAMINATION**

8 **BY THE COURT:**

9 **Q** You say -- the question is could you consider
10 giving a life sentence if he is convicted for murder?

11 **A** Yeah, I could consider it.

12 **Q** The last question was, I believe your last answer
13 was that it is possible that you would automatically impose
14 a death penalty. Is that what you said?

15 **A** Yeah. I mean, once you find him guilty --

16 **Q** We're not asking you if it is possible that you
17 would impose the death penalty. We want you to consider
18 that option.

19 **A** Right.

20 **Q** We just want to make that if you get on that
21 jury, you're willing, honestly, seriously willing to
22 consider imposing a life sentence. Are you?

23 **A** Yeah, I can do that.

24 **Q** You can consider imposing the life sentence?

25 **A** (Nods head affirmatively.)

1 **Q** Sir?

2 **A** Yes, sir.

3 **Q** All right. So the question is would you
4 automatically impose the death penalty upon the conviction
5 of the defendant for murder. What is your answer?

6 **A** No.

7 **THE COURT:** All right. Mr. Bartosh, I will let
8 you retain the floor if you would like to follow up on
9 that.

10 **MR. BARTOSH:** Just one question.

11 **EXAMINATION**

12 **BY MR. BARTOSH:**

13 **Q** I am talking about in the guilt phase.

14 **A** Right.

15 **Q** Would you automatically or would you have a tough
16 time giving a fair and impartial hearing to the evidence or
17 are you --

18 **MR. BARNETT:** Your Honor, I'm going to object
19 to that because he's trying to box him because he said
20 automatic or tough time or whatever. I think he needs
21 to rephrase it.

22 **MR. BREWTON:** I have already given my answer.

23 **THE COURT:** Hold on, sir. Hold on just a
24 second.

25 **MR. BREWTON:** Okay.

1 **THE COURT:** Let us work out this little -- why
2 don't you step in the hall for just one second.

3 **THE WITNESS:** Okay.

4 (WHEREUPON, Mr. Brewton exits at approximately
5 11:24 a.m.)

6 **THE COURT:** What page do y'all think that's on?
7 It looks like about page 17 or 18.

8 **MR. BARTOSH:** 18, Your Honor.

9 **THE COURT:** Yes, sir. What are you --

10 **MR. BARTOSH:** What I'm trying to saying is and
11 I'm sure I am doing it inartfully. But I'm not so
12 concerned about the penalty phase, I think what he is
13 saying is that from what he knows, he has formed an
14 opinion as to the guilt of Mr. Lindsey and that he
15 would have --

16 **THE COURT:** All right. Well, let's let the
17 State ask a few questions. Then we will see where we
18 go from there. Do you still want to?

19 **MR. BARNETT:** Yes, sir, I do.

20 **THE COURT:** Bring him in.

21 (WHEREUPON, Mr. Reese enters at approximately
22 11:25 a.m.)

23 **THE COURT:** Mr. Barnett is going to ask you a
24 few questions.

25 **MR. BREWTON:** All right.

1 **MR. BARNETT:** Thank you, Your Honor. May it
2 please the Court.

3 **EXAMINATION**

4 **BY MR. BARNETT:**

5 **Q** My name is Barry Barnett. Myself, Trey Gowdy and
6 Donnie Willingham, who stepped out for a little bit, is
7 going to be prosecuting for the State. I know it is a
8 tough question. I know you are very conscientious but you
9 thinking through every question. We appreciate that.
10 But you do not believe everything you read in the
11 newspaper, do you?

12 **A** No.

13 **Q** You don't believe everything you see on Channel 7
14 or Channel 4, do you?

15 **A** Not everything.

16 **Q** Not everything. Yes, sir. And you understand
17 that that is not evidence what you have seen. I think
18 everybody forms opinions like when we see polls on
19 presidential races or the governor's race. We've got
20 opinions but they don't always turn out that way.
21 Elections don't always go the way polls say they were going
22 to go. So you understand -- would you follow what the
23 judge and what the evidence shows here in court, what you
24 actually saw happen, is that what you will follow?

25 **A** I will try my best. I can not say for a fact that

1 that would not still be in my mind. I know I need to put
2 it completely out what I've heard from the news or
3 whatever. But I cannot say for sure that I can. I'm just
4 being totally honest. I would want someone to be honest
5 with me.

6 Q I understand but you would want them to listen to
7 both sides before you could make a decision. And like I
8 said both sides will get to speak --

9 A Right. News is always one-sided. That is what
10 I told him.

11 Q So you would listen to both sides before you
12 reach a verdict?

13 A I would try.

14 Q And you would try to do your best. That's all we
15 can ask. Is that correct?

16 A That is all anybody can do.

17 Q And you would listen to the evidence here. I
18 notice you just thinking and agonizing. You were trying to
19 be as honest as you can.

20 THE COURT: Mr. Barnett, with your permission,
21 may I slightly redirect your question away from the
22 jurors consideration of listening to both sides?

23 MR. BARNETT: Yes, sir.

24 THE COURT: Because the defendant has the right
25 to remain silent and does not have to present any

1 evidence. What he has to do is listen to all of the
2 evidence and consider objectively the question of
3 whether or not the State has met its burden of proving
4 the defendant guilty beyond a reasonable doubt. I
5 think it would be, before this gets too far down the
6 road, it is not correct to ask him if he would listen
7 to both sides.

8 MR. GOWDY: Yes, sir, and I appreciate you
9 pointing that out.

10 THE COURT: You understand that distinction,
11 Mr. Brewton?

12 MR. BREWTON: Yes, sir.

13 THE COURT: All right.

14 BY MR. BARNETT:

15 Q You understand the State has the burden of proof.
16 We have to prove the defendant guilty beyond a reasonable
17 doubt. The defendant never has to prove anything, does not
18 have to present any evidence. You understand that?

19 A Yes, sir.

20 Q You would have to base it off the evidence that
21 is presented in here in court today. And that evidence
22 has to prove the defendant's guilt beyond a reasonable
23 doubt. You understand that?

24 A Yes.

25 Q And would you follow that instruction from the

1 judge?

2 A Yes.

3 Q And you realize he is presumed innocent until we
4 prove his guilt beyond a reasonable doubt. You understand
5 that?

6 A Yes.

7 Q Would you follow the judge's instruction
8 regarding that?

9 A I would try to do my best at it.

10 Q I know you keep saying try. You always try to
11 do your best. That is the way you treat life, is that
12 correct?

13 A Yes.

14 Q And obviously you have never been in this
15 situation before. Have you ever been in jury service
16 before?

17 A Yes.

18 Q So you understand the different ways of looking
19 at things?

20 A Yes.

21 Q And when you go in as a juror, you have
22 information that other jurors may not have?

23 A Right.

24 Q But you will judge based on what you see here in
25 court today, is that correct?

1 **A** I will do what I could do, yes.

2 **Q** And you would try to do your best on that?

3 **A** Yes.

4 **MR. BARNETT:** One moment, Your Honor, please.

5 **BY MR. BARNETT:**

6 **Q** You realize you have life experiences that other
7 people don't have?

8 **A** Yes.

9 **Q** But would you base your verdict or base what you
10 heard in this courtroom over the next several days or
11 whatever, would you base your verdict on that instead of
12 information that you received outside?

13 **A** Yes, but I don't know if the information I
14 received outside would not influence it some. I don't
15 know that. I can't say that. He asked me and you asked
16 me. Both of you asked me the same questions three or four
17 different times different phrases.

18 **Q** What I'm trying to do --

19 **A** And I'm going to give you the same answer every
20 time.

21 **THE COURT:** All right, sir. Mr. Brewton, we're
22 going to let you step outside in the hall for just
23 second.

24 **MR. BARNETT:** Thank you, Mr. Brewton.

25 (WHEREUPON, Mr. Brewton exits at approximately

1 11:30 a.m.)

2 THE COURT: I've got the kill sign from both
3 sides, I think. So there's agreement that he is
4 disqualified?

5 MR. BARTOSH: Yes, sir.

6 MR. BARNETT: Yes, sir.

7 THE COURT: All right. Bring him in.

8 (WHEREUPON, Mr. Brewton enters at approximately
9 11:30 a.m.)

10 THE COURT: Mr. Brewton, we appreciate your
11 honesty with us. We appreciate you coming. We are
12 not going to need your services as a juror in this
13 case. So you are free to go.

14 MR. BREWTON: All right. Thank you, sir.

15 THE COURT: Thank you.

16 (WHEREUPON, Mr. Brewton exits at approximately
17 11:31 a.m.)

18 THE COURT: Bring us a juror.

19 (WHEREUPON, Aletha Misenheimer, Juror number 197,
20 enters at approximately 11:31 a.m.)

21 ALETHA MISENHEIMER

22 having previously been sworn, testified as follows:

23 EXAMINATION

24 BY THE COURT:

25 Q Ms. Misenheimer?

1 A Yes, sir.

2 Q Did I pronounce it correctly?

3 A Yes, you did.

4 Q Good morning.

5 A Good morning.

6 Q You recall that we put you under oath Monday
7 morning?

8 A Yes, sir.

9 Q You understand you are still under oath today,
10 this morning?

11 A Yes, sir.

12 Q Since you left us Monday afternoon, have you
13 talked to anybody about this case or anybody talk to you
14 about this case?

15 A They tried to.

16 Q They have?

17 A Yes.

18 Q Have they been successful?

19 A No.

20 Q Who have tried to?

21 A People I work with.

22 Q They just wanted to know what you were doing?

23 A Uh-huh (affirmative).

24 Q And you told them you could not talk about it?

25 A Uh-huh (affirmative).

1 Q Did they tell you anything about the case?

2 A They started to. I just told them I could not
3 talk about it.

4 Q Okay. I appreciate you doing that. I'm not
5 trying to imply that you did anything you should not have
6 done. You did exactly what you should have done. When
7 they tried, did they get anything out? Did they say
8 anything about the case that you can tell me?

9 A They started to talk about the case and where it
10 happened.

11 Q Okay.

12 A Like it happened in Inman.

13 Q So somebody said something to you about where it
14 happened?

15 A Uh-huh (affirmative).

16 Q And they said it happened in Inman?

17 A Uh-huh (affirmative).

18 Q Did they say anything else about where it
19 happened?

20 A No.

21 Q They didn't tell you where in Inman it happened?

22 A No.

23 Q Did anybody saying anything to you about what
24 happened?

25 A There was a killing.

1 Q Somebody told you that there was a killing?

2 A Right.

3 Q In Inman?

4 A Uh-huh (affirmative).

5 Q Okay. Other than someone saying to you that
6 there was a killing in Inman, did anybody say anything else
7 about what happened?

8 A Not that I recall.

9 Q Or anything else about this case?

10 A No.

11 Q All right. Now, have you read anything or seen
12 anything on the news about the case?

13 A Yes, I have.

14 Q Tell me what -- that's since Monday?

15 A No, before.

16 Q Before. Okay. Now, we're going to ask you some
17 questions. We don't want to pry too deeply into your
18 private life. But we do have to ask you these questions.
19 All we want you to do is be open and honest with us and
20 tell us what you think and what you feel.

21 We are going to talk about a possible sentencing
22 phase. The fact that we're doing that does not mean
23 anything about this defendant. It does not mean anything
24 about this case. It just means that we might get to the
25 sentencing phase. And we need to ask you some questions

1 about some things that might come up.

2 If you are a juror in this case, would you be able to
3 accept and apply the law that I give to you and render a
4 verdict based solely on what you hear and see in this
5 courtroom, disregarding anything that you may have read or
6 heard or been told up until right now?

7 A No, I don't think I could.

8 Q Now why is that?

9 A I think I know too much about the case from
10 hearing about it.

11 Q Now if I were to tell you that your
12 responsibility as a juror is to disregard anything that you
13 may have heard about the case and if I wanted to, I could
14 explain to you that you, what you heard was not necessarily
15 reliable or true. If I instructed you as a juror to
16 disregard anything that you have heard or seen about this
17 case before the trial began and put you on that jury, could
18 you do that?

19 A I don't think I could.

20 Q All right. Let me let you step into the hall
21 please, ma'am.

22 (WHEREUPON, Ms. Misenheimer exits at approximately
23 11:35 a.m.)

24 THE COURT: Does either side want to voir dire
25 this juror?

1 **MR. BARTOSH:** No, sir.

2 **MR. GOWDY:** No, sir.

3 **THE COURT:** Bring her in.

4 (WHEREUPON, Ms. Misenheimer enters at approximately
5 11:35 a.m.)

6 **THE COURT:** Ms. Misenheimer, we thank you for
7 coming. Thank you for being honest with us. We're
8 not going to need your services as a juror in this.
9 You are free to go.

10 (WHEREUPON, Ms. Misenheimer exits at approximately
11 11:35 a.m.)

12 **THE COURT:** All right. Y'all want to take a
13 short break?

14 **MR. GOWDY:** Yes, sir.

15 **MR. BARTOSH:** Yes, sir.

16 **THE COURT:** Let me see y'all right up here.

17 (WHEREUPON, a bench conference was held off the
18 record.)

19 **THE COURT:** Let's put that on the record. Mr.
20 Gowdy's remarks appropriately, I believe, is that what
21 has happened with the last two jurors illustrates the
22 need for honesty from jurors. You don't need to
23 convince me of that. You don't need to make a policy
24 argument that I should have the authority to
25 disqualify a juror or strike a juror for cause because

1 they have been dishonest with the Court. I am simply
2 going to make sure that I am not making a mistake
3 concluding that I have the authority to do that before
4 I do it.

5 **MR. GOWDY:** I don't even know that the
6 defense contests your authority as a judge --

7 **THE COURT:** Do you?

8 **MR. BARTOSH:** Your Honor, hopefully, when this
9 PCR comes through, I'll be just about ready to retire.
10 And I don't want to have to sit up there and say --

11 **THE COURT:** This is off the record.

12 (WHEREUPON, the bench conference was continued off the
13 record at approximately 11:36 a.m.)

14 (WHEREUPON, the record resumed at approximately
15 11:37 a.m.)

16 **MR. GOWDY:** Your Honor, with respect to juror
17 number 224, I believe his name was Mr. Reese. The
18 State would move to strike this juror for cause
19 because of a series of what from our vantage point was
20 dishonest answers not just today but also Monday
21 during general voir dire. It was a failure to
22 disclose what I consider to be crucial information to
23 both sides. Only when confronted with the reality of
24 his RAP sheet did he come around. We're talking about
25 with arrest and convictions.

1 I think that this court has the power to strike
2 the prospective juror who is dishonest with the Court
3 on Monday, dishonest with the parties today, dishonest
4 on his questionnaire. And only when confronted with
5 the reality of his record decides that his memory is
6 improved. I think the Court has the power to strike
7 that juror for case.

8 I think if nothing else that we've learned from
9 the last two jurors, it would be absolute necessity of
10 honesty from jurors in all regards. We have seen two
11 jurors essentially disqualify themselves because of
12 their admitted inability to do as Mr. Bartosh says,
13 come to court with a clean slate with respect to this
14 case. And both of those jurors are properly
15 disqualified.

16 And I think that even though this juror may meet
17 the analysis, we can have no confidence in the answers
18 to those questions because he hasn't told the truth of
19 almost anything else. I would also bring to the
20 Court's attention State versus Woods which is a South
21 Carolina Supreme Court case from 2001.

22 **THE COURT:** All right. Well, I think I might just
23 -- any argument you want to present on that subject?
24 I think I may rule.

25 **MR. BARTOSH:** No argument.

1 **THE COURT:** I think it's -- it's kind of like, you
2 know, what used to frustrate me a lot of time is that,
3 when I was a young lawyer, it became my responsibility
4 to write a brief. And you've got some point of law
5 that has become central to the case. But it is so
6 obvious. It is such an obvious point of law.

7 It is what we call "black letter law". It's been
8 so obvious and so well known and so well established
9 for so long that nobody writes about it anymore. And
10 you can't find a citation. You can't find any
11 authority. You can't find a case that says that the
12 rule is whatever. That used to frustrate me. And
13 this may be kind of like that.

14 I, uh, the integrity of an individual called into
15 this court to serve as a juror is such a fundamental
16 requirement for the service as a juror that it is
17 almost like somebody reading this transcript is going
18 to suspend me. The Supreme Court is liable to turn me
19 over to the, maybe not the grievance committee, but
20 the standards committee or something because I had
21 trouble recognizing the concept that a juror needs to
22 be honest before they can be seated. And I've
23 actually been thinking about it as we went through
24 these next couple of jurors.

25 And I recall when Mr. Reese was answering my

1 questions about whether or not he could impose a life
2 sentence or the death penalty. And I remember
3 thinking to myself at that time that he seemed a
4 little eager to tell me that he could impose the death
5 sentence. And so I figured y'all were going to follow
6 up on that. And without meaning to characterize how
7 y'all handled the thing, it's almost like you got cast
8 into one side of the question and you stayed stuck in
9 that side. But I was concerned at the time that Mr.
10 Reese might be trying to position himself into this
11 jury so that he could vote for the death penalty.

12 That illustrates why it is that I've got to have
13 confidence in the integrity and honesty of that juror
14 before I allow him to get on the jury. It doesn't
15 really matter whether he has positioned himself one
16 way or the other. But he -- I've already said this.
17 There is no way that he could have as clearly recalled
18 the details of the drug charge in Florida when I asked
19 him about it five minutes after he denied it unless he
20 deliberately denied it knowing that it was true.

21 The same with the thing in Georgia. I said,
22 you've got trouble -- Mr. Barnett asked him about the
23 Florida charge. He said, oh, yeah. I had that. Then
24 he said do you have any other charges. And he,
25 probably fearing that Mr. Barnett had him cornered,

1 said not that I can recall, giving himself a little
2 way out.

3 Then Mr. Barnett says what about this assault.
4 And he said I've got an assault and battery. Then I
5 asked him about the thing in Georgia. He said I can't
6 recall but I know I spent time in jail in Georgia.
7 There is just no way. There is no way that he can
8 have that clear a memory of what jail he served and
9 not have had the same clarity or similar clarity three
10 minutes before when somebody else was asking him those
11 questions. That causes me to conclude that he
12 deliberately misled the Court.

13 Here is another thing. On his juror information
14 card, he writes in I also did not make it pass the
15 sixth grade. Now, his answer to me was, how far did
16 you go in school, seventh grade. That was in
17 Mississippi. I understood he had school problems.
18 But isn't the seventh grade after the sixth grade in
19 Mississippi? I'm going to take judicial notice that
20 it probably is.

21 So, I think that there is a substantial
22 probability if not certainty that he figured out at
23 some point yesterday morning, Monday morning that he
24 had to have made it pass the sixth grade in order to
25 get on this jury, so he changed his answer. And so

1 finding as I do that this juror has a fundamental
2 unfamiliarity with the concept of the truth and that
3 he has deliberately misled this court in answering
4 questions, I am granting the motion to strike him for
5 cause with confidence that any Supreme Court that
6 reverses me on that needs to reexamine it.

7 **MR. GOWDY:** Thank you, Your Honor.

8 **THE COURT:** And with recognition that I run my
9 mouth too much sometimes about the appellate courts.

10 (WHEREUPON, a short recess was taken at approximately
11 11:52 a.m.)

12 (WHEREUPON, the Court resumed at approximately
13 12:04 p.m.)

14 **THE COURT:** Give us a juror.

15 (WHEREUPON, Samuel Barnwell, Juror number 15, enters
16 at approximately 12:04 p.m.)

17 **SAMUEL BARNWELL**

18 having previously been sworn, testified as follows:

19 **EXAMINATION**

20 **BY THE COURT:**

21 **Q** I was hoping to have the opportunity to say good
22 morning to about six more jurors. But you are the last
23 juror of the day that I'm going to be able to say good
24 morning to. So good morning.

25 **A** Good morning, sir.

1 Q You recall that we put you under oath on Monday?

2 A That's correct.

3 Q And you would understand you are still under oath
4 right now?

5 A Yes, sir.

6 Q Has anyone talked to you or have you talked to
7 anybody about this case since you left us Monday afternoon?

8 A No, sir. I have not.

9 Q Have you seen anything or read anything or heard
10 anything about this case since Monday?

11 A No, sir.

12 Q I'm going to ask you some questions. The lawyers
13 also are going to ask you some questions. We don't want to
14 get too deep in your private life. But we do have to ask
15 you these questions. There are no right or wrong answers.
16 We just want you to be open and honest with us and tell us
17 how you think and how you feel.

18 We are going to talk about a possible sentencing
19 phase. That is not because we know we're going to get
20 there. And the fact that we're talking about it does not
21 mean anything about this defendant. It just means that
22 because we might get there, we need to ask you about some
23 issues that will come up during the sentencing phase.

24 If you are a juror in this case, will you be able to
25 accept and apply the law precisely as I give it to you and

1 render a verdict based solely on the testimony and the
2 evidence that you hear in this courtroom setting aside
3 anything that you might have heard or seen before the trial
4 began?

5 A Yes, sir.

6 Q Do you understand that in a criminal case such as
7 this, the State has the burden of proving the defendant
8 guilty beyond a reasonable doubt?

9 A Yes, sir. I do.

10 Q And you understand that that is a murder case?

11 A Yes, sir.

12 Q Could you, depending on the facts and
13 circumstances that you find to have been proven and in
14 light of the law as I will give it to you, could you find a
15 verdict of either guilty or not guilty depending on whether
16 or not you believe the State has met its burden of proof?

17 A Yes, sir.

18 Q If you are on the jury and the jury finds the
19 defendant guilty of murder, we would move into the
20 sentencing phase of the trial. Some new issues are going
21 to come up. And I'm going to talk to you about those now.

22 Aggravating circumstances are facts, incidents or
23 details of an occurrence that the State of South Carolina
24 has declared to aggravate or to make worse the crime of
25 murder. Aggravating circumstances increase the enormity of

1 the crime of murder or add to the injury resulting from the
2 crime.

3 Mitigating circumstances, on the other hand, are
4 facts, incidents or details of an occurrence that the State
5 of South Carolina has declared to lessen or reduce the
6 severity of the crime of murder. And they serve to
7 extenuate or to reduce the moral culpability or
8 responsibility for the crime.

9 If you are on the jury in the sentencing phase of a
10 death penalty trial such as this, you would have two
11 options for verdicts. One is a verdict for a life
12 sentence. The other is a verdict for the death penalty.
13 Could you, depending on the facts and circumstances that
14 you find to exist, considering aggravating or circumstances
15 and considering the law as I give it to you, could you
16 return a verdict imposing the life sentence?

17 A Yes.

18 Q A life sentence.

19 A Yes, sir.

20 Q Sir?

21 A Yes, sir.

22 Q Could you vote to return a verdict imposing the
23 death penalty?

24 A Yes, sir.

25 Q If you are on the jury and I sequester the jury

1 and you are required to be away from your home for five or
2 six days, is that going to impose a terrible burden on you?

3 A I wouldn't like it but no, sir.

4 Q Have you been over the witness list that I gave
5 you?

6 A Yes, sir. I read it.

7 Q Have you read every name on that list?

8 A I went over them. Yes, sir.

9 Q Did you read every name on that list?

10 A Yes.

11 Q Is there anybody on that list to whom you know or
12 to whom you are related?

13 A None that I know of, sir.

14 Q Do you know of any reason why you cannot give
15 both the State and the defendant a fair and impartial
16 trial?

17 A No reason. No, sir.

18 Q I'm going to let the lawyers ask you some
19 questions. Then I will be back in touch with you in a few
20 minutes.

21 MR. BRENNAN: May it please the Court, Your
22 Honor.

23 THE COURT: Yes, sir.

24 EXAMINATION

25 BY MR. BRENNAN:

1 Q Afternoon, Mr. Barnwell. How are you today?

2 A Fine, sir.

3 A Good. My name is Doug Brennan. I'm an attorney
4 from here in Spartanburg. Mr. Bartosh, Ms. Quimby and I
5 have the opportunity to represent Mr. Lindsey in this
6 matter. Sir, I noticed that your wife works at the Opie
7 Elementary School.

8 A That's correct, sir.

9 Q That's in Landrum?

10 A Yes, sir.

11 Q What does she do there?

12 A She is a lunch room manager.

13 Q And you live in Campobello, is that correct?

14 A That's correct.

15 Q As a result of living in Campobello, have you
16 ever had the opportunity, or have you had any relationship
17 with any Inman city police officers?

18 A No, sir.

19 Q How long have you been at Coble?

20 A 22 years, sir.

21 Q Sir, many years ago, I believe that you been at
22 Coble, there was an incident where maybe a former employee
23 of Coble came into the plant and shot somebody. Do you
24 remember that?

25 A I remember somebody shooting out in the parking

1 lot or someone a couple of years ago. I cannot remember
2 somebody coming into the plant and shooting someone. No,
3 sir.

