

VOLUME THREE OF EIGHT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Spartanburg County

S.C. SUPREME COURT

Honorable Paul M. Burch, Circuit Court Judge

MARION ALEXANDER LINDSEY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-001271

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

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1 sitting there with us in the white shirt on his case.
2 There are a couple of things I would like to ask you about
3 your questionnaire that you filled out.

4 Monday, the panel was asked if anybody knew anything
5 about the case to stand up. And we have it marked down
6 that you stood up.

7 A Yes, I did.

8 Q Okay. What can you tell me that you know about
9 the case?

10 A Only what I've heard from my son after I filled
11 out the questionnaire.

12 Q So once your son found out that you were a
13 potential juror, you discussed the case with him?

14 A No. I asked him a question about one of the
15 names that was on the questionnaire. I didn't know anything
16 about the case or anything.

17 Q I see.

18 A I've only lived here, or back here since
19 September of 2002, I'm sorry, 2001.

20 Q This happened in September of 2002?

21 A Yes. And when I asked him concerning the name,
22 he explained to me what he thought. And he put it to me,
23 he said I think it is this. That's all.

24 Q Okay. Did he explain, was it a kind of lengthy
25 explanation or was it that these people were involved in

1 such and such?

2 A Just highlight. Nothing lengthy.

3 Q Was it enough for you to draw an opinion either
4 way of guilt or innocence on Mr. Lindsey's part?

5 A No, sir.

6 Q You understand that the judge is going to tell
7 you if you are chosen as a juror that Mr. -- everybody in
8 the United States, under our system of laws, is entitled to
9 the presumption of innocence. And it doesn't matter what
10 you are charged with. As Mr. Lindsey sits there, he is
11 presumed to be innocent of his crime and will remain
12 innocent until the jury decides he is no longer entitled to
13 that presumption. Would you have a problem following the
14 judge's instructions on the presumption of innocence?

15 A No, sir.

16 Q Okay. So you believe now that as he sits there,
17 Mr. Lindsey is innocent of his charges?

18 A Yes.

19 Q Okay. Now, also, you are in the army?

20 A Yes, sir.

21 Q How long did you serve in the army?

22 A Two years active. Two active reserve and two
23 inactive reserve. A total of six years.

24 Q Okay. In the states or overseas?

25 A I was always stateside.

1 Q Okay. And then after you came out of the army,
2 you went to work in the car business?

3 A I went to work for General Motors at that time.
4 From there to the car business.

5 Q You're interested in Native American culture?

6 A Yes, sir.

7 Q Do you collect artifacts and things like that?

8 A Not, I have some original things that Native
9 Americans have made but not a collector.

10 Q You go out on trips and things like that?

11 A I used to. I haven't in the last couple of
12 years.

13 Q Okay. Now, one of the questions that you asked
14 was whether or not you had been exposed to crime or been
15 involved in crime. It said you were called as a witness to
16 testify about some stolen cars?

17 A Yes.

18 Q Was that in your business?

19 A In North Carolina, yes.

20 Q Okay. Was the person ever caught?

21 A Yes.

22 Q Obviously, that's a silly question. I'm sorry.
23 You testified there?

24 A (Nods head affirmatively.)

25 Q So you know, Mr. Barham, that in South Carolina,

1 death penalty trials are conducted in two stages. His
2 Honor has already told you about that. The first stage is
3 like a regular trial. The State presents its evidence and
4 tries to convince the jury beyond a reasonable doubt that
5 Mr. Lindsey is guilty of murder. If they do that, we move
6 to a second phase. If they don't do that, we all go home.
7 Okay?

8 A Okay.

9 Q Now, the second phase is to determine what the
10 penalty should be. This is the only procedure where the
11 jury in South Carolina determines what the punishment
12 should be. What the State will attempt to do is they will
13 bring in aggravating circumstances, things that they
14 believe make a murder worse. And remember now, we only get
15 to this part if Mr. Lindsey is convicted of murder.

16 They bring in things that they believe show that the
17 murder is worse, that make the murder worse. We bring in
18 things, that is -- the defense, when we have our
19 opportunity to will have evidence of what we believe to be
20 mitigating circumstances. Things that will lessen the
21 severity of the murder.

22 Now, having said all of that, if you were a juror on
23 this case, could you listen and give both sides a fair and
24 impartial hearing both to the aggravators and to the
25 mitigators? I guess, in other words, you would be able to

1 listen fairly to both sides? You wouldn't have a
2 preference to one or a preference to the other?

3 A I could listen fairly. I wouldn't have a
4 preference.

5 Q I want you to be honest. I appreciate you being
6 honest. Of course, that's what we want. We want somebody
7 who will listen fairly and give both sides a fair listening
8 and then decide based upon their view of the evidence what
9 the punishment should be.

10 A Yeah.

11 Q In South Carolina, the death penalty is never
12 mandatory. There is always the option of a life sentence -
13 - a life sentence is just exactly what it is. A person
14 stays in jail for the rest of their life. They never get
15 out. That person would die in jail -- or the death
16 sentence. But it has to be unanimous. All eleven jurors
17 have got to agree either for life or for death. All
18 twelve, I'm sorry. All twelve. We've been here a long
19 time. All twelve would have to agree either for life or
20 for death. Okay?

21 A Okay. --

22 Q There's a sentencing sheet that everybody has to
23 sign.

24 A Okay.

25 Q After they reach the verdict. And let's say by

1 the luck of the draw, you are the twelfth juror. And all
2 eleven have signed, let's say you decide death is the
3 appropriate punishment. All eleven have signed the
4 sentencing sheet. And it's passed to you. And knowing
5 that once you signed that, you have condemned Mr. Lindsey
6 to death, could you sign that?

7 A Yes, I could sign it.

8 Q If you believed death was appropriate?

9 A Yes.

10 Q And by the same token, if you believed life was
11 appropriate and you were the twelfth juror and it was
12 passed to you, you would be able to sign that?

13 A Yes.

14 Q You have no preconceived notions of either
15 finding death or life?

16 A No.

17 Q Just so that I understand, it depends upon the
18 circumstances in the case?

19 A Correct.

20 Q And you would listen to those circumstances and
21 then make your decision?

22 A Yes.

23 Q Thank you very much for your time.

24 A Thank you.

25 MR. WILLINGHAM: Mr. Barham, my name is Donnie

1 Willingham. This is Barry Barnett. This is Trey
2 Gowdy. We are prosecuting this case. That's our job.
3 I think you've answered every question the judge has
4 asked you. You've answered very candidly. We have no
5 other questions to ask you. We think you ought to be
6 fair and impartial to both sides. Thank you.

7 **THE COURT:** Mr. Barham, would you mind stepping
8 in the hall for just one second please, sir.

9 (WHEREUPON, Mr. Barham exits at approximately
10 4:44 p.m.)

11 **THE COURT:** Any objection?

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

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

14 (WHEREUPON, Mr. Barham enters at approximately
15 4:44 p.m.)

16 **THE COURT:** Mr. Barham, I find that you are a
17 qualified juror in this case. We expect to get ready
18 to actually have the jury selection probably around
19 lunchtime tomorrow. Stay in touch with us tomorrow by
20 calling the telephone number that you were given on
21 Monday. Beginning at 10 o'clock tomorrow morning,
22 there will be a message on that recorder telling you
23 some more details about when to be here, where to park
24 and what to bring and all of that. I expect that it
25 will be around lunchtime.

1 So, from now on, continue not to discuss this
2 case. Don't allow anyone to discuss it with you.
3 Don't read anything about it. Don't watch it. Don't
4 listen to anything about it. We will see you
5 tomorrow. Thank you, sir.

6 (WHEREUPON, Mr. Barham exits at approximately
7 4:45 p.m.)

8 **THE COURT:** Got another juror?

9 **THE BAILIFF:** Ready for her?

10 **THE COURT:** Judy Folk. Ready.

11 (WHEREUPON, Judy Folk, Juror number 90, enters at
12 approximately 4:46 p.m.)

13 **JUDY FOLK**

14 having previously been sworn, testified as follows:

15 **EXAMINATION**

16 **BY THE COURT:**

17 **Q** Good afternoon, Ms. Folk.

18 **A** Good afternoon.

19 **Q** You recall that on Monday morning, we put you
20 under oath?

21 **A** That's right.

22 **Q** You understand you are still under oath now?

23 **A** Yes.

24 **Q** Ms. Folk, since you left us on Monday afternoon,
25 has anybody talked to you about this case or have you

1 talked to anybody about the case?

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

3 **Q** Have you read anything or heard anything or seen
4 anything about this case?

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

6 **Q** Ma'am, we have some questions that we're going to
7 ask you. We hope these questions are not too much into
8 your personal life, but we have to ask them. We just want
9 you to be open and honest with us and tell us what you
10 think and how you feel.

11 **A** Okay.

12 **Q** We may discuss, we will discuss a possible
13 penalty phase. But that does not mean anything about this
14 defendant or about this case. It simply means that because
15 we may get to a penalty phase, we need to ask you some
16 questions about some issues that might come up if that
17 happens.

18 If you are a juror in this case, can you accept and
19 apply the law precisely as I will give it to you and set
20 aside anything that you might have heard or learned about
21 the case before the trial began and render a verdict that
22 is based solely on the testimony and evidence that you hear
23 and see in this courtroom? Can you do that, ma'am?

24 **A** I think so.

25 **Q** Are you confident that you can?

1 A Yes.

2 Q You understand that in a criminal case such as
3 this, the State has the burden of proving the defendant
4 guilty beyond a reasonable doubt?

5 A Yes.

6 Q And you understand this is a murder case?

7 A Yes.

8 Q Can you, could you, based on the facts and
9 circumstances that you find to have been proven in light of
10 the law as I will give it to you, could you return a
11 verdict of either guilty or not guilty depending on whether
12 you think the State has proven the, has met their burden of
13 proof?

14 A Yes, I could.

15 Q If the jury in this case finds Mr. Lindsey
16 guilty of murder, we will move into the sentencing phase.
17 In the sentencing phase, some issues will come up that I
18 will talk to you about now. Aggravating circumstances are
19 facts, incidents or details of an occurrence that the State
20 has declared to aggravate or to make worse the crime of
21 murder. Aggravating circumstances increase the enormity of
22 the crime or add to the injury that the crime causes.

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

1 the crime. They serve to extenuate or to reduce the moral
2 culpability or responsibility for the crime.

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

12 A Yes.

13 Q Could you vote to return a verdict for the death
14 penalty?

15 A Yes.

16 Q Ma'am, if you are on this jury and if I sequester
17 the jury, you will be required to stay with us in a hotel
18 for five or six days, would that impose a terrible burden
19 on you?

20 A The Registrar at Converse would not like it.
21 It's the week of graduation.

22 Q Well, as fond as I am of Converse College where
23 my grandmother finished in 1934, I would just not be able
24 to do a whole lot for the Registrar over there at Converse.
25 Would it impose a terrible burden on you and your family if

1 we were to do that?

2 A No.

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

5 A Yes, I did.

6 Q Have you read every name on that list?

7 A Yes, I have.

8 Q Do you know or are you related to anybody whose
9 name is on that list?

10 A The only name that I recognized was Jim Kennedy.

11 Q Jim Kennedy.

12 A Uh-huh (affirmative).

13 Q And do you know Mr. Kennedy or do you think you
14 might?

15 A I know him.

16 Q How well do you know him?

17 A I haven't seen him in about six years. But he
18 used to attend the church we were members of.

19 Q If Mr. Kennedy is the Mr. Kennedy you know,
20 assuming he is and if he testifies in this case, would that
21 interfere in any way with either your willingness or your
22 ability to give both the State and the defendant a fair and
23 impartial trial?

24 A No.

25 Q Do you know of any reason why you could not give

1 both the State and the defendant a fair and impartial
2 trial?

3 A I do not.

4 Q I'm going to let the lawyers ask you some
5 questions now, Ms. Folk. Then I may come back and ask you
6 some more in a few minutes.

7 A Okay.

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

9 THE COURT: Yes, sir.

10 EXAMINATION

11 BY MR. BRENNAN:

12 Q Ms. Folk, how are you this afternoon?

13 A I'm well.

14 Q Good. My name is Doug Brennan. I'm an attorney
15 from here in Spartanburg. Myself, Mr. Mike Bartosh and
16 Ms. Karen Quimby have the opportunity to represent Mr.
17 Lindsey in this matter. Ms. Folk, I noticed on your
18 questionnaire that you suffer from diabetes.

19 A Correct.

20 Q How long have you had that?

21 A I'm almost going to tell my age.

22 Q It's been a while?

23 A Forty something years.

24 Q Now, I know all about that. My daughter is
25 diabetic. Do you have to eat at a specific time each day?

1 **A** Within a time frame or compensate for it in some
2 other way.

3 **Q** And I know what my daughter is. How strict? Are
4 we talking 15 minutes or are we talking an hour?

5 **A** Well, for example, last night I was here until
6 after 6 o'clock. By the time I got home, it was 7:00. You
7 know, that's a little off-kilter for me. But I am able to
8 manage it with snacks.

9 **Q** Okay. And do you believe -- I know His Honor is
10 going to give us a lunch break every day. But we really
11 don't know when that's going to be.

12 **THE COURT:** Mr. Brennan, let me speak to Ms.
13 Folk for just one second, okay?

14 **MR. BRENNAN:** That's fine.

15 **THE COURT:** Ms. Folk, if you have any kind of
16 need like that and you are on this jury, I assure you
17 that we will accommodate you, okay?

18 **MRS. FOLK:** Okay.

19 **THE COURT:** We will not put you in any kind of, we
20 will treat you better when you are on the jury than we
21 treated you last night.

22 **MRS. FOLK:** Okay.

23 **THE COURT:** All right. If I had known about it
24 last night, I would have taken care of it last night.
25 All right. That should take care of that part.

1 **MR. BRENNAN:** Thank you, Your Honor.

2 **BY MR. BRENNAN:**

3 **Q** Mrs. Folk, on your questionnaire, you were asked
4 if you knew anything about this case.

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

6 **Q** And you said yes. And then the next question was
7 have you formed an opinion. And you said yes. What is
8 your opinion?

9 **A** Based upon what I read.

10 **THE COURT:** Okay. Now, I hate to do this to you
11 twice in a row. But I made this mistake, both of them
12 really. And I want to talk to you again. And then
13 I'm going to let Mr. Brennan talk to you.

14 Now, ma'am, I meant to ask you this at first. So
15 let me make it clear to you again. If you are on the
16 jury, I will instruct you just like all the other
17 members of the jury about your responsibilities and
18 what the law is. And I will tell you that the
19 defendant is presumed to be innocent. I will tell you
20 very clearly that the State has the burden of proof
21 and must prove the defendant guilty beyond a
22 reasonable doubt.

23 I will then define for you the crime of murder.
24 I will give you all of the elements that the State
25 must prove in order to convict Mr. Lindsey of murder.

1 I will explain it to you so that you could understand
2 it. Any other issues that will come up during the
3 course of the trial that will relate to whether or not
4 Mr. Lindsey is guilty of murder, I will explain that
5 to you. I will make it very clear to you what the
6 State would have to prove in this courtroom in order
7 to convict him of murder.

8 Then I will tell you that it is your
9 responsibility to set aside anything that you might
10 have heard or read or concluded before the trial began
11 and to come in here with an open mind and a clean
12 slate in your mind and to listen very carefully to the
13 testimony and to the evidence and to listen to the law
14 as I will give it to you. Listen to the lawyers make
15 their arguments. And render a verdict that is based
16 solely on the testimony and evidence that you hear and
17 see in this courtroom.

18 Now, some people can't do that. Maybe they have
19 become so intertwined with the case or they have
20 become so attached to their conclusions that they just
21 can't get rid of them. Do you think that you could do
22 that? Do you think that you could set aside anything
23 that you learned about the case and set aside any
24 conclusions that you reached and do as I said which is
25 to render a verdict based solely on the testimony and

1 evidence that you hear in this courtroom. Could you
2 do that?

3 MRS. FOLK: Yes.

4 THE COURT: Ma'am?

5 MRS. FOLK: Yes.

6 THE COURT: Now, Mr. Brennan is naturally going
7 to ask you some follow up questions to that. You go
8 ahead now Mr. Brennan.

9 MR. BRENNAN: Thank you, Your Honor.

10 BY MR. BRENNAN:

11 Q Based on the knowledge that you have, first off,
12 where did you gain the knowledge that you have of this
13 case?

14 A The media.

15 Q Newspaper?

16 A Yeah, newspaper.

17 Q TV?

18 A TV.

19 Q Did you search anything on the Internet?

20 A I think a couple of things come up on a couple of
21 news briefs that I was a member of at that point in time.

22 Q Okay. Do you understand that in South Carolina
23 the death penalty is never mandatory?

24 A Yes.

25 Q Okay. Understanding or based on the knowledge

1 that you have now and the opinion that you had previously
2 formed, could you still vote for a life sentence in this
3 matter if Mr. Lindsey is found guilty?

4 A Rephrase that again please.

5 Q Based, understanding that you have a preconceived
6 opinion in this case, is it possible for you to still vote
7 for a life sentence?

8 A That would depend on the evidence.

9 Q Well, the evidence that comes from this courtroom
10 or excuse me, the witness stand, will it build upon your
11 preconceived opinion or will you start from zero wiping
12 away that opinion.

13 A Let me phrase it this way. I look at the
14 newspaper and all things that I read as a form of, you
15 know, as if I were reading a piece of literature. You
16 form an opinion about all of the characters in the
17 literature at the end of the story. I've looked at the
18 newspaper in the event of being the same sort of thing.

19 Q All right.

20 A I think I can approach this with an open mind.

21 Q Okay. Aside from this case, do you have an
22 opinion as to the death penalty?

23 A Yes.

24 Q Do you favor the death penalty in all cases where
25 the defendant has been convicted of murder?

1 **A** No.

2 **Q** All right. Last question. At the end of the
3 trial, he has been convicted. We've completed the evidence
4 part of the sentencing phase. You are in the jury room
5 deliberating. And in fact, you finished the deliberation.
6 It is time to sign the verdict form. The verdict form
7 requires all twelve jurors to sign either for death or for
8 life. It must be unanimous.

9 Luck of the draw, you would be the 12th one. The
10 other eleven jurors have signed for death. Understanding
11 that your signature would be the one that will send him to
12 the death penalty, could you still sign that document?

13 **A** Yes.

14 **Q** Thank you.

15 **MR. BRENNAN:** One second, Your Honor.

16 **BY MR. BRENNAN:**

17 **Q** Ma'am, do you know a young woman named Shannon
18 Rucker?

19 **A** Not to my knowledge. But now, I taught school
20 for 14 years. If they were at Converse, I really don't
21 interface with the students. I have all of the technology.

22 **Q** Okay. Has your husband mentioned anything to you
23 about knowing Mr. Lindsey?

24 **A** No.

25 **Q** The only reason I asked that is he worked at

1 Milliken. There may have been a relationship there.

2 That is -- thank you. That's all I have.

3 MR. BARNETT: May I approach -- may it please
4 Court.

5 THE COURT: It may. It does.

6 MR. BARNETT: I'm sorry.

7 EXAMINATION

8 BY MR. BARNETT:

9 Q It has been a long day. I apologize. My name
10 is Barry Barnett. Myself and Trey Gowdy along with Donnie
11 Willingham represent the State in this case. We
12 appreciate you coming up and taking the time to come in
13 here and answer our questions. We know we're asking you
14 questions that normally would not be asked. Your husband
15 worked at Milliken?

16 A That's correct.

17 Q He is retired now?

18 A That's correct.

19 Q I saw that you used to teach school in District
20 1.

21 A That is correct.

22 Q What did you teach?

23 A Landrum High School.

24 Q How long did you teach English, for 14 years?

25 A I taught 14 years.

1 Q I taught school too. It is a very tough thing
2 to do. A very rewarding thing to do also. I think
3 that's all the questions I have for you, ma'am. Thank
4 you for your time.

5 **THE COURT:** Mrs. Folk, do you mind stepping in
6 the hall for just a second please.

7 (WHEREUPON, Ms. Folk exits at approximately
8 4:54 p.m.)

9 **THE COURT:** Any objection?

10 **MR. BRENNAN:** No, Your Honor.

11 **MR. BARNETT:** No, Your Honor.

12 **THE COURT:** Bring her back.

13 (WHEREUPON, Ms. Folk enters at approximately
14 4:54 p.m.)

15 **THE COURT:** Ms. Folk, I find you are a
16 qualified juror in this case. It is going to be
17 tomorrow around midday that we need you to come back.
18 Please stay in touch with us by calling the telephone
19 number that you were given on Monday. It is an 800-
20 number. And beginning 10 o'clock tomorrow morning,
21 there will be instructions on that recording as to
22 when to come and where to park and what to bring.

23 At 10 o'clock tomorrow morning, we may not give
24 you a precise time. But we might. We might just
25 give you the indication of a time and tell you to call

1 back again. But don't talk to anybody about the
2 case. Don't allow anybody to talk to you about it
3 just as you've done. Don't read anything, listen to
4 anything, read anything or watch anything about this
5 case.

6 When you come back, keep in mind that you may be
7 here for five or six days. So be prepared by having
8 your stuff packed. And of course you have some needs
9 that jurors might not have. Make sure you have
10 everything with you that you need to take care of your
11 situation. We look forward to seeing you tomorrow.

12 **MRS. FOLK:** Thank you.

13 (WHEREUPON, Mrs. Folk exits at approximately
14 4:56 p.m.)

15 **THE COURT:** We're going to take a short break.

16 We have 30 jurors?

17 **MR. GOWDY:** I have 28. That is by my score
18 keeping. Your score keeping is the only one that
19 counts.

20 **THE COURT:** I thought I wrote down 28. Now, I
21 got 27. So she is the 28th. Ms. Netherton is
22 included in the 28. She has bought herself into
23 doubt. And Mr. Smith is not included in the 28.

24 **MR. GOWDY:** That's correct.

25 **THE COURT:** And I have not ruled on him.

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

2 **THE COURT:** All right. So we have still 10 more
3 to talk to tonight, right? I cut the, we're only
4 going to talk to Panels 10 and 11. I've cut Panel 12
5 over to tomorrow. So we got the rest of panel, we
6 got four more people on Panel 10 and all of Panel 11
7 to talk to tonight. Isn't that right?

8 Then we have panels coming in at 9:00 and 10:30
9 and 12:00 tomorrow. So if we get four more tonight
10 that will be 32. If we out of the first twelve people
11 we talk to tomorrow, get -- well, out of the first
12 three panels tomorrow, if we get our average of half,
13 we will have 40 by about 1:30 tomorrow. That is how I
14 am seeing the schedule.

15 **MR. BRENNAN:** Do we know anything about the
16 juror, Bedillion?

17 **THE COURT:** No, I don't know anything about her.
18 Her husband called and said she was in the hospital. I
19 instructed Ashley to try to find out something about
20 it and tell them we need some sort of documentation.
21 If y'all want me to, I will send a sheriff's deputy
22 over there and pick her up.

23 **MR. BRENNAN:** We just wanted to make sure she
24 was okay.

25 **THE COURT:** Okay.

1 **MR. GOWDY:** Your Honor, I would assume,
2 which I should not do. But I would assume that to the
3 extent there are lingering pretrial matters that you
4 would prefer to do those after all the jurors are
5 qualified in between the time that we would bring them
6 back. Or perhaps while they are going to the hotel to
7 get acclimated, we would entertain. I know Mr.
8 Brandon has four motions.

9 **MR. BRENNAN:** I will hope that that motion
10 will be heard before they go to the hotel.

11 **MR. GOWDY:** Oh, the sequestration.

12 **THE COURT:** Well, let's hear that right now. I
13 think I can rule on all of those right now. You want
14 me to let the jury pick their own foreperson?

15 **MR. BRENNAN:** Yes, Your Honor.

16 **THE COURT:** I always do that. You want me to let
17 you sit in the table next to the jury?

18 **MR. BRENNAN:** That or alternate. When the
19 State is presenting their argument, they would sit
20 there.

21 **THE COURT:** Yeah. I'm going to deny the motion.
22 You also want me to, what's the other one besides not
23 sequestering the jury?

24 **MR. BRENNAN:** Who would guard or be in charge
25 of the jury. We would ask that it not be S.L.E.D.

1 We would ask that it be the bailiffs or some private
2 security agency.

3 **THE COURT:** Let me ask this question. Have I
4 been given any evidentiary support for either of the
5 two motions I have not ruled on?

6 **MR. BRENNAN:** Your Honor, I believe I handed
7 you a written motion just after we did the Blair
8 hearing.

9 **THE COURT:** Is that your way of telling me yes?

10 **MR. BRENNAN:** I think yes, we have, sir.

11 **THE COURT:** Is it argument or evidence?

12 **MR. BRENNAN:** It is not evidence. It is simply
13 basis for the argument, Your Honor.

14 **THE COURT:** It's an argument. You don't have
15 any evidentiary support for the motion?

16 **MR. BARTOSH:** There is references in there,
17 Your Honor, to articles and treatises about it.

18 **THE COURT:** All right. Let me then make sure I
19 have read that before I rule on the other two motions.

20 You are telling me I have a copy of it back in my
21 office?

22 **MR. BRENNAN:** I gave it to you during the
23 Blair hearing. I have another copy right here.

24 **THE COURT:** Hold that copy. And we will go and
25 make sure, see if we can put our hands on the one that

1 we have. If we don't, we will come back to you and
2 get that copy. We will take a short break.

3 You might want to go ahead and give it to me.
4 My law clerk is sitting up here reading the
5 dictionary. She is so bored that we will just go
6 ahead and let her start reading those motions.

7 (WHEREUPON, a short recess was taken at approximately
8 5:00 pm.

9 (WHEREUPON, the Court resumed at approximately
10 5:15 p.m.)

11 **MR. WILLINGHAM:** Before we get started on the
12 next few jurors, Juror number 117, Your Honor, Ms.
13 Hamby, her address that she was summoned at, that
14 address is actually in Cherokee County. Now, since
15 that time, she told us Monday that she has moved from
16 that address into Spartanburg in Campobello. I don't
17 know if that has an affect on her qualification or
18 not. When she was summoned, she was not qualified.
19 After being summoned, she becomes qualified.

20 **THE COURT:** We will talk to her about it when she
21 gets in here.

22 Bring us Ms. Thomas.

23 (WHEREUPON, Patricia Thomas, Juror number 273, enters
24 at approximately 5:17 p.m.)

25 **PATRICIA THOMAS**

1 having previously been sworn, testified as follows:

2 **EXAMINATION**

3 **BY THE COURT:**

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

5 **A** Hello..

6 **Q** How are you?

7 **A** I'm fine. Thank you.

8 **Q** Good. You recall on Monday morning, we put you
9 under oath?

10 **A** Yes.

11 **Q** And you understand you are still under oath now?

12 **A** No, sir.

13 **Q** Since you left us on Monday afternoon, have you
14 talked to anybody about this case or has anybody talked to
15 you about the case?

16 **A** No, sir. I have not.

17 **Q** Have your read or seen or heard anything about
18 this case?

19 **A** No, sir.

20 **Q** Ma'am, we're going to ask you some questions.
21 I'm going to start. The lawyers are probably going to
22 follow up a little bit. We don't mean to get to far into
23 your private life. But we have to ask you these questions.
24 There are no right or wrong answers. We just want you to
25 be open and honest with us and tell us what you think and

1 what you feel.

2 We're going to get into some discussions about a
3 possible penalty phase. But that doesn't mean anything
4 about this case. It just means that because we know we
5 might get there, we're going to have to ask you some
6 questions about some issues that will come up if we do.

7 If you are a juror in this case, could you accept and
8 apply the law precisely as I will give it to you and set
9 aside anything that you might have learned or heard about
10 the case and render a verdict that is based solely on the
11 testimony and evidence that you see and here in this
12 courtroom?

13 A Yes, sir.

14 Q Do you understand that in a criminal case, the
15 State has the burden of proving the defendant guilty beyond
16 a reasonable doubt?

17 A Repeat that again.

18 Q Do you understand that in a criminal case like
19 this, the State has the burden of proving the defendant
20 guilty beyond a reasonable doubt?

21 A Yes, sir.

22 Q And you understand this is a murder case?

23 A Yes, sir.

24 Q Could you, based on the facts and circumstances
25 that you find to have been proven and in light of the law

1 as I will give it to you render a verdict of either guilty
2 or not guilty depending on whether you think the State has
3 met its burden of proof?

4 **A** Yes, sir.

5 **Q** If you are a juror in this case and if the
6 verdict of the jury is guilty on the charge of murder, we
7 would move into the penalty phase or the sentencing phase.
8 Both names mean the same thing. I'm going to talk to you
9 about some of the issues that will come up in that phase if
10 we get there.

11 Aggravating circumstances are facts, incidents or
12 details of an occurrence which South Carolina has declared
13 to aggravate or to make worse the crime of murder.
14 Aggravating circumstances, when accompanying a murder,
15 increase the enormity of the crime or add to the injury
16 that results from the crime.

17 Mitigating circumstances, on the other hand, are
18 facts, incidents or details of an occurrence that South
19 Carolina has declared to lessen the severity of the crime
20 of murder. These serve to extenuate or to reduce the moral
21 culpability or responsibility for the crime of murder.

22 If you are a juror in the sentencing phase of a death
23 penalty trial like this one, then you would have two
24 options as to what your verdict could be. The verdict
25 could either be life in prison or the death penalty.

1 Could you, depending on the facts and circumstances that
2 you find to be present and considering any aggravating or
3 mitigating circumstances that might exist and considering
4 the law as I would give it to you, could you render a
5 verdict, could you vote to return a verdict of the life
6 sentence?

7 **A** You talking about the death penalty?

8 **Q** Well, first, I'm going to ask you about the life
9 sentence. If you want me to, I'll ask you first about the
10 death penalty, could you vote to impose the death penalty?

11 **A** I don't believe in the death penalty.

12 **Q** You just don't believe in it?

13 **A** (Shakes head negatively.)

14 **THE COURT:** All right. Does either side want to
15 voir dire this juror?

16 **MR. GOWDY:** I have no questions for Ms.
17 Thomas, Your Honor.

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

19 **THE COURT:** Ms. Thomas, we won't be needing
20 your services in this case. You are free to go.

21 **MS. THOMAS:** Okay.

22 (WHEREUPON, Ms. Thomas exits at approximately
23 5:23 p.m.)

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

25 (WHEREUPON, Thomas Williams, Juror number 297, enters

1 at approximately 5:23 p.m.)

2 **THOMAS WILLIAMS**

3 having previously been sworn, testified as follows:

4 **EXAMINATION**

5 **BY THE COURT:**

6 **Q** Hello, Ms. Williams.

7 **A** Hello.

8 **Q** How are you?

9 **A** Fine.

10 **Q** Do you recall that on Monday morning, we put you
11 under oath?

12 **A** Yes, sir.

13 **Q** And you are still under oath right now. You
14 understand that?

15 **A** Yes, sir.

16 **Q** Since Monday afternoon, have anybody talked to
17 you about this case or have you talked to anybody about the
18 case?

19 **A** No, sir.

20 **Q** Have you heard or seen or listened to anything
21 about this case?

22 **A** No, sir.

23 **Q** Ma'am, we're going to ask you some questions now.
24 And we don't mean to pry too deep into your private life,
25 but we do have to ask you these questions. There are no

1 right or wrong answers. We just want you to be open and
2 honest with us. Tell us how you feel and what you think.

3 We're going to talk a little bit about the possibility
4 of a penalty phase. But we're not doing -- that does not
5 mean anything about this defendant or about this case. It
6 simply means that because we might get to that phase, we
7 need to ask you some questions about some issues that will
8 come up if we do. All right?

9 A Yes, sir.

10 Q If you were a juror in this case, could you
11 accept and apply the law precisely as I would give it to
12 you and set aside anything that you might have learned or
13 heard or concluded about the case and render a verdict that
14 is based solely on the testimony and the evidence that you
15 hear and see in this courtroom. Could you do that?

16 A Yes, sir.

17 Q You understand that in a criminal case, the State
18 has the burden of proving the defendant guilty beyond a
19 reasonable doubt?

20 A Yes, sir.

21 Q And you understand this is a murder case?

22 A Yes, sir.

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

1 either guilty or not guilty depending on whether you
2 believe the State has met its burden of proof?

3 **A** Yes, sir.

4 **Q** If you are on the jury in this case and if the
5 jury returns a verdict of guilty, then we would move into
6 the penalty phase or the sentencing phase of the trial.
7 There are some issues that will come up in that phase that
8 I will need to talk to you about now.

9 Aggravating circumstances are facts, incidents or
10 details of an occurrence that the State has declared to
11 aggravate or to make worse the crime of murder.
12 Aggravating circumstances increase the enormity of the
13 crime of murder and add to the injury that results from the
14 crime.

15 Mitigating circumstances, on the other hand, are
16 facts, incidents or details of an occurrence which South
17 Carolina has declared to lessen the severity of the crime
18 of murder. They serve to extenuate or to reduce the moral
19 culpability or responsibility for the crime.

20 If you are a juror in a death penalty case in the
21 sentencing phase, you would have two options as to your
22 verdict. The verdict could be for a life sentence or the
23 verdict could be for the death penalty. Could you, based
24 on the facts and circumstances that you find to exist,
25 considering any aggravating or mitigating circumstances in

1 light of the law as I would give it to you, could you
2 return or vote to return a verdict for a life sentence?

3 A Yes.

4 Q Could you vote to return a verdict for the death
5 penalty?

6 A No.

7 Q You don't believe in the death penalty?

8 A No, sir.

9 THE COURT: All right. Does either side want to
10 voir dire this juror?

11 MR. GOWDY: I have no questions for Ms.
12 Williams.

13 MR. BARTOSH: No, sir.

14 THE COURT: Ma'am, we will not need your services
15 in this case. And you are free to go.

16 (WHEREUPON, Ms. Williams exits at approximately
17 5:26 p.m.)

18 THE COURT: Bring us a juror. Oh, this is Ms.
19 Hamby. Bring her in.

20 (WHEREUPON, Amanda Hamby, Juror number 117, enters at
21 approximately 5:26 p.m.)

22 AMANDA HAMBY

23 having previously been sworn, testified as follows:

24 EXAMINATION

25 BY THE COURT:

1 Q Ms. Hamby?

2 A Yes, sir.

3 Q You recall that we put you under oath on Monday
4 morning?

5 A Yes, sir.

6 Q And you understand that you are still under oath
7 right now?

8 A Yes, sir.

9 Q Let me ask you a couple of questions about where
10 you live.

11 A Okay.

12 Q Do you live in Spartanburg County?

13 A Yes, sir.

14 Q When did you move to Spartanburg County?

15 A In the last week.

16 Q Where did you live before the last week?

17 A On Cowpens Path Road. It's listed in Cherokee
18 County but it's a Spartanburg address.

19 Q Is it in Cherokee County?

20 A Yes, sir.

21 Q And so you lived in Cherokee county in say
22 February, March, April, up until about a week ago?

23 A Yes, sir.

24 Q Ma'am, I'm going to ask you to step in the hall
25 for just one second please.

1 (WHEREUPON, Ms. Hamby exits at approximately
2 5:29 p.m.)

3 **THE COURT:** What do you say?

4 **MR. BRENNAN:** I don't believe she is qualified,
5 Your Honor.

6 **MR. BARNETT:** Judge, I think at the time she was
7 summoned --

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

9 (WHEREUPON, Ms. Hamby enters at approximately
10 5:29 p.m.)

11 **THE COURT:** Ms. Hamby.

12 **MS. HAMBY:** Yes, sir.

13 **THE COURT:** Because you were a resident of
14 Cherokee County at the time the summons was sent out,
15 we do not think you are properly included in this jury
16 pool. So I'm going to excuse you. You are free to
17 go.

18 **MS. HAMBY:** Okay. Thank you.

19 (WHEREUPON, Ms. Hamby exits at approximately
20 5:30 p.m.)

21 **THE COURT:** Bring us a juror. One without any
22 problems. That's three in a row.

23 (WHEREUPON, Stanley Fields, Juror number 85, enters at
24 approximately 5:30 p.m.)

25 **STANLEY FIELDS**

having previously been sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q All right. Mr. Fields, how are you this afternoon?

A Doing well. How are you?

Q I'm pretty good. You recall that on Monday morning, we put you under oath?

A Yes.

Q And you understand that you are still under oath right now?

A Yes, sir.

Q Since Monday afternoon when we let you go, has anybody talked to you about this case or have you talked to anybody about the case?

A No, sir.

Q Have you listened to or learned or heard or seen anything about this case?

A No, sir.

Q We're going to ask you some questions now, Mr. Fields. And we don't want to pry too deep into your private life. But we do have to ask you these questions. There are no right or wrong answers. We just want you to listen very carefully and be open and honest with us and tell us what you think and how you feel.

1 **A** Okay.

2 **Q** We're going to talk about a possibility of a
3 penalty phase in this trial. That doesn't mean anything
4 about this defendant. It simply means that we might get to
5 a penalty phase. And we need to ask you some questions
6 about some issues that will come up in that phase if we do.

7 If you are a juror in this case, can you accept and
8 apply the law precisely as I will give it to you and set
9 aside anything that you might have heard or concluded or
10 seen before the trial began and render a verdict that is
11 based solely on the testimony and the evidence that you
12 would see and hear in this courtroom. Can you do that?

13 **A** I believe I can. Yes, sir.

14 **Q** You understand that in a criminal case, the State
15 bears the burden of proving the defendant guilty beyond a
16 reasonable doubt?

17 **A** Yes, sir.

18 **Q** You understand this is a murder case?

19 **A** I do.

20 **Q** If you, could you, depending on the facts and
21 circumstances that you find to have been proven, return a
22 verdict, and in light of the law as I would give it to you,
23 return a verdict of either guilty or not guilty depending
24 on whether you believe the State has met its burden of
25 proof?

1 **A** Yes, sir. I do.

2 **Q** If you are on the jury in this case and the jury
3 were to find the defendant guilty of murder, we would move
4 into the second phase or the penalty phase of this trial.
5 There are some issues that will come up during that phase
6 that I want to go over with you now.

7 Aggravating circumstances are facts, incidents or
8 details of an occurrence which South Carolina has declared
9 to aggravate or to make worse the crime of murder.
10 Aggravating circumstances increase the enormity of the
11 crime or add to the injury that results from the crimes.

12 Mitigating circumstances, on the other hand, are
13 facts, incidents or details of an occurrence that the State
14 of South Carolina has declared to reduce the severity of
15 the crime of murder. They serve to extenuate or to reduce
16 the moral culpability or responsibility for the crime.

17 If you are a juror in the penalty phase of a death
18 penalty trial, you would have two options as to your
19 verdict. One could be a life sentence. The other could be
20 a death penalty. Could you, considering all the facts and
21 circumstances that you find to exist, considering any
22 aggravating or mitigating circumstances and considering the
23 law as I would give it to you, could you return a verdict
24 or I should say vote to return a verdict of life in prison?

25 **A** Yes.

1 Q Could you vote to return a verdict for the death
2 penalty?

3 A Yes.

4 Q If you are on this jury and if I sequester the
5 jury and put you up in a hotel for five or six days and not
6 let you go home to your family, is that going to impose a
7 terrible burden on you?

8 A It would not be the best thing in the world but I
9 could do that.

10 Q Have you read over that witness list that I gave
11 you?

12 A I have.

13 Q Is there anybody -- have you read every name on
14 that list?

15 A Yes, I have.

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
21 trial?

22 A No, sir.

23 Q All right. I'm going to let the lawyers ask you
24 some questions now. I might ask you a few more in just a
25 minute, sir.

1 **A** Okay.

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

3 **EXAMINATION**

4 **BY MR. BRENNAN:**

5 **Q** Mr. Fields, how are you doing today?

6 **A** Doing well. How are you?

7 **Q** Good. My name is Doug Brennan. I'm an attorney
8 from here in Spartanburg. Myself, Mr. Mike Bartosh and
9 Ms. Karen Quimby have the opportunity to represent Mr.
10 Lindsey in this matter. Sir, on your questionnaire, you
11 mentioned or you told us that your dad's truck had been
12 stolen.

13 **A** Yes, sir.

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

15 **A** Good question. It was probably, it was 20 years
16 ago I would say.

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

18 **A** No, that was in Mississippi.

19 **Q** You also stood when you were asked if you or a
20 family member had been arrested by the Spartanburg County
21 Sheriff's Department or the Inman Police Department.

22 **A** Yes, sir.

23 **Q** Who was that?

24 **A** That was myself.

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

1 A That was 16 years ago.

2 Q Was that the Sheriff's Department or the Inman
3 Police Department?

4 A Sheriff's Department.

5 Q What was that?

6 A I had written a check to Wal-Mart. It bounced. I
7 thought my wife had taken care of it. She thought I had
8 taken care of it. We found out neither one of us had when
9 the sheriff's deputy knocked on my door and we came to the
10 jailhouse here. After we got processed through here, we
11 went to Wal-Mart, took care of the check and paid my court
12 fine. And that was the end of it.

13 Q Okay. Do you believe that you were treated
14 fairly by the Sheriff's Department in that?

15 A Yes.

16 Q Okay. Would that affect in any way your
17 decision-making ability in this case?

18 A No.

19 Q Okay. You also mentioned that you were under
20 care of a doctor?

21 A Yes.

22 Q Would that in any way inhibit your ability to
23 serve on this jury?

24 A No.

25 Q Okay. What are you being treated for?

1 **A** High blood-pressure.

2 **Q** Okay. You also told us that your hobbies or
3 your hobby is youth ministry.

4 **A** Yes.

5 **Q** Sir, if the facts brought out in this case are
6 that there were children somehow involved in this case,
7 would that affect your decision in this matter?

8 **A** I guess, you know, it would depend on what the
9 situation with the children would be as far as were they
10 involved in the crime or not.

11 **Q** If there were children involved, would you be
12 more likely to vote for the death penalty than not?

13 **MR. BARNETT:** Your Honor, I would object to
14 the vagueness of the question.

15 **THE COURT:** Sustained.

16 **MR. BARNETT:** Thank you, Your Honor.

17 **BY MR. BRENNAN:**

18 **Q** Sir, do you understand that in South Carolina the
19 death penalty is never mandatory?

20 **A** I was not aware of that but I understand that we
21 have two potential outcomes from the penalty phase.

22 **Q** All right. And you understand that there is no
23 triggering mechanism at which point you must sentence
24 death?

25 **A** I understand that.

1 Q Okay. With that in mind, sir, would you be
2 inclined to always impose the death penalty, to always
3 impose a life sentence or would you wait and listen to the
4 facts and circumstances and then make the decision for
5 either one?

6 A I think we have to wait and weigh the evidence.

7 Q Sir, let's suppose that you are selected as a
8 juror in this matter, we've gone through the guilt phase
9 and the defendant has been convicted. We are now beyond
10 even the evidentiary part of the sentencing. You are in
11 the jury room. And it is time to sign the jury form or the
12 sentencing form, excuse me.

13 The sentencing form requires all twelve jurors to
14 unanimously sign indicating either death or life. In this
15 case, let's say that eleven people have signed for death.
16 And you would be last one. Could you, understanding that
17 your signature would be the one that sent Mr. Lindsey to
18 the death penalty, could you sign that form?

19 A Are you asking me could I make a decision as to
20 which side to sign that form for life or death? I'm sorry.
21 I did not understand.

22 Q If, based on your, let's say that based on the
23 evidence your decision had been that death was appropriate,
24 but you were the twelfth person to sign understanding that
25 your signature would be the one to send him to the death

1 penalty, could you sign that form?

2 A I believe I could.

3 MR. BRENNAN: All right. One second, Your Honor.

4 BY MR. BRENNAN:

5 Q Sir, what age children do you primarily work with
6 in your ministry?

7 A Teens.

8 Q Teens?

9 A Seventh through twelfth grade.

10 MR. BRENNAN: Nothing further. Thank you, Your
11 Honor.

12 MR. BARNETT: May it please the Court, Your
13 Honor?

14 THE COURT: Yes, sir.

15 EXAMINATION

16 BY MR. BARNETT:

17 Q Mr. Fields, my name is Barry Barnett. Along
18 with me, Trey Gowdy and Donnie Willingham who stepped out
19 will be representing the State in this case.

20 A Okay.

21 Q I would just like to ask you a few questions. We
22 appreciate you being here.

23 A Sure.

24 Q It is very important for you to be here. We
25 appreciate that. You live in Lyman, is that correct?

1 **A** That is correct.