4 Q Your remembrance of, you vague remembrance of
5 those facts, has that in any way help shape your opinion as
6 to the death penalty?

7 A Not that I can say. No, sir.

8 Q Okay. All right. Sir, do you have an opinion as
9 to the death penalty?

10 A Do I have an opinion? Under certain
11 circumstances, I can see the death penalty. In my opinion,
12 there would be certain circumstances.

13 Q Okay. Do you understand that in South Carolina,
14 the death penalty is never mandatory?

15 A Yes, sir.

16 Q All right. There are three kinds of jurors.
17 Three types of jurors. One set of jurors, based on the
18 evidence if convicted of murder, would always impose the
19 death penalty. Another set of jurors, if the defendant is
20 convicted of murder, will always impose a life sentence.
21 Then there are those based on the facts and circumstances
22 presented in the trial of the matter would make their
23 decision for life or for death. Where do you fall?

24 A I would have to go by the evidence presented.

25 Q So you did not lean towards the life sentence or

1 towards a death sentence?

2 **A** I would probably lean more towards the life
3 sentence.

4 **Q** All right.

5 **A** I'm being honest.

6 **Q** That's what we want. Thank you for that honesty,
7 sir.

8 **THE COURT:** Let me take a moment to clarify
9 what he said. When he said that is what we want, that
10 is simply thanking you for being honest. He is not
11 telling you that you gave the answer that we want.

12 **MR. BARNWELL:** I understand that, sir.

13 **THE COURT:** All right.

14 **MR. BRENNAN:** Forgive me.

15 **THE COURT:** That's all right. I just needed to
16 clear it up. I know you didn't mean anything by it.

17 **BY MR. BRENNAN**

18 **Q** I also see that you served some time in the
19 military?

20 **A** Yes, sir.

21 **Q** And you indicated you are a Baptist. Is that
22 correct?

23 **A** That's correct, sir.

24 **Q** Did those influences in your life help create
25 your tendency towards a life sentence?

1 **A** No, sir. I would not think so.

2 **Q** Sir, I just have one last question. That is
3 this, if you were seated on this jury and we've gotten
4 beyond the guilt phase. We are in the sentencing phase and
5 you are deliberating. And based on the evidence, you have
6 decided that the life sentence is the proper sentence.

7 But the other eleven jurors have all decided that
8 death is the appropriate sentence, would you be swayed by
9 the fact and the fact only that those eleven jurors have
10 voted for life -- excuse me, for the death penalty. Could
11 you stand your ground and remain steadfast in your belief
12 that life was the proper sentence?

13 **A** That would be hard to answer, sir. Depending on
14 the other jurors and all and how strong I felt towards it
15 at the time. I don't know whether that answered your
16 question.

17 **Q** Is it possible, sir, that only the fact that
18 those eleven have voted for death might sway you?

19 **A** There's a possibility that they could. sir.

20 **MR. BRENNAN:** I have nothing further, Your Honor.

21 **THE COURT:** Mr. Barnwell, let me ask that
22 similar question. Let's put you in a position that
23 Mr. Brannon just put you in. You are on the jury.
24 The jury is deliberating about what death penalty
25 ought to be. And you have concluded, perhaps

1 preliminarily, you have concluded that life sentence
2 is appropriate. But the other eleven members of the
3 jury have concluded that the death penalty is
4 appropriate. We understand that you all will continue
5 to discuss that.

6 **MR. BARNWELL:** Correct.

7 **THE COURT:** And that they would try to convince
8 you to change your mind and vote for the death
9 penalty. You would try to convince them to change
10 their mind and vote for a life sentence. The question
11 is, if you are in that situation and it is 11 to 1
12 against you, are you going to change your mind just
13 because you are by yourself and because you are the
14 only one, or are you going to change your mind only if
15 you, or change your vote only if you change in mind?

16 **MR. BARNWELL:** Only if I change my mind will I
17 change my vote.

18 **THE COURT:** Right, so if you continued to
19 believe that the life sentence was the appropriate
20 sentence, you would stand firm on your vote for the
21 life sentence?

22 **MR. BARNWELL:** Yes, sir. I would.

23 **THE COURT:** All right, sir.

24 **MR. WILLINGHAM:** May it please the Court.

25 **EXAMINATION**

1 **BY MR. WILLINGHAM:**

2 **Q** Mr. Barnwell, my name is Donnie Willingham.
3 Along with Barry Barnett and Solicitor Trey Gowdy, we are
4 going to be prosecutors on this case. I appreciate your
5 being honest with us in filling out the questionnaire and
6 answering the judge's questions. I just want to follow
7 that a little bit. When the judge asked if you could impose
8 the death sentence -- when he asked if you could impose the
9 life sentence, you told him you could. When he asked about
10 a death sentence, you hesitated and then said that you
11 could. Tell me the reason for your hesitation.

12 **A** There are certain circumstances where I would not
13 have any problem with the death sentence. It would depend
14 on the circumstances involved.

15 **Q** Tell me what you mean by that. What
16 circumstances would be okay?

17 **A** If the evidence was presented where someone
18 killed and raped and molested a child or something like
19 that, I've got strong beliefs in that. Or a teenager --

20 **MR. BARTOSH:** Your Honor, I --

21 **THE COURT:** Mr. Willingham, let me ask you to
22 step over this way just so that will cause the witness
23 to -- I'm having a little trouble hearing you. So I
24 want him to get you to turn towards us. Is that what
25 you were going to --

1 **MR. BARNETT:** At this point, yes, Your Honor.

2 Thank you.

3 **THE COURT:** You can not hear?

4 **MR. BRENNAN:** Yeah.

5 **THE COURT:** Go ahead.

6 **BY MR. WILLINGHAM:**

7 **Q** Okay, so you said if it was a murder of a child?

8 **A** Something to that effect..

9 **Q** Is that the only time you believe you could?

10 **A** No, sir.

11 **Q** Tell me what else you meant by the answer --

12 **MR. BRENNAN:** Your Honor, I object to this form
13 of questioning. I believe he is seeking to stake him
14 out and get him to state a specific set of
15 circumstances.

16 **THE COURT:** Uh, --

17 **MR. WILLINGHAM:** Your Honor, I'm not asking
18 him about specific aggravators. I'm asking about
19 specific mitigators. He indicated there were certain
20 circumstances where he could and could not impose the
21 death penalty. I think that is proper for me to find
22 out what the circumstances may be.

23 **THE COURT:** I am trying to remember exactly
24 what the question was. I was hoping it would pop up on
25 my screen here. But it has not popped up yet. Why

1 don't you either tell me what the question was or
2 start over..

3 **MR. WILLINGHAM:** Your Honor, he asked -- he
4 indicated that there was certain circumstances such as
5 the death of a child or a murder of a child where he
6 can see himself imposing the death penalty. I asked
7 him if that was the only circumstance. He said no. I
8 asked him what other circumstances he could see
9 himself imposing the death penalty.

10 **THE COURT:** Mr. Barnwell, let me get you to
11 step in the hall for just one second.

12 **MR. BARNWELL:** Yes, sir.

13 (WHEREUPON, Mr. Barnwell exits at approximately
14 12:16 p.m.)

15 **THE COURT:** How is that any different from the
16 two questions that Solicitor Gowdy so vigorously
17 objected to yesterday?

18 **MR. WILLINGHAM:** Judge, I am not asking him
19 about specific mitigators. What I am not asking him,
20 I am trying to determine whether or not he could give
21 death in circumstances outside of a child murder. He
22 has indicated he could do it there. I'm asking him --
23 this is obviously not about a child murder. I'm
24 asking if him if he could see himself imposing death
25 in other circumstances and if so what those

1 circumstances are.

2 **MR. BRENNAN:** He has already asked in a
3 question. His answer was that depending on the
4 evidence presented in the trial, could he render a
5 decision in favor of the death sentenced. And he said
6 yes. Could he favor a sentencing, impose a sentence
7 for life. And he said yes. I believe that is the
8 question asking him to consider which specific facts
9 or circumstances would require him or would lead him
10 to impose a death sentence. I don't believe that is a
11 proper question.

12 **THE COURT:** Well, I'm going to sustain the
13 objection. It is the witness, I mean the juror who
14 started this. I don't mean that in a way of it being
15 his fault. But the juror did, not response to a
16 question, say something about the death or murder of a
17 child.

18 It is true that Mr. Willingham is entitled to
19 explore that. But I don't believe that you are
20 entitled to explore that by asking him the specific
21 question of what other, what circumstances would you
22 impose the death penalty. And, because you are asking
23 him to speculate just like the defense did the other
24 day. And y'all objected to that. And I sustained it.
25 You can explore it less directly I suppose.

1 Let me explain why I came in and asked him those
2 questions when you finished. I don't think that you
3 are asking him the question right when you ask him if
4 he -- I mean, you can ask him any question you want
5 to. But you are trying to get him to address what
6 would he do if he found himself 11 to 1. And he is
7 the one in favor of the life sentence.

8 Perfectly legitimate to try to find that out.
9 But you are posing it to him wrong. You are putting
10 him in a position saying would you let the other
11 eleven try to convince you to change your mind. We
12 want him to let the eleven try to convince him to
13 change his mind.

14 You asking a question. And the way you are
15 asking it has no basis in the law. It is an
16 irrelevant question the way you are asking it. You
17 are saying, okay, you are down 11 to 1. Are you still
18 going to continue to deliberate or are you going to
19 sit right there and throw up your hands and say you're
20 not participating in this process anymore.

21 That is not what that case is about.. In the
22 Bennett case or whatever it was, the reversal occurred
23 because the juror had said I do not have the personal
24 gumption to stand up to eleven other jurors. I would
25 cave in simply because I'm down 11 to 1. If you get a

1 juror that says that, we will disqualify him.

2 If you get a juror that says yes I'm going to
3 fulfill my responsibility under the law as the judge
4 directs me to and I'm going to continue to deliberate
5 openly and honestly and objectively until the jury
6 declares a mistrial or until we get a verdict. That's
7 the question you are asking him. That is why I
8 stepped in there.

9 Not only do I not want you to ask that question
10 like that anymore. But I don't want you to think that
11 I'm trying to embarrass you in front of the juror or
12 anything. But you are putting it to him in a way
13 that is misleading. That is why I did that. All
14 right.

15 Ms. Joanne Netherton. I am handed this message.
16 I have no idea who wrote this down, somebody in the
17 Clerk's office. Joanne Netherton has called and asked
18 a question. Wants to talk to her priest about her
19 service as a juror in this case. Can she do it? The
20 answer is no, right? She cannot talk to the priest
21 about the death penalty, right?

22 **MR. BARTOSH:** Yes, sir.

23 **THE COURT:** Correct?

24 **MR. BARTOSH:** You are correct.

25 **THE COURT:** How about if I get the Clerk call

1 Ms. Netherton and ask her to come in now. And let's
2 discuss it with her.

3 **MR. BARTOSH:** Yes, sir.

4 **THE COURT:** Any objection, Mr. Gowdy?

5 **MR. GOWDY:** No objection to that, Your Honor.

6 I think the Court remembers why this is coming up.
7 She is a member of the Catholic Church. I think the
8 question was -- the Catholic Church does have a
9 position on the capital punishment. She, as a
10 Catholic, has a different from position. I'm sure
11 she's conflicted about opposing her Catholic Church.

12 **THE COURT:** I don't recall that. Your recall
13 is predictably much better than mine. I remember the
14 young man saying that. But I don't remember Ms.
15 Netherton saying that. She may very well have. But
16 let's do bring her in and we will talk to her and we
17 will see what she has to say.

18 She is also worried about what might happen after
19 the trial, any kind of harassment or retribution. I
20 will talk to her about that.

21 At her convenience. Tell her do not talk to the
22 priest. Come in at her convenience this afternoon and
23 we will talk to her.

24 **THE COURT:** All right. Mr. Willingham, are
25 you ready to proceed with Mr. Barnwell?

1 **MR. WILLINGHAM:** Yes, sir.

2 **THE COURT:** Do you understand my ruling?

3 **MR. WILLINGHAM:** Yes, Your Honor.

4 **THE COURT:** I believe you can open the floor
5 to him maybe. But to ask him specifically to name
6 circumstances in which he would impose a death penalty
7 is the same thing, the same question that was asked
8 before. And I sustain the objection.

9 Bring him in.

10 (WHEREUPON, Mr. Barnwell enters at approximately
11 12:27 p.m.)

12 **THE COURT:** Proceed.

13 **BY MR. WILLINGHAM:**

14 **Q** I appreciate you being patient with us. Tell us
15 what are your views on the death penalty are?

16 **A** My views are certain circumstances and all, I do
17 believe that the death penalty would be in for order.

18 **Q** Okay. And you indicated earlier that you thought
19 if you were given the choice, you would lead more towards a
20 life sentence?

21 **A** In certain circumstances.

22 **Q** Tell me why, why you say that?

23 **A** It would depend on the crime as I stated earlier
24 where the crime was and what the evidence presented at all
25 whether I would rule on the death penalty or a life

1 sentence.

2 Q Where do your views on the death penalty come
3 from Mr. Barnwell?

4 A What I seen done through the years and just the
5 way I feel on certain crimes and all that I think the death
6 penalty would be -- should be imposed.

7 Q Mr. Barnwell, I think we mentioned this before.
8 I want to make sure it is clear. When you get to the
9 sentencing phase, the death penalty is not automatic.

10 A Yeah. I understand.

11 Q And it is never going to be what we require.
12 The judge will never tell you you've got to find a verdict
13 of death or a sentence of death. No other jurors will
14 tell that you have got to. You always have choice. You
15 can give life for any reason. You can give life for no
16 reason. Given that you always have choice between life
17 and death, can you realistically see yourself ever imposing
18 a death sentence?

19 A Could I see myself? Yes, sir. I could.

20 Q And there is a form that the jurors would have to
21 sign if you believe that that is a proper verdict. And you
22 would have to sign it for all the world to see. If all
23 the other jurors are signing it and it is one blank left
24 and without your signature a death sentence would not be
25 imposed, could you see yourself signing that form?

1 **A** I could under certain circumstances, yes, sir.

2 **Q** Thank you.

3 **THE COURT:** Mr. Barnwell, please step back out
4 in the hall. I will be right back with you.

5 **MR. BARNWELL:** Yes, sir.

6 (WHEREUPON, Mr. Barnwell exits at approximately
7 12:30 p.m.)

8 **THE COURT:** Any objections?

9 **MR. BRENNAN:** No.

10 **MR. WILLINGHAM:** No, sir.

11 **THE COURT:** All right.

12 Bring him in.

13 (WHEREUPON, Mr. Barnwell enters at approximately
14 12:30 p.m.)

15 **THE COURT:** Mr. Barnwell, I find that you are
16 a qualified juror in this case. It is going to be I
17 believe at least tomorrow morning before we are ready
18 to come back. Start checking the, stay in touch with
19 us by calling on the telephone number you were given
20 Monday morning. Some time this afternoon, we're
21 going to put some information on there about when we
22 need you back.

23 Remember not to talk about the case with anybody.
24 Don't let anybody talk to you about it. Don't read
25 anything, watch anything or listen to anything about

1 this case. When you come back, be prepared to spend
2 five or six days with us. So you will need to start
3 getting your clothes together to come up here. So we
4 will see you in a day or so.

5 **MR. BARNWELL:** When would you want me to call,
6 sir?

7 **THE COURT:** I would start to call by three or
8 four o'clock this afternoon. Maybe five o'clock. It
9 is 12:30 now. So we're not -- it's going to be
10 tomorrow. There is almost no way we are going to be
11 done today. So, uh, it will be tomorrow. You can
12 call tonight or, just call tonight.

13 **MR. BARNWELL:** Okay.

14 **THE COURT:** You are free to go.

15 (WHEREUPON, Mr. Barnwell exits at approximately 12:31
16 p.m.)

17 **THE COURT:** Do you want to take a minute to
18 kind of talk about this last objection? The question
19 that I think it is agreed by you all to be
20 objectionable is something along the lines of under
21 what circumstances would you impose the death penalty.

22 **MR. BARTOSH:** You mean Mr. Barnwell?

23 **THE COURT:** Anybody.

24 **MR. BARTOSH:** I mean, that's the -- that
25 question?

1 **THE COURT:** That type of question. But the
2 way he came up here, the way it came up here was --
3 there is nothing improper about it all. He said
4 something about how he would impose the death penalty
5 on the death, on the killing of the child which then
6 raises the question that the only circumstance in
7 which you -- now if that is the question, is that the
8 only circumstance, well, that question has either a
9 yes or a no answer. That is one thing. But if you
10 change the question around and say what other
11 circumstances would you impose a death penalty, then
12 you are back to the original question which is --

13 **MR. GOWDY:** The death difficulty comes, Your
14 Honor, from he volunteers that it's got to be death of
15 a child. The next category is it has to be somebody
16 that I know or the next category is it has to be crime
17 that I witnessed. I agree that it should not be an
18 open-ended question. I do think that both sides
19 perhaps ought to be able to ask is 9/11 the only
20 circumstance under which you can see. Or I have asked
21 in the past does it have to be a serial murder.

22 **THE COURT:** How about this? How about if he
23 said something like it was the death of a child or a
24 killing of a child, then I could vote for the death
25 penalty. If you wanted to follow up and needed to

1 follow up and being entitled to follow up, said
2 something like do you have a set of circumstances
3 under which you would impose the death penalty and
4 that you would not consider the death penalty under
5 any other circumstances. If he says yes that means
6 he's already got an answer. You're not asking him to
7 speculate about anything. You can get that answer.

8 If he says no -- and I'm not telling you. I'm the
9 last person that needs to be telling you how to do it.
10 I'm simply trying to explore what my ruling is going
11 to be if it comes up again. But that points him, I
12 would hope, in the right direction of maybe giving you
13 a comfort level that he does not have some sort of
14 litmus test for the death penalty.

15 **MR. BARTOSH:** I think where this thing came up
16 was he said something about the death of a child.
17 Then Mr. Willingham said, well, tell me another
18 circumstance.

19 **THE COURT:** Right.

20 **MR. BARTOSH:** He could go down that road
21 forever. I think as you say, do you have a set --

22 **THE COURT:** What I wanted to do, I am going to
23 be really messing up if I start telling y'all how to
24 do your job. I want to explore how to do my job.
25 Do we agree that an open-ended question like under

1 what circumstances would you impose the death penalty
2 is not a proper question?

3 **MR. BARTOSH:** Yes, sir.

4 **MR. GOWDY:** Yes.

5 **THE COURT:** All right. Let's go ahead with
6 the next juror.

7 **MR. BRENNAN:** May I ask one question in relation
8 to the form of the question that I asked that you
9 didn't approve of? I did actually change the
10 question from yesterday. I believe my language was
11 would the mere fact that those eleven people would
12 have voted for death --

13 **THE COURT:** You did say something like that,
14 but you said it was something like would the fact that
15 you are alone only -- I wanted to state it more
16 clearly. The reason I did that I suppose was in the
17 interest of time.

18 I'm not telling you you can't ask that question.
19 But if I let that go, then maybe the Solicitor feels
20 compelled to spend five minutes on it. I just felt
21 like since I didn't think the question was all that
22 helpful to me in deciding whether not to qualify the
23 juror that I would clear it up for myself before I
24 allow things to go on. Any objection to me doing
25 that when I feel it necessary?

1 **MR. GOWDY:** No, sir.

2 **MR. BARTOSH:** No, sir.

3 **THE COURT:** All right.

4 (WHEREUPON, Jami Sturgeon, Juror number 268, enters at
5 approximately 12:35 a.m.)

6 **JAMI STURGEON**

7 having previously been sworn, testified as follows:

8 **EXAMINATION**

9 **BY THE COURT:**

10 **Q** Good afternoon, Ms. Sturgeon.

11 **A** Good afternoon.

12 **Q** How are you?

13 **A** I'm fine.

14 **Q** You recall that yesterday morning, we put you
15 under oath?

16 **A** Yes, sir.

17 **Q** And you understand you are still under oath right
18 now?

19 **A** Yes, sir.

20 **Q** Since yesterday afternoon when you left us, have
21 you talked to anybody about this case or has anybody talked
22 to you about the case?

23 **A** No, sir.

24 **Q** Have you learned anything or read anything or
25 heard anything about the case?

1 **A** No, sir.

2 **Q** Ms. Sturgeon, we're going to ask you some
3 questions. We hope that these questions will not intrude
4 too much into your private life. But we have to ask you
5 these. All we want you to do is to be open and honest
6 with us and tell us how you think and tell us how you feel.

7 We're going to talk a little bit about possible
8 penalty phase. The fact that we're talking about the
9 penalty phase does not mean anything about this case or
10 about this defendant. It simply means that we might get
11 to the penalty phase and we need to have some information
12 about some issues that might come up.

13 If you are a juror in this case, could you accept and
14 apply the law precisely as I give would give it to you and
15 render a verdict based solely on the testimony and the
16 evidence that you hear and see in this courtroom setting
17 aside anything that you might have heard or seen before the
18 trial began?

19 **A** Yes, sir.

20 **Q** You understand that in a criminal case like this
21 the State has the burden of proving the defendant guilty
22 beyond a reasonable doubt?

23 **A** Yes, sir.

24 **Q** You understand this is a murder case?

25 **A** Yes, sir.

1 **Q** Could you, depending on the facts and
2 circumstances that you find to have been proven and in
3 light of the law as I will give it to you, could you find a
4 verdict of either guilty or not guilty depending on whether
5 or not you think the State has met its burden of proof?

6 **A** Yes, sir.

7 **Q** If you are on the jury in this case and the jury
8 finds the defendant guilty of murder, then the case will go
9 into the sentencing phase. There are some issues that are
10 going to come up in sentencing phase that I need to you
11 about.

12 Aggravating circumstances are facts, incidents or
13 details of an occurrence that the State of South Carolina
14 has declared to aggravate or to make worse the crime of
15 murder. Aggravating circumstances, when accompanying a
16 murder, increase the enormity of the crime of murder or add
17 to the injury of crime of murder.

18 Mitigating circumstances, on the other hand, are
19 facts, incidences or details of an occurrence that the
20 State has declared to lessen the severity of the crime of
21 murder. These serve to extenuate or to reduce the moral
22 culpability or responsibility for the crime. If you are
23 on the jury in the sentencing phase of the capital, of a
24 death penalty trial, then you will have two possible
25 verdicts as to the sentence. You could find that the

1 verdict would be for a life sentence or you could find a
2 verdict for the death penalty.

3 If you were a juror, could you, depending on the facts
4 and circumstances that you find to exist, depending on the
5 consideration of aggravating and mitigating circumstances,
6 considering the law that I will give you, could you vote to
7 return a verdict for a life sentence?

8 A Yes, sir.

9 Q Could you vote to return a verdict for the death
10 penalty?

11 A Yes, sir.

12 Q If you are on the jury in this case and I
13 sequester the jury and put you in a hotel for five or six
14 days away from your home or your family, would that impose
15 a terrible burden for you?

16 A Not as long as I will be allowed to make
17 arrangements for my son.

18 Q You would have plenty of time to make an
19 arrangements. And I will also point out that this will
20 definitely keep you away from your school responsibilities.

21 A Yes, sir. I understand that.

22 Q Have you gone over the witness list?

23 A Yes, sir. I have.

24 Q Have you read every name on that list?

25 A I have.

1 **Q** Is there anybody on that list that you know or to
2 whom you are related?

3 **A** I'm not positive about one name.

4 **Q** Okay. Tell us.

5 **A** Number 36 is Linda Lyles. It is a possibility
6 that she was a parent of a former student of mine. I am
7 not positive. I would have to see her to be 100 percent
8 positive. The name just sounds a little familiar to me.
9 But I was not positive about that.

10 **THE COURT:** What can we tell Ms. Sturgeon
11 about Linda Lyles?

12 **MR. GOWDY:** Your Honor, if it pleases the
13 Court. Ms. Lyles is an employee of the Spartanburg
14 Regional Hospital. She is an African-American lady.
15 I'm not going to give a guess as to her age.

16 **BY THE COURT:**

17 **Q** Does that sound familiar?

18 **A** Yes, sir. I will need to know more about her
19 children in order for me to be able to tell you if that was
20 a possibility.

21 **Q** Let's just assume that this is the same Linda
22 Lyles that you know.

23 **A** Uh-huh (affirmative).

24 **Q** Did you know her well enough that this might
25 cause you a problem for you in being an impartial juror?

1 A No, sir.

2 Q Would the fact that you know Ms. Lyles interfere
3 in any way with your willingness or your ability to give
4 both the State and the defendant a fair and impartial
5 trial?