2 **Q** Your wife is Pamela Fields?

3 **A** That is correct.

4 **Q** And is she a housewife?

5 **A** She is.

6 **Q** And you do have two children. Both of them are
7 in their teens too. Is that right?

8 **A** Yes.

9 **Q** Is that the primary reason why you're in the
10 youth ministry along with other things?

11 **A** Along with other things. But yeah, they got me
12 started I guess you would say.

13 **Q** And I saw baseball was one of your hobbies too?

14 **A** Oh, yes. I used to coach a good bit. But my son
15 is a real player.

16 **Q** I understand. I have a son and a daughter too.
17 And they both play baseball and softball.

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

19 **Q** So I understand. Thank you for your time.

20 **MR. BARNETT:** Thank you, Your Honor

21 **THE COURT:** Mr. Fields, would you mind stepping
22 out for one second please.

23 (WHEREUPON, Mr. Fields exits at approximately
24 5:40 p.m.)

25 **THE COURT:** Any objection to his qualifications?

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

2 **MR. BARNETT:** No, your Honor.

3 **THE COURT:** All right. Bring him in.

4 (WHEREUPON, Mr. Fields enters at approximately
5 5:40 p.m.)

6 **THE COURT:** Mr. Fields, I find you are a
7 qualified juror in this case. We expect to need you
8 to return to the courthouse some time around lunch
9 tomorrow. I would plan on coming as early as noon.
10 Please stay in touch with us by calling, beginning at
11 10 o'clock tomorrow morning, the telephone number that
12 you were given on Monday. It is an 800-number.

13 **MR. FIELDS:** Right.

14 **THE COURT:** We will put, beginning at 10:00, a
15 recording on that phone that will tell you when to
16 come, where to park and what to bring and all of that.
17 Keep in mind that you might be sequestered and so you
18 need to be ready to spend five or six days with us.
19 So you will need to bring the appropriate things for
20 you.

21 **MR. FIELDS:** Okay.

22 **THE COURT:** Don't talk to anybody about case.
23 Don't allow anyone to talk to you. Don't read listen
24 to or watch anything regarding this case. When you
25 come back tomorrow, I will ask you and all the members

1 of the jury if you had been able to follow that
2 instruction of mine. And I expect that you will be
3 able to tell me that you have. Have a nice night.
4 We look forward to seeing you tomorrow.

5 **MR. FIELDS:** Thank you very much.

6 **THE COURT:** Thank you, sir.

7 (WHEREUPON, Mr. Fields exist at approximately
8 5:42 p.m.)

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

10 (WHEREUPON, Jeffrey Seay, Juror number 247, enters at
11 approximately 5:42 p.m.)

12 **JEFFREY SEAY**

13 having previously been sworn, testified as follows:

14 **EXAMINATION**

15 **BY THE COURT:**

16 **Q** Mr. Seay, good afternoon, sir.

17 **A** Good afternoon.

18 **Q** How you doing?

19 **A** Doing real well. How about you?

20 **Q** I'm doing great. Are you related to the bailiff,
21 Mr. Seay?

22 **A** No, I talked with him a while ago. We never went
23 through the family tree. But as far as I know, no.

24 **Q** You related to any Seays over in Greenville?

25 **A** Not that I know of.

1 Q Gordon Seay and David Seay

2 A David Seay is my dad, but I doubt if it's the one
3 you're --

4 Q No, this is a different one. This won't be your
5 dad. He's about your age. You recall that on Monday
6 morning we put you under oath?

7 A Yes.

8 Q Notice how I asked you about your family before I
9 reminded you of that?

10 A Yes.

11 Q You understand you are still under oath right
12 now?

13 A Yes, sir.

14 Q Since you left here Monday afternoon, has anybody
15 talked to you about the case or have you talked to anybody
16 else about the case?

17 A No. No, sir.

18 Q Have you listened to or watch or heard or seen or
19 read anything about the case since Monday afternoon?

20 A No, sir.

21 Q All right. We're going to ask you some
22 questions. I'm going to start. And then the lawyers will
23 probably follow-up. We don't mean to go too deep into your
24 private life, but we do have to ask you some questions.
25 There are no right or wrong answers. We just want you to

1 be open and honest with us and tell us what you think and
2 how you feel.

3 We are going to go into some discussion about a
4 possible penalty phase but that doesn't mean anything about
5 this case. It simply means that because we might get
6 there, we need to ask you about some issues that might come
7 up if we do.

8 If you are a juror in this case, would you be able to
9 accept and apply the law precisely as I will give it to you
10 and to set aside anything that you might have heard or
11 might have seen regarding this case and render a verdict
12 that is based solely on the testimony and evidence that you
13 hear inside this courtroom? Would you be able to do that?

14 A Yes, sir.

15 Q Do you understand that in a criminal case the
16 State has the burden of proving the defendant guilty beyond
17 a reasonable doubt?

18 A Yes.

19 Q Do you understand this is a murder case?

20 A Yes, sir.

21 Q Could you, depending on the facts and
22 circumstances that you find to exist and in light of the
23 law as I will give it to you return a verdict of either
24 guilty or not guilty depending on whether you believe the
25 State has met its burden of proof?

1 **A** Yes, sir.

2 **Q** If you were a juror in this case or in any death
3 penalty case and the verdict was guilty on the question of
4 murder, then you would move into the penalty phase or the
5 sentencing phase. I'm going to talk to you a little bit
6 now about some of the issues that will come up in that
7 phase.

8 Aggravating circumstances are facts, incidents or
9 details of an occurrence which the State of South Carolina
10 has declared to aggravate to make worse the crime of
11 murder. Aggravating circumstances increase the enormity
12 of the crime of murder and add to the jury that result from
13 the crime.

14 Mitigating circumstances, on the other hand, are
15 facts, incidents or details of an occurrence that the State
16 of South Carolina has declared to lessen the severity of
17 the crime of murder. They serve to extenuate or to reduce
18 the moral culpability or responsibility for the crime.

19 If you were a juror in the penalty phase of a death
20 penalty case such as this, you would have two options as to
21 what your verdict could be. It could be a life sentence
22 or it could be the death penalty. Could you, depending on
23 the particular facts and circumstances that you find to
24 exist and considering any aggravating circumstances or
25 mitigating circumstances and considering the law as I would

1 give it to you, could you return a verdict or vote to
2 return a verdict for a life sentence?

3 A Yes, sir.

4 Q Could you vote to impose the death penalty?

5 A I guess I would answer that at the end of the
6 trial. I mean, I have always said I supported the death
7 penalty. But I have never been on a jury where I had to
8 make that decision.

9 Q Right. I guess another way of stating my
10 question is are you open to considering the possibility
11 that you would vote for the death penalty in an appropriate
12 case?

13 A Yes, sir.

14 Q I'm asking you, I want to be clear. I'm not
15 asking you how you will vote in this case if you get on the
16 jury.

17 A Right.

18 Q I want you to get into the case and listen and
19 wait and deliberate and decide. But sitting here now and
20 looking forward to that point, could you under the proper
21 circumstances vote to impose the death penalty?

22 A (No response.)

23 Q Under the proper circumstances?

24 A Yes, sir.

25 Q If you are juror in this case and if I sequester

1 the jury, meaning to put you over in a hotel for five or
2 six days and not let you go to your family, would that
3 impose a terrible burden on you?

4 **A** Terrible burden, no.

5 **Q** Have you had a chance to read over the witness
6 list that I gave you?

7 **A** Yes, sir.

8 **Q** Have you read every name on the list?

9 **A** Yes, I have.

10 **Q** Do you know of the anybody or are you related to
11 anybody whose name is on that list?

12 **A** Not related. The only person that I might know
13 is number 44, Douglas Durham. I have known a Doug Durham
14 in the past.

15 **THE COURT:** Somebody tell me about Douglas
16 Durham.

17 **MR. BARNETT:** Your Honor, he's probably not
18 going to be called in this case.

19 **THE COURT:** How old is he?

20 **MR. BARNETT:** He is an African-American. He's
21 probably about 35 to 38.

22 **MR. SEAY:** That's probably who I know. The guy
23 that I'm thinking of used to work with me. It's been
24 probably six years ago. And I just knew him as --

25 **BY THE COURT:**

1 Q They say he's probably not going to testify. But
2 if he does, would that interfere in any way with either
3 your willingness or your ability to give both the State and
4 the defendant a fair and impartial trial?

5 A No, sir.

6 Q Do you know of any reason why you cannot give
7 both the State and the defendant a fair and impartial
8 trial?

9 A No, sir.

10 Q All right, sir. The lawyers are going to ask you
11 some questions now. I'm going to, I might ask you some
12 more after that.

13 **EXAMINATION**

14 **BY MR. BARTOSH:**

15 Q Good evening, Mr. Seay.

16 A Good afternoon.

17 Q We appreciate your patience in going through
18 this. I know it is not a very pleasant experience. It
19 is something that we really need to do. I was looking
20 over the questionnaire that you filled out and sent back
21 in. On your questionnaire, you indicated that you did not
22 know anything about this particular case. However, when
23 asked on Monday if you did, if anybody knew about anything
24 about the case, you stood up.

25 A Right.

1 Q Okay. What do you know about the case?

2 A The name still, the names mean nothing to me. I
3 didn't recognize the name. But I had heard Inman referred
4 to a few times.

5 Q Uh-huh (affirmative).

6 A And I do recall at some point last year that
7 there was a murder in Inman that occurred at the police
8 station. And it was alleged that it was the lady's husband
9 who shot her. That's pretty much. I'm assuming that
10 maybe this is the case.

11 Q What was the source of that information?

12 A The best I could remember, I must have just
13 scanned the newspaper and read that possibly.

14 Q All right. Have you formed an opinion about Mr.
15 Lindsey's guilt or innocence --

16 A No, sir.

17 Q -- based on what you know about the case?

18 A No, sir.

19 Q Could you be fair and impartial and listen to the
20 testimony and the evidence that the State is going to
21 present and decide the case based on that and not on what
22 you may have heard about the case?

23 A Yes.

24 Q Now your wife works at Spartanburg Regional?

25 A Yes, sir.

1 Q How long has she been there?

2 A She's been there approximately five, maybe six
3 years.

4 Q She is a financial analysis, correct?

5 A Correct.

6 Q She don't have any direct connection with any of
7 the nurses?

8 A No, she works down in the Resource Center which
9 is down below the hospital.

10 Q The alleged victim in this case was employed at
11 the Restorative Care. Would she have any reason the come
12 in contact with her?

13 A No, sir.

14 Q She has never mentioned anything to you about
15 that?

16 A No. She does financial work for Restorative.
17 But I think that is the extent of her involvement with
18 them.

19 Q So she never has any direct contact with the
20 folks there. She just does financial.

21 A Right.

22 Q You are with UPS?

23 A Yes, sir.

24 Q Do you do rotary or do you drive local?

25 A Both.

1 **Q** Now, not to belabor the point, but there is a
2 couple of things I would like to ask you about. First of
3 all, the judge is going to tell you at the beginning of
4 this, if you picked as a juror, he's going to tell you that
5 at the beginning of a trial that everyone accused of the
6 trial a crime no matter how great or how small is presumed
7 to be innocent. Even as Mr. Lindsey sits there today, he
8 is innocent of the crime he's charged.

9 If you are picked on the jury, you would have to take
10 an oath to try the case fairly based upon the evidence and
11 also to accept the law as the judge gives it to you. Now
12 would you have any problem? Does that give you any pause?
13 Or do you believe that as Mr. Lindsey sits there that he is
14 innocent?

15 **A** From what I know right now, yes.

16 **Q** He is innocent?

17 **A** Yes.

18 **Q** And that's where we would start?

19 **A** Right.

20 **Q** And he would remain innocent only if the State
21 after presenting all of the evidence that they've got
22 convinced all twelve jurors beyond a reasonable doubt that
23 he is no longer is entitled to that presumption.

24 **A** Right.

25 **Q** And you understand that?

1 A Yes, sir.

2 Q You have no problems with that?

3 A No, sir.

4 Q If they don't, the State doesn't carry its burden
5 in the guilt phase, then we don't proceed to the penalty
6 phase. But let's say for sake of argument that we are in
7 the penalty phase and the judge has gone over with you this
8 portion. There's just one thing then I want to ask you.
9 There are two possible verdicts. And jury decides what
10 those verdicts are, two possible punishments. It's up to
11 the twelve folks of the jury to decide what the punishments
12 are.

13 There never is mandatory that death penalty in South
14 Carolina. Life is always an option. You don't always have
15 to always choose death. You can choose either life or you
16 can choose death, whatever the jury feels is the
17 appropriate punishment. And if it's life, life means life.
18 Life means life without parole. That the person never gets
19 out of prison. From what I gather in your response to the
20 judge, you would have no problem imposing a life sentence
21 if you thought it was appropriate?

22 A Yes, sir.

23 Q Okay. And after considering all of the evidence
24 and deliberating with the other jurors, if you determine
25 that life is the appropriate sentence, you would have no

1 problem imposing a life sentence?

2 A No, sir.

3 Q When the judge asked you about the death
4 sentence, you kind of hesitated a little bit. I just want
5 to be make sure that I understand. I think I know the
6 reason, but I want to make sure. Is that because you have
7 never been asked to consider putting a person to death?

8 A Right. It's kind of like saying I'm a Democrat
9 but I never went out and voted. That's kind of
10 meaningless. I always said I supported that death
11 penalty, but it's different when you --

12 Q Somebody's never come up to you and said you're
13 going to have to serve on this death penalty.

14 A Now I'm going to have to see if I really support
15 it or not.

16 Q Which is my next question. There's a sentencing
17 form for life or death. The verdicts, the punishments have
18 got to be unanimous just like the guilt or innocence has to
19 be unanimous.

20 A Right.

21 Q All right? There is a form that everyone signs.
22 Let's say for the sake of argument that you are the twelfth
23 juror. You have sat around. You deliberated. You have
24 considered everything. The jury has decided that death is
25 the appropriate sentence. Just by the luck of the draw,

1 you happen to be the twelfth juror. And the form comes
2 around and they say it is your time to sign. All twelve
3 have to sign. Could you, knowing that by signing that
4 form you would be condemning Mr. Lindsey to death, could
5 you sign it?

6 A I could sign it. If I had decided that is what
7 he deserved, then yes I could sign it. But if I did not
8 think he deserved it and everybody thought he did, no, then
9 I would not. If I sign my name to it, it would be because
10 I thought that is what he deserved.

11 Q That would be only after you heard all the
12 evidence, considered it fairly and then decided which way
13 to go?

14 A Yes, sir.

15 Q You would not always give the life sentence.
16 You would not always give death. You would want to hear
17 all the facts and evidence before you made up your mind.
18 Is that fair to say?

19 A Yes, sir.

20 Q And then that is what you would base your
21 decision?

22 A Yes.

23 Q If you thought it was not appropriate and the
24 other eleven did, then you would not sign it?

25 A No, sir.

1 **Q** Okay. That's all I have.

2 **MR. GOWDY:** May it please the Court, Your
3 Honor?

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

5 **EXAMINATION**

6 **BY MR. GOWDY:**

7 **Q** Good evening, Mr. Seay.

8 **A** Hey.

9 **Q** My name is Trey Gowdy. I'm with the Solicitor's
10 Office. That is Donnie Willingham to your left and Barry
11 Barnett in the center. The judge asked you almost every
12 question in mind I had a ask you. So I'm going to be brief
13 in the interest of time. Hopefully, you would make it home
14 in time for dinner.

15 I appreciate you filling out the questionnaire. My
16 mother always said never ask anyone you never met before
17 about politics or religion. I'm fixing to violate both of
18 these rules only because this is an important case. You
19 did not mention any party affiliation on your
20 questionnaire, but in response to something Mr. Bartosh
21 asked you used a hypothetical.

22 **A** Right.

23 **Q** I don't know whether you used a hypothetical just
24 because Democrat came to mind before Republican or because
25 you were active in the Democratic Party. Do you have a

1 party affiliation? And if so, are you active in that
2 party?

3 A No, I don't want specifically identify with
4 either party.

5 Q Just whoever the person is?

6 A Yes, sir.

7 Q I too noted as my friend Mr. Bartosh did, some
8 reflection, some careful reflection when the judge asked
9 you about your ability to impose the death sentence. This
10 is a very serious matter. I'm surprised if anybody didn't
11 stop to think about it. I know you can appreciate the
12 fact that both sides want those jurors that could be fair.

13 And part of being fair is not only just being able to
14 consider both forms of punishment but actually being able
15 to impose if you think that's the right thing. Are you
16 satisfied having never been confronted with this issue
17 before until today, are you satisfied that if you thought
18 death was the proper punishment for what this defendant had
19 done that you could sentence him to death?

20 A Yes, sir.

21 Q Your views on the death penalty, is it something
22 that you thought of much? Is it Biblically based,
23 politically based, morally based?

24 A A combination of just personal thoughts and
25 Biblical figures in there also.

1 **Q** I believe you attend a Baptist Church?

2 **A** Yes, sir.

3 **Q** Is that near the golf course?

4 **A** Yes, across the road.

5 **Q** Is that where you play golf?

6 **A** Occasionally. I don't play as much as I would
7 like.

8 **Q** Don't play as much as judges play?

9 **A** No.

10 **THE COURT:** Or solicitors or public defenders.

11 **MR. GOWDY:** Thank you for answering my
12 questions, Mr. Seay. I appreciate it.

13 **THE COURT:** Mr. Seay, would you step in the
14 hall for one second please.

15 **MR. SEAY:** Sure.

16 (WHEREUPON, Mr. Seay exits at approximately 6:00 p.m.)

17 **MR. GOWDY:** I meant federal judges, Your Honor.

18 **THE COURT:** That's all right. Any objection to
19 this juror's qualification?

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

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

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

23 (WHEREUPON, Mr. Seay enters at approximately 6:00
24 p.m.)

25 **THE COURT:** Mr. Seay, I find that you are

1 qualified to serve as a juror in this case. We're
2 going to ask you to return to the courthouse probably
3 some time around lunch tomorrow. Please stay in touch
4 with us by calling the telephone number that you were
5 given on Monday morning beginning at 10 o'clock
6 tomorrow morning to find out -- I'm sorry. You were
7 given telephone number on Monday morning. Is that
8 what I said?

9 **MR. SEAY:** Right.

10 **THE COURT:** And call on tomorrow morning beginning
11 at 10:00 about instructions on what to bring, where to
12 come and where to park and all of that. Continue to
13 not talk about the case. Don't allow anyone to talk
14 with you about it. Don't read, watch or listen to
15 anything that relates to this case. And we will see
16 you tomorrow.

17 **MR. SEAY:** Thank you.

18 (WHEREUPON, Mr. Seay exits at approximately 6:02 p.m.)

19 **THE COURT:** Okay. Bring him in.

20 (WHEREUPON, Alonzo Robinson, Juror number 230, enters
21 at approximately 6:02 p.m.)

22 **ALONZO ROBINSON**

23 having previously been sworn, testified as follows:

24 **EXAMINATION**

25 **BY THE COURT:**

1 **Q** Mr. Robinson?

2 **A** Sir.

3 **Q** How are you, sir?

4 **A** Fine.

5 **Q** Good. You recall that on Monday morning, we put
6 you under oath? Do you remember that?

7 **A** Yes, sir.

8 **Q** You are still under oath now. You understand?

9 **A** Yes, sir.

10 **Q** Since you left us Monday afternoon, has anybody
11 talked to you about this case or have you talked to anybody
12 about the case?

13 **A** No, sir.

14 **Q** Have you read, heard or learned or listened to
15 anything about this case?

16 **A** No, sir.

17 **Q** Mr. Robinson, we're going to ask you some
18 questions now. I'm going to start. The lawyers may follow
19 up. We don't mean to pry too deep into your private life,
20 but we do have to ask you these questions. There are no
21 right or wrong answers. We just want you to be open and
22 honest with us and to tell us how you think and how you
23 feel.

24 We're going to get into some questions about a
25 possible penalty phase. That does not mean anything about

1 this defendant or about this case. It simply means that
2 because we might get to that phase, we need to ask you some
3 questions about some issues that will come up in case if we
4 do.

5 If you are a juror in this case, could you accept and
6 apply the law precisely as I would give it to you and set
7 aside anything that you might have heard or learned about
8 the case and render a verdict that is based solely on the
9 testimony and evidence that you hear in this courtroom?
10 Could you do that?

11 A Yes, sir.

12 Q You understand that in a criminal case like this,
13 the State has the burden of proving defendant guilty beyond
14 a reasonable doubt?

15 A Yes, sir.

16 Q You understand that this is a murder case?

17 A Yes, sir.

18 Q 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 to you, could you find the
21 defendant either guilty or not guilty depending on whether
22 you think the State has met its burden of proof?

23 A Well, sir, if I felt that the State had proved
24 it, yeah, I probably could.

25 Q You could find him guilty, if you felt the State

1 had proved it?

2 **A** If the State had proven their case, yeah.

3 **Q** Could you find him not guilty if you didn't think
4 the State proved it?

5 **A** Yes.

6 **Q** You could?

7 **A** Yes, sir. . If I didn't think they had enough
8 evidence, sure.

9 **Q** You would find him not guilty?

10 **A** Yes, sir.

11 **Q** I've got a lot of questions to ask you. I want to
12 make sure that you wait until I finish my questions because
13 this young lady right here gets tripped up if we're both
14 talking at the same time.

15 **A** All right.

16 **Q** If you were a juror in a death penalty case and
17 if the jury found the defendant guilty of murder, you will
18 move into a sentencing phase or a penalty phase. I'm
19 going to talk to you now about some of the issues that will
20 come up. Aggravating circumstances are facts, incidents
21 or details of an occurrence that the State of 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 or add to the injury that results
25 from 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 lessen the severity of
4 the crime of murder. Mitigating circumstances serve to
5 extenuate or to reduce the degree of moral culpability or
6 responsibility.

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

15 A Well, Your Honor, I really don't believe in the
16 death penalty.

17 Q So if I change the question around and say could
18 you vote to impose a death penalty, what is your answer?

19 A The death penalty, probably not.

20 Q Probably not?

21 A (Nods head affirmatively.)

22 Q All right. Is that based on your -- you just
23 said --

24 A That's just my feeling.

25 Q I believe you said you don't believe in the death

1 penalty.

2 **A** Right.

3 **THE COURT:** Does either does either side want to
4 voir dire this juror?

5 Mr. Bartosh?

6 **MR. BARTOSH:** Briefly, Your Honor.

7 **THE COURT:** Certainly.

8 Mr. Bartosh is going to ask you some questions.

9 Then the solicitor might ask you some questions.

10 Then I might ask you some more questions.

11 **MR. ROBINSON:** All right.

12 **EXAMINATION**

13 **BY MR. BARTOSH:**

14 **Q** Mr. Robinson, you said you would probably not.

15 **A** Right.

16 **Q** Do you have an moral objection to the death
17 penalty?

18 **A** It's just my belief. I don't want the burden on
19 me knowing that I had put somebody to death.

20 **Q** That you had killed somebody?

21 **A** Yeah. I don't know that I could sleep like that
22 knowing that I had participation in it.

23 **Q** And there's no set of circumstances that you
24 could think of where you could impose the death sentence if
25 you thought it was appropriate?

1 **A** I don't think so.

2 **Q** And you understand in South Carolina, the death
3 penalty is not mandatory. There are two choices. The jury
4 has the choice of imposing life which means life without
5 parole or for the death penalty. And the jury would decide
6 based on the evidence that is presented by the State and is
7 presented by the defense. Now, knowing that, do you think
8 that if you thought the death penalty was appropriate that
9 you could impose?

10 **A** I don't think I could. I don't believe in the
11 death penalty.

12 **Q** I appreciate your honesty. Thank you.

13 **THE COURT:** Mr. Robinson, I don't believe we will
14 need your services in this case, sir. We appreciate
15 you coming. You are free to go.

16 **MR. ROBINSON:** All right. Thank you.

17 (WHEREUPON, Mr. Robinson exits at approximately 6:14
18 p.m.)

19 **THE COURT:** Mr. Solicitor, I am so sorry to have
20 deprived you of your right to voir dire that juror.
21 Would you like me to get him back so you can ask him
22 some questions?

23 **MR. GOWDY:** Your Honor, your apology is
24 accepted 100 percent. Do not give it another thought.

25 **THE COURT:** Mr. Bartosh, I would assume that you

1 agree that he is not qualified.

2 **MR. BARTOSH:** He's not qualified.

3 **THE COURT:** Bring us another juror.

4 Or I'll tell you what, I'm not going to make it
5 through four more. What's the use of taking a break
6 when you only have two or three to go. So let's take
7 a break with four to go.

8 (WHEREUPON, a short recess was taken at approximately
9 6:14 p.m.)

10 (WHEREUPON, the Court resumed at approximately
11 6:19 p.m.)

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

13 (WHEREUPON, Melody Riddle, Juror number 226, enters at
14 approximately 6:19 p.m.)

15 **END OF VOLUME 2**

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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 3 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
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TERESA B. JOHNSON
OFFICIAL REPORTER

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No exhibits offered.

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

MELODY RIDDLE

having previously been sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q Good afternoon, Ms. Riddle. How are you doing?

A Pretty good. How are you?

Q I'm doing well. Ms. Riddle, you remember that on Monday morning, we put you under oath?

A Uh-huh (affirmative).

Q And you are still under oath right now. You understand that?

A Yes, sir.

Q Since Monday afternoon when we let you go, have you talked to anybody about this case or has anybody talked to you?

A No.

Q Have you learned anything about the case or heard or seen anything about this case?

A No.

Q Ms. Riddle, I'm going to ask you some questions. The lawyers are probably going to follow up with some questions. We don't mean to pry too deep into your private life, but we do have to ask you these questions. There are not any right or wrong answers. We just want you to be

1 open and honest with us and tell us how you feel and what
2 you think.

3 We are going to talk about the possibly of a penalty
4 phase. That does not mean anything about this defendant.
5 It simply means that because we know we might get into the
6 penalty phase, we need to ask you some questions about some
7 of the issues that will come up if we do. Could you, if
8 you were a juror in this case, could you accept and apply
9 the law that I would give to you and set aside and forget
10 about anything that you might have heard or learned before
11 the trial began and render a verdict based solely on the
12 testimony and evidence that you see and hear in this
13 courtroom?

14 A I'm going to be honest with the fact that I'm
15 only 19. And I really don't know if I'm ready to do what
16 this case is asking for.

17 Q All right. So are you concerned about the fact
18 that this is a death penalty case?

19 A Yes.

20 Q All right. Well, let's talk about that then. We
21 will jump ahead just a little bit. I will talk to you
22 about a couple of things. Then we will get right to the
23 death penalty. You understand that the State has the
24 burden of proof and has to meet that burden of proof beyond
25 a reasonable doubt?

1 **A** Yes, sir.

2 **Q** And you understand that this is a murder case?

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

4 **Q** Now, just talking about guilt or innocence right
5 now, could you, based on the facts and circumstances that
6 you find to have been proven and in light of the law as I
7 would give it to you, could you find the defendant either
8 guilty or not guilty? We're not talking about the penalty
9 right now.

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

11 **Q** But could you find him either guilty or not
12 guilty depending on whether you believe the State has meet
13 its burden of proof?

14 **A** Yeah.

15 **Q** All right. Now, if you are on the jury and the
16 jury finds the defendant guilty, we would move into the
17 penalty phase or the sentencing phase. And some issues are
18 going to come up there. And now we're going to talk about
19 it. Okay?

20 **A** Okay.

21 **Q** I'm going to talk about aggravating circumstances
22 and mitigating circumstances.

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

24 **Q** Aggravating circumstances are facts, 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 increase the enormity of
3 the crime and add to the injury that the crime causes, the
4 crime of murder.

5 A Uh-huh (affirmative).

6 Q Mitigating circumstances, on the other hand, are
7 facts, incidents or details of an occurrence that the State
8 of South Carolina has declared to lessen the severity of
9 the crime of murder.

10 A Uh-huh (affirmative).

11 Q And they serve to extenuate or to reduce the
12 moral culpability or responsibility for the crime of
13 murder. If you are on the jury in the sentencing phase of
14 a death penalty trial, you would have two options as to
15 what your verdict could be. It could be for a life
16 sentence or it could be for the death penalty.

17 Now, if you were a juror in that situation, in the
18 sentencing phase of a death penalty case, could you, based
19 on the facts and circumstances that you find to exist and
20 considering any aggravating or mitigating circumstances and
21 considering the law as I would describe it to you, could
22 you vote to impose a life sentence?

23 A I don't know yet cause I don't know the case.

24 Q Right.

25 A But I guess so.

1 Q Are you open to the possibility that after you
2 have heard all the testimony and the evidence that you
3 would find that a life sentence is appropriate?

4 A Yes.

5 Q Now, here is the question that you want to talk
6 to me about.

7 A Uh-huh (affirmative).

8 Q Are you open to the possibility that you would
9 find that the death penalty is the appropriate sentence?

10 A I don't know.

11 Q You don't know?

12 A Yeah. I just haven't decided how I personally
13 feel about either or situation.

14 Q So at this point right now, you don't know
15 whether you could vote to impose the death penalty or not?

16 A Uh-huh (affirmative).

17 Q Is that right?

18 A I just haven't made a decision about --

19 Q Haven't made up your mind.

20 A -- how I feel about it really.

21 Q Let me ask you this question. You have this
22 uncertainty about how you stand on the death penalty as a
23 concept and philosophically, right?

24 A Uh-huh (affirmative).

25 Q Right? That's what you're telling me?

1 **A** Yeah.

2 **Q** Do you think that uncertainty would interfere
3 with your ability to consider the death penalty as an
4 option for a verdict in this case?

5 **A** Probably. I guess after hearing the case, I can.
6 But I don't know.

7 **Q** All right. Let me ask you another question.
8 Then I'm going to let the lawyers ask you questions if they
9 want to. Well, I'm going to let them ask you those
10 questions now.

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

12 **EXAMINATION**

13 **BY MR. BRENNAN:**

14 **Q** How are you, Ms. Riddle?

15 **A** Good. How are you?

16 **Q** Good. My name is Doug Brennan. I'm an attorney
17 from here in Spartanburg.

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

19 **Q** Myself and Mr. Mike Bartosh and Karen Quimby are
20 the attorneys representing Mr. Lindsey in this matter. I
21 appreciate your opinion or your stance that you haven't
22 made up your mind. It is said that there are three kinds o
23 jurors. There are those jurors that if the defendant is
24 convicted of murder that they would always impose a life
25 sentence. There are those jurors that if the defendant is

1 convicted will always impose the death penalty.

2 Then there are those jurors that have to wait and
3 figure out and hear the evidence in the sentencing phase,
4 both those aggravating circumstances and those mitigating
5 circumstances before they could decide whether life is
6 appropriate or death is appropriate. What category do you
7 fall into?

8 A I think right now I'm in a totally different
9 category. I'm usually a very opinionated person. But I
10 don't believe in saying what should occur. I haven't
11 decided if it's ever appropriate to do anything. I know if
12 somebody is put in jail for the rest of their life, I mean
13 if they got out of jail early, you're never going to do
14 anything with yourself.

15 You've been in jail for years. The chance of ever
16 getting out and doing something great are slim to none.
17 Pretty much none. If you are jail for the rest of your
18 life, what is that going to do for anybody. But killing
19 somebody is not any better than what they did.

20 Q Do you understand that if someone is sentenced to
21 life in prison for a conviction of murder, they will never
22 get out of jail? They will die in prison. Do you
23 understand that?

24 A Uh-huh (affirmative).

25 Q At this point, do you see yourself able in any

1 situation to impose the death penalty?

2 **A** I haven't decided whether or not I think the
3 death penalty should ever be -- there's been many cases
4 where this has been done and the person was proven later
5 for different reasons that they are innocent. And in some
6 cases, it's plain proof that that person should be. So I
7 don't know the case well enough to state that.

8 **Q** Again, I understand and I respect your position.
9 But both sides need to know what a juror's opinion is. And
10 maybe you can't answer that question. But the question
11 again is is there any situation where you can impose the
12 death penalty right now in this position?

13 **A** I don't think I can answer that question.
14 Honestly.

15 **MR. BRENNAN:** One more question, Your Honor.

16 **BY MR. BRENNAN:**

17 **Q** You had mentioned -- or Monday, you stood up when
18 asked if you knew anything about this case. You said yes.

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

20 **Q** Can you tell me first off how you came by that
21 information?

22 **A** First, my mom works for the Herald Journal. I
23 was at lunch with a bunch of them last week. And one of
24 them was discussing that he was doing the case. And he
25 kind of gave what was said in the paper. I happen to read

1 the paper Monday morning before I came in. It said the
2 same thing that was in the paper.

3 Q Okay. Have you, based on that information, have
4 you formed an opinion as to guilt or innocence in this
5 matter?

6 A It's not an opinion. It's just what they are
7 accused of.

8 THE COURT: Does the Solicitor have any voir dire
9 for this juror at this time?

10 MR. GOWDY: Very, very brief. Very, very
11 brief.

12 THE COURT: Okay.

13 EXAMINATION

14 BY MR. GOWDY:

15 Q Good evening, Ms. Riddle. How are you?

16 A Pretty good.

17 Q My name is Trey Gowdy. That's Donnie Willingham
18 to your left and Barry Barnett in the center. How did you
19 get to the University of Alabama?

20 A One of the big schools. And I didn't want to go
21 to school with everybody else.

22 Q You got both then, didn't you?

23 A Uh-huh (affirmative).

24 Q Nobody here, not the judge, not Mr. Brennan, not
25 myself are in any way, shape or form trying to influence

1 your opinion on capital punishment.

2 A Uh-huh (affirmative).

3 Q When I was your age, I'm not sure I had an
4 opinion on capital punishment either.

5 A Uh-huh (affirmative).

6 Q But I think you can appreciate the fact that we
7 probably have to have some sense of what that position is
8 before we would be able to effectively consider you as a
9 juror?

10 A Uh-huh (affirmative). I know..

11 Q Let me see if I can get at it this way. In any
12 criminal case in South Carolina where the death penalty is
13 an option, you will always have the option of life with
14 parole.

15 A Uh-huh (affirmative).

16 Q You will never be made to choose the death
17 penalty.

18 A Uh-huh (affirmative).

19 Q Do you believe that if given that option, you
20 would always choose life to the exclusion of death?

21 A No.

22 Q So you could give the death penalty?

23 A I just don't know. I really don't know.

24 Q All right. Let me try one more way. It is fair
25 to say that your views such as they are right now or

1 perhaps even your emerging views are such that your ability
2 to be a fair juror in this case would be either totally
3 hampered or substantially hampered. Do you believe your
4 views emerging as they are today would substantially impair
5 your ability to give the death penalty?

6 **A** There's been cases that I've seen that I can
7 understand the death penalty. But whether or not me
8 sitting on a jury is prepared to do that, I don't know.

9 **Q** All right. Thank you very much.

10 **MR. GOWDY:** Your Honor, I would --

11 **THE COURT:** Ms. Riddle, let me let you step in
12 the hall for just a second please.

13 **MS. RIDDLE:** All right.

14 (WHEREUPON, Ms. Riddle exits at approximately
15 6:31 p.m.)

16 **THE COURT:** You think she is qualified?

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

18 **THE COURT:** Okay. Well, we're going to have to
19 talk to her some more then.

20 **MR. BARTOSH:** I just have one more question to
21 ask her.

22 **THE COURT:** Okay.

23 **MR. GOWDY:** She doesn't think she's
24 qualified.

25 **MR. BARTOSH:** Your Honor, I would just like to

1 ask her one question and then that will be it.

2 **THE COURT:** Bring her out please.

3 (WHEREUPON, Ms. Riddle enters at approximately 6:32
4 p.m.)

5 **MR. GOWDY:** Your Honor, are we working under
6 the one attorney rule?

7 **THE COURT:** No.

8 Ms. Riddle, we have just a couple of more
9 questions to ask you. So bear with us for a few more
10 moments.

11 **MS. RIDDLE:** Okay.

12 **THE COURT:** Mr. Bartosh is going to ask you a
13 question.

14 **EXAMINATION**

15 **BY MR. BARTOSH:**

16 **Q** A very short one, Ms. Riddle. I appreciate your
17 patience. Now, there may be some confusion. I don't ask
18 questions very well. And it may be confusing. But you
19 understand that nobody is asking you to say what you would
20 do right now?

21 **A** Yes.

22 **Q** What they are asking you is could you after
23 having been through the entire case, having heard the
24 entire evidence, could you, if you believed it was
25 appropriate impose the death penalty? If you believed it

1 was appropriate after hearing all the facts and all the
2 evidence. Not sitting here talking about it in a vacuum.
3 But having heard everything.

4 **MR. BARNETT:** Your Honor, I'm going to object.
5 If he would just let her answer the question.

6 **THE COURT:** Let her answer the question.

7 **MS. RIDDLE:** I know it's hard to get to. But the
8 defense obviously wants to know whether or not I would
9 give the death penalty and the prosecutor obviously
10 wants to know if I would as well. But honestly, I
11 just don't really know if I could. I don't know if --
12 I just don't know.

13 **THE COURT:** It would be nice if we could wait
14 around a little while until you arrive at how you are
15 going to land on the death penalty.

16 **MS. RIDDLE:** Uh-huh (affirmative).

17 **THE COURT:** But we can't do that.

18 **MS. RIDDLE:** Exactly.

19 **THE COURT:** If I put you on this jury in this
20 case, this week and you are put in a situation where
21 you've got to vote and somebody is saying can you vote
22 for the death penalty and I understand you developing
23 your views. That is good. Would the fact that you
24 are developing your views on the death penalty make it
25 very difficult for you to vote yes and to vote to

1 impose the death penalty? Would it make it very
2 difficult for you to actually vote yes for the death
3 penalty?

4 **MS. RIDDLE:** It would be difficult. But I don't
5 know if on the date that we vote that my mind might
6 change. I just don't know.

7 **THE COURT:** Uh-huh (affirmative). Okay.

8 **MS. RIDDLE:** I know I'm not really helping the
9 situation. I just really don't know.

10 **THE COURT:** All right. Either side want to ask
11 any more questions?

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

13 **THE COURT:** Let me let you just step in the hall
14 just another minute, Ms. Riddle.

15 (WHEREUPON, Ms. Riddle exits at approximately
16 6:35 p.m.)

17 **THE COURT:** You think she's qualified?

18 **MR. BARTOSH:** Your Honor, she said --

19 **THE COURT:** Yes or no?

20 **MR. BARTOSH:** Yes.

21 **THE COURT:** All right. I will give you a chance
22 to argue.

23 **MR. BARTOSH:** She never said she couldn't
24 impose it. I think we were talking about it. I think
25 she was thinking that we were saying right now would

1 you impose a death penalty in this case without
2 knowing anything about it. And I think that she came
3 across and said that she could listen to the evidence.
4 And once she heard the evidence that she thought was
5 approximate, she could impose it. So I believe she is
6 qualified.

7 **THE COURT:** All right. My ruling is she is not
8 qualified. She has indicated a very clear and
9 unqualified reluctance to say that she even
10 acknowledges that the death penalty is appropriate.
11 She said that her views on the death penalty are
12 developing. She said she thinks she's too young to
13 handle the pressure that would come along with voting
14 to impose the death penalty. She said other things
15 along those lines.

16 It is very clear to me that her views, her
17 emerging views, her lack of any established views on
18 the death penalty will substantially impair her
19 ability to carry out my instructions and to follow the
20 law which would be to objectively evaluate whether or
21 not the death penalty should be imposed. So I find
22 that she is not a qualified juror.

23 Bring her in.

24 -(WHEREUPON, Ms. Riddle enters at approximately

25 6:37 p.m.)

1 **THE COURT:** Ms. Riddle, it certainly is a mighty
2 big burden for all of us to be sitting around here
3 talking about all of this stuff. And it's just like
4 Mr. Gowdy said, when we were your age, we don't know
5 how we stood on it either.

6 **MS. RIDDLE:** Uh-huh (affirmative).

7 **THE COURT:** We appreciate you coming in and
8 appreciate you being so honest with us. Good luck to
9 you at the University of Alabama. But we're not going
10 to need your services any more in this case. Okay?

11 **MS. RIDDLE:** Okay.

12 **THE COURT:** Thank you.

13 **MS. RIDDLE:** Thank you.

14 **MR. BARTOSH:** Your Honor, we would respectfully
15 object based upon the arguments we made.

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

17 (WHEREUPON, Joyce Martin, Juror number 175, enters at
18 approximately 6:37 p.m.)

19 **JOYCE MARTIN**

20 having previously been sworn, testified as follows:

21 **EXAMINATION**

22 **BY THE COURT:**

23 **Q** Ms. Martin?

24 **A** Yes.

25 **Q** How are you?

1 **A** Fine. How are you?

2 **Q** Just fine. You recall that yesterday morning, we
3 put you under oath?

4 **A** Uh, it was Monday, yes.

5 **Q** Was it -- is it already Wednesday?

6 **A** Yes, sir.

7 **Q** You're right. I'm sorry. Monday morning, we put
8 you under oath. You remember that?

9 **A** Yes.

10 **Q** You understand that you are still under oath now?

11 **A** Yes.

12 **Q** Since you left us Monday afternoon, have you
13 talked about this case with anybody or has anybody talked
14 to you about the case?

15 **A** Somebody has tried to.

16 **Q** What did they say?

17 **A** They asked me what kind of case was this going to
18 be. I told them I could not talk about it.

19 **Q** Did they tell you anything about the case?

20 **A** No.

21 **Q** Did they appear to know anything about this case?

22 **A** Well, they didn't mention this case in
23 particular. They just wanted to know what kind of case
24 this was going to be.

25 **Q** All right. So from that conversation, you didn't

1 learn anything about this case?

2 A No.

3 Q Have you read anything or seen anything or heard
4 anything about this case?

5 A No, I haven't.

6 Q We're going to ask you some questions now. I'm
7 going to start off. And the lawyers may decide to follow
8 up. We hope we don't get too far into your personal life
9 with these questions but we do have to ask them to you.
10 There are not any right or wrong answers here. We just
11 want you to be open and honest with us and to tell us how
12 you feel and what you think.

13 A Okay.

14 Q We are going to get into some discussion about a
15 possible penalty phase. But that doesn't mean anything
16 about this defendant and it doesn't mean anything about
17 this case. It just means that we recognize we might get
18 into a penalty phase. We have some questions that we need
19 to ask you about some issues that will come up if we do.

20 If you are a juror in this case, can you accept and
21 apply the law precisely as I give it to you and set aside
22 anything that you might have heard or learned about the
23 case before the trial began and render a verdict that is
24 based solely on the testimony and the evidence that you see
25 and hear in this courtroom. Can you do that?

1 **A** Yes.

2 **Q** You understand that in a criminal case the State
3 has the burden of proving the defendant guilty beyond a
4 reasonable doubt?

5 **A** Yes, I do.

6 **Q** And you know of course this is a murder case?

7 **A** Yes.

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

14 **A** Yes.

15 **Q** If you are a juror in this case and the jury
16 finds the defendant guilty of murder, we would move into
17 the penalty phase. There are some issues that will come up
18 then that I'm going to talk to you about now. Aggravating
19 circumstances are facts, incidents or details of an
20 occurrence that South Carolina has declared to aggravate or
21 to make worse the crime of murder. Aggravating
22 circumstances increase the enormity of the crime and add to
23 the injury that the crime has caused.

24 Mitigating circumstances, on the other hand, are facts
25 incidents or details of an occurrence that South Carolina

1 has declared to lessen the severity of the crime of murder.
2 And they serve to extenuate or to reduce the moral
3 culpability for the crime of murder.

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

13 A Yes.

14 Q Could you vote to impose a death penalty?

15 A No.

16 Q Is that because you oppose of the death penalty?

17 A Yes.

18 Q You just don't believe in imposing the death
19 penalty?

20 A Uh-huh (affirmative).

21 Q That's right?

22 A Uh-huh (affirmative).

23 THE COURT: Is there any voir that either side
24 wants to have with this juror?

25 MR. BARTOSH: No, sir.

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

2 **THE COURT:** All right. Ma'am, we won't be needing
3 your services in this case. We appreciate you coming.
4 You are free to go.

5 **MS. MARTIN:** Okay.

6 (WHEREUPON, Ms. Martin exits at approximately
7 6:43 p.m.)

8 **THE COURT:** Bring us a jury -- juror.