6 A No, sir.

7 Q Do you know of any reason why you could not give
8 the State and the defendant a fair and impartial trial?

9 A No, sir.

10 Q I'm going to let the lawyers talk to you for a
11 few minutes, ma'am. Then I'll come back maybe and talk to
12 you maybe in a few minutes.

13 A All right.

14 **EXAMINATION**

15 **BY MR. BARTOSH:**

16 Q Let me make sure I pronounce your name correctly,
17 Ms. Sturgeon. I am Mike Bartosh. I am a lawyer here in
18 Spartanburg. Along with Karen Quimby and Doug Brennan, we
19 represent Marion Lindsey in this case. I would like to go
20 a little bit over your questionnaire that you filled out.

21 A Okay.

22 Q You are a seventh grade teacher?

23 A Yes, sir.

24 Q Have you always been at Woodlock?

25 A No, sir.

1 Q Where were you before that?

2 A Directly before that, I was at C.L. Madden
3 Elementary School. And before that, I was at Cleveland
4 Elementary School. Prior to that, I was a long-term sub
5 at D.R. Hill Middle School.

6 Q Okay. Do you teach science?

7 A I do.

8 Q The Judge has gone over and I don't want to
9 belabor the point. But the Judge has gone over how this
10 process is going to work. If you're selected to be a
11 juror, the first part of the trial or this process is
12 basically just like every, like every trial. The State
13 will put up witnesses.

14 The jurors will sit over in the jury box and they will
15 listen to the evidence that the State puts up. They have
16 to decide based upon that evidence whether or not they have
17 proved to the satisfaction of each and every one of the
18 jurors beyond a reasonable doubt that Mr. Lindsey is
19 guilty of murder. If they do not prove that to the
20 satisfaction of the jurors, then we all go home.

21 If they do prove it, then we move into a second phase.
22 It is only if the State carries its burden as to proving
23 Mr. Lindsey guilty of murder that we move into the second
24 phase. I have heard some people say it is a penalty
25 phase. Some people say it is a sentencing phase. But

1 this is only procedure that I know of where the jury
2 decides the punishment.

3 What the State would do in that phase is they will
4 present aggravating circumstances, circumstances that they
5 hope will convince you that this is a worse case, that it
6 is an aggravated murder and that the proper punishment is
7 death. What we will be doing is we will be presenting
8 evidence in mitigation to lessen or show the various things
9 in Mr. Lindsey's life that we feel should lessen his
10 culpability or explain some things of what happened.

11 Of course, we are hoping to convince the jury to come
12 back with death, I apologize, life. In South Carolina
13 now, life is life without parole. If the decision of the
14 jury is life, Mr. Lindsey will die in the Department of
15 Corrections. He would never get out. Now, you worked
16 with children all of your professional life?

17 A Yes, sir.

18 Q Would the fact that children may have been
19 involved in that, would that affect your ability to be fair
20 and impartial in deciding this case?

21 A No, sir.

22 Q All right. Have you thought much about the death
23 penalty?

24 A I wouldn't think any more than anyone else had.

25 Q Have you had any reason?

1 **A** No, sir.

2 **Q** Usually no one has any reason to do it until a
3 situation like this.

4 **A** No, sir.

5 **Q** But I guess when you received your questionnaire,
6 did you start?

7 **A** No, sir. Honestly, at that point in time, my
8 inferences about what the case was about were totally
9 incorrect based on the questions.

10 **Q** Okay. But you've had an opportunity to think
11 about?

12 **A** Since we left here on Monday, yes sir.

13 **Q** Okay. Where do you get your beliefs. What are
14 the sources of your beliefs on the death penalty?

15 **A** I suppose it would relate to my upbringing from
16 my parents which would involve Christianity.

17 **Q** Uh-huh (affirmative). Now you've had some
18 relatives that work in the law enforcement?

19 **A** Yes, sir.

20 **Q** You have an aunt that was working with the Easley
21 Police?

22 **A** Yes, sir.

23 **Q** Also your uncle work with Greenville City police?

24 **A** Yes, he currently does.

25 **Q** You also said you have an uncle who is a

1 constable?

2 A Yes.

3 Q Is that --

4 A That was in the past.

5 Q That was in Greenville or was it over here?

6 A I'm really not sure.

7 Q All right.

8 A I know it's not in Spartanburg. I can tell you
9 that much. But I don't know if it was in Greenville.
10 They have lived in Greenville most of their life.

11 Q In a nutshell, what we are looking for are folks
12 that can be fair to both sides, who come in with an open
13 mind, who are willing to listen to both sides and give both
14 sides a fair trial before they decide if we get to the
15 penalty phase what the appropriate punishment will be. Do
16 you believe you can do that?

17 A Yes, sir.

18 Q The judge is going to tell you at the beginning
19 of the trial and even as we are talking now that as Mr.
20 Lindsey sits there, he is presumed to be innocent under our
21 law?

22 A Yes, sir.

23 Q That is a real and substantial right that every
24 citizen in this country enjoys. It is only until the
25 twelve jurors decides that he is no longer entitled to that

1 presumption that he loses it. But up until then as he
2 sits there, he is innocent. The judge is going to tell
3 you that now. Can you follow that instruction?

4 A Yes, sir.

5 Q All right. Now at the end of the trial, whatever
6 way or at the end of the penalty phase, whatever way it
7 goes, you and -- if you are on the jury, you and your other
8 eleven jurors are going to have to sign a sentencing sheet.

9 A Okay.

10 Q It could be for life. It could be for death.
11 Death is not mandatory in South Carolina. You are always,
12 you always have the option of choosing life as a punishment
13 over death. So death is not mandatory. But should it be
14 death and should the sentencing sheet as it was passed
15 around, the eleven jurors had signed it. And for whatever
16 reason you turned out to be the last person to sign the
17 sheet. And the sheet was passed over to you. And knowing
18 that when you signed that sheet, you were condemning Mr.
19 Lindsey to death. Could you do it?

20 A Yes, sir, if that's the way I felt.

21 Q Would you would be --

22 A You're asking me -- I'm sorry.

23 Q Go right ahead.

24 A Is it appropriate for me ask you a question?

25 Q Sure.

1 A Are you asking me if I was the only person who
2 had not signed would I be able to do that if that is what I
3 believed?

4 Q Yes, ma'am.

5 A Yes, sir. If I believe that that's the
6 punishment he should get no matter what anyone else had
7 written down, I would pick whatever I felt was appropriate.

8 Q So if you believed that death was appropriate --

9 A Uh-huh (affirmative).

10 Q -- then you would have no trouble signing it?

11 A No, sir.

12 Q Likewise if you believed that life was
13 appropriate, you would have no problem signing the
14 sentencing sheet?

15 A That's correct. Yes, sir.

16 Q Thank you very much.

17 MR. GOWDY: May it please the Court?

18 THE COURT: Yes, sir.

19 **EXAMINATION**

20 **BY MR. GOWDY:**

21 Q Good afternoon, Ms. Sturgeon.

22 A Good afternoon.

23 Q My name is Trey Gowdy. I, along with Donnie
24 Willingham to your left and Barry Barnett to the center, we
25 work in the solicitor's office. We're going to be

1 prosecuting this case on behalf of the State. The judge
2 asked you all the questions that I really had to ask you.
3 I just have a couple more.

4 A Okay.

5 Q I noticed you are a school teacher. I do not
6 have a child yet that is to the seventh grade, so if this
7 is a dumb question, I apologize to you.

8 A Uh-huh (affirmative).

9 Q But as a science teacher in the seventh grade, do
10 you specialize in biology, chemistry, physics or a mixture
11 of all of the sciences?

12 A Under the current state standards, it is a
13 mixture. But primarily we focus on life science. We do
14 earth science as well as physics.

15 Q I notice you go to Pastor Anders' Church?

16 A I do.

17 Q How long have you gone there?

18 A About five or six years. Not positive about
19 that.

20 Q Okay. That is good enough. Last question for
21 you. If I understood you right, you said that after all
22 the evidence is in as a juror, if you thought that life was
23 the proper verdict, that's what you're going to vote for?

24 A Uh-huh (affirmative).

25 Q And if you thought that death was the proper

1 verdict, that is what you're going to vote for?

2 A Uh-huh (affirmative).

3 Q And it's based on what happens in this courtroom?

4 A Uh-huh (affirmative).

5 Q And it's based on what you believe should happen
6 to him?

7 A Yes, sir. Uh-huh (affirmative).

8 Q Thank you very much for answering my questions.

9 MR. GOWDY: Thank you, Your Honor.

10 THE COURT: Step out in the hall for just a
11 minute please, Ms. Sturgeon.

12 (WHEREUPON, Ms. Sturgeon exits at approximately
13 12:51 p.m.)

14 THE COURT: Any objection?

15 MR. BARTOSH: No, sir.

16 MR. GOWDY: Not from the State.

17 THE COURT: Bring her in.

18 (WHEREUPON, Ms. Sturgeon enters at approximately
19 12:51 p.m.)

20 THE COURT: Ms. Sturgeon, I find that you are
21 a qualified juror in this case. It is going to be at
22 least tomorrow I believe before we will be ready for
23 you to come back. When you do come back, be prepared
24 to bring enough stuff, clothing and whatever to last
25 you five or six days.

1 **MS. STURGEON:** Okay.

2 **THE COURT:** Don't talk to anybody about the case.
3 Don't let anybody talk to you. Don't read anything,
4 listen to anything or watch anything about this case.
5 When you come back, I will ask you whether or not you
6 complied with that instruction. I want you to be
7 able to tell me that you had.

8 **MS. STURGEON:** Can I ask you a question?

9 **THE COURT:** Please.

10 **MS. STURGEON:** I'm sorry. When you tell me I
11 need to be prepared to come back, that would be for
12 the weekend as well too?

13 **THE COURT:** Yes, ma'am.

14 **MS. STURGEON:** So I would need to go ahead and
15 make arrangements just in case for my son to be cared
16 for by somebody else?

17 **THE COURT:** Yes, ma'am.

18 **MS. STURGEON:** I just wanted to be clear.

19 **THE COURT:** All right. We will see you in a
20 day or so.

21 (WHEREUPON, Ms. Sturgeon exits at approximately
22 12:51 p.m.)

23 **THE COURT:** Give us a juror.

24 (WHEREUPON, Matthew Smith, Juror number 256, enters at
25 approximately 12:52 p.m.)

MATTHEW SMITH

having previously been sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q Mr. Smith, good afternoon, sir.

A Yes, sir.

Q You recall we put you under oath yesterday afternoon, excuse me, Monday morning?

A Yes, sir.

Q You are still under oath now. You understand that?

A Yes.

Q Since you left us Monday afternoon, have you talked to anybody about this case or has anybody talked to you about this case?

A No.

Q Have you watched or heard or read anything about the case?

A No.

Q We're going to ask you some questions. I'm going to start off. The lawyers are going to follow up. We hope we don't get too deep into your private life. We have to ask you these questions. All we want you to do is be open and honest with us, tell us how you think, tell us how you feel and we would appreciate that.

1 We're going to get into some discussion about the
2 penalty phase. The fact that we get into that discussion
3 doesn't mean anything about this case, about this
4 defendant. It simply means we need ask you some questions
5 about some issues that might come up if we get that far.

6 If you are a juror in this case, could you accept and
7 apply the law precisely as I will state it to you and
8 render a verdict based solely on the testimony and evidence
9 that you, that is presented to you here in this courtroom,
10 setting aside anything that you may have learned before the
11 trial began?

12 **A** Yes.

13 **Q** Do you understand that in a criminal case such as
14 this, the State has the burden of proving the defendant
15 guilty beyond a reasonable doubt?

16 **A** Yes.

17 **Q** You understand this is a murder case?

18 **A** Yes.

19 **Q** If you are a juror in this case, could you --
20 hold on just one second. Could you, depending on the
21 facts and circumstances that you find to have been proven
22 and in light of the law as I give it to you, could you find
23 the defendant either guilty or not guilty depending on
24 whether or not you think the State has met its burden of
25 proof?

1 A Yes.

2 Q If you are a juror in this case and if you get
3 into the, if the jury finds the defendant guilty, we will
4 move into the penalty phase as I said. There will be some
5 other issues that will come up. I will talk to you about
6 those now. Aggravating circumstances are facts,
7 incidences or details of an occurrence that the State of
8 South Carolina has declared to aggravate or to make worse
9 the crime of murder. Aggravating circumstances increase
10 the enormity of the crime or add to the injury resulting
11 from the crime.

12 Mitigating circumstances, on the other hand, are
13 facts, incidences or occurrences that the State of South
14 Carolina has declared to lessen the severity of the crime.
15 They may be seen as extenuating or reducing the moral
16 culpability or responsibility for the crime.

17 If you are on the jury in the penalty phase of a death
18 penalty case such as this, you will have two options as to
19 what your verdict would be. You can have a verdict for a
20 life sentence or you can have a verdict of the death
21 sentence. Could you, depending on the facts and
22 circumstances that you find to exist, considering
23 aggravating and mitigating circumstances and considering
24 the law as I will give it to you, could you vote to impose
25 a life sentence?

1 **A** Yes.

2 **Q** Could you vote to impose the death penalty?

3 **A** No.

4 **Q** You're sure about that?

5 **A** Yes.

6 **Q** Are there any circumstances and don't tell me
7 what they are, but are you telling me that you just are not
8 going to consider the death penalty?

9 **A** Yes.

10 **Q** You are not going to consider it?

11 **A** That is correct.

12 **THE COURT:** Do you want to voir dire this
13 witness?

14 **MR. BARTOSH:** No, sir.

15 **THE COURT:** The State?

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

17 **THE COURT:** All right. Mr. Smith, we are not
18 going to need your services in this case. You are
19 free to go.

20 (WHEREUPON, Mr. Smith exits at approximately
21 12:59 p.m.)

22 (WHEREUPON, Joseph Floyd, Juror number 89, enter at
23 approximately 12:59 p.m.)

24 **JOSEPH FLOYD**

25 having previously been sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q Mr. Floyd, afternoon, sir.

A Good afternoon.

Q You recall that we put you under oath Monday morning.

A Yes, sir.

Q You understand you are still under oath right now?

A Yes, sir.

Q Since Monday afternoon when I released you, have you talked to anybody about this case or has anybody tried to talk to you about the case?

A No, sir.

Q Have you heard anything or read anything or seen anything about this case since Monday?

A No, sir.

Q Mr. Floyd, we're going to ask you some questions now. We hope that these questions don't go too deep into your private life. But we have to ask you these questions. There are not any right or wrong answers to these questions. We just want for you to be open and honest with us and tell us how you think and how you feel.

— We are going to get into some questions about a possible penalty phase. But the fact that we're talking

1 about the penalty phase does not mean anything about this
2 defendant or about this case. It simply means there are
3 some questions about that that we need to talk to you about
4 so we can see how you feel about some issues that might
5 come up at that point in the trial.

6 If you are a juror in this case, would you be able to
7 accept and apply the law as I will give it to you and
8 render a verdict based solely on the testimony and the
9 evidence that you hear and see in this courtroom?

10 A (No response.)

11 Q Let me ask the question again. You told us on
12 Monday that you knew something about the case, right?

13 A I have been acquainted with persons who -- in my
14 business where I work, I ran up on a person who was
15 discussing the case right after it happened.

16 Q Uh-huh (affirmative). All right. Well, let me
17 just ask that question again. Okay. If you are a juror
18 in this case, could you accept and apply the law as I will
19 give it to you and set aside anything that you might have
20 learned or heard about this case and render a verdict based
21 solely on the testimony and the evidence that you would
22 hear and see in this courtroom? Could you do that?

23 A Yes, sir.

24 Q You understand that in a criminal case such as
25 this the State has the burden of proof and must meet that

1 burden of proof beyond a reasonable doubt?

2 A Yes, sir.

3 Q You understand this is a murder case?

4 A Yes, sir.

5 Q Could you, depending on the facts and
6 circumstances that you find to have been proven and in
7 light of the law as I will give it to you, could you find
8 the defendant either guilty or not guilty depending on
9 whether or not you believe the State has met its burden of
10 proof?

11 A Yes, sir.

12 Q If you are on the jury and the jury finds the
13 defendant guilty, we will move into the penalty phase or
14 the sentencing phase of the trial. I'm going to tell you
15 about some things that will come up, some issues that will
16 come up during that phase of the trial. Aggravating
17 circumstances are facts, incidences or details of an
18 occurrence that the State of South Carolina has declared to
19 aggravate or to make worse the crime of murder.
20 Aggravating circumstances increase the enormity of the
21 crime of murder and add to the injury of that crime.

22 Mitigating circumstances, on the other hand, are facts
23 incidences, incidences, incidents -- I'm not saying that
24 right, am I? I need to go back to your school. Incidents
25 or details of an occurrence that the State of South

1 Carolina has declared to lessen the severity of the crime.
2 They may serve to extenuate or to reduce the moral
3 culpability or responsibility of the crime of murder.

4 If you are on the jury in the sentencing phase of a
5 death penalty trial, you would have two options as to what
6 your verdict could be. You can have a verdict for a life
7 sentence or you can have a verdict for the death penalty.
8 Could you, depending on the facts and circumstances that
9 you find to exist, considering any aggravating or
10 mitigating circumstances and considering the law as I will
11 give it to you, could you vote to return a sentence of a
12 life sentence, a verdict of a life sentence?

13 A According to the circumstances, I could.

14 Q Could you vote to return a verdict for the death
15 penalty?

16 A Yes, sir.

17 Q If you are on the jury in the case and if I
18 sequester a jury meaning put you up in a hotel where you
19 can't go home for five or six days, is that going to impose
20 a terrible burden on you?

21 A I need to inform you that I have two teenage
22 daughters. And my wife left me five weeks ago.

23 Q Uh-huh (affirmative). Now, of course, if you're
24 on the jury then that's going to mean that you cannot be
25 home supervising and taking care of those two daughters.

1 And, of course, I know this must be a particularly
2 difficult time since this just came up so recently.

3 A It is.

4 Q And you have to tell me how it would affect you.
5 Is there somebody else that might can come and watch those
6 girls while you are serving on a jury?

7 A Yes, I believe there possibly could be.

8 Q Do you think that you could do it if you get on
9 the jury and I sequester the jury?

10 A I could.

11 Q Have you been over that witness list that I gave
12 you a few minutes ago?

13 A Yes, sir.

14 Q Have you read every name on that list?

15 A Yes, sir.

16 Q Do you know or are related to anybody whose name
17 is on that list?

18 A I do not know any of them or am not related any
19 of them.

20 Q Do you know of any reason why you could not give
21 both the State and the defendant a fair and impartial trial
22 in this case?

23 A I feel I am prejudiced.

24 Q Why is that?

25 A I do not have a clear conscious as far as the

1 judicial system goes because of things that's happened in
2 the past.

3 Q All right. I tell you what, I'm going to let the
4 lawyers follow-up on that. They will ask you some
5 questions about it. You can talk to them. Okay?

6 A Okay.

7 Q Of course, I will be listening too.

8 THE COURT: Mr. Bartosh.

9 MR. BARTOSH: Thank you, Your Honor.

10 EXAMINATION

11 BY MR. BARTOSH:

12 Q How are you, Mr. Floyd?

13 A Just fine. Thank you.

14 Q My name is Mike Bartosh. I am a lawyer here in
15 Spartanburg. I, along with Doug Brennan and Karen Quimby,
16 are representing Marion Lindsey. Mr. Lindsey is the
17 individual in the white shirt there. One of the things
18 that I wanted to ask you about from the beginning is you
19 listed on your questionnaire that you have poor hearing?

20 A Yes, sir.

21 Q How long have you suffered from that condition?

22 A Since 1972.

23 Q Is it chronic?

24 A There's a constant ringing in my ears.

25 Q Do you believe that that would affect your

1 ability to perform your duties as a juror?

2 A Unless I could hear, if I could only hear. Some
3 times I hear the words but I can't make out what is being
4 said.

5 Q Okay. Well the way you describe that, how often
6 does that happen?

7 A Constantly.

8 Q So you may or may not be able to hear what is
9 being said. When a witness testifies, you may or may not
10 be able to hear them. You hear the words, but don't
11 understand?

12 A That is correct.

13 Q Okay. Also, when the judge was first talking to
14 you about whether or not you could listen to the evidence
15 and, and if you find that -- based on the evidence, you
16 find that Mr. Lindsey either is innocent or guilty, you
17 had a hesitation?

18 A Yes, sir.

19 Q Can you tell me what the cause of that hesitation
20 was.

21 A The one hesitation you are referring to was the
22 one about -- I hesitated more than once.

23 Q Yes, sir.

24 A Was it the one about, what?

25 A The first one?

1 Q And the question was -- can you refresh my
2 memory?

3 A I think his first question was could you listen
4 to the evidence in the first part of the trial and
5 determine and find Mr. Lindsey either guilty or not guilty
6 and follow his instructions.

7 A And I hesitated?

8 Q Yes, sir.

9 A I was just thinking of the words and making sure
10 I understood the question that's the reason I hesitated.
11 I do believe I can do that, perform that duty.

12 Q Is that generally what you have to do is you have
13 to hear the words first and then you have to think about
14 their meanings before you can respond? Is that a fair
15 statement?

16 A Not in every case. I was just wanting to be
17 extra careful that I answered correctly.

18 Q Because this is a serious manner and I appreciate
19 that.

20 A Yes, sir.

21 Q Okay. Also there was one part towards the end
22 when you said that you felt he would be prejudiced?

23 A Yes, sir.

24 Q Or that you are prejudiced?

25 A Yes, sir.

1 Q About -- towards the legal system?

2 A Yes, sir.

3 Q Could you describe that prejudice for us?

4 A If I must.

5 Q Well yes, sir. We would like for you to.

6 A I was involved in a case three, maybe four years
7 ago where my daughter, who was 19 or 20 at the time, caused
8 a very bad disturbance in my home. And I was accused of
9 criminal domestic violence and found guilty of it. Because
10 I did not realize the consequences of that sentence, --

11 Q Yes, sir.

12 A -- if I had only been wiser, I would have
13 demanded a jury trial instead of a magistrate's trial. So
14 I feel like that I was wrongly convicted because I did not
15 strike my daughter. I did not do anything harmful to her.
16 But the law states, according to what I was told by the
17 magistrate, if she feels like she had been harmed, then I
18 am guilty. So I was found guilty. And so I have this in
19 my heart that says the judicial system has wronged me. Do
20 you understand where I'm coming from?

21 Q Yes, sir. Fair to say, you felt like you had
22 been falsely accused?

23 A Yes, sir.

24 Q It's fair to say that you felt that you had been
25 mistreated by the judicial system?

1 **A** Yes, sir. I lost my constitutional rights to
2 to own an arm and to hunt. And so to me, it is a very
3 serious matter although it was a misdemeanor. To me, it
4 damaged me greatly.

5 **Q** So then you feel, giving those feelings that you
6 have towards the judicial system, do you feel that you
7 could be fair and impartial to both sides?

8 **A** I have a grudge. I will be honest with you.

9 **Q** And that grudge would be towards the State?

10 **A** Yes, sir.

11 **Q** You felt like you had been mistreated by the
12 system?

13 **A** Yes sir.

14 **Q** Okay. Could you push put that grudge aside and
15 be fair to the State?

16 **A** I would have to be because it is such a terrible
17 crime that Mr. Lindsey is accused of.

18 **Q** Okay. So you would be able to do that?

19 **A** Yes, sir.

20 **Q** Okay. Now let's get to the crime that Mr.
21 Lindsey is accused of. I think you indicated Monday that
22 you knew some things about the case?

23 **A** Yes, sir.

24 **Q** You know some individuals involved in a case?

25 **A** No, sir.

1 Q You have been told things about it?

2 A I work -- may I tell you what I know?

3 A Sure.

4 Q I work as a plumber. I work for this one
5 company where they run sewer lines. It is not a public
6 sewer. It is a private sewer. It is Carolina Water
7 Sewers. I recall right after this incident took place,
8 this crime, that I was working for this lady who had sewer
9 problems in her yard. It was our responsibility to fix it.

10 I don't remember location. I don't remember the name
11 or anything like that. But I remember her discussing that
12 she knew the person or she was a cousin or a relative or
13 something of that lady who was killed. And it was just a
14 casual conversation but she was very distraught about it.
15 That's all I remember.

16 Q Did she tell you the details of it?

17 A Nothing except gun fire was involved and that is
18 all.

19 Q All right. Did the fact that she told you some
20 of the details, did that cause you to form an opinion as to
21 Mr. Lindsey's guilt or innocence?

22 A No, I don't think so. Not at that time.

23 Q How about right now?

24 A It has been two years ago, if I'm not mistaken.
25 I don't think right now I would not think that it would be

1 for me to form an opinion one way or the other.