9 (WHEREUPON, Tracy Whitaker, Juror number 287, enters
10 at approximately 6:43 p.m.)

11 **TRACY WHITAKER**

12 having previously been sworn, testified as follows:

13 **EXAMINATION**

14 **BY THE COURT:**

15 **Q** Good afternoon, Ms. Whitaker.

16 **A** Hey.

17 **Q** How are you?

18 **A** Okay.

19 **Q** You recall that on Monday morning, we put you
20 under oath?

21 **A** Yes.

22 **Q** And you understand you are still under oath right
23 now?

24 **A** Yes, sir.

25 **Q** Since Monday afternoon when you left us, has

1 anybody talked to you about this case or have you talked to
2 anybody about this case?

3 A No.

4 Q Have you read, seen or heard anything about this
5 case?

6 A No.

7 Q Ms. Whitaker, we're going to ask you some
8 questions now. We apologize that we're prying into your
9 private life. But we have to ask you these questions.
10 There are no right or wrong answers. We just want you to
11 be open and honest with us and tell us what you think and
12 how you feel.

13 A Okay.

14 Q We're going to talk a little bit about a possible
15 penalty phase. But that doesn't mean anything about this
16 defendant and it doesn't mean anything about this case. It
17 simply means that because we might get into a penalty
18 phase, we need to talk to you about some of the issues that
19 will come up if we do.

20 If you are a juror in this case, can you accept and
21 apply the law precisely as I will state it to you and can
22 you set aside anything that you might have heard or learned
23 about the case before the trial began and can you render a
24 verdict that is based solely on the testimony and the
25 evidence that you see and hear in this courtroom? Can you

1 do that?

2 A I feel like I can.

3 Q Do you understand that in a criminal case such as
4 this the State has the burden of proving the defendant
5 guilty beyond a reasonable doubt?

6 A Yes, sir.

7 Q And this is of course this is a murder case. You
8 know that?

9 A Yes.

10 Q Can you or could you, depending on the facts and
11 circumstances that you find to have been proven and in
12 light of the law as I will give it to you, could you find a
13 verdict of either guilty or not guilty depending on whether
14 or not you feel the State has met its burden of proof? Can
15 you do that?

16 A Yes, sir.

17 Q Ma'am?

18 A Yes, sir.

19 Q Now, if you are on the jury in this case and if
20 the jury finds the defendant guilty or murder, we would
21 move into the penalty phase. There are some issues that
22 will come up then that I'm going to talk to you about now.
23 Aggravating circumstances are facts, incidents or details
24 of an occurrence which South Carolina has declared to
25 aggravate or to make worse the crime of murder.

1 Aggravating circumstances increase the enormity of the
2 crime of murder and add to the injury that results from the
3 crime.

4 Mitigating circumstances, on the other hand, are
5 facts, incidents or circumstances which the State of South
6 Carolina has declared to lessen the severity of the crime
7 of murder. And they serve to extenuate or to reduce the
8 degree of moral culpability or responsibility for the crime
9 of murder.

10 Now, if you are on the jury during the penalty phase,
11 you would have two options as to what your verdict could
12 be. Your verdict could be a life sentence or it could be
13 the death penalty. Could you, depending on the
14 circumstances and the facts that you find to exist and
15 considering any aggravating or mitigating circumstances and
16 considering the law that I will tell you about, could you
17 vote to impose a life sentence?

18 A I feel like I could.

19 Q Could you vote to impose a death penalty?

20 A I don't know.

21 Q You don't know?

22 A Huh-uh (negative.)

23 Q Now, do you believe that the death penalty is
24 never appropriate for a murder?

25 A I feel like it is appropriate in some situations.

1 **Q** In some situations. Okay. Now, if one of those
2 situations that you think is appropriate -- and I'm not
3 going to ask you what they are. But if one of those
4 situations that you think is appropriate were to be before
5 you in this case, could you vote to impose the death
6 penalty in this case?

7 **A** I don't know that I could do that.

8 **Q** Is that because of an opposition that you have to
9 the death penalty or just because you don't want to be
10 responsible for somebody who gets the death penalty?

11 **A** The responsibility of it.

12 **Q** Okay. So do you think it would be difficult for
13 you to actually write your name, sign your name on a piece
14 of paper that says this person is going to get the death
15 penalty?

16 **A** Yes, sir.

17 **Q** Would that be difficult for you?

18 **A** Yes, sir.

19 **Q** Could you do it?

20 **A** I don't think I can do it.

21 **THE COURT:** All right. Do either side want to ask
22 this juror any questions?

23 **MR. BARNETT:** No, sir.

24 **THE COURT:** All right. Ms. Whitaker, thank you
25 for coming. We're not going to need your services in

1 this case. You are free to go.

2 **MS. WHITAKER:** Okay.

3 (WHEREUPON, Ms. Whitaker exits at approximately 6:50
4 p.m.)

5 **THE COURT:** And I assume, Mr. Bartosh, you agree
6 she is not qualified?

7 **MR. BARTOSH:** She's not qualified.

8 **THE COURT:** All right. Bring us the last juror of
9 the day.

10 (WHEREUPON, Sarah Simms, Juror number 102, enters at
11 approximately 6:50 p.m.)

12 **SARAH SIMMS**

13 having previously been sworn, testified as follows:

14 **EXAMINATION**

15 **BY THE COURT:**

16 **Q** Ms. Simms?

17 **A** Yes.

18 **Q** Do you go by just Ms. Simms?

19 **A** You can call me Sarah. It doesn't matter.

20 **Q** Well, if I see you on the street tomorrow, I
21 might call you Sarah.

22 **A** Okay.

23 **Q** But in here, I'm going to be a little more formal
24 with you.

25 **A** Okay.

1 **Q** I believe you may have said you just got married
2 or you just changed your name?

3 **A** Been married for 26 years, but they haven't got
4 my name right here.

5 **Q** Really?

6 **A** Yeah.

7 **Q** Let's see if we can't straighten that out, okay?

8 **A** Please do.

9 **THE COURT:** Mark, can you make sure that gets
10 straightened out in the records of Spartanburg County
11 that her last name is Simms and has been for 27 years.

12 **MRS. SIMMS:** 26.

13 **BY THE COURT:**

14 **Q** 26 years. It might seem like 27 some times,
15 doesn't it? Ma'am, you remember that on Monday morning, we
16 put you under oath?

17 **A** Yes.

18 **Q** And you are still under oath right now. You
19 understand that?

20 **A** Yes.

21 **Q** Since Monday afternoon when we let you go home,
22 have you talked to anybody about this case or has anybody
23 talked to you about the case?

24 **A** No.

25 **Q** Have you read, heard or listened to anything

1 about this case?

2 A No.

3 Q Ma'am, we're going to ask you some questions now.
4 We hope we don't get too far into your private life. But
5 we do have to ask you these questions. There are no right
6 or wrong answers. We just want you to pay close attention
7 and to be open and honest with us. Tell us how you feel
8 and what you think.

9 We're going to talk a little bit about a possible
10 penalty phase here. But that doesn't mean anything about
11 this defendant. It doesn't mean anything about this case.
12 It simply means that because we might get to a penalty
13 phase, we need to know how you feel about some of the
14 issues that will come up if we do. If you are a juror in
15 this case, could you accept and apply the law precisely as
16 I give it to you?

17 A Yes.

18 Q And set aside anything that you might have heard
19 or learned about the case before the trial started and
20 render a verdict that is based solely on the testimony and
21 evidence that you hear in this courtroom?

22 A Yeah.

23 Q Can you do that?

24 A Uh-huh (affirmative).

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 know that this is a murder case?

5 A Yes.

6 Q Could you, depending on the facts and
7 circumstances that you find to have been proven and in
8 light of the law as I will give it to you, could you find a
9 verdict of either guilty or not guilty depending on whether
10 the State has proven the defendant guilty beyond a
11 reasonable doubt?

12 A Yes.

13 Q Now, ma'am, if you are a juror in this case and
14 if the jury finds the defendant guilty of murder, we would
15 move into the penalty phase. There are some issues that
16 will come up then that I'm going to talk to you about now.
17 Aggravating circumstances are facts, incidents or details
18 of an occurrence that South Carolina has declared will
19 aggravate or make worse the crime of murder. Aggravating
20 circumstances increase the enormity of the crime and add to
21 the injury that results from the crime of murder.

22 Mitigating circumstances, on the other hand, are
23 facts, incidents or details of an occurrence that South
24 Carolina has declared will lessen the severity of the crime
25 of murder. And they serve to extenuate or to reduce the

1 moral culpability or responsibility for murder.

2 If you are on the jury in penalty phase of this trial,
3 you would have two options as to what your verdict could
4 be. One option would be the verdict for a life sentence
5 and another option would be a verdict imposing the death
6 penalty. Could you, depending on the circumstances and the
7 facts that you find to exist including any consideration of
8 aggravating or mitigating circumstances and including
9 consideration the law as I will explain it to you, could
10 you vote to return a verdict for a life sentence?

11 A Yeah.

12 Q Could you vote to impose a death penalty?

13 A No.

14 Q And you are sure about that, aren't you?

15 A Yes.

16 THE COURT: All right. Does either side want to
17 ask this juror any questions?

18 MR. BARTOSH: No, sir.

19 MR. BARNETT: No, sir.

20 THE COURT: All right. Ma'am, thank you for
21 coming. Sarah, thank you for coming. We will not
22 need your services in this case.

23 (WHEREUPON, Ms. Simms exits at approximately 6:57
24 p.m.)

25 THE COURT: That's five in a row we struck out on.

1 Okay. I know y'all aren't finished yet. And you
2 still have a lot of work you want to do. And you're
3 going to be mad at me because I'm leaving. And you're
4 going to think ill of me and curse me and report me to
5 the screening committee because I'm lazy and don't
6 work hard enough. But I don't care. I'm going home.
7 I'll see y'all in the morning.

8 **MR. GOWDY:** Your Honor, before the Court
9 departs, can I inquire of the Court's preference
10 relevant to Juror Netherton. Will she be brought back
11 for additional voir dire?

12 **THE COURT:** Yes, my thought was that Ms.
13 Netherton would come in with all of the other jurors
14 who have been qualified. And we would probably take
15 her apart separately and question her. And then after
16 doing that, if we think she is still qualified, we
17 will put her back in the pool. Then I've got some
18 additional questions that I am going to ask these
19 jurors as a group.

20 They will be mainly the statutory questions. I'm
21 going to ask them if they changed their mind about
22 anything or if there's anything they want to bring to
23 our attention. I'm going to ask them whether or not
24 they've formed an opinion. I've got to ask them if
25 there's any bias or prejudice either for or against

1 the State in connection with the case. And I'm going
2 to ask them again whether or not they know of any
3 reason that they could not give both sides a fair and
4 impartial trial.

5 Basically those four statutory questions and any
6 others that y'all want me to ask. Then if we have any
7 answers to that, we'll take those up one at a time.
8 Then we will strike the jury. Does that suit you?

9 MR. GOWDY: Yes, sir.

10 THE COURT: Mr. Bartosh?

11 MR. BARTOSH: Yes, sir.

12 MR. GOWDY: Your Honor, before the Court
13 leaves today, may Mr. Bartosh and I retire in
14 chambers with you to discuss a matter of some
15 sensitivity?

16 THE COURT: Yes, you may. And before we forget,
17 the Clerk got a phone call from Donald Ray. The Clerk
18 made some notes about that phone call. Apparently he
19 remember that when he was in high school, somebody
20 took a warrant out against him. But he was never
21 arrested or convicted. His dad and he went to the
22 judge. He believes it was dropped. He was under 18.

23 It was for malicious injury to a vehicle. He
24 talked to the judge. It was dropped. He was never
25 arrested. It didn't cross his mind during the

1 interview. He wanted to be honest and make sure it
2 doesn't cause a problem. So if either side wants to
3 follow up with that during this next stage of voir
4 dire, let me know. Otherwise, I'll drop it.

5 (WHEREUPON, the Court and attorneys held an conference
6 in camera.)

7 (WHEREUPON, the Court adjourned at approximately 8:00
8 p.m.)

9 (WHEREUPON, the Court resumed on May 20, 2004 at
10 approximately 9:03 p.m.)

11 **THE COURT:** All right. You ready, Ms. Quimby?

12 **MS. QUIMBY:** Yes, sir.

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

14 While he is doing that, we have something faxed
15 to us from, concerning the juror who was sick
16 yesterday. It really doesn't say what we were told
17 yesterday. I will let you look at it at your
18 convenience. Then we will decide what to do.

19 (WHEREUPON, William Parnell, Juror number 212, enters
20 at approximately 9:03 p.m.)

21 **WILLIAM PARNELL**

22 having previously been sworn, testified as follows:

23 **EXAMINATION**

24 **BY THE COURT:**

25 **Q** Good morning, sir.

1 A Good morning.

2 Q You are Mr. Parnell?

3 A Yes, sir.

4 Q You recall that on Monday morning, we put you
5 under oath?

6 A Yes, sir.

7 Q And you understand you are still under oath right
8 now?

9 A Yes, sir.

10 Q Since you left us Monday afternoon, has anybody
11 talked to you about this case or have you talked to anybody
12 about the case?

13 A No, sir.

14 Q Mr. Parnell, we're going to ask you some
15 questions. I will start and the lawyers will probably
16 follow up with some questions. We don't want to get too
17 deep into your privacy but we do have to ask you these
18 questions. These questions don't have right or wrong
19 answers. We just want you to be open and honest with us.
20 We're going to get into some discussion of a possible
21 penalty phase. But that doesn't mean anything about this
22 defendant and it doesn't mean anything about this case. It
23 just means that because we know we might get there, we need
24 to ask you some questions about some issues that will come
25 up if we do.

1 If you are on the jury in this case, can you accept
2 and apply the laws I will give it to you and set aside
3 anything that you might have heard or learned about the
4 case before the trial began and render a verdict based
5 solely on the testimony and the evidence that you hear and
6 see in this courtroom. Can you do that?

7 **A** Yes, sir.

8 **Q** You understand that in a criminal case, the State
9 has the burden of proving the defendant guilty beyond a
10 reasonable doubt?

11 **A** Yes, sir.

12 **Q** And you understand that this is a murder case?

13 **A** Yes, sir.

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, could you find
17 the defendant either guilty or not guilty depending on
18 whether you believe the State has met its burden of proof?

19 **A** Yes, sir.

20 **Q** Now if you are on the jury in this case and if
21 the jury finds the defendant guilty or murder, we would
22 move into second phase or the penalty phase of this trial.
23 I'm going to talk to you now about some of the things that
24 will come up then. Aggravating circumstances are facts,
25 incidents or details of an occurrence that the State of

1 South Carolina has declared to aggravate or to make worse
2 the crime of murder. Aggravating circumstances increase
3 the enormity of the crime and add to the injury resulting
4 from the crime.

5 Mitigating circumstances, on the other hand, are
6 facts, incidents or details of an occurrence that South
7 Carolina has declared to lessen the severity of the crime
8 of murder. And they serve to extenuate or to reduce the
9 degree of moral culpability or responsibility for the
10 crime.

11 If you are a juror in a death penalty case in the
12 sentencing phase, you would have two options as to what
13 your verdict could be. One option is for a life sentence
14 and the other option is the death penalty. Could you,
15 depending on the facts and circumstances that you find to
16 exist and considering the law as I would give it to you,
17 could you vote to return a verdict for a life sentence?

18 A Yes.

19 Q Could you vote to return a verdict for the death
20 penalty?

21 A Yes, sir.

22 Q If you are on the jury, you are likely to be
23 sequestered for five or six days. And you would have to
24 spend that time in a hotel with us and you wouldn't be
25 allowed to go home. Is that going to impose a terrible

1 burden on you?

2 A No, sir.

3 Q Have you been over that witness list that you got
4 this morning?

5 A Yes, sir.

6 Q Have you read every name on the list?

7 A Yes, sir.

8 Q Do you know anybody or are you related to anybody
9 whose name is on that list?

10 A No, sir.

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, sir.

15 Q All right, sir. The lawyers are going to ask you
16 some questions now. And I may come back and ask you some
17 more questions later.

18 EXAMINATION

19 BY MR. BRENNAN:

20 Q Sir, my name is Doug Brennan. Myself, Mike
21 Bartosh and Karen Quimby have the opportunity to represent
22 Mr. Lindsey in this matter. Sir, I recognized on your
23 questionnaire that you live in Inman. Is that correct?

24 A Yes, sir.

25 Q Do you have a relationship or do you know any of

1 the members of the Inman Police Department?

2 A No, sir.

3 Q And you have no knowledge of this case?

4 A I work out of town.

5 Q You're an electrician?

6 A Yes, sir.

7 Q Who do you work for?

8 A Advance Illumination in Greenville.

9 Q And that requires you to travel?

10 A Yes, sir.

11 Q You were in the military I see back in the early
12 '70s?

13 A Yes, sir.

14 Q Have you formed an opinion as to the death
15 penalty?

16 A No. It depends on what is said. I don't really
17 know what the law is.

18 Q But it depends on the case. Is that correct?

19 A Yes, sir.

20 Q Do you understand, sir, that in South Carolina,
21 the death penalty is never mandatory?

22 A Yes, sir.

23 Q Okay. All right. You had a motorcycle stolen
24 some time ago, is that correct?

25 A Yes, sir.

1 **Q** Did that crime occur in Spartanburg County?

2 **A** No, sir. It was down in Lexington County.

3 **Q** Have you had any opportunity or reason to deal
4 with the Spartanburg County Sheriff's Department?

5 **A** I had a young fellow take a gun one time. I
6 reported it. And they wound up picking him up. And he
7 wound up having to pay restitution.

8 (WHEREUPON, a fire alarm sounds at approximately 9:14
9 a.m.)

10 **THE COURT:** How about take Mr. Parnell back in
11 the jury room. Don't let him talk to other jurors.

12 (WHEREUPON, Mr. Parnell exits at approximately 9:14
13 a.m.)

14 **THE COURT:** It suits me to sit tight. We will be
15 in recess until this stops. Everybody do what they
16 want.

17 (WHEREUPON, a short recess was taken at approximately
18 9:15 a.m.)

19 (WHEREUPON, the Court resumes at approximately 9:17
20 a.m.)

21 **THE COURT:** Let's bring him back in.

22 (WHEREUPON, Mr. Parnell enters at approximately 9:17
23 a.m.)

24 **THE COURT:** All right. Mr. Parnell, apparently a
25 child pulled that alarm out in the lobby and of course

1 did that accidentally. Or maybe they didn't do it
2 accidentally but it is nothing to be alarmed about.

3 And I believe that you had already started with
4 your questioning. I had finished with mine. I don't
5 have to then figure out where I was. You've got
6 figure out where you were.

7 MR. BRENNAN: I think I remember, sir.

8 THE COURT: All right. Go ahead.

9 BY MR. BRENNAN:

10 Q Mr. Parnell, you were telling us about having a
11 gun stolen?

12 A Yes, sir.

13 Q And that person was made to pay restitution?

14 A Yes, sir.

15 Q Was that in Spartanburg County?

16 A Yes, sir.

17 Q As a result of that crime, did you deal with the
18 Spartanburg County Sheriff's Department or the Inman Police
19 Department?

20 A The Spartanburg County. I lived in Duncan at the
21 time.

22 Q Do you believe that you were treated fairly by
23 the sheriff's department?

24 A Yes, sir.

25 Q And if Spartanburg County Sheriff's Deputies or

1 employees of the Spartanburg County Sheriff's Department
2 are witnesses in this matter, would that affect your
3 ability to render a fair and just decision in this matter?

4 A No, sir. I don't even remember who the officer
5 was.

6 Q Okay. All right. Sir, it is said that there are
7 -- rephrase. Do you believe that you are the type of juror
8 that would, if the defendant were found guilty, would
9 always impose the death penalty or always impose a life
10 sentence or, sir, would you wait until the end of the trial
11 hearing the evidence presented and then make a decision?

12 A I would have to know everything about it before I
13 could make a decision.

14 Q Thank you, sir. Last question, sir. If you were
15 placed on this jury and the defendant is found guilty, we
16 would then move into the sentencing phase. At the end of
17 that, the jury will be asked to make a decision as to which
18 sentence they would recommend. That will either be life or
19 the death penalty.

20 All twelve jurors have to be unanimous in their
21 decision. If there was a decision rendered and eleven
22 people had already signed that sentencing form, and the
23 12th signature would be yours, knowing that your signature
24 would send Mr. Lindsey to the death sentence, could you
25 still sign that sentencing form?

4 Q I understand that. If you had made a decision
5 that that was the proper sentence, if your decision was
6 that the death sentence was the proper sentence, could you
7 sign as the 12th juror?

9 | **MR. BRENNAN:** Nothing further, Your Honor.

11 BY MR. WILLINGHAM:

16 Following up on Mr. Brennan said about signing that
17 form, there are some jurors that believe in death penalty
18 and believe that the death penalty is appropriate in a
19 certain case but they just cannot put their name down on
20 paper for later generations to come back and look at and
21 say, Yeah, because of my signature being there, someone
22 received a death sentence. What I'm asking is are you the
23 type of juror that could put your name down and wouldn't
24 have that problem if you thought it was the right thing to
25 do?

1 **A** If that's the way it went, yes, I could sign.

2 **Q** Okay. And that's just my question. In order to
3 return a verdict of death if you think it is appropriate in
4 this case, every juror has to sign that form.

5 **A** Yes, sir.

6 **Q** You think you could do that?

7 **A** Yes, sir.

8 **Q** All right. I appreciate you filling out the
9 questionnaire. You were asked a lot of personal
10 questions. One of the questions it asked that I wanted to
11 follow up on is have you ever been a witness in a civil or
12 criminal trial. You indicated that you have?

13 **A** I don't know. It was a DUI case.

14 **Q** Okay.

15 **A** I don't know what they call it.

16 **Q** Were you a witness in that or were you a juror?

17 **A** I was a juror.

18 **Q** You were a juror in that?

19 **A** Yes, sir.

20 **Q** That was somebody was driving a motorcycle --

21 **A** Yes, sir.

22 **Q** -- at 4:00 in the morning --

23 **A** Yes, sir.

24 **Q** -- and wrecked and claimed he didn't have
25 anything to drink?