2 Q So you would not have an opinion either way.
3 The judge is going to tell you, if are chosen as a juror,
4 that as Mr. Lindsey sits there he is innocent. He is
5 presumed to be innocent. And when you take that oath --if
6 you are chosen for the jury, when you take the oath, you
7 accept the fact that he is swear, accept the fact that he
8 is innocent as he sits there. Would you have a problem
9 doing that?

10 A No, sir.

11 Q Do you wear any kind of appliances --

12 A No, sir.

13 Q -- for your ear? Now one last question that I
14 want to ask you. I don't mean to pry. Well, that is
15 being self-serving, but it is a question that I would like
16 to ask you. I hope you don't take it the wrong way. You
17 just explained to the judge that your wife, you and your
18 wife are separated or she left you about five weeks ago?

19 A Yes, sir.

20 Q Is that -- and I'm sure that has affected you in
21 many, many ways?

22 A It is has made me very apprehensive and worried.

23 Q Okay. Would that fact and the fact that you may
24 be sequestered which means you won't be home, would that
25 cause you to become distracted or, from being able to give

1 both sides a fair and impartial hearing and come to a fair
2 and impartial verdict? Would you be able to set aside for
3 that period of time all of these things that have happened
4 to you and devote yourself to this?

5 A I believe I could. It has not been like it was
6 last week.

7 Q So as time goes, time's healed the situation.
8 Okay. Now you know if we get to the, we will only get to
9 the penalty phase if the State proves beyond a reasonable
10 doubt that Mr. Lindsey is guilty of murder. If they don't
11 do that, then we all go home. You understand that part?

12 A Right.

13 Q If they do prove it to the twelve jurors beyond a
14 reasonable doubt, then we have the sentencing or the
15 penalty phase. This is the only procedure that I know of
16 where the jury decides what the penalty is, okay, whether
17 it's life or whether it's death. If it is life, then life
18 now is life without parole. If Mr. Lindsey was to get
19 life in this case, he would spend the rest of his life in
20 prison. He would die in the Department of Corrections.

21 If he was to get death, he would either be
22 electrocuted or receive lethal injection. Two things,
23 could you listen to both sides? Because what the State is
24 going to do is they're going to present what they consider
25 to be aggravating circumstances. Things that make this

1 murder worse.

2 Of course, what we would be doing is we would be
3 presenting mitigating factors which we believe will lessen
4 the severity of this. Now, could you give both sides a
5 fair and impartial hearing on those matters?

6 A Yes, sir.

7 Q And if you felt that death was appropriate, you
8 could vote for death?

9 A Yes, sir.

10 Q And if you felt life was appropriate, likewise
11 you would vote for life?

12 A Yes, sir.

13 Q And you understand that death is not compulsory?

14 A Yes, sir.

15 Q There is always a chance for life.

16 A (Nods head affirmatively.)

17 Q And this last question, I appreciate your
18 patience, Mr. Floyd. But I just want to ask you this. If
19 it comes down to death or life for that matter, every juror
20 -- there's a sentencing sheet. And every juror has to sign
21 that sentencing sheet.

22 And let's say by the luck of the draw, it's death.
23 And you are the last one to sign the sheet after all the
24 other eleven signed and you were the last one to sign it.
25 And you knowing that when you put your signature on sheet

1 that you are condemning Mr. Lindsey to death, could you do
2 that?

3 A Could I ask you a question?

4 Q Please do.

5 A Why do you say I have to sign that sheet?

6 Q Well, in order --

7 A What if I don't?

8 Q Well, if you are a juror, it is your duty to sign
9 the sheet either way, either for life or for death. It
10 must be unanimous. Now, if you don't feel it's
11 appropriate, you don't have to sign it.

12 A That's only for death?

13 Q For life. If you didn't feel life was
14 appropriate.

15 A What if everybody says we want to give him life
16 and I want to give him death and I say I'm not signing
17 that.

18 Q That's your prerogative. It has to be unanimous.

19 A You don't sign something on the life stage?

20 Q Yes, on both. It's the sentencing sheet.

21 A So they both have to be unanimous?

22 Q They both have to be unanimous. It has to be
23 unanimous for life or it has to be unanimous for death.

24 A If we reach a unanimous decision, I could sign
25 it.

1 Q Thank you.

2 MR. WILLINGHAM: Please the Court.

3 EXAMINATION

4 BY MR. WILLINGHAM:

5 Q Mr. Floyd, my name is Donnie Willingham. This
6 is Barry Barnett. We are the prosecutors on this case. I
7 want to thank you for being candid with us. I hate you had
8 an experience where you felt you were wrongly accused. I
9 need to talk to you about that. Who arrested you?

10 A I do not remember.

11 Q You know what agency it was?

12 A County.

13 Q Okay. And the fact that we are going to have
14 county deputies testify in this case, is it my
15 understanding that you think that based on your prior
16 experience you may be prejudiced against some of the things
17 they say?

18 A I would be lying if I didn't tell you so.

19 Q Again, I want to tell you that there are no right
20 answers or wrong answers. They are just your answers. I
21 appreciate your candor and your honesty with us. When you
22 went to magistrate court, was there a prosecutor there?

23 A No, sir.

24 Q Okay. Would that prejudice be such that you
25 would not give those officers the same credibility as you

1 would any other person who testified?

2 A No, sir.

3 Q Tell me how your prejudice may affect this trial.

4 A It would probably not affect it in any physical
5 way. It would only be an emotional prejudice.

6 Q Okay. Tell me what you mean by that if you
7 would.

8 A See, most police officers, they act puffed up and
9 they point at you like a dog. Like yesterday, during our
10 pre -- whatever we were doing yesterday. They would point
11 at you like you were a bird dog and say come here. They
12 don't respect -- they don't treat you with any kindness. I
13 have that feeling. Why do they treat people in such a
14 disdainful, hateful, mean-spirited way.

15 And I would have commend you, Your Honor, for you are
16 a man of gentle ways. And you act respectful towards all
17 people.

18 But that's the reason I have this disdain for them
19 because of the way they talk to you. One bailiff says you
20 can't read that book. And there was a lady sitting right
21 there reading a book. And a man sitting over there reading
22 a book. I said why do you have to act so hateful and mean
23 spirited. Why not use kindness towards people? I get
24 riled up about it.

25 Q Okay. I want to ask you a few more questions.

1 Unless the Court --

2 THE COURT: Do you have any more questions?

3 MR. WILLINGHAM: Yes, I do. You looked like you
4 were wanting to say something.

5 BY MR. WILLINGHAM:

6 Q You said you have two daughters at home. One who
7 is 17 and I think 14?

8 A Yes, sir.

9 Q On the questionnaire -- if you were being
10 selected and the jury sequestered, you would be here with
11 us day and night and weekends for the next five to seven
12 days. Would you be so worried about your daughters and
13 whether they were being taken care of what they were doing
14 that that would distract you from this case?

15 A No, sir. My two daughters that you are speaking
16 of are very trustworthy young ladies.

17 Q I want to ask you a little bit about the death
18 penalty. What are your views on the death penalty?

19 A My views are sometimes it's appropriate and
20 sometimes it's not.

21 Q What do you mean by that?

22 A It's all according to the circumstances.

23 Q Where do your views on the death penalty come
24 from?

25 A A lot of it comes from my upbringing and my home

1 from what my parents have taught me or from what I have
2 read and experiences in life.

3 Q Okay. I'm going to ask you about your hearing.
4 Do you believe that would prevent you from being able to
5 actively participate in this trial?

6 A If I have permission when I am sitting over there
7 to say I can't hear you, it will not prevent it. But if I
8 don't have permission to say speak up, please, it would be
9 very difficult.

10 Q During these past two days of jury
11 qualifications, has there been a time that you have not
12 been able to understand what was going on or hear?

13 A No, sir.

14 Q Give me one second. Mr. Floyd, you said you
15 have ringing in your ears constantly?

16 A Constantly.

17 Q Is it safe to say that you are pretty good at
18 watching my lips pretty close? You are pretty good at
19 reading lips?

20 A It helps.

21 Q Okay. Now, if we have a witness that's talking
22 to the judge or talking to somebody else and is not looking
23 at the jury, do you think that's going to cause any concern
24 or any trouble?

25 A If they would speak in a good firm voice, I could

1 hear. I must concentrate on what they are saying. I can't
2 be distracted by another sound in the room or someone
3 talking over there. That's not the case in a courtroom.

4 Q A few more questions then I'm going to sit down.
5 Your CDV experience. There may be allegations of domestic
6 abuse in this case. The fact that you've had that prior
7 experience, is that going to prevent you from fairly
8 looking at both the defense and the prosecution?

9 A No, sir.

10 Q Okay. And back to your experiences concerning
11 police officers both during your CDV arrest and apparently
12 yesterday in court, do you have a feeling that all law
13 enforcement are acting either puffed up or arrogant or too
14 authoritative?

15 A All, you used the word "all". There was one
16 gentleman who talked to me. I don't remember his name. I
17 was very impressed by his demeanor, his kindness.

18 Q Mr. Floyd, what I want to make sure is because
19 you've had bad experiences with law enforcement and with
20 the justice system. I don't want to be left in that
21 category. And I don't want the prosecution or any of these
22 officers that are going to testify to be left in that same
23 category with the ones that you had bad experiences with.

24 I guess what I want is some assurance that you
25 wouldn't do that. But are there times that you've had

1 experiences with peoples or agencies or law enforcement
2 that just leave such a bad taste in your mouth that you
3 just can't get it out and I've been there. I understand
4 that. If that's the case, I need to know that now.

5 A Just like a child. When a child gets bit by a
6 big brown dog, a child is going to be afraid of a big brown
7 dog. When you become a man, you put aside all of that
8 stuff. And you consider that some brown dogs aren't going
9 to bite you.

10 Q You think you can put that aside in this case?

11 A Yes.

12 Q And give me a fair shake as well as the other
13 side?

14 A Yes, sir.

15 Q Excuse me. Thank you.

16 THE COURT: Mr. Floyd, step out in the hall for
17 just one second.

18 MR. BARTOSH: May I ask him one quick question?

19 THE COURT: Yes, sir. Let him ask a follow up
20 question.

21 BY MR. BARTOSH:

22 Q Mr. Floyd, you taught in District 7?

23 A Pardon me.

24 Q You taught school in District 7?

25 A Yes, sir.

1 **Q** Where did you teach?

2 **A** Daniel Morgan Vocational School.

3 **Q** Thank you.

4 **THE COURT:** All right. Step out in the hall, sir.

5 (WHEREUPON, Mr. Floyd exits at approximately
6 1:42 p.m.)

7 **THE COURT:** What's your position on this juror?

8 **MR. BARTOSH:** I find him fascinating, Your
9 Honor.

10 **THE COURT:** He is fascinating.

11 **MR. BARTOSH:** I think he is qualified.

12 **THE COURT:** I know that Mr. Willingham thinks he
13 is qualified. Otherwise, he would not have spent
14 fifteen minutes trying to rehabilitate him from his
15 obvious disqualification over his prejudice towards
16 law enforcement agents. So y'all believe he is
17 qualified?

18 **MR. WILLINGHAM:** Judge, I would agree with you. I
19 am concerned about his theory and his beliefs. But I
20 do think he will be able to up stand and hold.

21 **THE COURT:** I find that this juror's experience
22 with law enforcement and his opinion about law
23 enforcement is likely to substantially interfere with
24 his ability to be able to carry out his responsibility
25 as a juror. I have watched him. He was very agitated

1 and very eager to explain his frustration with the way
2 he perceived that he was treated on Monday.

3 When the question was finally put to him by Mr.
4 Bartosh appropriately, could you set that aside. He
5 got quiet. He sort of sagged his shoulders and in a
6 fully reluctant voice, he said I can set that aside
7 and be fair. He did the same sort of thing when he
8 went through the brown dog analogy. And when he was
9 talking about the bailiffs and the sheriff's deputies
10 were pointing their fingers at him, and he was shaking
11 his finger vigorously.

12 I am just, I am convinced that that witness is --
13 I keep calling them witnesses. That that juror's
14 feelings about law enforcement is going to
15 substantially interfere with his ability to carry out
16 my instructions and to carry out his responsibilities
17 under the law. I find him disqualified. I'm not
18 concerned about his hearing.

19 **MR. BARTOSH:** May we object to that, Your
20 Honor.

21 **THE COURT:** I think your objection is noted. And
22 I want the record to be clear here that this juror
23 more than any juror we had was animated in his
24 descriptions. And I suppose that -- there's a lot of
25 my finding in what I observed from him from the bench.

1 But let me go back to Monday. And we can put this on
2 the record if you want to.

3 But during jury qualification on Monday, when the
4 whole panel was in here, a couple of law enforcement
5 agents and bailiffs, and I don't remember who they
6 were, we can find out, came to me and told me that
7 they were having difficulty with Mr. Floyd because
8 they were trying to get him to do one thing or not do
9 one thing and that he was smarting off to them. And
10 he was saying things to them that I felt were
11 inappropriate.

12 That is the way I have always asked the bailiffs
13 and the courtroom security deputies to communicate
14 with me about what is going on out there in the jury
15 panel. So they did what I had asked them to do in
16 helping me to fulfill my responsibilities to maintain
17 order in the courtroom.

18 When that was reported to me, it was right before
19 we broke for lunch I believe. And I said let him go.
20 It wasn't like they had him in custody. But I said
21 let's just don't do anything about it right now and
22 see if it kind of blows over. And I believe nothing
23 else was said to me during the course of the
24 afternoon. So that enters into my evaluation and my
25 findings.

1 Frankly, I forgot about that until he started
2 mentioning how the bailiffs were telling him that he
3 could not read a book when someone else was reading a
4 book and how they were pointing their fingers at him
5 and they were demonstrating, he was demonstrating how
6 they did that. And that is what reminded me that we
7 had had that, that I had had that report on Monday.

8 So based on all of that and particularly based on
9 my observation of him in the courtroom, I find that he
10 is not qualified. That is because his opinion about
11 law enforcement, his experience with Spartanburg
12 County Sheriff's Office in that criminal domestic
13 violence case, the consequences of his criminal
14 domestic violence conviction that he did not
15 understand apparently at the time he entered the, or
16 went before the magistrate on the CDV, all of that is
17 going to substantially interfere with his ability to
18 carry out my instructions to be fair and impartial
19 juror.

20 **MR. BARNETT:** One other thing too I noticed was
21 he would have to constantly interrupt everybody. You
22 asked the question the first time we were sitting here
23 for almost a minute or two you had to repeat your
24 question. He would interrupt saying that, he would
25 have to interrupt and say you would have to talk loud

1 or whatever if he was on the jury.

2 **THE COURT:** That is not a part of my ruling.
3 I am satisfied that he and I in working together that
4 I can keep my eye on him and he could let me know. In
5 whatever way, we could arrive at that he was having
6 trouble hearing. And I could take care of that. I am
7 not concerned about his hearing.

8 **MR. BARTOSH:** I am assuming that by just our
9 entering our objection that we are protected on the
10 record or do we need to put the basis for our
11 objection?

12 **THE COURT:** Mr. Bartosh, I'm going to have to
13 say that not only do I not know the answer to that
14 question but I don't believe that it would be proper
15 for me to give you an opinion on it even if I did know
16 it.

17 **MR. BARTOSH:** Your Honor, I think out of
18 abundance of caution we need to put the basis of our
19 objection. As I understand it, the Court is
20 disqualifying him because of his attitude towards law
21 enforcement, his experience with the bailiffs and law
22 enforcement on Monday and that you don't believe you
23 can follow his instructions. I think what he
24 testified to was in every case he said he could follow
25 the instructions.

1 He also told that story about the brown bear or
2 the brown dog. He said when you are a child, you are
3 afraid of all dogs. But as you become a man, you
4 discover that not on brown dogs are bad. I think
5 that indicated to me he could follow your instructions
6 and that he did not share that opinion of all police
7 officers. So I think that he indicated that he could
8 follow instructions. That is the basis of our
9 objection.

10 **THE COURT:** And my ruling is not he did not
11 indicate that. It is that I don't buy it. It is my
12 finding that his attitude and his, not so much as
13 attitude as if that is improper, but his feelings
14 about law enforcement, his feelings about the case
15 that he had is going to substantially interfere with
16 his ability to carry out his responsibilities under
17 the laws of jurors.

18 Bring him in.

19 (WHEREUPON, Mr. Floyd enters at approximately
20 1:48 p.m.)

21 **THE COURT:** Mr. Floyd, we appreciate you
22 coming and talking to us about all the things that you
23 talked to us about. We're not going to need your
24 services in this case and you are free to go.

25 **MR. FLOYD:** Thank you.

1 (WHEREUPON, Mr. Floyd exits at approximately
2 1:48 p.m.)

3 **THE COURT:** All right. Let's take a break.
4 We will call this a lunch break although in reality it
5 will end up being one of the most pathetic lunch
6 breaks you have ever seen because it just will not do
7 the dignity of lunch justice cause it will be short.
8 So let's say we will be back at two o'clock.

9 (WHEREUPON, a lunch recess was taken at approximately
10 1:49 p.m.)

11 (WHEREUPON, the Court resumed at approximately
12 2:10 p.m.)

13 **THE BAILIFF:** She's here.

14 **THE COURT:** Don't bring her in.

15 Let me see you two for a second. Y'all can come
16 too.

17 (WHEREUPON, the attorneys approach the bench.)

18 **THE COURT:** I just want to let you know that Court
19 TV asked --

20 This is off the record.

21 (WHEREUPON, a bench conference was held off the
22 record.)

23 **THE COURT:** All right. Ms. Netherton is here.
24 I'm going to bring her in here and talk to her. And
25 we will see what happens.

1 Bring her in.

2 (WHEREUPON, Joann Netherton, Juror number 205, enters
3 at approximately 2:15 p.m.)

4 MS. NETHERTON: Hi.

5 JOANN NETHERTON

6 having previously been sworn, testified as follows:

7 THE COURT: Hello, Ms. Netherton. I understand
8 that you have asked a question about or you want to
9 ask a question about talking to your priest.

10 MS. NETHERTON: Uh-huh (affirmative).

11 THE COURT: Okay. Ma'am, I don't want to
12 interfere with your communication with your priest or
13 in any of your activities with your church. But I am
14 assuming that you might have wanted to discuss with
15 him something that is related to this case and that
16 that is why you brought it to my attention before you
17 did it.

18 MS. NETHERTON: That is correct.

19 THE COURT: So I respectfully do not want you to
20 discuss anything that relates to this case with
21 anybody just as I have instructed you already. You
22 know, you are in this jury pool because you as a
23 citizen of Spartanburg County carry your share of the
24 role load of representing Spartanburg County.

25 MS. NETHERTON: Right.

1 **THE COURT:** If you go out and talk to somebody
2 else and bring on their views, that skews your
3 representation of Spartanburg County.

4 **MS. NETHERTON:** Okay.

5 **THE COURT:** We want your views. We want you
6 in here as a juror. We don't want that priest in
7 here.

8 **MS. NETHERTON:** I understand.

9 **THE COURT:** I want to be very careful about
10 telling you not to talk to your preacher. But I'm
11 just going to ask you to remember the general
12 instruction that I gave you not to discuss this case
13 with anybody. Since this case is a case in which the
14 State is seeking the death penalty, if you were to
15 talk to your preacher about the death penalty, you
16 would be talking about this case. So I'm going to
17 ask you not to talk about this case.

18 **MS. NETHERTON:** Okay.

19 **THE COURT:** You understand why my answer is
20 that?

21 **MS. NETHERTON:** Yes, I do.

22 **THE COURT:** You want me to follow-up in any
23 way? Is there any way I can answer that question?
24 You have any other questions?

25 **MS. NETHERTON:** I do. I have a question.

1 **THE COURT:** Okay.

2 **MS. NETHERTON:** I am not prejudging anything. I
3 started thinking last night because the solicitor's
4 office did bring to my attention my religion. It is
5 my religion that we do not believe in capital
6 punishment. I believe there are politics in every
7 religion. I don't normally go by -- I usually go on
8 my beliefs. I believe in God. I was born a
9 Catholic.

10 I just don't want to be sitting in the hotel room
11 like you said yesterday and get to a certain point and
12 not be able to go further without some kind of
13 counseling or maybe I misunderstand the law. Is
14 there a certain criteria that designates life in
15 prison or the death penalty? Is there a criteria
16 that somebody must meet up to? At that point, where
17 does the decision -- is it based on just the jurors?
18 Or is it based on the criteria, the evidence?

19 **THE COURT:** Before the jury can consider the
20 possibility of the death penalty. The jury would
21 have to find that the State has proven beyond a
22 reasonable doubt not only that the defendant is guilty
23 of murder but that the State has proven beyond a
24 reasonable doubt the existence of at least one
25 aggravating circumstance. You recall that we talked

1 about aggravating circumstance?

2 **MS. NETHERTON:** Uh-huh (affirmative).

3 **THE COURT:** Those are the State, in the
4 statute. I'm not going to tell you what those all
5 are. But the State is going to have to prove beyond
6 a reasonable doubt the existence of one aggravating
7 circumstance. . If that occurs, then the decision as
8 to what the penalty will be is completely up to the
9 judgment of the jury.

10 Now, balancing the aggravating circumstances,
11 there are mitigating circumstances that the jury can
12 take into consideration. Of course, all of the
13 evidence that will be before you, the jury can take
14 that into consideration. Does that answer your
15 question?

16 **MS. NETHERTON:** Yes and no. Until I -- it
17 does. I would assume that there would be counseling
18 from you based on the laws.

19 **THE COURT:** Yes, ma'am. I will tell you all
20 of the law. But I can't tell you how to exercise
21 your judgment. As a member of the jury, you will be
22 called upon or you would be called upon to exercise
23 your judgment. That is why we asked you those
24 questions yesterday. I believe you were in here
25 yesterday.

1 **MS. NETHERTON:** Uh-huh (affirmative).

2 **THE COURT:** We want to make sure that you are
3 open-minded in your willingness to exercise your
4 judgment.

5 **MS. NETHERTON:** Okay.

6 **THE COURT:** Since you are here and you raise
7 these concerns, do you still believe that if you are a
8 juror in this case that you can vote either guilty or
9 not guilty based on whether or not you believe that
10 the State has met its burden of proving the defendant
11 guilty beyond a reasonable doubt?

12 **MS. NETHERTON:** I could.

13 **THE COURT:** Do you still believe that you
14 could vote in favor of returning a life sentence if
15 the jury gets to that point?

16 **MS. NETHERTON:** I could.

17 **THE COURT:** Do you still believe that you
18 could vote in favor of the death penalty? That is not
19 to say that you would do it but that you could do it.
20 Do you feel that you could vote to turn a verdict for
21 the death penalty?

22 **MS. NETHERTON:** I hesitate to say I could
23 simply because I don't know all of the circumstances
24 and the evidence.

25 **THE COURT:** Right. I believe we, you and I

1 kind of got to this hurdle yesterday in your
2 discussion. I'm not asking you to tell me what your
3 vote would what your vote would be. But if,
4 depending on the facts and circumstances and depending
5 on your consideration of aggravating and mitigating
6 circumstances, and of course considering the law that
7 will give you, are you open-minded to the possibility
8 that under the right circumstances you could vote to
9 impose the death penalty?

10 **MS. NETHERTON:** I could.

11 **THE COURT:** Well, ma'am, I will tell you what
12 we will do, we will, if you have any more concerns
13 about it, we still got at least the rest of today,
14 probably a fair amount of tomorrow before we get
15 around to actually deciding who is going to be on the
16 jury.

17 **MS. NETHERTON:** Okay.

18 **THE COURT:** If you have any further concerns
19 about that or anything else, bring them to my
20 attention when you come back here some time tomorrow.

21 **MS. NETHERTON:** I will.

22 **THE COURT:** I suspect it will be some time
23 tomorrow. Now you also, I believe, asked questions
24 about security after a verdict and are you protected
25 and are you safe and do you have to get double bolt

1 locks on all the door.

2 MS. NETHERTON: You don't hear about all
3 these things after it has happened. I do work in a
4 public place of employment. There is not a security
5 door to get to me. No matter what the verdict is,
6 there are two families here and somebody is not going
7 to be happy. So I am very, I am out in the public all
8 the time.

9 THE COURT: Uh-huh (affirmative). Well,
10 ma'am, we don't have any mechanism for providing you
11 protection unless we think there is a reason to. If
12 something were to come up where I believed or where
13 law enforcement believed there's a reason to provide
14 you protection then we could that. But I have been
15 involved in the legal system now for a number of
16 years. And I have been a judge for right at four
17 years.

18 I never known of a situation in South Carolina
19 where a juror was legitimately threatened. So it is
20 an everyday occurrence in South Carolina --

21 MS. NETHERTON: Right.

22 THE COURT: -- that jurors in various every
23 serious cases go about their lives, go on about their
24 business, work in the public, see people at grocery
25 stores and malls and don't have any problems.