1 A Yes, sir.

2 Q Y'all found him guilty?

3 A Yes, sir.

4 Q On the next page, it says you had some dealings
5 with the FBI?

6 A I was a Cub Master. And I had a Cub Scout pack.
7 And in the city of Pelham, they had a parade every
8 Christmas.

9 Q Right.

10 A The KKK was going to March in a parade. And I
11 couldn't be responsible for 68 kids so I pulled them out of
12 there.

13 Q Okay.

14 A Then I was subpoenaed as a witness as to why I
15 pulled them out.

16 Q Did the agents with the FBI treat you fairly?

17 A Yes.

18 Q You didn't --

19 A I just got a paper that said come out to the
20 courthouse. And I went down there.

21 Q Did you actually have to testify?

22 A Yes. I just told them what happened. That was
23 it.

24 Q All right. I appreciate it, Mr. Parnell.
25 Thank you.

1 **A** Yes, sir.

2 **THE COURT:** Mr. Parnell, please step into the
3 hall for just a second please.

4 (WHEREUPON, Mr. Parnell exits at approximately 9:22
5 a.m.)

6 **THE COURT:** Any objection to this juror?

7 **MR. WILLINGHAM:** Not from the State, Your
8 Honor.

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

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

11 (WHEREUPON, Mr. Parnell exits at approximately 9:22
12 a.m.)

13 **THE COURT:** Mr. Parnell, I find that you are a
14 qualified juror in this case. We expect that we are
15 going to tell the jurors to come back at two o'clock
16 today. So go home, get your stuff together. Be
17 prepared when you come back at two o'clock to spend
18 five or six days up here.

19 Don't talk to anybody about the case. Don't let
20 anybody talk to you. Don't read, listen to or watch
21 anything about this case. We will see you at 2
22 o'clock. You might want to call the telephone number
23 that you were given yesterday morning. There's going
24 to be a recording on there in a few minutes that says
25 come in at 2:00. If you call say at noon and maybe

1 something got delayed and it may be different. But
2 that is one way you can keep up-to-date with your
3 schedule. All right?

4 **MR. PARNELL:** Yes, sir.

5 **THE COURT:** You are free to go.

6 (WHEREUPON, Mr. Parnell exits at approximately 9:23
7 a.m.)

8 **THE COURT:** Now, we had a conversation yesterday
9 afternoon that, Mr. Bartosh and Mr. Gowdy and I,
10 about -- was it, Joyce Martin?

11 **MR. GOWDY:** I believe it was Juror 175
12 unless I am mistaken. That is Ms. Martin.

13 **THE COURT:** All right. Let me follow up. We
14 decided we were going to ask Ms. Martin to come back
15 in so I can ask her a few questions.

16 **MR. GOWDY:** Yes, sir.

17 **THE COURT:** Martha, can you arrange that,
18 please. Get someone to call her and say that I asked
19 her to come in as soon as it is convenient for her but
20 to try to be here in about an hour or so if she can.
21 All right.

22 Bring us another juror.

23 While we are waiting on that juror who might
24 already be here, we probably ought to go ahead and put
25 on the record about Mr. Reese. We had a long

1 discussion --

2 Hold that juror just one second please.

3 We had a long discussion on the record during the
4 examination of Mr. Reese as to whether or not I had
5 the authority to disqualify or to excuse for cause
6 Mr. Reese because of my conclusion that he had misled
7 the Court, that he had lied about a criminal charge, a
8 felony charge that he had in Florida and others.

9 I am told by employees of the Spartanburg County
10 Detention Center, Mr. Ruth who is in the courtroom
11 here, that Mr. Reese was picked up at 1:30 this
12 morning on a charge of public disorderly conduct and
13 is now being housed at the Spartanburg County
14 detention center.

15 Is that correct, Mr. Ruth?

16 **DETENTION OFFICER:** Yes, sir, it is.

17 **THE COURT:** So that might need to be on the record
18 if Mr. Reese, if any questions ever arise on appeal
19 about Mr. Reese's qualifications. It is my
20 understanding that when asked why he was wearing a
21 juror pin when he was arrested, he said he was on the
22 jury but he couldn't talk about it.

23 Bring in the juror.

24 (WHEREUPON, Tracy Hollingsworth, Juror number 130,
25 enters at approximately 9:25 a.m.)

TRACY HOLLINGSWORTH

having previously been sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q Ms. Hollingsworth, good morning.

A Good morning.

Q How are you?

A I am fine. How are you?

Q I'm fine. Do you recall that on Monday morning I put you under oath?

A Yes, sir.

Q You understand you are still under oath right now?

A Yes, sir. I do.

Q Since Monday afternoon when you left us, have you talked to anybody about this case or has anyone talked to you about this case?

A No, sir.

Q Have you read, heard or listen to anything about the case?

A No, sir.

Q We're going to ask you some questions. I'm going to ask you some questions. The lawyers are going to follow-up about some things that might be kind of private and we apologize for that. But we do have to ask you about

1 these questions. There are no right or wrong answers.
2 We just want you to be open and honest with us and tell us
3 what you think and how you think and how you feel.

4 A Yes, sir.

5 Q We are going to get into a discussion of a
6 possible penalty phase but that does not mean anything
7 about the defendant or about this case. It simply is
8 because we know we might get into the penalty phase. And
9 we need to ask you some questions about some issues that
10 will come up if we do.

11 A Yes, sir.

12 Q If you are a juror in this case, can you accept
13 and apply the law precisely as I would give it to you and
14 set aside anything that you might have heard or read before
15 the trial began and render a verdict that is based solely
16 on the testimony and evidence that you see and hear in this
17 courtroom? Can you do that?

18 A Yes, sir.

19 Q You understand that in a criminal case like this,
20 the State has the burden of proof beyond a reasonable
21 doubt?

22 A Yes, sir.

23 Q You know this is a murder case?

24 A Yes, sir.

25 Q If you are a juror in this case, could you,

1 depending on the facts and circumstances that you find to
2 have been proving and in light of the law as I will give it
3 to you, could you find a verdict of either guilty or not
4 guilty depending on whether you believe the State has met
5 its burden of proof?

6 **A** Yes, sir. I do.

7 **Q** If the jury finds the defendant guilty of murder,
8 we will move into the penalty phase or the sentencing phase
9 of this trial. Some issues that might come up we're going
10 to talk about now. Aggravating circumstances are facts,
11 incidents or details of an occurrence that South Carolina
12 has declared will aggravate or make worse the crime of
13 murder. Aggravating circumstances increase the enormity
14 of the crime of murder and add to the injury of the crime
15 of murder.

16 Mitigating circumstances, on the other hand, are
17 facts, incidents or details of an occurrence that South
18 Carolina has declared will lessen the severity of the crime
19 of murder. They serve to extenuate or to reduce the
20 degree of moral culpability or responsibility for the
21 crime.

22 If you are a juror in the sentencing phase of the
23 death penalty case such as this, you would have two options
24 for what your verdict could be. The verdict could be for
25 life in prison or it could be for the death penalty. Could

1 you, depending on the facts and circumstances that you find
2 to exist and considering any aggravating or mitigating
3 circumstances and considering the law as I will give it to
4 you, could you vote to return a verdict for a life
5 sentence?

6 A Yes, depending on all that, yes.

7 Q Could you vote to impose the death penalty?

8 A Yes, I could.

9 Q If you are a juror in this case or if I elect to
10 sequester the jury, you will be put up in a hotel for five
11 or six days and not allowed to go home. Is that going to
12 impose a terrible burden on you?

13 A No, sir.

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

16 A Yes, I have.

17 Q Have you read every name on that list?

18 A Yes, sir, I have.

19 Q Do you know or are related to anyone whose name
20 is on at list?

21 A No, sir.

22 Q Ma'am, do you know of any reason why you cannot
23 give both the State and the defendant a fair and impartial
24 trial?

25 A I have no reason. I can be fair.

1 Q You can be fair?

2 A I could be fair.

3 Q All right, ma'am. The lawyers are going to ask
4 you some questions. And I will talk to you again in a few
5 minutes.

6 A Thank you.

7 **EXAMINATION**

8 **BY MR. BRENNAN:**

9 Q I'm going to apologize up front because there are
10 some questions on the questionnaire that I need to ask you
11 about that are kind of a personal nature. I don't want
12 you think I'm trying to pry, but it is something that we
13 need to know. Now I believe you said you know nothing
14 about this case.

15 A No, sir.

16 Q On your questionnaire, you indicated that someone
17 in your family had been charge with either a CDV or assault
18 with a gun or some type of an assault.

19 A Assault and battery.

20 Q Yes, sir.

21 A I had been charged but it was dropped because I
22 was a minor. Criminal domestic violence, it was also
23 dropped if I went to management classes, which I did.

24 Q So both charges were against you but they were
25 both dropped?

1 **A** Yes.

2 **Q** Okay. I take it that you also says some member
3 of your family had been arrested by the Sheriff's
4 Department or Inman Police Department. That would have
5 been on those charges?

6 **A** My mother, I don't know if it will go to that.
7 I don't know really what it was called. It was not
8 attempted murder. But she had stabbed my ex-husband. She
9 served like five years probation. It was an abuse case
10 which was with me involved. But I did not get charged.
11 So it was like assault and battery high and aggravated or
12 something that. I don't know.

13 **Q** So your mother was charged with an assault
14 charge?

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

16 **Q** For stabbing your ex-husband?

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

18 **Q** And was that because your ex-husband had
19 assaulted you?

20 **A** I had a lot of charges. He was abusive towards
21 me.

22 **Q** You were in an abusive relationship?

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

24 **Q** How long were you and your ex-husband together?

25 **A** Maybe two years.

1 Q Okay. Also, you also indicated that you had some
2 knowledge of Safe Homes.

3 A Yes, at that time, I did go to safe homes when I
4 was in that situation.

5 Q With your ex-husband?

6 A Yes.

7 Q How many times had you gone to Safe Homes?

8 A Twice. I never did go into the safe home where,
9 you know, you hide away. I just went and got information.
10 They help get me an order of protection.

11 Q You have since remarried?

12 A Yes, sir.

13 Q With that experience of having been the victim of
14 criminal domestic violence or domestic violence and having
15 been the victim of an abusive relationship, do you think
16 that that would affect your ability to be fair and
17 impartial in this case?

18 A No, sir. I don't know the situation. I do know
19 that was my situation.

20 Q Okay. Let's say the situations are comparable.
21 Would that affect your ability to be fair?

22 A No.

23 Q You would be able to put aside your experiences
24 and just to deal with the facts and evidence as they were
25 presented from the witness stand?

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

2 **Q** You are a homemaker?

3 **A** Yes.

4 **Q** You have never been a schoolteacher, have you?

5 **A** No.

6 **Q** You went to the eighth grade?

7 **A** Yes.

8 **Q** Can you read and write?

9 **A** Yes.

10 **Q** And at some point, you were under doctor's care?

11 **A** Yes.

12 **Q** But you are no longer?

13 **A** No, sir.

14 **Q** When was the last time you saw your doctor?

15 **A** I see a back doctor.

16 **Q** I'm talking about --

17 **A** Psychiatrist, something like that?

18 **Q** You said you had seen a doctor for your nerves?

19 **A** Yes.

20 **Q** When was the last time you seen that doctor?

21 **A** The first of the year. About January.

22 **Q** Okay. Are you still seeing him or has he
23 released you?

24 **A** I'm not seeing him anymore. He has not released
25 me. I have an insurance problem.

1 Q You stopped going because of insurance problem?

2 A Yes.

3 Q You say you see a back doctor?

4 A Yes.

5 Q Is it a chiropractor or is it a medical doctor?

6 A It is a medical doctor. Two of my discs do not
7 have any fluid in it. Eventually I'm going to have to have
8 surgery.

9 Q Do you believe that that condition with your back
10 would substantially affect your ability to perform your
11 duties as a juror?

12 A No, sir.

13 Q You are pretty able to maintain and not have any
14 problems with it?

15 A Yes, sir.

16 Q Okay. Now I don't want to belabor the point
17 because the judge has gone over this all with you and
18 covered it. There are two things I would like to ask you
19 about. The first thing the judge is going to tell you
20 that if you are picked as a juror, first of all, you would
21 take an oath as a juror.

22 A Uh-huh (affirmative).

23 Q Then the judge will instruct you that as a juror
24 that everyone in this country under our constitution both
25 the State and the federal constitution who is charged with

1 a crime is presumed to be innocent of that crime.

2 A Uh-huh (affirmative).

3 Q And they remain innocent. They keep that
4 presumption up until and only if the jury decides that they
5 are no longer entitled to that presumption. Of course,
6 that would be up to the jury after hearing all the facts
7 and the evidence that is presented by the State has to be
8 convinced beyond a reasonable doubt that he is no longer
9 entitled to that presumption. Would you have a problem in
10 following the judge's instructions on the presumption of
11 innocence?

12 A No.

13 Q You understand that as Mr. Lindsey sits there
14 now, he is innocent --

15 A Uh-huh (affirmative).

16 Q -- of this crime?

17 A Uh-huh (affirmative).

18 Q He will remain innocent until the jury decides he
19 is no longer entitled to that presumption.

20 A Yes, sir.

21 Q You can be fair and accept that?

22 A Yes, sir. I will be.

23 Q We also wanted to discuss with you about this is
24 a two-part process. The first part, of course, is just
25 like a regular trial where the State presents their

1 evidence and the jury has to decide the guilt or innocence
2 of Mr. Lindsey. Of course, if they don't prove beyond a
3 reasonable doubt his guilt, then we don't go to the second
4 part.

5 A Okay.

6 Q All right?

7 A Uh-huh (affirmative).

8 Q If they do, they will move on to the second part
9 which is the sentencing phase. Now in that phase, the
10 State is going to present evidence that they hope will
11 convince the jurors that this particular murder is worse
12 than other murders. And therefore, it deserves to, the
13 death penalty is warranted in this case because of the
14 circumstances of the murder.

15 A Uh-huh (affirmative).

16 Q And those are called aggravators and the judge
17 has told you about that. Of course, what the defense is
18 going to be doing is we're going to be presenting
19 mitigating circumstances, circumstances about Mr. Lindsey,
20 about the case and about his life that we believe lessen
21 the severity of the murder and that the proper punishment
22 will be life.

23 A Uh-huh (affirmative).

24 Q Okay. Now there are two things I don't know if
25 you understand. But the first one is you never have to

1 give death automatically.

2 A Okay.

3 Q Life is always an option.

4 A Uh-huh (affirmative).

5 Q Second of all, if a person is convicted, if a
6 person, if jury decides that the proper punishment for a
7 person is life in prison, it is real life.

8 A Uh-huh (affirmative).

9 Q He will die in the Department of Corrections. He
10 will never get out.

11 A Okay.

12 Q All right. So given those two sets of
13 circumstances, could you, would you have any problem giving
14 both sides in that portion, if we get that far, could you
15 have a problem in giving both sides a fair and impartial
16 hearing on the evidence that each side will prevent?

17 A No, I would not.

18 Q I mean present. I'm sorry. Would present.

19 A I would not have a problem. I will be fair.

20 Q Okay. And you could listen to both sides and you
21 would have no bias or no desire to punish somebody, no
22 desire to reward someone. You will base your decision
23 solely upon the evidence that you heard at that proceeding?

24 A Only on the evidence that I hear.

25 Q All right. Now, let's say that after considering

1 all the facts and all the evidence in that second part, in
2 the penalty part, and the jury, they are the ones that
3 impose this sentence.

4 A Uh-huh (affirmative).

5 Q The judge does not in these kind of cases.
6 Let's say and there is a sentencing sheet that has to be
7 signed by the jury. Of course, it has got to be
8 unanimous. The jury's decision has got to be unanimous.
9 All twelve has got to decide either for death or for life.
10 Okay, it cannot be a split decision. It has to be
11 unanimous. Either way whether it is life or death, the
12 sentencing sheet must be signed.

13 A Okay.

14 Q Let's say by the luck of the draw, you are the
15 12th juror around the table. The other eleven jurors
16 after deliberating, the jury has decided death is the
17 appropriate sentence.

18 A Uh-huh (affirmative).

19 Q And the other eleven have signed the sentencing
20 sheet. And it is passed to you. You know that when you
21 sign that sheet by putting your name on that sheet that you
22 will be condemning Mr. Lindsey to death.

23 A Uh-huh (affirmative).

24 Q Would you have a problem doing that if you
25 believe that death was appropriate?

1 **A** After hearing all of the evidence and if I
2 believe it, then I could sign it.

3 **Q** Okay. Thank you very much.

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

5 **EXAMINATION**

6 **BY MR. WILLINGHAM:**

7 **Q** Ms. Hollingsworth, my name is Donnie Willingham.
8 This is Barry Barnett and Mr. Gowdy. We are going to be
9 the prosecutors on this case. I have a few questions to
10 ask you. They are somewhat personal questions.

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

12 **Q** I hate to do it, but I have to find out the
13 answers. When you looked over that witness list, you told
14 the judge there was nobody on that list that you knew.

15 **A** Not that I recognize.

16 **Q** Now, there's an officer named Jason Yance on that
17 yet list.

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

19 **A** He was the one that arrested you for criminal
20 domestic violence.

21 **A** I'm not good at names. I can't help who arrested
22 me. I know faces like that gentleman back there. I
23 recognize his face, but I don't know his name.

24 **Q** That's Mr. Yance.

25 **A** I'm not good at names. I know faces but not

1 names. I can take you down everybody and show you
2 everybody that arrested me, but I'm not really good at
3 names.

4 Q How many times have you been arrested?

5 A I have been arrested twice I believe for assault
6 and battery. Two to three times I know.

7 Q You arrested once back in 1997?

8 A Right. That will be probably the assault and
9 battery.

10 Q You were arrested again in 1998 for the other
11 assault and battery?

12 A I don't know who that would be on unless it was
13 my boyfriend who I'm married to now.

14 Q So you were charged with assaulting and a battery
15 of your boyfriend that you know now?

16 A I thought was criminal domestic violence. It
17 might have been.

18 Q You got a criminal domestic violence in 2000?

19 A Yes.

20 Q You were convicted of that one and you were given
21 a \$425 fine suspended upon going to counseling.

22 A That's right. That's the one I was telling him
23 about.

24 Q You went before the judge. And he gave you a
25 fine and told you you did not have to pay the fine if you

1 went to counseling?

2 **A** If I went to anger management classes.

3 **Q** Ms. Hollingsworth, you're going to have to
4 explain to me, if you would, on the questionnaire that you
5 filled out.

6 **A** When I went and got a record of mine, the only
7 thing I would have got on there was assault and battery.
8 I went and got a record down at the courthouse because I
9 had to have a background check. And all that was on there
10 was assault and battery.

11 **Q** My question to you is on this questionnaire, it
12 asked if you a family member or a person close to you ever
13 been accused of a crime. Do you remember that question?

14 **A** Yes.

15 **Q** You answered no. So that is not true, is it?

16 **A** They were supposed to have been all dropped.

17 **Q** It did not ask if it was dropped. It asked if
18 you were accused --

19 **THE COURT:** Let me, uh -- Ms. Hollingsworth,
20 just step in the hall for just one second please.
21 Just one second. We will get you right back out
22 here.

23 (WHEREUPON, Ms. Hollingsworth exits at approximately
24 9:44 a.m.)

25 **THE COURT:** I think your tone is a little bit

1 harsh with this juror. I think you need to be a
2 little bit more respectful of her and not be so
3 accusatory of her in asking her those questions. All
4 right?

5 **MR. WILLINGHAM:** I apologize Your Honor.
6 Sometimes I have problem with when people are not
7 honest with me.

8 **THE COURT:** With what?

9 **MR. WILLINGHAM:** When people aren't honest with
10 me.

11 **THE COURT:** Well, you let me be the judge of
12 that. You just bring out the evidence in a
13 respectful way. I will be the one who decides whether
14 or not she is being honest.

15 **MR. WILLINGHAM:** Yes, sir.

16 **THE COURT:** Bring in the jury, the juror.

17 **THE BAILIFF:** She needed to go to the bathroom.
18 She is crying.

19 **THE COURT:** She's what?

20 **THE BAILIFF:** She is crying.

21 (WHEREUPON, there was a pause.)

22 **THE COURT:** They are going to let you know when
23 she is ready?

24 **THE BAILIFF:** Yes, sir.

25 (WHEREUPON, there was a pause.)

1 **THE COURT:** While we have this break and while
2 this juror collects herself so she can come back in
3 and finish answering questions, is there anything that
4 either you have to say about the qualifications of the
5 juror that might save us the need to go any farther?

6 Mr. Bartosh?

7 **MR. BARTOSH:** We don't believe she is
8 qualified, Your Honor.

9 **MR. WILLINGHAM:** Not the State either.

10 **THE COURT:** Tell the bailiff to bring me a new
11 juror.

12 Is she out there?

13 **THE BAILIFF:** No, sir.

14 **THE COURT:** Go ahead and bring us the next juror.

15 **THE BAILIFF:** Okay.

16 (WHEREUPON, Brandon Greenway, Juror number 112, enters
17 at approximately 9:46 a.m.)

18 **BRANDON GREENWAY**

19 having previously been sworn, testified as follows:

20 **EXAMINATION**

21 **BY THE COURT:**

22 **Q** Mr. Greenway.

23 **A** Yes, sir.

24 **Q** How are you today?

25 **A** Good.

1 Q You recall that on Monday morning we put you
2 under oath?

3 A Yes.

4 Q You are still under oath right now. You
5 understand that?

6 A Yes, sir.

7 Q Since Monday afternoon when you left us, have you
8 talked to anybody about this case?

9 A No, sir.

10 Q Or has anyone talked to you about the case?

11 A No, sir.

12 Q Have you read, heard or watched or listened to
13 anything about this case?

14 A No, sir.

15 Q We need to ask you some questions. These
16 questions don't have right or wrong answers. We just want
17 you to be open and honest with us and to tell us what you
18 think and how you feel.

19 A Yes, sir.

20 Q We're going to talk about a possible sentencing
21 phase for this trial. That does not mean anything about
22 this defendant or anything about this case. It just means
23 that because we know we might get to the sentencing phase,
24 we need to ask you some questions about some issues that
25 will may come up if we do.

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

2 **Q** If you are a juror in this case, would you accept
3 and apply the law precisely as I will give it to you, set
4 aside anything that you might have learned or heard about
5 this case before the trial began and render a verdict that
6 is based solely on the testimony and the evidence that you
7 hear in this courtroom?

8 **A** Yes, sir.