1 **MS. NETHERTON:** Okay.

2 **THE COURT:** I have no reason to suspect that
3 this case will be any different. I've not seen
4 anything about this case that would lead me to be
5 concerned that it would be any different. The
6 participants in this case have behaved themselves well
7 during the course of this case from my observation.
8 I see no reason for you to be concerned.

9 **MS. NETHERTON:** Okay.

10 **THE COURT:** I know why you are concerned. I
11 have the same concerns when I go to a grocery store.
12 I'm looking into the eyes of the people I see. Is
13 that somebody whose son I just put in jail?

14 **MS. NETHERTON:** Right.

15 **THE COURT:** So does that give you some comfort
16 about that question that you raised?

17 **MS. NETHERTON:** I have to cover my basis.

18 **THE COURT:** Yes, ma'am. All right. We will
19 hopefully see you some time tomorrow.

20 **MS. NETHERTON:** Okay.

21 **THE COURT:** You have a nice rest of the day and
22 evening. If you have any other concerns bring them
23 to my attention when you get here tomorrow is what I
24 hope.

25 **MS. NETHERTON:** Okay. I just had to ask the

1 question.

2 **THE COURT:** That is no problem.

3 **MS. NETHERTON:** Okay.

4 **THE COURT:** Would you let her just stand in the
5 hall for just one second and let me make sure that I
6 maybe did not leave something unsaid.

7 Let me speak to the lawyers and I will probably
8 just let you go. Okay?

9 **MS. NETHERTON:** Okay. Thank you.

10 (WHEREUPON, Ms. Netherton exits at approximately
11 2:27 p.m.).

12 **THE COURT:** Any objection to my comments?

13 **MR. BARTOSH:** No objection, Your Honor. I got
14 the impression from what she said was that at some
15 point during the deliberation, she was sort of
16 expecting somebody to come and talk to her about what
17 they were going to do. What I would ask the Court to
18 consider would be just a short instruction saying that
19 she understands that the penalty is going to be
20 decided by the twelve folks, should we can get that
21 far, by the twelve folks on the jury who through their
22 collective process will arrive at a verdict of either
23 life or death. They and they alone will be the ones
24 to decide that.

25 **MR. WILLINGHAM:** I don't have any objection to

1 what the Court instructed her about. I would like to
2 ask her three questions if that's okay. I think what
3 she demonstrated to the Court was she believes that
4 under certain circumstances uh, then it almost sounds
5 like death would be mandatory. And that if it's
6 mandatory, she could do that. I want to make sure
7 that she understands that it is not.

8 Then I want to find out if she would be able to
9 put her beliefs aside and go to priest every Sunday
10 after this is over with good conscience. The
11 question -- those questions I think may not materially
12 affect whether she is qualified or not. But would
13 affect us knowing whether or not she would be a juror
14 to be selected. And it may disqualify her based on
15 her answer.

16 **THE COURT:** I am inclined to allow either side
17 some additional voir dire. I am not sure whether now
18 is the time to do it. I have invited her to continue
19 thinking about it over the next day or so. It may be
20 that the more appropriate time and the more useful
21 time to do so from your standpoint is to do it when we
22 bring the jury back. What do you say about that?

23 **MR. GOWDY:** No objection to that, Your Honor.

24 **MR. BARTOSH:** No objection.

25 **THE COURT:** I do think that perhaps Mr.

1 Bartosh suggestion is a good one that I might have
2 misled her into affirming her suspicion that someone
3 will come up to the hotel and counsel them about what
4 they are supposed to do. So let me just get her back
5 out here for a second and go at the process one more
6 time.

7 **MR. BARTOSH:** Thank you, Your Honor
8 (WHEREUPON, Ms. Netherton enters at approximately
9 2:27 p.m.)

10 **THE COURT:** Okay. Ms. Netherton, I want to
11 make sure that I did not answer your question in such
12 a way that might have misled you. So I'm going to
13 kind of try at it again. If you are on the jury and
14 if the jury finds the defendant guilty of murder, then
15 we go into the penalty phase of the trial. During
16 the penalty phase, each side has an opportunity to
17 present additional evidence. But they don't have a
18 duty to present additional evidence, they have the
19 opportunity.

20 **MS. NETHERTON:** Uh-huh (affirmative).

21 **THE COURT:** After all of that is done, the
22 lawyer will have a chance to argue to you again and
23 make closing arguments again. And the defendant has
24 an opportunity to make a closing argument again. I
25 would then instruct you about the law. And I will

1 tell you everything that is, that the law is. Okay?

2 MS. NETHERTON: Okay.

3 THE COURT: Then I will put you all in the jury
4 room and y'all start deliberating.

5 MS. NETHERTON: Okay.

6 THE COURT: Y'all decide what the verdict is
7 going to be, life or death. But I'm not in a
8 position to counsel you about how you would exercise
9 your judgment. There's not going to be anybody else
10 except for other members of the jury --

11 MS. NETHERTON: Right.

12 THE COURT: -- to counsel you about how to
13 exercise your judgment. The one thing I guess that
14 gave me some concern is you said, you asked is
15 somebody going to come over to the hotel and counsel
16 us.

17 MS. NETHERTON: No, I just wanted to know was
18 there a certain criteria that says it is this or this.

19 THE COURT: No, ma'am. But whatever the law is
20 that has to be told to you, I will tell you that. I
21 will tell all of it. You will take what I give you,
22 what I tell you and you will go deliberate.

23 Once I have done that and once the jury has found
24 the existence of an aggravating circumstance beyond a
25 reasonable doubt, from that point on the question of

1 what the sentence is going to be either a life or the
2 death penalty is completely within the judgment and
3 discretion of the jury. Nobody's going to tell you
4 how to exercise that discretion. Nobody's going to
5 tell you how to exercise that judgment. The jury has
6 got to do it.

7 **MS. NETHERTON:** I understood that.

8 **THE COURT:** Okay. Good. We will see you
9 tomorrow.

10 **MS. NETHERTON:** Okay. Thank you.

11 (WHEREUPON, Ms. Netherton exits at approximately
12 2:30 p.m.)

13 **THE COURT:** Any objection?

14 **MR. BARTOSH:** No, sir.

15 **THE COURT:** From the State?

16 **MR. GOWDY:** No, sir.

17 **THE COURT:** All right. Remind me tomorrow or
18 whenever and I will either do that myself or give you
19 a chance to do it. I don't mind giving y'all a chance
20 to do it.

21 Give us a juror.

22 (WHEREUPON, Linda Fuller, Juror number 95 enters at
23 approximately 2:32 p.m.)

24 **LINDA FULLER**

25 having previously been sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q Good afternoon, Ms. Fuller.

A Hi.

Q I hope we didn't mess up your lunch. I know we're running a little bit behind, actually, a good bit behind.

A That's okay. I had some candy.

Q All right.

A It gave me some energy.

Q We messed up our lunch. And all these people out here, that's why all these security officers are in here because I have to keep them from getting on me for messing up their lunch.

A That's okay.

Q I'm just kidding. All right. You recall that we put you under oath yesterday, on Monday morning?

A Yes, sir.

Q Do you -- hold on just one second. All right. Since yesterday or Monday when you left us, has anyone talked to you about this case or have you talked to anybody about this case?

A No, sir.

Q Have you heard anything or read anything or seen anything about this case?

A No, sir.

1 Q We're going to ask you some questions. I'm
2 going to start off. The lawyers will follow up about some
3 things that relate to this case. We don't really mean to
4 pry too deeply into your private life but we do have to ask
5 you these questions. There are no correct answers or
6 incorrect answers. We just want you to be open and honest
7 with us and tell us how you feel and how you think.

8 We're going to talk a little about the possibility of
9 a sentencing phase. That does not tell you anything about
10 this defendant or about this case. That just means that
11 we know we might get to the penalty phase and there are
12 some issues that may come up that we need to ask you about.

13 Could you, if you were a juror in this case, accept
14 and apply the law precisely as I will state it to you and
15 ignoring anything that you might have heard or learned
16 before the case began, render a verdict based solely on the
17 testimony evidence that you hear and see in this courtroom,
18 could you do that?

19 A Yes, sir.

20 Q Do you understand in a criminal case like this,
21 the State bears the burden of proving the defendant guilty
22 beyond a reasonable doubt?

23 A Yes, sir.

24 Q You understand this is a murder case?

25 A Yes, sir.

1 Q Could you, depending on the facts and
2 circumstances that you find to that have been proven, find
3 the defendant either guilty or not guilty depending on
4 whether you believe the State has met its burden of proof?

5 A Could you ask that me that again?

6 Q Yes, ma'am. Could you, depending on the facts
7 and circumstances that you find to have been proven in this
8 courtroom, could you find the defendant either guilty or
9 not guilty depending on whether or not you believe the
10 State has met its burden of proof?

11 A Yes, sir.

12 Q If you are a juror in a death penalty case -- or
13 in a death penalty case, certain issues will come up in the
14 penalty phase. I will talk to you about those now.
15 Aggravating circumstances are facts, incidents or details
16 of an occurrence which South Carolina has declared to
17 aggravate or to make worse the crime of murder.
18 Aggravating circumstance increase the enormity of the crime
19 and add to the injury caused by the crime.

20 Mitigating circumstances, on the other hand, are
21 facts, incidents or details of an occurrence that South
22 Carolina has declared to lessen the severity of the crime
23 of murder and they serve to extenuate or to reduce the
24 moral culpability or responsibility for the crime.

25 If you are a juror in a death penalty case such as

1 this in the penalty face, you will have two options as to
2 what the verdict can be. The verdict can be for a life
3 sentence or the verdict could be for the death penalty.
4 Could you, depending on the circumstances and the facts
5 that you find to exist consider any aggravating or
6 mitigating circumstances and considering the law as I will
7 give it to you, could you vote to impose a life sentence?

8 A Yes. I guess.

9 Q Could you vote to impose the death penalty?

10 A It would have to be very clear and beyond a
11 shadow doubt.

12 Q Ma'am, I will instruct you that the phrase
13 "beyond a shadow of the doubt" is not the law. The law is
14 that the State would have to prove the defendant guilty of
15 murder beyond a reasonable doubt. Having done that, the
16 State would have to prove the existence of an aggravating
17 circumstance beyond a reasonable doubt. If they do both
18 of those things, then the jury has got to exercise its
19 judgment as to whether or not to give the death penalty.

20 Now, you might have been telling me that you would
21 have to be sure in your own mind beyond a shadow of a doubt
22 that the death penalty was what you felt was the
23 appropriate sentence. But the State does not have to
24 prove guilt beyond as a shadow of a doubt. Do you
25 understand that?

1 **A** Yes, sir.

2 **Q** So could you, in light of what I said, vote to
3 impose the death penalty in this case if the circumstances
4 you felt warranted it?

5 **A** I wish I could answer that yes, but I'm not sure.

6 **Q** Okay. Sometimes this question gets
7 misinterpreted as asking you what your vote is going to be.
8 We don't know that. We don't want you to tell us that
9 because we don't want you to even be close to making up
10 your mind now. We want you to remain open-minded and go
11 all the way through the trial.

12 What we want to know -- I suppose another way the
13 question is asked is there might be three different ways of
14 looking at a juror in a death penalty case. Some jurors
15 always are going to give a life sentence no matter what.
16 Some jurors are always going to give the death penalty no
17 matter what. Other jurors are going to listen to the
18 testimony, listen to the facts and the evidence, evaluate
19 the case and decide using their discretion, use their
20 judgment to decide whether a life sentence is appropriate
21 or the death penalty is appropriate. Which of those three
22 types of jurors are you?

23 **A** I will probably be whether the death penalty was
24 appropriate?

25 **Q** So you believe that you would probably wait and

1 decide which of those two sentences was appropriate?

2 **A** After the trial and after I've heard all the
3 evidence.

4 **Q** Okay. We probably going to end up spending a
5 good little while talking about that here. I'm going to
6 turn it over in just a second to the lawyers and let them
7 ask you some questions about that. So let me just do that
8 now. Let me let the lawyers ask you some questions now.

9 **MR. BRENNAN:** May it please the Court, Your
10 Honor?

11 **THE COURT:** Yes.

12 **EXAMINATION**

13 **BY MR. BRENNAN:**

14 **Q** Ms. Fuller, how are you today?

15 **A** I have been better.

16 **A** My name is Doug Brennon. I'm a defense attorney
17 from here in Spartanburg. Myself, Mr. Bartosh and Ms.
18 Quimby are lawyers here. We have the opportunity to
19 represent Mr. Lindsey. Just for clarification, the Judge
20 just asked you the three categories. Was your answer, not
21 to put words in your mouth, was that you would be in that
22 third category that wanted to listen to the evidence before
23 you made a decision as to life or death?

24 **A** Uh-huh (affirmative).

25 **Q** So you're in that third category. Now on your

1 questionnaire and then again Monday when asked if you knew
2 anything about this case, you said yes.

3 A Right.

4 Q What do you know about this case?

5 A I don't know if it was about the case but I had
6 heard about the incident as far as what happened before
7 ever getting a summons for jury duty.

8 Q How did you find out about it?

9 A In my place of employment, some of the people
10 there were talking about it after it happened. They live
11 in the same town and basically knew all about it.

12 Q And they told you?

13 A Uh-huh (affirmative). And it was just the topic
14 of the conversation in the branch that day.

15 Q So they were just talking and you heard them?

16 A Right.

17 Q Did you look anything up on the Internet?

18 A No, I did not, but one of the other co-workers
19 did. And I was in office when she had it on the Internet.

20 Q On your questionnaire, it said have you formed an
21 opinion based on your knowledge. And you said you did not
22 know yet. You were not sure.

23 A Right, because you can't listen to everything you
24 read or hear other people say without the facts.

25 Q Okay. So since March when you filled the

1 questionnaire out, had you formed an opinion?

2 A No.

3 Q Would you be able to take the information that
4 you heard, that stuff that you heard, could you set that
5 aside and base your decision on the evidence that is
6 presented in court and only the evidence that is presented
7 in court?

8 A I would try.

9 Q And I appreciate that, ma'am. But I need to know
10 if you could.

11 A I don't know. To be honest, I might not be able
12 to.

13 Q All right. Now you actually wrote a little bit
14 of a letter to the Clerk of Court.

15 A Uh-huh (affirmative).

16 Q I'm going to quote you. It says "I am upset.
17 Because of people like Mr. Lindsey, I may have to cancel my
18 vacation."

19 A Right.

20 Q Do you still harbor that anger? Do you still
21 carry that?

22 A No, because as it turned out, of course, it was
23 canceled for that week. And I had went to my the vice
24 president and asked him if do I do have to go and is it all
25 right. I know we are short-handed, but is it alright if I

1 just changed my vacation. And he agreed that if I had to
2 come, then yes I could.

3 Q Okay.

4 A You know, a lot of times -- when I looked at the
5 summons, I did not look at a name before I started filling
6 this out.

7 Q But you think that that anger is passed or that
8 resentment has passed?

9 A Oh, yeah.

10 Q Do you understand, ma'am, that the death penalty
11 is never mandatory in South Carolina?

12 A No.

13 Q Do you believe that if the State proves X, Y and
14 Z that you have to impose the death penalty?

15 A I don't know. I don't know what the law is
16 about that.

17 MR. BARNETT: Your Honor, I'm going to object
18 to the last question. X, Y, Z that is kind of
19 putting it in a category or whatever. I don't think
20 that is a proper question.

21 THE COURT: Ma'am, let me just tell you that
22 just like he said, you don't have to impose the death
23 penalty. You have to decide. You understand?

24 MS. FULLER: Yes.

25 THE COURT: Nobody is going to tell you that you

1 have to impose the death penalty.

2 **MS. FULLER:** ok.

3 **MR. BRENNAN:** I apologize if it was an
4 improper question, Your Honor.

5 **BY MR. BRENNAN:**

6 **Q** Understanding that, ma'am, that you never have to
7 impose the death penalty, could you still impose a death
8 penalty?

9 **A** Yes.

10 **Q** Okay. I know that you have heard this through
11 TV and other sources. But the defendant in this case, Mr.
12 Lindsey, is presumed innocent. As he sits there today, he
13 is an innocent man. Based on the information that you
14 gathered from your coworkers and so on and so forth, do you
15 believe that sitting in that chair today that he is an
16 innocent man?

17 **A** I believe that it should be proven. But I don't
18 know.

19 **Q** Okay. All right. Last question. If the
20 defendant is found guilty, ma'am, and they go into the
21 sentencing phase and you are on the jury, there is a form
22 that have to be signed by the jurors. It has to be
23 unanimous. It has to be life or death and each juror has
24 to sign their name. If eleven people have signed that
25 form for death and you are the last one, and you know that

1 if you sign it Mr. Lindsey will be put to death, are you
2 still capable of signing that form?

3 **A** I'm not comfortable with that, no.

4 **Q** I have nothing further at this time.

5 **THE COURT:** Do you have any questions at this
6 time?

7 **MR. BARNETT:** Not at this time, Your Honor.

8 **THE COURT:** Ma'am, would you step out in the hall
9 just for a second.

10 **MS. FULLER:** Sure.

11 (WHEREUPON, Ms. Fuller exits at approximately
12 2:46 p.m.)

13 **THE COURT:** What is your position, Mr. Brennan?

14 **MR. BRENNAN:** I don't believe she is
15 qualified, Your Honor.

16 **MR. BARNETT:** We would agree.

17 **THE COURT:** All right. Bring her in.

18 **THE BAILIFF:** She went to the restroom.

19 **THE COURT:** All right. Well, bring us the next
20 juror.

21 **THE BAILIFF:** Okay.

22 **THE COURT:** Bring us the next juror.

23 We will take her off. Any objection to me
24 telling her she is not qualified? I will inform her
25 of that ruling after we talk to the next juror.

1 (WHEREUPON, William Atkins enters at approximately
2 2:47 p.m.)

3 THE COURT: Mr. Brennan -- All right. Go
4 ahead.

5 Have a seat.

6 Never mind. No problem. Yes, sir. What you
7 got?

8 WILLIAM ATKINS

9 having previously been sworn, testified as follows:

10 EXAMINATION

11 BY THE COURT:

12 Q Mr. Atkins.

13 A Yes, sir.

14 Q How are you?

15 A Pretty good. A little tired.

16 Q No kidding. Well, let me ask you some questions.

17 You recall that on Monday we put you under oath?

18 A Yes, sir.

19 Q You are still under oath now. You understand
20 that?

21 A Yes, sir.

22 Q Have you talked to anybody about this case or
23 anybody talk to you about this case?

24 A No, sir.

25 Q Mr. Atkins, you wrote on your, in response to

1 your questionnaire, I have read all that the newspapers
2 have printed and the TV news shows have had. And in
3 response to the question of whether or not you made up your
4 mind, sort of. You said I think he is guilty.

5 A Just from the stuff I read about, knowing what I
6 read and saw on TV.

7 Q So apparently you paid a good bit of attention to
8 it at the time.

9 A I think I did.

10 Q If you were on the jury, what I'm going to tell
11 you is your responsibility is it's your responsibility to
12 set aside in your mind anything that you might have read or
13 heard or learned before now. And if you have drawn any
14 conclusions, then you need to set those aside also.

15 You need to come into this courtroom with an open mind
16 and listen very carefully to the testimony and the evidence
17 and render a verdict based solely on the testimony and
18 evidence that you see and hear in the courtroom. Of
19 course, you would do that in light of the law as I will
20 explain it to you. Could you do that?

21 A I think so.

22 Q All right I'm going to ask you some more
23 questions. There aren't any right or wrong answers to
24 these questions. We just want you to be open and honest
25 with us. Tell us how you feel and what you think. Okay?

1 A Okay.

2 Q We're going to talk a little bit about a possible
3 penalty phase. That does not mean anything about this
4 case or about this defendant. It simply means that
5 because we might get to a penalty phase, we need to talk to
6 you about some of the issues that will come up if we do.

7 If you are a juror in this case, you already told me
8 you that could set aside anything you might have heard,
9 accept the law and apply the law as I give it to you and
10 render a verdict based solely on the testimony and evidence
11 that you see and hear in this courtroom. You can do that?

12 A I think so.

13 Q Are you confident that you can do that?

14 A I usually go pretty well with what I see and
15 read. You know, I drew my conclusions from that. If I
16 hear stuff that is contradictory to what I already read or
17 heard, I would go from what I hear in the courtroom.

18 Q So does that mean that you are able to set aside
19 --

20 A Yeah, I think I can.

21 Q -- and not consider the things that you may have
22 read and the conclusions that you may have reached in the
23 past?

24 A I would hope I could.

25 Q Well, let's, uh, I would hope you could too. But

1 sometimes people get really involved in a situation and
2 they might get -- well, they just get really involved in
3 it. And maybe those people can not set aside what they've
4 already learned and set aside the conclusions that they
5 have already reached. Or maybe they are not confident that
6 they can do that.

7 Are you confident that you can set aside what you
8 learned before now and the conclusions that you reached
9 before now and be a fair and an impartial and open-minded
10 and objective juror and give a fair and impartial trial to
11 both the State and the defendant and render a verdict that
12 considers only what you have seen and heard in this
13 courtroom and not what you read about before. Could you do
14 that?

15 A Yes, sir.

16 Q Could you do that?

17 A Yes, sir.

18 Q Are you confident that you can do that?

19 A Yes, sir.

20 Q You understand in a criminal case the State has
21 the burden of proving the defendant guilty beyond a
22 reasonable doubt?

23 A Yes, sir.

24 Q Of course, you know this is a murder case.

25 A Oh, okay.

1 Q Could you, sir, based on the facts and
2 circumstances that you determine to have been proven and in
3 light of the law as I will give it to you, render a verdict
4 of either guilty or not guilty depending on whether you
5 believe the State has met its burden of proof?

6 A Yes, I could do that.

7 Q You can do that? If that happens and if you are
8 on the jury, if the verdict is guilty and you are on the
9 jury, then we move into the second phase or the penalty
10 phase or the sentencing phase of this trial. Several
11 things are going to come up in that phase that I'm going to
12 talk to you about.

13 Aggravating circumstances are facts, incidents or
14 details of an occurrence that the State of South Carolina
15 has declared to aggravate or to make worse the crime of
16 murder. Aggravating circumstances increase the enormity
17 of the crime of murder and add to the injury resulting from
18 the crime.

19 Mitigating circumstances, on the other hand, are
20 facts, incidents or details of an occurrence that the State
21 has declared to lessen the severity of the crime. They
22 serve to extenuate or to reduce the degree of moral
23 culpability or responsibility for the crime.

24 If you are a juror in the penalty phase of a death
25 penalty case, you will have two options as to what your

1 verdict could be. Your verdict can be either the life
2 sentence or it could be the death penalty. Could you,
3 depending on the facts and circumstances that you find to
4 exist and considering any aggravating and mitigating
5 circumstances and considering the law as I will give it to
6 you, could you vote to return a verdict for a life
7 sentence?

8 A Yeah, I can do that.

9 Q Could you vote to return a verdict for the death
10 penalty?

11 A I don't think I could do that.

12 Q You don't think you could do it.

13 A No, sir. I never have believed in the death
14 penalty.

15 Q Are you the kind of juror that no matter what the
16 circumstances of the crime would always vote to impose a
17 life sentence in the event of a murder?

18 A Yes, sir.

19 Q You don't see any circumstance in which you could
20 impose a death penalty?

21 A No, I don't think so.

22 THE COURT: All right. Does either side want
23 to voir dire this juror?

24 MR. BARTOSH: No, sir.

25 MR. BARNETT: No, sir.

1 **THE COURT:** Mr. Atkins, we appreciate you
2 coming. We won't need your service in this case. You
3 are free to go.

4 And bring in --

5 Wait a minute. What did we decide about her?

6 **MR. BRENNAN:** She was excused, but she
7 apparently had to go to the restroom.

8 **MR. BARNETT:** Ms. Fuller? She could not
9 answer the question about signing the form.

10 **MR. GOWDY:** By consent of both parties, she
11 is disqualified.

12 **MR. BARTOSH:** She is disqualified, yes.

13 **THE COURT:** Bring her in.

14 Very quick recognition of where I am, Mr. Gowdy.
15 Nowhere.

16 (WHEREUPON, Ms. Fuller enters at approximately
17 2:55 p.m.)

18 **THE COURT:** Ms. Fuller, we will not be needing
19 your services in this case. We appreciate you coming
20 and you're free to go.

21 **MS. FULLER:** Okay. Thank you.

22 (WHEREUPON, Ms. Fuller exits at approximately
23 2:56 p.m.)

24 **THE COURT:** Can you bring me a juror and arrange
25 for me to have another one of those caffeine bombs

1 brought to me?

2 **THE BAILIFF:** Yes, sir.

3 (WHEREUPON, Marvin Smith, Juror number 255, enters at
4 approximately 2:56 p.m.)

5 **MARVIN SMITH**

6 having previously been sworn, testified as follows:

7 **EXAMINATION**

8 **BY THE COURT:**

9 **Q** Mr. Smith?

10 **A** Yes, sir.

11 **Q** How are you?

12 **A** All right.

13 **Q** Good. You recall that on Monday morning we put
14 you under oath?

15 **A** Yes, sir.

16 **Q** You understand you are still under oath now?

17 **A** Yes, sir.

18 **Q** Since Monday afternoon when you left us, has
19 anyone talked to you about this case or have you talked to
20 anybody about this case?

21 **A** No, sir.

22 **Q** Have you seen or read or heard anything about
23 this case?

24 **A** No, sir.

25 **Q** We're going to ask you some questions now. And I

1 hope we don't pry too deep into your private life. But
2 we've got to ask you these questions.

3 A Okay.

4 Q The questions don't have right or wrong answers.
5 We just want you to be open and honest with us. Tell us
6 what you think and how you feel.

7 A Okay.

8 Q We're going to talk about the possibility of a
9 penalty phase. But that does not mean anything about this
10 case or about this defendant. It simply means that because
11 we might get to that phase, we need to ask you some
12 questions about some issues that will come up so we know
13 how you think and how you feel about those issues.

14 A Okay.

15 Q Could you, if you were a juror in this case
16 accept and apply the law as I will give it to you and
17 ignore anything that you might have heard or read or seen
18 before you came into this trial and render a verdict that
19 is based solely on the testimony and evidence that you see
20 and hear in this courtroom?

21 A Yes, sir.

22 Q You realize that in a criminal case, the State
23 has the burden of proving the defendant guilty beyond a
24 reasonable doubt?

25 A Yes.

1 **Q** And you do know that this is a murder case?

2 **A** Yes.

3 **Q** Could you, depending on the facts and
4 circumstances that you find to have been proven and in
5 light of the law as I will give it to you, could you return
6 a verdict of either guilty or not guilty depending on
7 whether you believe the State has met its burden of proof?

8 **A** Yes, sir.

9 **Q** Now, if the jury finds the defendant guilty,
10 we're going to get to the penalty phase. I'm going to talk
11 to you now about some issues that will come up.
12 Aggravating circumstances are facts, incidents or details
13 of occurrences that the State of South Carolina has
14 declared to aggravate or to make worse the crime of murder.
15 Aggravating circumstances increase the enormity of the
16 crime of murder or add to the injury resulting from the
17 crime.

18 Mitigating circumstances, on the other hand, are
19 facts, incidents or occurrences that the State of South
20 Carolina has declared to lessen the severity of the crime
21 of murder. And they serve to extenuate or to reduce the
22 moral culpability or the responsibility of the crime.

23 If you are a juror in the penalty phase of a death
24 penalty trial, you would have two options is what the
25 verdict could be. The verdict could be a life sentence or

1 it could be the death penalty. Could you, depending on
2 the circumstances and facts that you find to exist and
3 considering any aggravating or mitigating circumstances and
4 considering the law that I will give to you, could you
5 return a verdict or vote to return a verdict for a life
6 sentence?

7 A Yes.

8 Q Could you vote to return a verdict for a death
9 penalty?

10 A Yes, sir.

11 Q Now, if I -- if you are on this jury and if I
12 sequester the jury and require you to stay with us in a
13 hotel for five or six days away from your family, is that
14 going to impose a tremendous burden on you?

15 A No, sir.

16 Q Have you had a chance to go over that witness
17 list I gave you?

18 A Yes, sir.

19 Q Have you read every name on that list?

20 A Yes, sir.

21 Q Do you know anybody or are you related to anybody
22 on that list?

23 A I know Raymond Gist.

24 Q Raymond Gist?

25 A Yes.

1 Q Tell me how you know him please.

2 A One of his cousins I used to go up to his house
3 with one of his cousins.

4 Q You used to go up to his house with one of his
5 cousins?

6 A Yes, when he was living with his mother.

7 Q How long has it been since you did that?

8 A It has been about 15 years or something.

9 Q Would the fact that you know Mr. Gist interfere
10 in any way with either your willingness or your ability to
11 give both the State and the defendant a fair and impartial
12 trial?

13 A No, sir.

14 Q Do you know of any reason why you cannot give
15 both the State and the defendant a fair and impartial
16 trial?

17 A No, sir.

18 Q I'm going to let the lawyers ask you some
19 questions now. Then I may come back and ask you some more
20 in a minute.

21 **EXAMINATION**

22 **BY MR. BRENNAN:**

23 Q Good afternoon, Mr. Smith.

24 A Good afternoon.

25 Q My name is Doug Brennan. I'm an attorney from

1 here in Spartanburg. Myself, Mr. Bartosh and Ms. Quimby
2 have the opportunity to represent Mr. Lindsey in this
3 matter. Do you have any prior knowledge concerning this
4 case whatsoever?

5 A Not prior knowledge.

6 Q Do you have any knowledge at all?

7 A I really don't know. I really don't read that
8 part of the paper. They've been talking about that stuff
9 at work though.

10 Q You heard about it at work?

11 A I probably did.

12 Q Can you be a little bit more specific with what
13 you might have heard.

14 A This the one that, is this the case that is
15 supposed to be shot at the police station?

16 Q You heard that at work?

17 A Yeah.

18 Q Based on what you've heard at work, have you
19 formed an opinion as to guilt or innocence on this matter?

20 A No, sir.

21 Q Would you be to set aside the information that
22 you heard at work and render a fair verdict?

23 A Yes, sir.

24 Q Okay. On Monday during the questions where you
25 were asked to stand up, you stood up when the question was

1 asked if you or someone you know been arrested and charged
2 with assault and battery, criminal domestic violence,
3 assault with a pistol or a pistol charge, do you remember
4 that question?

5 A Yes.

6 Q You stood up?

7 A Yes.

8 Q Who was it that was arrested and charged with one
9 of those crimes?

10 A Uh, my cousin.

11 Q I'm sorry. What was the crime specifically?

12 A He stabbed somebody.

13 Q Okay, all right. Was your cousin prosecuted?
14 In other words, did he go to jail or was there a sentence
15 rendered?

16 A No, he did not go to jail.

17 Q All right. As a result of that, were you ever
18 asked to make a statement to law enforcement at any time or
19 anything like that? Were you a witness to that case?

20 A No, sir.

21 Q Another question was has anybody in your family
22 been arrested by the Spartanburg Sheriff's Department or
23 the Inman Police Department. You stood up for that?

24 A Yes, sir.

25 Q Was that the same incident or was there others?

1 **A** That's the same incident.

2 **Q** I wish I could help you there. There is a fly
3 bothering him.

4 **THE COURT:** I'm not much of a judge, but I'm no
5 flycatcher at all.

6 **BY MR. BRENNAN:**

7 **Q** Sir, again, on the standup questions, the
8 question was has anyone in your family been a victim of a
9 CDV or an assault or those other charges. And you stood up
10 for that.

11 **A** Yes.

12 **Q** Who in your family was a victim of one of those
13 crimes?

14 **A** One of my cousins stabbed my other cousin.

15 **Q** The incident got all of it.

16 **A** Yes.

17 **Q** How long ago was that incident?

18 **A** Maybe four years ago. Three to four years ago.

19 **Q** Are you able to put that incident aside and not
20 let that affect your decision based on evidence that's
21 presented here in court?

22 **A** Yes.

23 **Q** All right. I don't mean to be confusing. But on
24 your questionnaire, you put for question number 16 that
25 somebody cut somebody. Is that the same incident?

1 **A** Yes, it's the same incident.

2 **Q** Thank you very much. Sir, it is said that there
3 are three types of jurors. If the jury finds the
4 defendant guilty of, in this case, murder, you then go to
5 the sentencing phase. There is a group of jurors that, if
6 they find him guilty, will always impose a life sentence.
7 No matter what, it's life.

8 Then there's a group of jurors on the other side that
9 if they find him guilty will always impose a death
10 sentence. Then there's a group in the middle that says
11 I'm going to wait to hear what is told from the witness
12 stand and whatever evidence is presented. And then I'm
13 going to make my decision on whether it should be life or
14 death. Which kind of juror are you?

15 **A** I'll wait to hear the facts of the case and
16 stuff.

17 **Q** All right. My last question would be if we are
18 in the sentencing phase and you are in fact on the jury,
19 there is a form. It is the sentencing form. It requires
20 all twelve jurors' signatures either for life or for death.
21 The decision must be unanimous. If that form was passed
22 to you and all eleven jurors other than you have signed to
23 sentence Mr. Lindsey to death, can you, knowing that once
24 you sign your name that he would be sentenced to death, can
25 you still sign that form?

1 **A** If the facts prove that it is that, I will.

2 **Q** Thank you for your time, sir.

3 **MR. GOWDY:** May it please the Court, Your
4 Honor?

5 **THE COURT:** Yes, sir.

6 **EXAMINATION**

7 **BY MR. GOWDY:**

8 **Q** Good afternoon, Mr. Smith. How are you doing?

9 **A** Fine.

10 **Q** My name is Trey Gowdy. I'm with the Solicitor's
11 office. That is Donnie Willingham to your left. That's
12 Barry Barnett in the middle. Together, the three of us are
13 prosecuting this case on behalf of the State. If that fly
14 shows up again, I'm going to swat it with this manilla
15 folder, all right?

16 **A** All right.

17 **Q** I want to first thank you for answering the
18 Court's questions, Mr. Brennan's questions and especially
19 for filling out the voir dire cause I know it asks
20 questions that we don't ordinarily ask people we don't know
21 too terribly well. They can be personal. It can be
22 intrusive. That is not my intention. But I think you
23 can appreciate the severity of this case and the fact that
24 both sides want jurors that can be open-minded and fair.

25 **A** Yes, sir.

1 Q And from what I heard you tell the Court so far,
2 you fall into that category. Let me ask you a couple more
3 questions. I noticed on your questionnaire that you had
4 previous service on a jury.

5 A Yes.

6 Q I believe, if I had not read it incorrectly, it
7 was a criminal jury?

8 A Yes.

9 Q I believe again, if my eyes aren't deceiving me,
10 that the verdict might have been not guilty.

11 A Yes, sir.

12 Q Can you tell me what the basis of the not guilty
13 verdict was? Can you tell me a little something about the
14 case and why the jury reached the conclusion that it was
15 not guilty?

16 A It was domestic. The father hit the child.

17 Q Domestic violence.

18 A Domestic violence. Okay. But they didn't have
19 no, the little girl didn't have any injuries. They did
20 not show any injuries. And there was really no proof on
21 what he had done.

22 Q So the prosecution did not prove the case?

23 A Right.

24 Q And y'all voted not guilty because that's what
25 you were supposed to do?

1 **A** Yes.

2 **Q** Do you recall if that case was upstairs in one of
3 these courtrooms or downstairs in magistrate court?

4 **A** It was in Pacolet.

5 **Q** Pacolet Municipal Court?

6 **A** Yes.

7 **Q** So there probably was not a prosecutor. It was
8 probably a police officer who was prosecuting the case
9 against an individual.

10 **A** Yes.

11 **Q** Is that right?

12 **A** Yes.

13 **Q** You live in Pacolet?

14 **A** Yes.

15 **Q** You know the chief there, Tim Schultz?

16 **A** Yes.

17 **Q** There goes that fly again.

18 **A** Yeah.

19 **Q** I'm trying to get him without getting you.

20 There. We'll get him to go over there with Mr. Barnett or
21 Mr. Willingham for a second. What is the basis of your
22 opinion or belief on capital punishment or the death
23 penalty?

24 **A** Basically, if somebody did it out of malicious or
25 somebody who can't defend themselves, I believe that's --

1 Q It could be the appropriate punishment?

2 A Yes.

3 Q And again I know you know this, Mr. Smith. But
4 I have got to ask you anyway as my responsibility as a
5 Solicitor. Sometimes we sit around the dinner table and
6 talk about capital punishment or in classrooms, we might
7 discuss it. But this is not a theoretic or academic
8 exercise. This is real life. At some point, a
9 prosecutor may stand up and ask you to put a another human
10 being to death.

11 A Yes.

12 Q Are you satisfied that if you are convinced that
13 is the right thing to do that you can do that?

14 A Yes, I believe I can.

15 Q Okay. When was the last time, and this was a
16 kind of crazy question. If you can't answer it, I'm not
17 sure I can answer it if you asked me. But when was the
18 last time you recall having discussion with a friend or
19 family member or about the death penalty or about capital
20 punishment?

21 A We may have talked about it at work a couple of
22 times.

23 Q Where do you work? I know you put that down
24 there.

25 A Honeywell.

1 Q What do you at Honeywell?

2 A Make the shell for a spark plug.

3 Q You lived in Pacolet all your life?

4 A Yes, sir.

5 Q You went to school there?

6 A Yes, sir.

7 Q What year did you finish?

8 A '84.

9 Q A little younger than me. Last question. And
10 I'm going to start off again by telling you that I may very
11 well be wrong. My experience with computers has been
12 either I don't know how to use them or the information
13 doesn't always spit out right. But I believe that unless
14 they are wrong, way back a long time ago, you might have
15 either pleaded guilty or paid a fine in connection to a
16 relatively minor offense. Maybe breach of peace or
17 fighting or something like that. I may have the wrong
18 gentleman. It looks like it maybe 1987.

19 A In Union County?

20 Q You know what? Yes, Union County.

21 A Yes, sir.

22 Q It looks to me like that was simply taken care of
23 with about \$100 dollar fine, is that correct?

24 A Yes, sir.

25 Q I'm not asking you about it to go into that. I

1 want to make sure that you during that part of your life,
2 which again is coming up on 20 years ago, that nothing
3 happened from the law enforcement or prosecutorial
4 standpoint that you thought was unfair. In other words,
5 you feel like you were treated fairly during that process.

6 A Yes, sir.

7 A You believe you were?

8 A Yes, sir.

9 Q Final question. If I hear you right, you're
10 telling me that if you were a juror, you will sit in this
11 courtroom and you will listen to the evidence that came
12 from that witness stand or the exhibits. And if you
13 thought he was guilty, you would vote guilty. And if you
14 thought that I have not proven to you he was guilty, you
15 will vote not guilty?

16 A Yes.

17 Q And if we got to that next stage, if you thought
18 death was the right punishment for the crime that he
19 committed and the aggravating circumstance that you would
20 vote for death.

21 A Yes, sir.

22 Q And if you thought life was appropriate, you
23 would vote for life?

24 A Yes, sir.

25 Q You could be fair to both sides?

1 **A** Yes, sir.

2 **Q** Mr. Smith, I appreciate you for answering these
3 personal questions. And I appreciate your time.

4 **MR. BRENNAN:** Your Honor, may I have a follow
5 up question?

6 **THE COURT:** Yes, sir.

7 **EXAMINATION**

8 **BY MR. BRENNAN:**

9 **Q** Mr. Smith, you said that if you believe that it
10 was malicious, you could vote for the death penalty.

11 **A** Yes.

12 **Q** Would you explain that to me, sir.

13 **A** Well, ain't got no, didn't have no self-defense
14 or just walk up and kill somebody. Something like that.

15 **Q** So, sir, if there was enough circumstances, you
16 could vote for the death penalty, is that correct?

17 **A** Yes, sir.

18 **Q** . But not in every instance, would you vote for the
19 death penalty?

20 **A** I can't say. I probably would.

21 **Q** So if it is a murder, you would vote for the
22 death penalty?

23 **A** Not any murder. Not any murder.

24 **MR. BRENNAN:** One second, Your Honor.

25 **BY MR. BRENNAN:**

1 **Q** Sir, if it was a murder and there was no self-
2 defense and it was in your opinion malicious, would you
3 vote for a death penalty every time?

4 **A** Yes.

5 **MR. BRENNAN:** Thank you, Your Honor.

6 **MR. GOWDY:** Your Honor, can I?

7 **EXAMINATION**

8 **BY MR. GOWDY:**

9 **Q** Mr. Smith, I hate to have to keep standing up.

10 **A** Okay.

11 **Q** But I notice you go to New Jerusalem Baptist
12 Church or Jerusalem Baptist Church?

13 **A** Jerusalem Baptist Church.

14 **Q** Jerusalem Baptist Church. I'm sorry. I want to
15 see if you agree with this proposition. All killings are
16 not the same.

17 **A** No.

18 **Q** You agree with that?

19 **A** Yes, sir.

20 **Q** In the Old Testament, Moses killed a man. He did
21 not get the death penalty. David killed a man. He did not
22 get the death penalty.

23 **MR. BARTOSH:** Your Honor, we would object to
24 that as being improper argument.

25 **MR. GOWDY:** I'm not arguing. I'm asking a

1 question.

2 **THE COURT:** I will direct you to, uh --

3 Mr. Smith, let me get you to step in the hall
4 just a second please.

5 **MR. SMITH:** Okay.

6 (WHEREUPON, Mr. Smith exits at approximately
7 3:14 p.m.)

8 **THE COURT:** All right. What is the basis of the
9 objection?

10 **MR. BARTOSH:** I used the wrong word argument.
11 But he is basing things, he is engaging in a religious
12 colloquy with Mr. Smith.

13 **THE COURT:** Okay.

14 **MR. BARTOSH:** And I do not believe that that is
15 proper.

16 **THE COURT:** You know, the reason you used the
17 wrong word argument is because you're probably in a
18 wrong chapter of that little blue book over there.
19 You might be referring in your mind to closing
20 argument cases. Let's don't get into any kind of
21 theological exercise.

22 But the use of examples to illustrate the
23 question that all killings are not the same, I don't
24 really see any objection to that. I don't really see
25 any problem with that. I don't want a sermon. And I

1 don't think I'm fixing to hear one.

2 **MR. GOWDY:** Frankly, Your Honor, those are
3 the only two stories I can remember from the Bible.

4 **THE COURT:** I don't believe that for a minute.

5 **MR. GOWDY:** I have exhausted my knowledge.
6 But my point as the Court correctly noted was to see
7 if I can get him to agree with me that all killings
8 are not the same. Now that I have exhausted my
9 knowledge, I was going to move on to another question.

10 **THE COURT:** You and I both learned about legal
11 gotcha from the same source.

12 **MR. GOWDY:** Yes, sir.

13 **THE COURT:** That is, y'all are, and I don't find
14 fault in it. But this what is going on and this why,
15 this is what makes it fun for me. Y'all are both
16 sitting back and waiting on somebody to give an answer
17 that you can jump on with all four feet and just blah,
18 blah, blah, raise cane with them and beat the tar out
19 of the juror. And then come up here and say that
20 juror is disqualified because they happened to say the
21 wrong thing.

22 So Mr. Gowdy asked a question, what is your view
23 on the death penalty. He said if it's malicious, they
24 ought to get the death penalty. That's about all
25 we've been doing for the last ten minutes is trying to

1 either cover that up a little bit or try to bring it
2 back up into the fore of my mind. I am satisfied.
3 But I'm ready for the, uh, y'all can go ahead and
4 complete this. And then I will rule.

5 **MR. GOWDY:** Yes, sir.

6 **THE COURT:** Bring him out.

7 (WHEREUPON, Mr. Smith enters at approximately
8 3:18 p.m.)

9 **THE COURT:** All right. Mr. Gowdy.

10 **MR. GOWDY:** May it please the Court.

11 **BY MR. GOWDY:**

12 **Q** Mr. Smith, thank you for your patience. You
13 used the word "malicious". If the judge were to instruct
14 you on the definition of malice, the legal definition of
15 malice, would you accept that definition?

16 **A** Yes.

17 **Q** Even if it was different from what your version
18 of malicious what was?

19 **A** Yes, sir.

20 **Q** And I think you have already agreed with the
21 proposition that all killings are not the same?

22 **A** Yes, sir.

23 **Q** I'm going to ask you again because I think I had
24 the answer and then Mr. Brennon stood up and I wasn't sure
25 anymore. If you think an intentional killing warrants the

1 death penalty, you will vote for death, right?

2 A Yes

3 Q If you think an intentional killing warrants life
4 based on any reason or no reason, you will vote for life,
5 is that fair?

6 A Yes, sir.

7 Q Thank you, Mr. Smith

8 THE COURT: Let me ask you a couple questions, Mr.
9 Smith. And I do that because that because this word
10 "malicious" has come up. Okay?

11 MR. SMITH: Okay.

12 THE COURT: If you are on the jury, you would
13 learn that the term the term "malice" is actually an
14 element of the crime of murder. So killing cannot be
15 murder unless the State has proven the existence of
16 malice beyond a reasonable doubt. So in that sense,
17 somebody might say that all murders are malicious
18 using the definition of malice to make it a murder. A
19 murder is a unlawful killing with malice aforethought.

20 Now what we want to make sure, what I want to
21 make sure is that you are not telling me that every
22 time somebody is found guilty of murder because it
23 requires malice that you would impose the death
24 penalty, is that true?

25 MR. SMITH: No, sir.

1 **THE COURT:** All right. So if somebody is found
2 guilty of murder understanding that malice is an
3 element of murder then you would sit as a juror during
4 the penalty phase of that trial and be open-minded and
5 consider whether you should impose a life sentence or
6 the death penalty?

7 **MR. SMITH:** Yes, sir.

8 **THE COURT:** All right. Either side want to
9 follow up?

10 **MR. GOWDY:** Nothing from the State, Your
11 Honor.

12 **MR. BRENNAN:** I have one question, Your Honor.

13 **THE COURT:** All right.

14 **EXAMINATION**

15 **BY MR. BRENNAN:**

16 **Q** Sir, if it is a killing where there is no self-
17 defense, would you always impose the death penalty?

18 **A** No, sir.

19 **Q** That's all. Thank you.

20 **THE COURT:** Mr. Smith, you are a qualified
21 juror in this case. I am going to ask you to use
22 that telephone number that you were given Monday
23 morning. Stay in touch with us by calling that
24 number. And some time late this afternoon or tonight,
25 we will put a message on there that would give you

1 some indication of what time we are going to need you
2 tomorrow.

3 Do not discuss this case with anyone. Do not
4 allow anyone to discuss the case with you. When you
5 come hopefully tomorrow, be prepared to stay for five
6 or six days and be ready to have all of your stuff
7 packed and, uh, to come on up here. All right?

8 **MR. SMITH:** Okay.

9 **THE COURT:** We'll see you hopefully tomorrow.

10 **MR. SMITH:** All right.

11 (WHEREUPON, Mr. Smith exits at approximately
12 3:21 p.m.)

13 (WHEREUPON, James Cottrell, Juror number 59, enters at
14 approximately 3:21 p.m.)

15 **JAMES COTTRELL**

16 having previously been sworn, testified as follows:

17 **EXAMINATION**

18 **BY THE COURT:**

19 **Q** Good afternoon, Mr. Cottrell.

20 **A** Good afternoon.

21 **Q** You recall that we put you under oath yesterday,
22 I mean, Monday morning?

23 **A** Yes, sir.

24 **Q** And you understand you are still under oath right
25 now?

1 A Yes, sir.

2 Q Have you talked to anybody about this case or
3 anybody talked to you about this case since you left on
4 Monday afternoon?

5 A No, sir.

6 Q Have you learned or heard or learned or seen
7 anything since you heard about this case on Monday
8 afternoon?

9 A No, sir.

10 Q We're going to ask you some questions right now.
11 I'm going to start off. And the lawyer's are probably
12 going to follow-up. And then, and these are going to be a
13 little bit personal questions. We don't want to get too
14 far in your private life but we do have to ask these
15 questions. We want you to be open and honest with us tell
16 us what you think and tell us how you feel.

17 We're going to talk a little bit about a possible
18 penalty phase. But because we're doing that, that does not
19 mean anything about this case or about this defendant. It
20 simply means that we realize we might get into a penalty
21 phase. And we want to see how you feel about some of the
22 issues that might come up.

23 If you are a juror in this case, can you accept and
24 apply the law precisely as I will give it to you? Can you
25 set aside anything that you might have heard or seen before

1 the trial began and render a verdict that is based on the
2 testimony and the evidence that you hear and see in this
3 courtroom?

4 A I do not know.

5 Q Why not you be able to do that?

6 A Until I face the problem, I don't know how I will
7 react to it.

8 Q Do you know anything about this case?

9 A I do not know. I probably heard something. But
10 I don't remember any names. I forget names.

11 Q So if you have heard something, you've forgotten
12 it.

13 A I probably heard about the case and will remember
14 something if it comes up. But I can not remember names.

15 Q As you sit here now, you don't remember anything
16 about this case?

17 A Huh-uh (negative).

18 Q Now what I want to do is make sure you understand
19 that your responsibility as a juror would be to come in
20 here with an open mind and to set aside anything that you
21 might have learned about the case beforehand and listen to
22 the evidence and observe the witnesses and judge their
23 credibility, listen to the arguments of the lawyers, listen
24 to me tell you what the law is and then render a verdict
25 that is based only on what you heard and what you saw in

1 the courtroom, not based on something else. Could you do
2 that?