9 **Q** You understand that in a criminal case like this,
10 the State has the burden of proving the defendant guilty
11 beyond a reasonable doubt?

12 **A** Yes, sir.

13 **Q** Could you, and you know this is a murder case?

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

15 **Q** Could you, depending on the facts and
16 circumstances that you find to be proving and in light of
17 the law as I give it to you, can you find the defendant
18 either guilty or not guilty depending on whether you think
19 the State has met its burden of proof?

20 **A** Yes, sir.

21 **Q** If you are on the jury in this case and the jury
22 finds the defendant guilty of murder, we move into the
23 second phase or the penalty phase of the trial. I'm going
24 to talk to you now about some issues that will come up when
25 that happens. Aggravating circumstances are facts,

1 incidents or details of an occurrence that South Carolina
2 has declared to aggravate or make worse the crime of
3 murder. Aggravating circumstances increase the enormity
4 of the crime and add to the injury resulting from the
5 crime.

6 Mitigating circumstances, on the other hand, are facts
7 incidences or details of occurrences that South Carolina
8 has declared to lessen the severity of the crime of murder.
9 They serve to extenuate or to reduce the degree of moral
10 culpability or responsibility for the crime. You
11 understand all of that?

12 A Yes, sir.

13 Q If you on the jury in a death penalty case in a
14 sentencing phase, you will have two options as to what your
15 verdict could be. One option is a life sentence and the
16 other option is a death penalty. Could you, depending on
17 the facts and circumstances that you find to exist and
18 considering, considering any aggravating or mitigating
19 circumstances and considering the law as I will give it to
20 you, could you return a verdict or vote to return a verdict
21 for a life sentence?

22 A I think so.

23 Q Could you vote to impose the death penalty?

24 A I don't think so.

25 Q You don't believe you could impose the death

1 penalty?

2 **A** I don't think so.

3 **Q** Why is that?

4 **A** I don't know. I think that is too big of a
5 responsibility for me. 19 years old, I don't want the
6 feeling that I have a man's life in my hands.

7 **Q** All right. So, if you are on the jury and you
8 are concerned about the responsibility as you said of
9 having a man's life in your hands and you are concerned
10 about whether or not you can actually vote to impose the
11 death penalty and sign your name to the verdict form that
12 would have to be signed in order to impose the death
13 penalty, do you think that your concern and your feelings
14 would substantially interfere with your ability to follow
15 your instructions as a member of the jury and weigh both
16 options that you would have to weigh?

17 **A** No, sir. I would do my job.

18 **Q** If you decide that you felt the death penalty was
19 appropriate, could you vote to impose it?

20 **A** I'm not sure. I would have to be in a position,
21 I guess.

22 **Q** You would have to be in the position. All
23 right. I'm going to let the lawyers follow up a little bit
24 on that. And then I'm going to come back and talk to you
25 some more.

1 **A** All right.

2 **THE COURT:** You have any voir dire?

3 **MR. BRENNAN:** Yes.

4 **EXAMINATION**

5 **BY MR. BRENNAN:**

6 **Q** Mr. Greenway, my name is Doug Brennan. I'm an
7 attorney from here in Spartanburg.

8 **A** Hi.

9 **Q** This is Mike Bartosh and Karen Quimby. We have
10 the opportunity to represent Mr. Lindsey. Do you
11 understand that in the South Carolina the death penalty is
12 never mandatory?

13 **A** I know now.

14 **Q** All right. If you were placed on this jury and
15 the defendant was found guilty, we would then move into the
16 sentencing phase. It would be what would resemble another
17 trial. It will be evidence presented an aggravation and
18 in mitigation. At the end of that, the jury would be
19 asked to recommend a sentence. The way you recommend a
20 sentence is by all twelve jurors signing the form for
21 either life in prison or the death penalty.

22 If a decision had been made by the jury that the death
23 penalty was a proper sentence and all eleven jurors had
24 signed their name, and just by the luck of the draw, you
25 would be the 12th one. Understanding that your signature

1 would send him to the death penalty, could you sign that
2 form?

3 **A** I don't think so.

4 **MR. BRENNAN:** I have nothing further, Your
5 Honor?

6 **THE COURT:** Does the State have any voir dire of
7 this juror at this time?

8 **MR. BARNETT:** No, sir.

9 **THE COURT:** All right. Mr. Greenway, do you
10 minding stepping in the hall for just a second?

11 (WHEREUPON, Mr. Greenway exits at approximately 9:52
12 a.m.)

13 **THE COURT:** Do you believe that the juror is
14 qualified?

15 **MR. BRENNAN:** No, Your Honor.

16 **THE COURT:** And the State obviously feels he is
17 not qualified?

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

19 **THE COURT:** Bring him back in. And hold the
20 next juror while I ask the lawyers a question.

21 (WHEREUPON, Mr. Greenway enters at approximately 9:52
22 a.m.)

23 **THE COURT:** We appreciate you coming in. We
24 are not going to need your service. Tell me, you
25 live in Mayo?

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

2 **THE COURT:** Where is that?

3 **MR. GREENWAY:** That's between here and Chesnee.
4 It is straight down 221.

5 **THE COURT:** Okay. All right. Thank you. You
6 are free to go.

7 (WHEREUPON, Mr. Greenway exits at approximately
8 9:53 a.m.)

9 **THE COURT:** Let me see the lawyers in my office
10 for a few minutes.

11 (WHEREUPON, a short recess was taken at approximately
12 9:53 a.m.)

13 (WHEREUPON, the Court resumed at approximately
14 10:09 a.m.)

15 **THE COURT:** We had a discussion. The solicitor
16 is not in here, but you stand in. I am telling you,
17 I suppose, what the discussion was since you don't
18 know. We had a discussion in my office with Mr.
19 Bartosh and Solicitor Gowdy about whether or not we
20 needed to bring Mr. Greenway back in here in order to
21 make certain that he is not a qualified juror.

22 Some concern was raised by me that perhaps he is
23 in fact qualified or we could find out that he is
24 qualified. So we're going to bring him back. And we
25 we're going to ask him a few more questions. We will

1 see.

2 Is that right, Mr. Bartosh?

3 **MR. BARTOSH:** That's correct, sir.

4 **THE COURT:** That's what you want me to do?

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

6 **THE COURT:** Was there something else I was going
7 to put on the record?

8 **MR. BARTOSH:** Was it about the other -- may we
9 approach, Your Honor?

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

11 (WHEREUPON, a bench conference was held off the
12 record.)

13 **THE COURT:** I'm also going to -- we had this
14 discussion. Basically, the discussion was about the
15 depth of questioning, the thoroughness of questioning
16 by the lawyers of jurors who appeared at the end of my
17 questions to be disqualified either one way or the
18 other because they were either insistent on imposing
19 the death penalty for every conviction of murder or
20 they were so opposed to the death penalty that they
21 would not be able to impose it upon a conviction for
22 murder.

23 And so I feel that it is appropriate that I say
24 that on each of the occasions where someone has been
25 disqualified because of their opinion concerning the

1 death penalty despite the fact that maybe no questions
2 were asked by either the State or the defendant, it
3 has been very clear to me based on what they said in
4 response to my questions that they truly are not
5 qualified.

6 For each of those jurors, I didn't have any doubt
7 in my mind that further questioning from the State or
8 from the defendant could change my mind about whether
9 or not that juror was qualified. The very first time
10 I had any doubt about whether or not the juror truly
11 was qualified was with Mr. Greenway. That's why I
12 brought it up. We're going to remedy that by bringing
13 Mr. Greenway back and giving both sides and giving me
14 an opportunity to ask more questions.

15 That is in short order to say that I firmly
16 believe that both Mr. Bartosh and Mr. Gowdy have
17 appropriately refrained from asking questions when
18 they did refrain from asking questions because there
19 appeared to me to be no hope of there ever being a
20 different conclusion drawn as to the qualifications of
21 the particular juror. All right.

22 (WHEREUPON, Joshua Bennett, Juror number 21, enters at
23 approximately 10:15 a.m.)

24 **JOSHUA BENNETT**

25 having previously been sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q Mr. Bennett?

A Yes, how are you doing?

Q Hi. I'm fine. How are you?

A All right.

Q You recall that on Monday morning we put you under oath?

A Yes, sir.

Q And you understand that you are still under oath right now?

A Yes, sir.

Q Mr. Bennett, since Monday afternoon when you left us, have you talked to anybody about this case or has anybody talked to you about the case?

A No, sir.

Q Have you read, heard or seen anything about this case?

A I heard people talk about it. I didn't pay it no attention.

Q Since Monday, you heard people talking about it?

A Yes.

Q Was that just overhearing a casual conversation that somebody was having?

A No, sir. They would try to say something about

1 it. or ask me to do something. I can't do nothing cause I
2 got jury duty tomorrow.

3 Q Wait a minute now. Try to ask you to do
4 something that is not related to the case?

5 A Oh, yeah.

6 Q Like go out or --

7 A Go out.

8 Q -- go fishing or go on a trip or something like
9 that?

10 A Yes.

11 Q And you told them that you can't go cause you got
12 to hang around to talk to the judge about this case?

13 A Yes.

14 Q And then what would happen?

15 A And they would say are you on that case or
16 whatever. And I was like I don't know. I ain't supposed
17 to say nothing about it.

18 Q In the course of those conversations -- and the
19 lawyers may follow up a little bit here with me. But in
20 the course of any of those conversations, did anybody tell
21 you anything about this case?

22 A No, sir.

23 Q So they would just say what you said, ask you if
24 you were on that case. And they might have mentioned the
25 name of the case?

1 **A** Yes, sir.

2 **Q** In describing the case so that they could ask you
3 if that's the one that you are on, did they say anything
4 about what they thought happened?

5 **A** No, sir.

6 **Q** Okay. So from any of those conversations, did
7 you learn anything about what anybody else thought about
8 what might have happened in this case?

9 **A** No, sir.

10 **Q** All right, sir. Thank you for bringing that to
11 our attention. Now, we're going to ask you some more
12 questions. And these questions don't have right or wrong
13 answers. We just want you to listen carefully and be open
14 and honest with us. Tell us what you think and how you
15 feel.

16 We're going to talk a little bit about a possible
17 penalty phase. That doesn't mean anything about this
18 defendant or about this case. It just means that we know
19 we might get into a sentencing phase. We need to ask you
20 some questions about some issues that will come up if we
21 get that far.

22 If you are a juror in this case, can you accept and
23 apply the law precisely as I will give it to you and set
24 aside anything that you might have heard or learned about
25 the case before the trial started and render a verdict that

1 is based solely on the testimony and the evidence that you
2 hear and see in this courtroom. Can you do that?

3 A Yes.

4 Q You understand in case like this the State has
5 the burden of proof?

6 A Yes.

7 Q And must meet that burden of proof beyond a
8 reasonable doubt. You understand that?

9 A Yes.

10 Q And you understand this is a murder case?

11 A Yes.

12 Q If you are a juror on this case, could you,
13 depending on the facts and circumstances that you find to
14 have been proven and in light of the law as I will give it
15 to you, could you return a verdict of either guilty or not
16 guilty depending on whether or not you believe the State
17 has met its burden of proof?

18 A Yes, sir. I don't want to be charge of
19 somebody's actual --

20 Q All right. Now, I'm going to -- you're talking
21 about what the sentence is going to be?

22 A Yes, sir.

23 Q Okay. I'm going to ask you about that. Let me
24 just go ahead and explain to you the things that I'm going
25 to explain. And then I will ask you that question and we

1 will talk about it. Okay.

2 A Okay.

3 Q Now, if you are on the jury in this case and if
4 the jury finds the defendant guilty of murder, we would
5 move into the sentencing phase of the trial. There are
6 some issues that will come up there that I'm going to talk
7 to you about now. Aggravating circumstances are facts,
8 incidents or occurrences that the State of South Carolina
9 has declared aggravate or make worse the crime of murder.
10 Aggravating circumstances increase the enormity of the
11 crime and add to the injury that results from the crime.

12 Mitigating circumstances, on the other hand, are facts
13 incidents or details of an occurrence that South Carolina
14 has declared to reduce or lessen the severity of the crime
15 of murder. And they serve to extenuate or to reduce the
16 degree of moral culpability or responsibility.

17 If you are on the jury in the sentencing phase of a
18 death penalty case such as this, you would have two options
19 as to what your verdict could be. You could impose the
20 life sentence or you could impose the death penalty. Now,
21 could you, depending on the circumstances and the facts
22 that you find to exist and considering any aggravating or
23 mitigating circumstances and considering the law as I would
24 give it to you, could you vote to impose a life sentence?

25 A Yes.

1 Q Could you vote to impose a death penalty on the
2 defendant?

3 A No.

4 Q Are you sure about that?

5 A Yes.

6 Q Have you thought about that?

7 A Yes, sir. I don't like -- I think I'm too young
8 to judge anybody about...

9 Q So if you were put in that situation, you just
10 don't feel that you could accept the responsibility of
11 giving somebody the death penalty?

12 A Yes, sir.

13 THE COURT: All right. Are there any questions
14 that you want to ask him, Mr. Bartosh?

15 MR. BARTOSH: Yes, sir.

16 THE COURT: All right, sir.

17 EXAMINATION

18 BY MR. BARTOSH:

19 Q Mr. Bennett, I'm Mike Bartosh. I'm a lawyer
20 here in Spartanburg. Along with Doug Brennan and Karen
21 Quimby, we represent Marion Lindsey in this case. The
22 judge has explained to you what this case is about. It's a
23 murder case.

24 A Yes.

25 Q And these kinds of cases are divided into two

1 parts. The first part is like a regular trial. What the
2 job of the jury in that part is to decide after hearing all
3 the evidence that has been presented by the State, they
4 have to decide whether or not the State has met its burden
5 and proven Mr. Lindsey guilty of murder beyond a
6 reasonable doubt. Okay?

7 A Okay.

8 Q Now, if the jury decides, all twelve decide that
9 they have not met that burden, then nothing happens after
10 that. It's over with, okay. And the jury's part of it is
11 done. But let's say that the jury comes back and says,
12 yes, the State has met its burden. We find him guilty,
13 okay?

14 A Okay.

15 Q Then we move into a second part which the judge
16 has talked to you about. And that second part is, the way
17 it's going to work is this. Once again, the State is going
18 to present evidence. And they are going to present
19 evidence, it's called aggravating circumstances, okay?

20 A Okay.

21 Q Which means that they are going to present
22 evidence that they believe will show that the crime is
23 worse, it's more serious than a regular, I don't want to
24 call it a regular murder, but a murder. For whatever
25 reason, there are some circumstances that are with it that

1 cause it to be worse.

2 Of course, what we're going to be doing, the defense
3 is we're going to be presenting evidence that we're going
4 to show that the murder is less serious than the State is
5 trying to show. So your part in all of this if you are
6 chosen to be on the jury, your part in all of this would be
7 to sit there and listen to the evidence presented by both
8 sides giving both sides a fair and impartial hearing. Not
9 being biased towards one or the other, either the defense
10 or the prosecution. Okay?

11 A Okay.

12 Q And then at the end, of course, the jury is going
13 to have to decide what the proper punishment should be.
14 The first thing I want to tell you is, as Mr. Lindsey sits
15 there, he is innocent. Under our system of laws, everybody
16 accused of a crime no matter what it is is presumed to be
17 innocent. Okay.

18 A Okay.

19 Q The judge will tell you that if you are placed on
20 this jury. Now, would you have a problem accepting that
21 instruction from the judge that Mr. Lindsey is innocent of
22 this crime?

23 A Yes, sir.

24 Q You would have a problem?

25 A Yes.

1 Q Why would you have a problem accepting that?

2 A I don't know. If people say he did it, then you
3 have to assume that he did.

4 Q I thought you said you hadn't heard anything
5 about the case.

6 A Well, I mean -- I don't know. If people say he
7 did, then he did. I didn't say I heard anything about the
8 case.

9 Q So you are saying that just because somebody gets
10 up on the stand and says that he is guilty, that would be
11 enough for you? You're not willing to listen --

12 A That wouldn't be enough for me.

13 Q So you would be willing to listen to both sides?

14 A Yes, sir.

15 Q So would you consider him innocent until you were
16 convinced that he was guilty?

17 A If that's how the State sees it.

18 Q That's not how the State sees it. That's how
19 you're supposed to see it.

20 A Yes, sir.

21 Q You would? You would have no problem doing that?

22 A No problem.

23 Q Okay. And then, of course, like I say, that
24 innocence stays with him until a jury decides that he is
25 not entitled to it, okay?

1 A Okay.

2 Q If at some point after hearing all the evidence,
3 they decide he is not entitled to that presumption and find
4 him guilty, then he is no longer presumed to be innocent.
5 Would you have a problem with that?

6 A No.

7 Q All right. Would you have a problem sitting and
8 listening to the evidence in order to decide whether Mr.
9 Lindsey was guilty of murder?

10 A No.

11 Q That would not bother you?

12 A Huh-uh (negative.)

13 Q All right. Now, you understand that death is not
14 mandatory?

15 A Yes.

16 Q You understand that?

17 A Yes.

18 Q You always have the choice of life. Okay?

19 A Okay.

20 Q What we are basically asking you to do, and of
21 course, nobody enjoys doing this. You would hope that
22 nobody in this world would come in here and say I want to
23 sit on a death penalty juror. It's difficult for everyone.

24 A Yes.

25 Q But it is something that in certain cases, it has

1 to be done. And this is one of those cases where the State
2 is seeking to impose the death penalty on Mr. Lindsey.
3 Now, what we're asking you to do as a citizen of
4 Spartanburg County is to sit and listen to both sides
5 fairly without any bias towards one side or any bias
6 towards the State or any bias to the defense, listen to
7 both sides and make a decision. The two decisions that you
8 have are you could either say I do not believe that this
9 deserves the death penalty and I'm going to vote for life,
10 okay?

11 A Okay.

12 Q Or on the other hand if after considering all the
13 evidence and all of the testimony and in the penalty phase
14 you believe, yes, I do. I believe that it does meet, it
15 does -- that it does deserve the death penalty that you
16 would follow your conscience and vote for death. Okay?

17 A Okay.

18 Q Those are -- that's what this is all about.
19 That's what we're trying to determine, if you could do that
20 knowing you never have to vote for death if you don't
21 believe it's appropriate. Okay.

22 A Okay.

23 Q If you don't believe it's appropriate, you don't
24 have to vote for it. The decision has got to be unanimous.

25 A Yes.

1 Q All twelve of the jurors have either got to vote
2 for life or vote for death. Okay. I understand you are
3 young.

4 A Uh-huh (affirmative).

5 Q I understand this is an awful young time, an age
6 to come in and face this. But this is what we're asking
7 you to do, we're asking you to be fair. That's -- if you
8 want to boil down to it, that's what we're asking you to
9 do. We're asking you to be fair to both sides, be fair to
10 Mr. Lindsey and be fair to the State. Now, could you do
11 that?

12 A Yes.

13 Q All right. And if you felt the death penalty was
14 appropriate, could you vote for it?

15 A See, that's what I don't want to do. I couldn't
16 do that. I couldn't send nobody -- I don't know what I'm
17 trying to say. But I couldn't send him to the death
18 penalty. And I wouldn't want to send him to life. I don't
19 want to make decisions for nobody else. I feel like I'm
20 too young to do that. I ain't but 19 years old.

21 Q I understand that, sir. That's young. But what
22 you're telling me just so I understand is, what you're
23 telling me is you do not believe that you could sit in
24 judgment and decide life or death?

25 A No, sir. I wouldn't feel right doing that.

1 **Q** And you can't think of any circumstances where
2 you could do either one?

3 **A** No, sir. If I was to sit through the court and
4 hear everybody's opinion, I don't know if that would change
5 my mind about things or not. But I really wouldn't want to
6 make that decision for nobody.

7 **Q** So your objection is having to make the decision?

8 **A** Yes, sir.

9 **Q** Not the punishment?

10 **A** Yes, sir.

11 **Q** And you can't think of any circumstances -- and
12 you understand now, nobody is going to know anything about
13 the case.

14 **A** I understand that.

15 **Q** Nobody's going to know anything about it. But
16 you still don't believe that you could.

17 **A** I don't think I could make decisions for nobody.

18 **MR. BARTOSH:** That's all I have, Your Honor.

19 **THE COURT:** All right. Mr. Bennett, step out in
20 the hall for one second, please, sir.

21 (WHEREUPON, Mr. Bennett exits at approximately
22 10:32 a.m.)

23 **THE COURT:** I assume you agree he is not
24 qualified?

25 **MR. BARTOSH:** He's not qualified.

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

2 (WHEREUPON, Mr. Bennett enters at approximately
3 10:32 a.m.)

4 **THE COURT:** Mr. Bennett, we appreciate you
5 talking to us. We know that was difficult for you.
6 But we're not going to need your services anymore in
7 this case. And you are free to go. Thank you.

8 (WHEREUPON, Mr. Bennett exits at approximately
9 10:32 a.m.)

10 **THE COURT:** Now, I will just say that confirms
11 every -- in my mind, that confirms everything we said.
12 This is a guy that you probably also thought could not
13 be rehabilitated or could not be qualified. I was
14 convinced when I finished talking to him that he was
15 never going to be qualified as a juror.

16 You did an outstanding job of trying to bring out
17 a discussion that would get him to acknowledge that he
18 could be a fair juror. And in the end, he couldn't do
19 it. I believe that your judgment in deciding not to,
20 I continued to be that your judgment in deciding not
21 to do that to some of the other jurors who have
22 appeared obviously unqualified was sound judgment and
23 appropriately exercised.

24 **MR. BARTOSH:** Thank you, Your Honor.

25 **THE COURT:** Bring in the next juror.

1 (WHEREUPON, Traci Brock, Juror number 203, enters at
2 approximately 10:34 a.m.)

3 **TRACI BROCK**

4 having previously been sworn, testified as follows:

5 **EXAMINATION**

6 **BY THE COURT:**

7 **Q** Ms. Brock?

8 **A** Yes.

9 **Q** Good morning.

10 **A** Good morning.

11 **Q** How are you?

12 **A** Fine.

13 **Q** Good. You recall that on Monday morning, we put
14 you under oath?

15 **A** Yeah.

16 **Q** And you understand you are still under oath right
17 now?

18 **A** Yes.

19 **Q** Since you left us Monday afternoon, has anybody
20 talked to you about this case or have you talked to anybody
21 about the case?