3 A As I said, I'm not sure.

4 Q What else would you base it on?

5 A Until I face the problem, I can't be sure. I
6 can't give a definite answer until I know what I'm faced
7 with.

8 Q All right. Okay. When you face the problem,
9 and let's just say you face it in this courtroom, okay?

10 A (Nods head affirmatively.)

11 Q Are you going to make your decision or make your
12 judgment based on what you see when you are in here facing
13 the problem?

14 A I have a tendency to get overemotional.

15 Q So you have doubts as to whether or not you can
16 be a fair and impartial juror?

17 A Yes.

18 THE COURT: All right. Does either side want to
19 voir dire this juror?

20 MR. BARTOSH: No.

21 MR. GOWDY: Not from the State.

22 THE COURT: Mr. Cottrell, I don't believe we'll
23 need your services. And you are free to go.

24 MR. COTTRELL: All right, sir.

25 MR. GOWDY: Your Honor, unless I have

1 transcribed something I think Ms. Snite may be next.

2 MR. BARTOSH: Yes.

3 THE COURT: Yes, sir.

4 MR. GOWDY: At this point, if the Court will
5 allow me, I would like to pass up a letter from her
6 counselor and from this physician that speak of her
7 inability to handle this kind of a situation. And at
8 the risk of speaking out of turn or saying something
9 improper, Mr. Brennan and I --

10 THE COURT: How did you get this stuff?

11 MR. GOWDY: Gossett gave it to me. She is
12 not living at home. She's living with a friend of
13 Solicitor Gossett's named Paula Pickens.

14 THE COURT: Whose son is her boyfriend according
15 to what she told us on Monday.

16 MR. GOWDY: Okay. I did not go that far with
17 the Solicitor. But there are genuine concerns about
18 her ability to handle this. Mr. Brennan and I, I
19 believe, have agreed to disqualify her. Or not
20 disqualify her, but to exempt her based on those
21 letters. We don't want to do so if the Court has a
22 contrary opinion.

23 THE COURT: Is that what you --

24 MR. BRENNAN: That is correct, Your Honor.

25 THE COURT: All right. I will hand you -- let's

1 go ahead and make these letters part of the record.
2 And then we will -- it is a letter May 18, 2004 from
3 David Cox and May 18, 2004 from Edward Cathgard. Both
4 are doctors.

5 Bring her in.

6 (WHEREUPON, Heather Snite, Juror number 261, enters at
7 approximately 3:25 p.m.)

8 **THE COURT:** Ms. Snite.

9 **MS. SNIKE:** Uh-huh (affirmative).

10 **THE COURT:** All right. Let me take a look at
11 it.

12 (WHEREUPON, the Court reviewed the documents.)

13 **THE COURT:** All right, Ms. Snite.

14 **MS. SNIKE:** Yes, sir.

15 **THE COURT:** Based on what you have given me, I'm
16 going to excuse you as a juror in this case. Okay?

17 **MS. SNIKE:** Thank you.

18 **THE COURT:** You are welcome. And good luck with
19 your moving. I know you're moving this week, right?

20 **MS. SNIKE:** Yes, sir.

21 **THE COURT:** Good luck to you. Here, you can have
22 these back.

23 **MS. SNIKE:** Thank you.

24 **THE COURT:** Bring us a juror.

25 **THE CLERK:** Mrs. Bedillion is in the hospital.

1 She is not here.

2 THE COURT: I did not know that. They say next
3 juror, Laurie Bedillion is in the hospital.

4 How did you get that information?

5 THE CLERK: Her husband called into the Clerk of
6 Court.

7 THE COURT: Did somebody tell me that? Seem
8 like she did tell me that.

9 Bailiff, go check with -- Ashley is the one that
10 told us that. Just tell her we need some type of
11 documentation. Not necessarily right this second.
12 But we will need something. All right. Then, bring
13 us Mr. Dawson.

14 (WHEREUPON, Mr. Michael Dawson, Juror number 68,
15 enters at approximately 3:29 p.m.)

16 MICHAEL DAWSON

17 having previously been sworn, testified as follows:

18 EXAMINATION

19 BY THE COURT:

20 Q Good afternoon, Mr. Dawson.

21 A How are you today?

22 Q I'm good. How are you?

23 A Fine.

24 Q You recall that on Monday morning, we put you
25 under oath?

1 A Yes, sir.

2 Q And you are still under oath right now. Do you
3 understand that?

4 A Yes, sir.

5 Q Since Monday afternoon when you left us, have you
6 talked to anybody about this case or has anyone talked to
7 you about this case?

8 A No, sir.

9 Q Have you read or seen or heard anything about
10 this case?

11 A No, sir.

12 Q We are going to ask you some questions now. We
13 hope these questions don't go too deeply into your private
14 life but we have to ask them. We just want you to be open
15 and honest with us and to tell us how you feel and what you
16 think.

17 A Okay.

18 Q We are going to talk about a possible sentencing
19 phase. That is not mean anything about this defendant or
20 about this case. It simply means that because we might
21 get to that phase. We need to know how you think and feel
22 about some issues that will come up if we do.

23 A Okay.

24 Q If you are a juror in this case and if you, I am
25 sorry. If you are a juror in this case, would you, could

1 you accept and apply the law precisely as I would give it
2 to you, set aside anything that you might have known about
3 or heard before you came here and render a verdict that is
4 based solely on the testimony and evidence that you hear
5 and see in this courtroom?

6 A Yes, sir.

7 Q You understand in a criminal case like this one,
8 the State has the burden of proving the defendant guilty
9 beyond a reasonable doubt?

10 A Yes, sir.

11 Q You know this is a murder case?

12 A Yes.

13 Q Could you, based on the facts and circumstances
14 that you find to have been proven and in light of the law
15 as I will give it to you, could you vote for a guilty or
16 not guilty verdict depending on whether you think the State
17 has met its burden of proof?

18 A Yes, sir.

19 Q If the jury finds the defendant guilty murder, we
20 will get into the penalty phase. There are some issues
21 that will come up in the penalty phase that I would like to
22 discuss with you. Aggravating circumstances are facts,
23 incidents and details of occurrences that the State of
24 South Carolina has declared to aggravate or to make worse
25 the crime of murder. Aggravating circumstances increase

1 the enormity of the crime and add to the injury that
2 results from the crime.

3 Mitigating circumstances, on the other hand, are facts
4 incidents and circumstances that the State of South
5 Carolina has declared to lessen the severity of the crime
6 of murder. They serve to extenuate or to reduce the moral
7 culpability or responsibility for the crime.

8 If you are a juror in a death penalty case in the
9 penalty phase, you will have two options as to what you
10 verdict could be. One option is for a life sentence. And
11 the other option is for a death penalty. Could you, based
12 on all of the facts and circumstances that you find to
13 exist, considering any aggravating or mitigating
14 circumstances and considering the law as I will give it to
15 you, could you vote to impose a life sentence?

16 A Yes, sir.

17 Q Could you vote to impose the death penalty?

18 A Yes, sir.

19 Q If I were to sequester this jury and you are on
20 the jury and you are required to stay into the hotel for
21 five or six days away from your family and your home, would
22 that impose a terrible burden on you?

23 A Slightly yes, sir.

24 Q Could you do it?

25 A Could if I had to.

1 Q Well, that is a possibility at this point. If
2 you don't think that you can do that, you need to tell me
3 at.

4 **A** I would just rather not. I am self-employed. I do
5 work most of the time. I work six or seven days a week. So
6 yes, it would impose a burden but it can be done.

7 Q Have you went over the witness list that I gave
8 you earlier?

9 | **A** Yes, sir.

10 Q Have you read every name on that list?

11 | **A** Yes, sir.

12 Q Do you know anybody or are you related to anybody
13 on that list?

14 **A** Not that I can recognize by name. No, sir.

15 Q Do you know of any reason why you could not give
16 both the State and the defendant a fair and impartial
17 trial?

18 | **A** No, sir.

19 Q All right. I'm going to let the lawyers ask you
20 some questions. And then I may come back and ask you some
21 more in a few minutes.

22 EXAMINATION

23:1 BY MR. BARTOSH:

24 Q Good afternoon, Mr. Dawson. I'm Mike Bartosh.
25 I'm a lawyer here in Spartanburg. Doug Brennan, Karen

1 Quimby and I are representing Marion Lindsey in this
2 situation. There are a couple of questions I got from your
3 brochure or from your questionnaire that you filled out
4 before you came into court. On your brochure, you say you
5 don't know anything about the case?

6 A No, sir.

7 Q We have it in our notes that on Monday when
8 people were asked to stand if they knew anything about the
9 case, that you did.

10 A The only thing I remember is seeing it on the
11 news two years ago. I remember something vaguely, but I
12 have no idea of the details.

13 Q So you don't remember any of the details?

14 A No. I heard of it.

15 Q As to what happened, you have no idea of that?

16 A No, there's so much on the news. It's hard to
17 keep up with it.

18 Q Okay. Your apartment was broken into?

19 A Yes, sir.

20 Q Did you go to court over that?

21 A Yes, sir.

22 Q You testified?

23 A Yes.

24 Q Was the person convicted?

25 A Yes.

1 Q Okay. Now just so you understand how this thing
2 works and the judge has already gone over it with you. But
3 this is a two-part process. Depending on what happens in
4 the first part, we don't know whether or not we're going to
5 go to the second. The first part of it is that it's a
6 regular trial. The State presents its evidence to twelve
7 folks sitting there. They have to decide whether the
8 State has carried its burden beyond a reasonable doubt and
9 proven Marion guilty of murder beyond a reasonable doubt to
10 all twelve folks.

11 If they have not carried their burden, then we all go
12 home. If they have carried their burden, then we move on
13 to a second phase which is penalty or sentencing case.
14 What that is is twelve folks on the jury sit and listen to
15 two types of evidence. They will hear evidence from the
16 State of aggravating circumstances which the State believes
17 makes this a more serious crime. And then, of course, they
18 are trying to convince a jury that the death penalty is
19 appropriate.

20 And what you will hear from us is some mitigating
21 circumstances which would tend to lessen the severity of
22 the crime. Of course, we hoping to convince all twelve
23 folks for a life sentence. The death penalty is never
24 mandatory in South Carolina. There's always the option of
25 life. So having said all of that, could you sit, first of

1 all, and listen to the first part of it and be fair to both
2 sides and render what you consider to be a just verdict?

3 A Sure.

4 Q Of course, if we go to the second phase, would
5 you be able to listen to both sides, be fair about it, give
6 each side an opportunity and then decide based upon what
7 you hear decide whether death is appropriate or whether
8 life is appropriate?

9 A Sure

10 Q You understand if it is life, it is life. It is
11 life without parole. Mr. Lindsey will die at the
12 Department of Corrections if he is found guilty and
13 receives life.

14 A I don't agree with life in prison. I would rather
15 the death penalty because I think it is a waste of tax
16 payer's money.

17 Q So are you saying that you would always give the
18 death penalty?

19 A Yes, sir, instead of life in prison. To me, it's
20 the same difference.

21 Q You can't think of any circumstance under which
22 you would give the --

23 A It is the same.

24 Q Give life.

25 A Life in prison or the death penalty, he's going

1 to die in jail or not.

2 MR. BARTOSH: That's all I have, Your Honor.

3 MR. BARNETT: May I have a follow up question?

4 THE COURT: Yes, sir.

5 EXAMINATION

6 BY MR. BARNETT:

7 Q My name is Barry Barnett. Along with Donnie
8 Willingham and Trey Gowdy, we will be representing the
9 State in this case. Now you listened to the judge here.
10 Would you listen to the judge's instructions concerning the
11 case?

12 A Yes.

13 Q You realize life without parole and the death
14 penalty would be an option?

15 A Yes.

16 Q Would you look at those mitigating factors as
17 well as aggravating factors to make a determination of
18 which would be the most appropriate sentence in that case?

19 A Sure.

20 Q Would you agree with me that all murderers, all
21 of them do not deserve the death penalty and not all
22 deserve the life sentence?

23 A I would agree.

24 Q And would you look at the evidence and evidence
25 based off this case on what you saw in court concerning the

1 guilt phase and we've got the sentencing phase, look at
2 both sides and listen to both sides?

3 A Sure.

4 Q And would you weigh -- if you thought life
5 without parole was a fair sentence in that case, is that
6 the sentence you would give?

7 A I would rather not. I would rather the death
8 penalty. Life without parole is paying for 40 years worth
9 of taxpayers money.

10 Q But you understand --

11 A And --

12 Q I'm sorry.

13 A Go ahead.

14 Q You understand that those are the two sentences
15 that are available?

16 A Yes, sir.

17 Q And the judge will instruct you on the
18 aggravating circumstance as well as mitigating
19 circumstances?

20 A Yes, sir.

21 Q And you understand that those two options are
22 available and those two options will be the two that you
23 could take, I mean the two that the jury would take a look
24 at?

25 A Yes, sir.

1 Q And if you think that the death penalty was not
2 the one, you would not be looking at the cost or benefits
3 or anything like that. You would be looking at those two
4 sentences?

5 A Right.

6 Q Is that what you would consider when you listen
7 to the judge and would consider this case?

8 A Yes, sir.

9 Q And you realize the sentence would be sentence
10 all twelve of you agree on?

11 A Yes, sir.

12 Q And if all twelve of you agreed on life, would
13 you give a life without parole sentence?

14 A Yes, sir. If we all agree, yes, sir.

15 Q And if all twelve agreed on the death sentence,
16 would you give the death sentence?

17 A Yes, sir.

18 Q And you would listen to the judge's instructions
19 and would you follow those instructions?

20 A Yes, sir..

21 Q And based off that, would you still be able to
22 give either sentence after you listen to all the evidence
23 and talked to the other jurors?

24 A Yes, sir.

25 MR. BARNETT: One moment, Your Honor, please.

1 **THE COURT:** Mr. Dawson, while they are
2 conferring, let me mention a couple of things to you
3 and ask you a question or two. You mentioned that
4 you had some concerns about whether a life sentence
5 might be a waste of money. Now let me take that off
6 of your plate. You as a businessman and perhaps a
7 family man and a prospective juror in this case, you
8 have got a good bit to concern yourself with. You do
9 not need to concern yourself with how much it cost to
10 put somebody in prison for the rest of their life.

11 **MR. DAWSON:** I understand that.

12 **THE COURT:** Just like you do not need to concern
13 yourself with how much it might cost to give somebody
14 the death penalty.

15 **MR. DAWSON:** Yes, sir.

16 **THE COURT:** As a member of the jury, that is none
17 of your business. You, as a member of the jury,
18 would simply be directed to decide which is the
19 appropriate punishment.

20 **MR. DAWSON:** Yes, sir.

21 **THE COURT:** It will be up to other departments
22 of government --

23 **MR. DAWSON:** I understand.

24 **THE COURT:** -- to decide about cost and that kind
25 of stuff.

1 **MR. DAWSON:** I understand that.

2 **THE COURT:** Can you accept that?

3 **MR. DAWSON:** Yes, sir.

4 **THE COURT:** If we take this question of the cost
5 of a life sentence off the table you and put you back
6 to where you are sitting in a jury room and you've
7 listened to all the testimony and the evidence and
8 you've listened to me instruct you on the law and you
9 listen to the lawyers argue to you as to which way you
10 should go, are you open minded to giving either a life
11 sentence or a death penalty depending on which one you
12 think is appropriate?

13 **MR. DAWSON:** Yes, sir.

14 **THE COURT:** Okay. All right. Any follow up from
15 either side?

16 **MR. BARTOSH:** Yes, sir.

17 **EXAMINATION**

18 **BY MR. BARTOSH:**

19 **Q** Now, Mr. Dawson, I may be mistaken but I thought
20 I heard you say in the beginning when I was talking to you
21 that you will always give the death penalty?

22 **A** That may be what I said but I also just agreed
23 that I could be open-minded.

24 **Q** Well, what brought about that changed?

25 **A** Well, like you said, if you take the cost and

1 everything out, you're just weighing one sentence versus
2 the other. I could be open-minded. I would be. I would
3 listen.

4 Q And just totally put the cost out of your mind?

5 A Sure.

6 Q How long have you thought about the death
7 penalty? How long have you thought about it?

8 A I don't understand your question.

9 Q You obviously have thought about it?

10 A Sure.

11 Q Has the cost always been a concern?

12 A Yeah. I mean, to me, yeah. It doesn't make any
13 sense to me to have someone sit there all that time.

14 Q Okay. And you realize, of course, if it's life,
15 they're going to sit there all that time?

16 A Sure.

17 Q And you will be able to put aside what I took to
18 be a fairly strongly view that --

19 MR. BARNETT: Objection, Your Honor. I think we
20 are getting into personalities here. If you would
21 like to as a question or whatever, I think it is
22 improper at this point to interject his personal
23 opinion.

24 THE COURT: I sustain the objection as to you
25 telling him what your opinion is as to what he said.

1 You can ask him what him said and clarify that. But
2 don't give him your opinion about what he said.

3 **BY MR. BARTOSH:**

4 **Q** You said from what I understood that you would
5 always give the death penalty?

6 **A** That is what I said.

7 **Q** But you don't believe that anymore?

8 **A** No, sir. I can be open minded.

9 **Q** Okay.

10 **MR. BARNETT:** No further questions of Mr.
11 Dawson.

12 **THE COURT:** Mr. Dawson, this is very important.
13 And I know that you have been straightforward with us.
14 And we appreciate that. You did make a comment that
15 you were concerned about the cost of putting somebody
16 in jail for life and that being a burden on the State
17 as being too much, too expensive. And I told you and
18 that's not really -- when I said that's none of your
19 business, of course, that is your business as a
20 taxpayer and as a citizen. You have the perfect
21 right to think about that, to have an opinion about
22 that and to express the opinion.

23 So let me clarify that. When you are sitting in
24 a jury box, your limitation is to consider the
25 evidence in the courtroom, the evidence that I have

1 allowed in. And then you use your life experiences
2 and your opinions to evaluate that evidence. There's
3 not going to be any evidence about how expensive it is
4 to put somebody in jail for life. There's not going
5 to be any evidence about how expensive it is to give
6 somebody the death penalty. So in your role as a
7 juror, you should not consider that. And you told me
8 that you accept that?

9 **MR. DAWSON:** I understand. Yes, sir.

10 **THE COURT:** So you tell me, okay, did we just get
11 sidetracked a little bit on the question of putting
12 somebody in jail or is this really going to weigh in
13 your deliberations if you are on this jury?

14 **MR. DAWSON:** No, I think I can be open minded
15 about it.

16 **THE COURT:** Do you think that you'll be able to
17 go through the deliberation process as a member of
18 this jury and deliberate and discuss and decide with
19 the other members of the jury what should be the
20 appropriate penalty and that you will not let your
21 view on cost enter into those deliberations or enter
22 into your thinking? Do you honestly think that?

23 **MR. DAWSON:** Yes, sir.

24 **THE COURT:** I'm going to let you step out in the
25 hall in just a second. I will be right back with you.

1 (WHEREUPON, Mr. Dawson exits at approximately 3:47
2 p.m.)

3 **MR. BARTOSH:** Your Honor, I don't believe he
4 is qualified. When we were discussing the life and
5 the death, I made no mention of cost. He brought it
6 up. So obviously he had been thinking about a long
7 time. And it is a strongly held belief of his that
8 it's better to put folks to death than it is to give
9 them life. For him to go from the strongly held
10 belief to well I can be fair, I can think about it in
11 about two or three minutes I think is incredible.

12 I think he has recognized that this is a way to
13 get on the jury. And then once I get on the jury,
14 then I can give him death. I just don't -- I think
15 that it boggles the imagination to think that a man
16 who would spontaneously say I don't want to keep him
17 in prison because it costs too much money, I would
18 give him the death penalty every time, to go from that
19 opinion over in about three minutes.

20 And I respect Mr. Barnett's ability as an
21 advocate and as a persuader, but I just don't believe
22 that he could convince him that quickly that, no, I
23 won't consider cost. He obviously has been
24 considering cost. He has been considering cost for a
25 while because he brought it up. Your Honor, he was

1 pretty swift about the value of human life. You know,
2 why should we pay all that money to keep somebody up
3 when we can just kill them. I don't think he is
4 qualified, Your Honor.

5 **THE COURT:** Mr. Barnett.

6 **MR. BARNETT:** Your Honor, I would argue that he
7 is qualified. In State versus Ricky George, it's a
8 476 S.E. 903, 1996, they held a juror was properly
9 qualified even though he initially thought that he
10 could not vote for life if he found an aggravating
11 circumstance. Your Honor, basically, he said he would
12 listen to the Court. And that's when I went back and
13 talked to him.

14 He could have initially said, no, I'm going to
15 vote death penalty period. No, that's not what he
16 did. Your Honor, Mr. Bartosh's questions which he
17 asked him questions concerning that, he made the
18 comment about cost. Once he was explained that, then
19 he understood that that was not their realm. Their
20 realm is to deal with what happened here in court here
21 today. I went through that with him. Your Honor went
22 through that with him.

23 He understood that. And once he understood that,
24 he knew he was going to go looking at all the
25 aggravating circumstances or the mitigating

1 circumstances in the sentencing phase. He
2 understands that he needs to listen to the judge.
3 Your Honor went through some very similar questions
4 with him yourself. He answered those questions. He
5 said he could be open-minded.

6 I believe he is qualified under our laws based on
7 that. This case said initially, initially he said
8 that. Once he was explained what he would have to
9 consider in court in the next five or six days then he
10 could be fair and open-minded concerning that. He
11 would consider all the evidence. He would consider a
12 life sentence as well as the death sentence. And I
13 believe he is qualified.

14 **MR. BARTOSH:** Just briefly, Your Honor. I will
15 say that was in response to a question. This was in
16 response to no question. He volunteered it. I think
17 you just don't volunteer that type of information if
18 it is not a strongly held belief.

19 **MR. BARNETT:** Your Honor, I would say that it was
20 in response to a question. He asked about his
21 feelings on the death penalty. I ask the Court to
22 look at what State versus Georgia says if you get a
23 chance. I don't have -- we may have a case for you
24 here in a second.

25 **THE COURT:** I don't think the case is going to

1 help me. I mean, I know the law. I've read the cases.

2 MR. BARNETT: Yes, sir.

3 MR. BARTOSH: Maybe not in the last ten
4 minutes. But I've looked at it. And I'm not -- I
5 think this is a -- the only -- that lasted -- he
6 walked in here 21 minutes ago and we started. So we
7 been discussing this in the way of argument with him
8 out of the courtroom for about 3 minutes. So that
9 leaves us about 18 minutes that he was in here. I've
10 been writing down the times just to kind of access how
11 long it takes to do this.

12 Apart from that 60-second maybe period of time in
13 which he was talking about cost of giving somebody a
14 life sentence, I had absolutely no doubt that he was a
15 perfectly qualified juror when he answered my
16 questions in the beginning and when he answered my
17 questions in the end. And when he answered y'all's
18 questions after I spoke to him, after he said
19 something about the cost of the life sentence, I had
20 no doubt that he was qualified as a juror, open-
21 minded, willing to consider a life sentence, willing
22 to consider the death penalty.

23 It is my impression that there was a moment there
24 when he got agitated. I don't know exactly what it
25 was, but something triggered a little sort of almost

1 angry or frustrated response in him. And I also
2 believe that that is consistent with his demeanor as
3 he expressed that opinion about cost. I'm not really
4 sure what to do about that.

5 I'm a little concerned about the fact that he had
6 that agitated or frustrated response. But I am
7 convinced that it is, that that is what it was. In
8 reality, he is a qualified juror. I'm going to go back
9 and think about that for a minute. I'm going to -- it
10 is not a terrible time to take a short break. And so
11 I'm going to do that. I'll be right back.

12 (WHEREUPON, a short recess was taken at approximately
13 3:38 p.m.)

14 (WHEREUPON, the Court resumed at approximately
15 4:01 p.m.)

16 **THE COURT:** The law is not in dispute. We know
17 what the law is. I've got to make a judgment as to
18 whether or not this juror's views on whatever they are
19 substantially impair or prevent him from exercising
20 the responsibilities and following the guidance and
21 instructions that I give. I asked him, you know, I
22 specifically said, this little business about the cost
23 of prison, is that something we just got sidetracked
24 on. And he said yes.

25 I am -- we have had several other jurors, in

1 fact, the first juror whose name Petty, I think. The
2 very first juror we talked to. He had inconsistent
3 answers. This guy has got inconsistent answers. But
4 the difference is that Petty's inconsistent answers
5 led me to conclude that his situation would
6 substantially interfere. Dawson's inconsistent
7 answers lead me to conclude that we got sidetracked
8 for a minute.

9 I think it is like someone who initially says
10 yeah, I'm going to vote for a life sentence no matter
11 what. But then after they are given some more
12 information and some more explanation, they say, well,
13 under those circumstances, I believe I can vote either
14 way depending on what the circumstances are.

15 I am not required to disqualify somebody just
16 because they gave an inconsistent answer. I have got
17 the responsibility of evaluating these people,
18 evaluating their demeanor, their credibility,
19 considering the entire voir dire and making a judgment
20 based on what I see as to whether or not their views
21 will substantially impair their ability to follow the
22 law and carry out their responsibilities as a juror.

23 And so having done that, I find that Mr. Dawson
24 is qualified, that the statement about the cost being
25 the reason that he would impose a life sentence, of

1 course, is something that he can't consider. And when
2 I told him that, he accepted it. And I'm convinced
3 that he accepted it. And I don't see that he was
4 trying to figure out a way to get on the jury.

5 In fact, I thought -- I think that maybe for a
6 second he looked at that -- he might have looked at
7 that life thing as -- I don't know. Something
8 frustrated him. I mean that cost of a life sentence.
9 But, anyway, I am convinced that he's qualified.

10 **MR. BARTOSH:** Your Honor, since you are finding
11 him qualified, we would like to put on the record our
12 objection to that qualification. I think it is clear
13 that those are his beliefs. The statement was not
14 made in response to any of my questioning.

15 In fact, I have intended -- before he said that,
16 I intended to move on to ask him about whether or not
17 the fact that he was away from his business would
18 cause him problems being sequestered and listening to
19 the jury. I think -- I don't think we got
20 sidetracked. It was not in response to any question.
21 He brought it up. Since he brought it up, I don't
22 think it was a question of being sidetracked.

23 **THE COURT:** Bring him out. I'm going to ask him
24 one more follow-up question.

25 (WHEREUPON, Mr. Dawson enters at approximately

1 4:07 p.m.)

2 **THE COURT:** Mr. Dawson, let me just go back to
3 this one more time. I know in the last few minutes
4 while you were sitting out in the hallway, you've
5 probably had a chance to think about the conversation
6 that you and I had and that you had with these other
7 lawyers. I want to go back to the question of whether
8 or not you are open-minded to considering the
9 possibility of the life sentence or the death penalty.

10 **MR. DAWSON:** Yes, sir.

11 **THE COURT:** Are you?

12 **MR. DAWSON:** Yes, sir.

13 **THE COURT:** Now, this business about the cost of a
14 life sentence, are you confident that you can take
15 that and recognize it as something that you are not
16 supposed to consider and put it out of your mind while
17 you are in here deliberating to determine what the
18 sentence ought to be in the case?

19 **MR. DAWSON:** Yes, sir.

20 **THE COURT:** You have any doubt about it?

21 **MR. DAWSON:** No, sir.

22 **THE COURT:** All right, sir. I find that you are a
23 qualified juror. And we expect to be ready to begin
24 with the actual jury selection some time around
25 lunchtime tomorrow. So about 11:00, let's say 10

1 o'clock, start checking in with us by calling the
2 number that you were given on Monday. There will be a
3 recorded message on there that gives you our best
4 information about when you should be here.

5 Now, keep in mind, you will need to bring enough
6 clothing and whatever you need to keep you going in a
7 hotel for five or six days. Don't talk to anybody
8 about this case. Don't let anybody talk to you about
9 the case. Don't read anything. Don't watch anything.
10 Don't listen to anything about this case.

11 When you come back in here tomorrow, I'm going to
12 ask you and all the jurors if you followed my
13 instructions not to listen and not to talk about it
14 and not to learn anything about the case. I want you
15 to be able to tell me that you have followed my
16 instructions. All right, sir?

17 **MR. DAWSON:** (Nods head affirmatively.)

18 **THE COURT:** You are free to go for now. Plan to
19 be up here around lunchtime tomorrow. Call that
20 number for specific instructions about when to come
21 and where to park and all of that stuff.

22 **MR. DAWSON:** So call that number tomorrow after
23 10:00?

24 **THE COURT:** Call it around, yeah. Between 10:00
25 and 11:00. We will put something on there between

1 10:00 and 11:00.

2 MR. DAWSON: But plan to be here tomorrow around
3 lunch anyway?

4 THE COURT: We won't get to you before noon, but
5 we could get to you as early as noon.

6 MR. DAWSON: Okay. So I've got one question.

7 THE COURT: Yes, sir.

8 MR. DAWSON: Am I on the jury or am I just
9 qualified to be -- you are still qualifying?

10 THE COURT: We are still qualifying. We've got --

11 MR. DAWSON: So I need to bring clothes tomorrow?

12 THE COURT: Right. We don't know if you're going
13 to be on the jury. But you are the 25th juror, I
14 believe. And we need about 40. So we've got a ways to
15 go. So we will be at it for a while tonight yet.

16 MR. DAWSON: Okay.

17 THE COURT: And once we get the proper number of
18 jurors, enough jurors, then we go through a different
19 process where we choose who is actually going to be on
20 the jury.

21 MR. DAWSON: Okay.

22 THE COURT: All right, sir.

23 MR. DAWSON: Okay. Thank you.

24 (WHEREUPON, Mr. Dawson exits at approximately
25 4:14 p.m.)

1 **THE COURT:** Bring us a juror.

2 (WHEREUPON, Pam Gardner, Juror number 97, enters at
3 approximately 4:14 p.m.)

4 **PAM GARDNER**

5 having previously been sworn, testified as follows:

6 **EXAMINATION**

7 **BY THE COURT:**

8 **Q** Ms. Gardner?

9 **A** Yes.

10 **Q** How are you this afternoon?

11 **A** I'm pretty good.

12 **Q** Good. Ms. Gardner, you recall that Monday
13 morning, we put you under oath?

14 **A** Yes, sir.

15 **Q** And you are still under oath right now. You
16 understand that?

17 **A** Yes, sir.

18 **Q** Since Monday afternoon when you left, have you
19 talked to anybody about this case or has anybody talked to
20 you about the case?

21 **A** No, sir.

22 **Q** Have you read or seen or heard anything about
23 this case?

24 **A** Since I came Monday?

25 **Q** Since Monday afternoon.

1 A No.

2 Q I'm going to ask you some questions now. And
3 after I do that, the lawyers will probably ask you some
4 questions. We don't mean to pry too deep into your private
5 life. But we do have to ask you these questions. We just
6 want you to be open and honest with us. Tell us what you
7 think and how you feel.

8 A Yes, sir.

9 Q We're going to have to talk about a possible
10 sentencing phase. But because we are talking about that,
11 that does not mean anything about this defendant or
12 anything about this case. It just means that because we
13 might get to that phase, we need to ask you some questions
14 about some things that will come up and how you feel about
15 those things.

16 If you were a juror in this case, could you accept and
17 apply the law precisely as I would give it to you and set
18 aside anything that you might have heard or learned before
19 the case began and render a verdict based solely on the
20 testimony and the evidence that you hear and see in this
21 courtroom?

22 A Yes, sir.

23 Q You could?

24 A Yes, sir.

25 Q You understand in a criminal case like this, the

1 State has the burden of proving the defendant guilty beyond
2 a reasonable doubt?

3 A Yes, sir.

4 Q And you know this is a murder case?

5 A Yes, sir.

6 Q Could you, based on the facts and circumstances
7 that you find to have been proven and in light of the law
8 as I would give it to you render a verdict of either guilty
9 or not guilty depending on whether you think the State has
10 met its burden of proof?

11 A Yes, sir.

12 Q You could?

13 A Uh-huh (affirmative).

14 Q Now, if you are on the jury in this case and the
15 jury finds the defendant guilty of murder, we would move
16 into the second phase, what's called a penalty phase or the
17 sentencing phase. And there will be some issues that will
18 come up then that I will need to discuss with you now.

19 Aggravating circumstances are facts, incidents or
20 occurrences that the State has declared to aggravate or to
21 make worse the crime of murder. Aggravating circumstances
22 increase the magnitude of the crime, the enormity of the
23 crime of murder. They add to the injury that is caused by
24 the crime.

25 Mitigating circumstances, on the other hand, are

1 facts, incidences or details of occurrences that the State
2 has declared to lessen the severity of the crime of murder.
3 They serve to extenuate or to reduce the moral culpability
4 or responsibility for the crime of murder.

5 If you are a juror in a death penalty case in the
6 sentencing phase, you would have two options as to what
7 your verdict could be. You could have a verdict of life in
8 prison or you could have the verdict of the death penalty.
9 Could you, depending on the facts and circumstances that
10 you find to exist, considering any aggravating
11 circumstances or mitigating circumstances and considering
12 the law as I will give it to you, could you return a
13 verdict or vote to return a verdict for a life sentence?

14 A Yes, sir.

15 Q You could?

16 A Uh-huh (affirmative).

17 Q Could you vote to return a verdict for the death
18 penalty?

19 A Yes.

20 Q You could?

21 A Yes.

22 Q Your voice is soft and I'm having to ask you to
23 repeat your answer.

24 A Yes, sir.

25 Q All right. Thank you. Now, ma'am, the jury

1 might be sequestered, that means, put up in a hotel and not
2 allowed to go home for five or six days. If I did that,
3 would that impose a terrible burden on you?

4 **A** No, sir.

5 **Q** Have you read over that witness list that I gave
6 you a little while ago?

7 **A** Yes, sir.

8 **Q** Have you read every name on that list?

9 **A** Yes, sir.

10 **Q** Do you know anybody or are you related to anybody
11 on that list?

12 **A** I don't know anybody but one person I might have
13 went to high school with.

14 **Q** All right. Tell me who that is.

15 **A** I think it is 31, Freddy Thompson.

16 **Q** Freddy Thompson?

17 **A** And I'm not even sure if that's the same Freddy
18 Thompson. It's been a long time ago.

19 **THE COURT:** What do we know about Freddy
20 Thompson?

21 **MR. GOWDY:** He's a lot older than this juror,
22 Your Honor.

23 **THE COURT:** So somewhere in his mid to upper 30's?

24 **MR. GOWDY:** Yes, sir, Your Honor. Is he from
25 Spartanburg?

1 **MR. WILLINGHAM:** He works for 911. He works for
2 the emergency department.

3 **THE COURT:** Okay.

4 **BY THE COURT:**

5 **Q** Let's assume that this is the same Freddy
6 Thompson that you know. Do you think the fact that you
7 know Freddy Thompson would interfere in any way with either
8 your willingness or your ability to give both the State and
9 the defendant a fair and impartial trial?

10 **A** No. I'm sure he don't remember me probably.

11 **Q** Okay. Do you know of any reason why you could
12 not give both the State and the defendant a fair and
13 impartial trial?

14 **A** No, sir.

15 **Q** Okay. Ma'am, I'm going to let the lawyers ask
16 you a few questions now. Then I may come back and ask you
17 some myself again in just a minute.

18 **MR. BRENNAN:** Please the Court, Your Honor.

19 **THE COURT:** Yes, sir.

20 **EXAMINATION**

21 **BY MR. BRENNAN:**

22 **Q** Ms. Gardner, how are you this afternoon?

23 **A** Good.

24 **Q** Okay. My name is Doug Brennan. I'm an attorney
25 from here in Spartanburg. Myself, Mr. Bartosh and Ms.

1 Karen Quimby have an opportunity to represent Marion
2 Lindsey in this matter. Ma'am, on Monday, the whole group
3 of jurors was asked to stand up in response to certain
4 questions.

5 A Uh-huh (affirmative).

6 Q And you did stand up or told the Court through
7 your questionnaire that you were the victim of a home
8 invasion some time ago?

9 A I don't remember if it was Monday. I don't
10 believe that come up Monday.

11 Q That was actually on your questionnaire.

12 A Yes.

13 Q Where you there when the home was broken into?

14 A No.

15 Q Was anyone ever arrested as a result of that?

16 A No, sir.

17 Q Were you ever asked to make a statement or
18 anything like that?

19 A Just when the police came out and asked us what
20 was taken.

21 Q And do you remember, not the name of the officer,
22 but do you remember if it was a Spartanburg County
23 Sheriff's Deputy or a city police officer?

24 A I think it was city police. It was in Cowpens.

25 Q Okay. So it would have been Cowpen City?

1 **A** Uh-huh (affirmative).

2 **Q** Okay. All right. How long ago was that, ma'am?

3 **A** At least 25 years.

4 **Q** Okay. You also mentioned that you knew somebody
5 that had been killed by a drunk driver?

6 **A** Yeah, a friend of mine's parent.

7 **Q** And how long ago was that?

8 **A** A couple of years.

9 **Q** Have you and your friend spoken about the tragic
10 lost of her parents?

11 **A** Yes.

12 **Q** And have those conversations, would they have
13 clouded your judgment so that you could not render a fair
14 verdict in this trial?

15 **A** No, sir.

16 **Q** Okay. You said that was a couple of years ago?

17 **A** Yes.

18 **Q** Okay. And the last question was had somebody in
19 your family been accused of a crime. And you put, yes,
20 stealing.

21 **A** Yes, sir.

22 **Q** Who was that?

23 **A** One of my sisters.

24 **Q** How long ago was that?

25 **A** About eight years.

1 Q Were you a witness or did you have anything to do
2 with that case?

3 A No, nothing came up about the case or anything.

4 Q All right. Now, ma'am, you also told the Court
5 that you belong to a Right to Life Organization. Is that
6 correct?

7 A Uh-huh (affirmative).

8 Q Does that mean you make donations?

9 A Yeah, donations.

10 Q All right. Ma'am, you understand that in South
11 Carolina, the death penalty is never mandatory?

12 A Yes, sir.

13 Q With that understanding, there are three kinds of
14 jurors. There are those jurors that if the defendant is
15 found guilty of murder will always impose a life sentence.
16 There are those jurors that once the defendant is found
17 guilty will always impose the death penalty. And then
18 there are those in the middle that don't know which we they
19 are going to go until the case is over. Can you tell me
20 which type you are?

21 A I would wait until the case is over.

22 Q Okay. You have been a teacher's assistant for
23 quite a while?

24 A Uh-huh (affirmative).

25 Q But you also said you had worked at Doctor's

1 Memorial at some point.

2 A Uh-huh (affirmative).

3 Q Was that before you became a teacher's assistant?

4 A Yes.

5 Q So it was --

6 A A long time ago.

7 Q A long time ago?

8 A Uh-huh (affirmative).

9 Q Okay. All right. And you don't have any
10 knowledge of this case at all?

11 A No, sir. I mean, I read the paper. I don't know
12 anything about the case. I am thinking it might be
13 something I read a good while back.

14 Q And that stuff, that information that you gained
15 from reading the paper, have you formed an opinion as to
16 the guilt of Mr. Lindsey at this point?

17 A No.

18 Q And you be able to put that information that you
19 gained from the newspaper aside in making your decision
20 here?

21 A Yes, sir. It's real vague. I don't even really
22 know what the case is. I was just thinking when I heard
23 that name that I recognized that name.

24 Q Okay. My last question, ma'am, is this, let's
25 suppose for a second that you have been placed on the jury.

1 We've been through the guilt phase and the jury has come
2 back with a guilty verdict. We're now in the sentencing
3 phase. And you are actually in the jury room deliberating.

4 There is a form, a sentencing form. All twelve jurors
5 have to sign for life in prison or death. And it has to be
6 unanimous. All twelve have to sign one or the other.
7 Let's say that it's passed to you. All eleven jurors have
8 already signed it. They have signed for the death penalty.
9 Understanding that by signing your name as the twelfth
10 juror, Mr. Lindsey would be sentenced to death, could you
11 still sign that document?

12 A Yes, sir.

13 Q Thank you. No further questions.

14 MR. BARNETT: May it please the Court, Your
15 Honor.

16 THE COURT: Yes, sir.

17 EXAMINATION

18 BY MR. BARNETT:

19 Q Ms. Gardner, my name is Barry Barnett. I,
20 myself, Trey Gowdy and Donnie Willingham are prosecuting
21 this case for the State. We appreciate you coming. I know
22 this is hard and everything to answer these questions.
23 This is the only time we'll get to really talk to each
24 other a little bit. Your husband is Willie Gardner, is
25 that correct?

1 **A** Uh-huh (affirmative).

2 **Q** And he does front end alignment?

3 **A** Yes.

4 **Q** And you attend a Baptist Church?

5 **A** Uh-huh (affirmative).

6 **Q** I appreciate you answering my questions. Thank
7 you.

8 **MR. BARNETT:** Thank you, Your Honor.

9 **THE COURT:** Ms. Gardner, would you step out in
10 the hall for just one second please, ma'am.

11 **MRS. GARDNER:** Okay.

12 (WHEREUPON, Mrs. Gardner exits at approximately
13 4:29 p.m.)

14 **THE COURT:** Any objection to her qualifications?

15 **MR. BRENNAN:** No, Your Honor.

16 **THE COURT:** Bring her in.

17 (WHEREUPON, Ms. Gardner enters at approximately
18 4:29 p.m.)

19 **THE COURT:** Mrs. Gardner, I find that you are a
20 qualified juror in this case. We're going to need you
21 to be ready to come back and join us some time
22 tomorrow. Probably it's going to be right around
23 lunchtime. That is my prediction.

24 Between now and then, do not discuss this case
25 with anybody. Don't allow anybody to discuss it with

1 you. Don't read anything, watch anything or listen to
2 anything about this case. When you come back
3 tomorrow, I'm going to ask you and all the other
4 qualified jurors if you had been able to follow my
5 instruction and not talk about the case and not learn
6 anything about the case. And I want you to be able to
7 tell me that you have.

8 You are going to need to be ready to bring enough
9 clothes and whatever else you need to be put up in a
10 hotel for five or six days. Okay.

11 **MRS. GARDNER:** Okay.

12 **THE COURT:** And you call tomorrow beginning around
13 10:00 or 11:00 that number that you were given Monday
14 morning. We will have a recording on there that gives
15 you some more information about when to come, what to
16 bring and where to park and all of that.

17 **MRS. GARDNER:** I have to call in the morning?

18 **THE COURT:** Call some time after 10:00.

19 **MRS. GARDNER:** Okay.

20 **THE COURT:** We will try to put something on there
21 tomorrow morning after 10:00 that tells you all of
22 that information, okay?

23 **MRS. GARDNER:** Okay.

24 **THE COURT:** We will see you tomorrow.

25 **MRS. GARDNER:** Okay. Thank you.

1 (WHEREUPON, Mrs. Gardner exits at approximately
2 4:30 p.m.)

3 **THE COURT:** Hold on just a second.

4 Y'all probably noticed retired Chief Justice
5 Littlejohn who just was in here for a little while and
6 then left.

7 **MR. GOWDY:** Yes, sir.

8 **THE COURT:** You know, he loves telling stories.
9 And they are fascinating to hear. But his stories
10 about death penalty jury selection in his day when he
11 was a circuit judge, he said jury selection went like
12 this, is there any member of the jury panel that is
13 connected by blood or marriage to the defendant? If
14 so, please stand. Any member of the jury panel who is
15 connected by blood or marriage to the victim? If so,
16 please stand. Nobody would stand.

17 Mr. Clerk, give me a jury. And he would tell
18 you that one week in 1951, he tried -- he was holding
19 court. And I can't remember if he said it was in
20 Spartanburg or not. But on Thursday morning, he came
21 and showed up for court. And the Solicitor said,
22 Judge, we've got a murder case to try. He said, All
23 right, let's try it. Thursday afternoon, the jury
24 found him guilty. No recommendation of mercy,
25 sentenced him to death.

1 Came into the courtroom Friday morning, the
2 Solicitor said Judge we got a murder case to try. The
3 very next day. Started the case that morning. The
4 jury came back that afternoon. No recommendation of
5 mercy. Sentenced him to death. Two death sentences
6 in two days, 1951.

7 Bring us a juror.

8 Interesting, isn't it?

9 (WHEREUPON, Jackie Barham, Juror number 14, enters at
10 approximately 4:31 p.m.)

11 **JACKIE BARHAM**

12 having previously been sworn, testified as follows:

13 **EXAMINATION**

14 **BY THE COURT:**

15 **Q** All right, sir. Do you say Barham or Barham?

16 **A** It's Barham.

17 **Q** Barham.

18 **A** Here it's Barham. I think in Mississippi or
19 Virginia, it's Barham.

20 **Q** Well, you probably know some Parhams or some
21 Parhams.

22 **A** No. I heard the name plenty of times.

23 **Q** In Greenville and maybe over here, we've got both
24 Parhams and Parhams spelled both the same way. Anyway, Mr.
25 Barham?

1 A Correct. Yes, sir.

2 Q You recall that on Monday morning, we put you
3 under oath?

4 A Yes.

5 Q And you understand you are still under oath right
6 now?

7 A Yes.

8 Q Since Monday afternoon when you were excused --
9 hold on just a second. Have you talked to anybody about
10 this case or has anybody talked to you about this case?

11 A No.

12 Q Have you read or seen or heard anything about
13 this case?

14 A No, sir.

15 Q We're going to ask you some questions. I'm going
16 to start. The lawyers are probably going to follow up. We
17 don't mean to intrude too far into your private life. But
18 we do have to ask you these questions. There are no right
19 or wrong answers. We just want you to be open and honest
20 with us and tell us how you feel and what you think.

21 We're going to talk a little bit about a possible
22 sentencing phase but that doesn't mean anything about this
23 case. That just means that because we might get to a
24 sentencing phase, we need to ask you some questions about
25 some things that will come up if we do.

1 If you are a juror in this case, could you accept and
2 apply the law precisely as I give it to you, set aside
3 anything that you might have heard or learned about this
4 case in the past and render a verdict solely, based solely
5 on the testimony and evidence that you hear and see in this
6 courtroom?

7 **A** Yes, sir.

8 **Q** You understand that in a criminal case like this,
9 the State has the burden of proving the defendant guilty
10 beyond a reasonable doubt?

11 **A** Yes, sir.

12 **Q** And you understand this is a murder case?

13 **A** Yes.

14 **Q** Could you, depending on the facts and
15 circumstances that you find to have been proven and in
16 light of the law as I will give it to you, render a verdict
17 in this case that is either guilty or not guilty depending
18 on whether you think the State has met its burden of proof?

19 **A** Yes, sir.

20 **Q** If you are on the jury in this case and the jury
21 reaches a verdict of guilty on the charge of murder, we
22 would move into the sentencing phase or the guilt phase.
23 And there are some things about that that I want to talk to
24 you about now.

25 Aggravating circumstances are facts, incidents or

1 details of an occurrence which the State of South Carolina
2 has declared to aggravate or to make worse the crime of
3 murder. Aggravating circumstances increase the enormity of
4 the crime or add to the injury that results from the crime.

5 Mitigating circumstances, on the other hand, are
6 facts, incidents or details of an occurrence that the State
7 of South Carolina has declared to lessen the severity of
8 the crime of murder. And they serve to extenuate or to
9 reduce the moral culpability for the crime.

10 If you are a juror in the penalty phase of a death
11 penalty trial, you would have two options as to what your
12 verdict could be. The verdict could be a life sentence or
13 it could be the death penalty. Could you, depending on the
14 facts and circumstances that you find to exist and
15 considering any aggravating or mitigating circumstances and
16 considering the law that I give to you, could you return a
17 verdict or could you vote to return a verdict for a life
18 sentence?

19 A Yes, I could.

20 Q Could you vote to return a verdict for the death
21 penalty?

22 A Yes, I could.

23 Q Now, Mr. Barham, if you are on this jury and if
24 I sequester the jury, that would mean that you are put up
25 in a hotel and not allowed to go home for five or six days.

1 Would that impose a terrible burden on you?

2 A No, sir.

3 Q Have you read over the witness list that I gave
4 you a few minutes ago?

5 A Yes, I have.

6 Q Do you -- have you read every name on that list?

7 A Yes.

8 Q Do you know anybody or are you related to anybody
9 on that list?

10 A No.

11 Q Do you know of any reason why you could not give
12 both the State and the defendant a fair and impartial
13 trial?

14 A No.

15 Q All right, sir. Mr. Barham, the lawyers are
16 going to ask you some questions now. I'm going to come
17 back and ask you a few more later.

18 **EXAMINATION**

19 **BY MR. BARTOSH:**

20 Q Good afternoon, Mr. Barham.

21 A Hi.

22 Q My name is Mike Bartosh. I'm a lawyer here in
23 Spartanburg. I don't know if we introduced on Monday.
24 It's so far back, I can't remember. But along with Karen
25 Quimby and Doug Brennan, we are representing Marion who is