22 **A** No.

23 **Q** Have you seen, read or hear anything about this
24 case?

25 **A** Yes.

1 Q Since Monday?

2 A No.

3 Q All right. Now, we're going to talk to you,
4 we're going to talk to you about -- the lawyers will talk
5 to you about what you had heard beforehand. But let me ask
6 you this, if you are on the jury in this case, can you
7 accept and apply the law as I will give it to you and set
8 aside anything that you might have heard or learned about
9 this case before the trial began and render a verdict that
10 is based solely on the testimony and evidence that you hear
11 in this courtroom, can you do that?

12 A Yes.

13 Q And you understand that this is a criminal case
14 and that the State has the burden of proving the defendant
15 guilty beyond a reasonable doubt?

16 A Yes.

17 Q And it's a murder case. You understand that?

18 A Yes.

19 Q Could you, depending on the facts and
20 circumstances that you find to have been proven and
21 considering the law as I will explain it to you, could you
22 return a verdict of either guilty or not guilty depending
23 on whether you believe the State has met its burden of
24 proof?

25 A Yes.

1 **Q** If you are on the jury in this case and if the
2 jury finds the defendant guilty of murder, we will move
3 into the second phase or the penalty phase of the trial.
4 And some things will come up during that phase that I'm
5 going to talk to you about right now. Aggravating
6 circumstances are facts, incidents or details of an
7 occurrence that the State of South Carolina has declared to
8 aggravate or to make worse the crime of murder.
9 Aggravating circumstances increase the enormity of the
10 crime and add to the injury that results from the crime of
11 murder.

12 Mitigating circumstances, on the other hand, are
13 facts, incidents or details of an occurrence that South
14 Carolina has declared to lessen the severity of the crime
15 of murder. And they serve to extenuate or to reduce the
16 degree of moral culpability or for the crime.

17 If you are on the jury in the sentencing phase of this
18 case, you would have two options as to what your verdict
19 could be. One would be for a life sentence and the other
20 one would be for the death penalty. Could you, depending
21 on the facts and circumstances that you find to exist and
22 considering the law as I would give it to you, could you
23 vote to impose a life sentence?

24 **A** Do you mean life or death?

25 **Q** I'm going to ask you about both. But I'm first

1 asking you about life. Could you vote to impose a life
2 sentence?

3 A If I believed in it.

4 Q Could you vote to impose a death penalty?

5 A Yes.

6 Q So if I'm correctly understanding what you are
7 telling me, you would sit and listen to everything that you
8 are required to listen to and you would think it through.
9 And in the end, you would vote either to impose a life
10 sentence or the death penalty depending on which one you
11 believe is the appropriate sentence?

12 A Correct.

13 Q Ma'am, if you are on the jury in this case, you
14 might be put up in a hotel for five or six days and not
15 allowed to go home to your family. Would that impose a
16 terrible burden on you?

17 A Yes.

18 Q Tell me why that is.

19 A Cause I have a 13 year old son. It's just the
20 two of us. I don't have any immediate family here. He has
21 family on his side. I'm a single parent.

22 Q Is his father in town?

23 A No, he's in a drug rehab.

24 Q I see. All right. If I were to do that to you
25 or if you were on the jury and I were to sequester you, how

1 would you handle it? Is there anybody who could keep your
2 son for about a week while you are away?

3 A Well, if it came down to it, you just do what you
4 have to do.

5 Q Well, I mean, we don't want to get to the point
6 where you do what you have to do. We want to know if
7 there's a reasonable way that you could accommodate the
8 care of your son while you are serving on a jury. Do you
9 have a friend or do you have a family member? Does your
10 son have a grandparent?

11 A They have grandparents here. But you're talking
12 five continuous days staying there every day. It's not --

13 Q Let me do it this way.

14 A Okay. I'm not being difficult.

15 Q No, ma'am.

16 A I'm just trying to be honest.

17 Q No, ma'am. You're not being difficult. Do you
18 want me to consider taking you out of the jury pool because
19 of the difficulty that you would have taking care of your
20 son while you are serving on the jury? Do you want me to
21 consider that or do you want to go ahead?

22 A I would like for you to consider it.

23 Q All right.

24 A It's a total inconvenience for me, my child and
25 the people I would have to find.

1 **Q** Okay. Let me get you to step in the hall for
2 just one second.

3 **A** Okay.

4 (WHEREUPON, Ms. Brock exits at approximately
5 11:05 a.m.)

6 **THE COURT:** No objection to her being excused.

7 **MR. GOWDY:** She has family here in
8 Spartanburg that can provide for him. And I am very
9 sympathetic to it, but until she crosses the threshold
10 of saying that it can be worked out. I appreciate the
11 difficulty of it. But a lot of jurors have
12 difficulty. I think she's got to take it up another
13 step. And I think Your Honor was going in that
14 direction. Is it possible or is it impossible?
15 Possible and difficult --

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

17 (WHEREUPON, Ms. Brock enters at approximately 11:06
18 a.m.)

19 **BY THE COURT:**

20 **Q** Ma'am, I'm very sensitive to the fact, for
21 anybody who gets put in this situation that they, that it's
22 difficult for them. Serving on the jury is always an
23 imposition on citizens. And it is particularly so if the
24 jury is going to be sequestered. Let me talk to you a
25 little bit more about it.

1 If you are on the jury and the jury is sequestered and
2 if your son is then required to go and stay with a
3 grandparent or a friend or whatever, would he be in an
4 environment where you would feel comfortable and secure
5 about his safety and the ability of those people to monitor
6 his behavior and keep him out of trouble and take care of
7 him?

8 **A** Definitely.

9 **Q** All right. Uh, does he have a good enough
10 relationship with his grandparents so that he would not
11 feel uncomfortable if he were required to go and stay with
12 them during this time?

13 **A** He has his grandparents here. They are just
14 older. He's got my parents that live in North Carolina.
15 It just kind of depends on when the trial takes place as to
16 what they can do.

17 **Q** It's probably going to start today, this
18 afternoon. And if you are on the jury and if I sequester
19 the jury, you would spend tonight at the Marriott and
20 probably -- I'm saying that it's probably going to take
21 five or six days. I could be wrong. I don't think I am.
22 But it could be a little longer than that. And it could be
23 shorter. But if you are on that jury, would you be worried
24 about the safety and security of your son?

25 **A** No, he will be fine.

1 Q All right. Ma'am, I'm going to leave you in the
2 panel. I'm going to leave you in consideration for this
3 jury. Let me apologize for the inconvenience that that
4 potentially causes you. But your situation is not unlike
5 that of many of the other jurors who are going to be under
6 consideration for being put on this jury. You are not on
7 the jury yet. We will go through that process this
8 afternoon. Have you had a chance to go over that witness
9 list?

10 A Yeah.

11 Q Have you read every name on the list?

12 A Yes.

13 Q Do you know or are you related to anybody whose
14 name is on that list?

15 A Yes.

16 Q Who are they?

17 A And I only know them from the past that I was
18 involved with with my ex-husband. I know Wendy Alley from
19 dealing with me and my ex-husband.

20 Q Wendy Alley.

21 A Uh-huh (affirmative). I just met Marc Finley the
22 other day. He's an Inman Police Officer. I know Allen
23 Wood. I worked for his father years ago.

24 Q Who was the second name that you gave me?

25 MR. GOWDY: Marc Finley.

1 BY THE COURT:

2 Q Marc Finley. All right. Ma'am, let me ask you
3 this -- is that all?

4 A Yes.

5 Q Let me ask you this question. Would the fact
6 that you know these witnesses interfere in any way with
7 either your willingness or your ability to give both the
8 State and the defendant a fair and impartial trial?

9 A Not at all.

10 Q Now I'm going to give you a chance because we put
11 you in a little bit of a difficult position to give you a
12 list of 130 something names and ask you to just recall
13 right off the bat which of the ones you know. Maybe you
14 didn't have a chance to mark which ones you knew. If you
15 would like to have another minute to sit right there or to
16 sit right where you are and look over that list again to
17 make sure that you didn't forget to tell us about somebody,
18 I will be glad to give that to you.

19 A It's fine.

20 Q You look like you might have thought there was
21 somebody else.

22 A It was three.

23 Q It was three. All right. Do you know of any
24 reason why you could not give both the State and the
25 defendant a fair and impartial trial?

1 A Because of my mind, my mind has already -- I read
2 it when it first happened a year and a half ago. I was at
3 my office --

4 Q Let me talk to you about that for just a minute,
5 okay?

6 A Okay.

7 Q If you are on the jury, you will be told that
8 your responsibility as a juror is to listen very carefully
9 to the testimony and evidence that is put before you in
10 this courtroom. You will be told that the defendant is
11 presumed innocent under the law and that you must accept
12 that presumption of innocence. So right now as we sit
13 here, Mr. Lindsey is innocent.

14 You will be told that the State has the burden of
15 proving the defendant guilty beyond a reasonable doubt.
16 And then I will explain to you in a little bit more detail
17 exactly what that means. I will then explain to you in
18 detail what is the crime of murder. And I will tell you
19 all the elements of the crime of murder. And that means I
20 will tell you exactly what the State has to prove in order
21 to convict him of murder.

22 Now, there may be some other issues that will come up
23 during the trial that I don't know about yet. If that is
24 true, I will explain all of that to you as well. And in
25 every one of those circumstances, you will be told that the

1 State has to prove each element of the crime of murder
2 beyond a reasonable doubt and that your responsibility is
3 to sit over there in that jury box, listen to the testimony
4 and evidence that is presented to you in the courtroom,
5 consider the law as I explain it to you and determine in
6 your mind and collectively also as a jury whether or not
7 the State has proven each of the elements of murder beyond
8 a reasonable doubt and whether or not the defendant is
9 guilty of murder beyond a reasonable doubt.

10 And you must do that based on what you see and hear in
11 the courtroom. And in doing so, you must forget and set
12 aside anything that you might have heard, anything that you
13 might have learned or any conclusions that you might have
14 reached before the trial began.

15 Now, some people can't do that. We understand. Some
16 people have become so intertwined with a situation or they
17 have become so attached to the conclusions that they may
18 have reached that they just can't do it. Can you do that,
19 ma'am?

20 A It would only be fair to do that.

21 Q And you are correct there. And it would also
22 only be fair if you are honest with me about whether or not
23 you are confident that you can do it. Can you do it?

24 A Leave the press behind?

25 Q Leave everything that you --

1 A Yeah, I can do that.

2 Q And you can make your decision based on what you
3 see and hear in the courtroom?

4 A Yes.

5 Q All right. Now, I'm going to let the lawyers
6 talk to you for a few minutes. Then I will probably come
7 back and talk to you again in just a minute. Thank you,
8 ma'am.

9 **EXAMINATION**

10 **BY MR. BARTOSH:**

11 Q Ms. Brock?

12 A Yes, sir.

13 Q I just want to make sure I've got the right name.
14 My name is Mike Bartosh. I am a lawyer here in
15 Spartanburg. And along with Doug Brennan and Karen Quimby
16 and Mr. Lindsey, we are here about his case. And the
17 three of us represent Mr. Lindsey in this matter. You
18 filled out the questionnaire I guess way back when.
19 There's some questions that I would like to ask you about,
20 some of your responses. Okay?

21 A Yes, sir.

22 Q You indicated I guess on Monday that you were
23 related to or know someone in the Solicitor's office?

24 A Yes.

25 Q And who might that be?

1 **A** I just know Trey just through church and my ex-
2 husband, I assume.

3 **Q** Okay.

4 **A** It's more like just an acquaintance.

5 **Q** Both you and Solicitor Gowdy attend the same
6 church?

7 **A** Yes.

8 **Q** How long have you known him?

9 **A** I'm sorry.

10 **Q** How long have you known him?

11 **A** I just know him through my ex-husband.

12 **Q** I know. But I mean are we talking years, months,
13 weeks.

14 **A** Years.

15 **Q** Years. You have any idea how many years?

16 **A** Uh, twelve.

17 **Q** Would the fact that you know Trey Gowdy and the
18 fact that he's prosecuting this case affect you in any way
19 in your ability to be fair to both sides?

20 **A** Not at all.

21 **Q** Okay. And you also said that a member of your
22 family was arrested for some kind of assault.

23 **A** My ex-husband.

24 **Q** And what kind of assault was that?

25 **A** Uh, well, it was on me.

1 Q Okay.

2 A It wasn't recently. It was back in like '94,
3 '95. It's just violence.

4 Q Was he charged?

5 A No.

6 Q Did the police come out?

7 A Yes.

8 Q But he wasn't charged?

9 A I didn't pursue it.

10 Q It was an assault by him upon you?

11 A Yes.

12 Q All right. No charges every came out?

13 A No.

14 Q Okay. Also, you indicated that some member of
15 your family or yourself has been arrested.

16 A Him.

17 Q All right. Anybody else?

18 A No. All this basically pertains to him. He was
19 the one that brought all this into my life.

20 Q Were you in an abusive relationship?

21 A Yeah, I guess. He was a drug abuser which
22 brought out the worse in him. It was more emotional.

23 Q Did the physical abuse happen more than one time
24 during your relationship?

25 A Just a couple of times.

1 Q Okay. Was the police called each time?

2 A Oh, yeah.

3 Q But you never pursued it?

4 A No, he's been arrested several times because he
5 stalked me and it was one of those crazy relationships.
6 When you get them to the courthouse, things would settle
7 down and you drop the charges.

8 Q Would that experience in any way affect your
9 ability to be fair or impartial to Mr. Lindsey?

10 A You have to be fair. You have to leave all that
11 aside and come in fair minded.

12 Q That is exactly what we would like to have. We
13 would like to have twelve folks sitting over there with
14 clean slates with absolutely nothing about what had gone on
15 and could listen to the evidence and be fair to both sides.

16 A Honestly, it's hard. But if that's what you have
17 to do, then you have to put all that stuff aside especially
18 when you been involved in that kind of situation.

19 Q When you say that, are you referring just to your
20 situation or to any other situations that you know about?

21 A I'm referring to any type of abuse situation.
22 It's hard to put it aside. But if you have to, if I would
23 have to, I would.

24 Q But you would find it difficult?

25 A Probably.

1 Q Okay.

2 A If I was picked and I don't want to be picked, I
3 would come in and have to be fair that man and clear the
4 slate and give him a fair trial.

5 Q Well, you say you don't want to be picked. If
6 you are picked, would that affect you in any way, your
7 ability to be fair?

8 A No, it would not affect me. You've got to do
9 what's right.

10 Q This incident happened in Inman?

11 A Right.

12 Q You know all about the incident?

13 A At that time, I did not live at the lake. I
14 lived in Boiling Springs at the time.

15 Q Okay. But you knew all about the incident?

16 A Just what I read in the newspaper on that day,
17 the next day when he was in the paper.

18 Q Okay. Can you tell me what you know about it?

19 A What I remember about it was she was killed in
20 the parking lot of the Inman Police Department and he
21 killed her.

22 Q Okay.

23 A I don't know how she aggravated him, how she
24 pushed his buttons or whatever happened. I just know that
25 she was killed in the parking lot at Inman Police

1 Department.

2 Q Have you formed an opinion as to Mr. Lindsey's
3 guilt or innocence from what you know about the case?

4 A No. I just kind of formed an opinion about
5 anyone who killed somebody. I think it is terrible. I
6 don't have opinion. I don't know the story. I don't
7 know the circumstances.

8 Q Let me go back to that. You just said you
9 formed an opinion when someone killed somebody. Is that
10 one of the things that hits your hot button? Is that
11 something that disturbs you?

12 A When someone kill somebody?

13 Q Murder.

14 A Yes.

15 Q Okay.

16 A Yes.

17 Q And it will cause you to form an opinion?

18 A Yes.

19 Q So you have an opinion about this case?

20 A Yes. I also said that if I was chosen on the
21 jury, I would have to wipe all of that clean. So sitting
22 here talking, yes, I have an opinion. But if I was
23 chosen, you know you have to throw all of that out the
24 window and start over and forget what the press said and
25 give him a fair trial.

1 Q And you could do that?

2 A Yes. If I had to do it, I could do it. You
3 want honesty. I'm just being honest.

4 Q Yes, ma'am. I appreciate it. I appreciate
5 your honesty. You know Mark Finley?

6 A I just met him.

7 Q Okay. And you know Mark Finley is one of the
8 investigating officers or is going to be a witness in this
9 case. You know that?

10 A I just knew that from here.

11 Q Okay. Would the fact that you know Mark Finley,
12 would the fact that you know him, would that cause you to
13 give him more credibility over other witnesses?

14 A Not at all. I don't know him that well. I just met
15 him.

16 Q You also know Allen Wood?

17 A I do. I worked with his dad years ago.

18 Q And Alley's with the Sheriff's Department?

19 A County.

20 Q And who is the --

21 A Wendy Alley

22 Q Wendy Alley. You know her from Family Court?

23 A I know her from going down talking about the
24 domestic violence. They wanted me to pursue it further.
25 And she wanted me to go talk to someone to give me the

1 strength to pursue it further. This was back in the late
2 '90s.

3 Q So you went and talked to Safe Homes?

4 A Yes.

5 Q Did you ever spend any time in Safe Homes?

6 A No. Just a couple of hours, just talking. It
7 was a meeting.

8 Q You have never been arrested?

9 A No.

10 Q Have you have been involved in a jury trial?

11 A Never.

12 Q Can I ask you if you remember filling out your
13 form?

14 A Yes.

15 Q I just want to be sure about this.

16 A Okay.

17 Q That is the only reason why I'm asking. Would
18 you look at question number 16.

19 (WHEREUPON, Ms. Brock reviewed the document.)

20 MS. BROCK: I was not involved in the jury.

21 BY MR. BARTOSH:

22 Q What you are saying is you were on the jury.
23 You were chosen to be on --

24 A No. I was the person sitting, no I wasn't --
25 that was back in 1994.

1 Q Right.

2 A And I guess that was a DUI --

3 Q Right.

4 A That I was found innocent of.

5 Q Correct.

6 A I was not in the jury. I was here.

7 Q Once again I have a tendency not to ask the
8 clearest questions in the world. But you were arrested?

9 A Yes.

10 Q You have been arrested?

11 A Yes.

12 Q You went to trial and you were found not guilty?

13 A Right.

14 Q Now, you understand there's one other thing too,
15 as the judge told you, Mr. Lindsey is presumed innocent
16 until proven guilty beyond a reasonable doubt. You are
17 telling me you would have no problems setting aside your
18 opinions that you hold right now if you were to be put on
19 that jury. You would follow the judge's instructions and
20 consider him to be innocent?

21 A Yes.

22 Q Okay. When the judge was talking to you about
23 the penalty phase, he asked you could you impose life. And
24 you hesitated. And then you said if I believed in it.
25 What did you mean by that?

1 **A** I believe in the death penalty.

2 **Q** I understand.

3 **A** It would have to -- it is just because I believe
4 that if you take a life, your life should be taken. But
5 coming in here, you have to put all of those opinions
6 aside. You have to do your job and put all of that aside.
7 You're asking me. I am telling you how I feel, but I'm also
8 telling you that I can wipe the slate clean, forget what
9 the press said, give the man a fair chance to get up and
10 say why he did what he did.

11 **Q** You understand he does not have to do anything?

12 **A** Well, okay.

13 **Q** You understand that?

14 **A** Right.. You guys do it for him.

15 **Q** No, he has no burden at all. He has no burden at
16 all. He carries no burden to prove that he did not do it.

17 **A** Really?

18 **Q** You understand --

19 **THE COURT:** You want me to talk to her a minute
20 about that.

21 **MR. BARTOSH:** If you would, Your Honor.

22 **THE COURT:** Yes, ma'am. The defendant, as all
23 of us have, and I'm sure that you might have been told
24 this maybe when you had your DUI situation. The
25 defendant has a right to remain silent. The exercise

1 of that right can not be held against him. The
2 defendant would have the opportunity if he chooses to
3 testify or present evidence. But he does not have
4 to. He can just absolutely remain silent and do
5 nothing.

6 And yet the burden of proof still remains on the
7 State to prove him guilty beyond a reasonable doubt.
8 Then if we get in the sentencing phase, the burden is
9 on the State to prove the existence of an aggravating
10 circumstance beyond a reasonable doubt. The
11 defendant has the right to remain silent and need not
12 do anything throughout the whole course of the trial
13 if that is what he chooses.

14 If the State proves the defendant guilty beyond a
15 reasonable doubt and if the State proves the existence
16 of an aggravating circumstance, -- and those
17 circumstances are listed in a statute. We will talk
18 about that later. If the State proves the existence
19 of one aggravating circumstance, then the jury has
20 within its discretion the penalty of either life in
21 prison or the death penalty. But the defendant does
22 not have to get up here and tell you his side of the
23 story. Okay.

24 If he chooses not to get up there and tell you
25 his side of the story, you can not hold it against

1 him. You have got to focus on what the State has
2 proven and not focus at all and I will tell you that I
3 will not even allow you to discuss the fact that the
4 defendant did not testify if that is what he chooses.
5 You can not even discuss that in the jury room. You
6 can not think about it. You cannot talk about it.
7 You cannot consider it. Okay? Does that make that
8 clear?

9 **MS. BROCK:** Well, these three people are here
10 to talk for him.

11 **THE COURT:** They are here to make sure that he
12 gets a fair trial. As part of their responsibilities
13 in making sure that he gets a fair trial, and they are
14 here to represent him, they have the opportunity to
15 question witnesses, they have an opportunity to call
16 witnesses and they have the opportunity to make
17 arguments to me and talk to me and make objections and
18 make arguments to you during closing arguments. And
19 they have that opportunity.

20 And yes, ma'am, they do. So you are correct
21 that they are here to speak for him. But in terms of
22 presenting their own evidence and in terms of him
23 testifying, he does not have to do that. You
24 understand all that?

25 **MS. BROCK:** I believe I do. They are doing it

1 for him. They are speaking for him.

2 **THE COURT:** There are two different ways that
3 that might come about. At the end of the guilt
4 phase, well, at the beginning, at the beginning of the
5 guilt phase, which might even be today, the lawyers
6 for both sides will have an opportunity to stand
7 before the jury and make an opening statement. In
8 that opening statement, they can talk to you about the
9 issues that will come up in the case, tell you how
10 they stand on those issues and talk to you a little
11 bit about some of the evidence that might be presented
12 during the trial and some other things. That is
13 opening statement.

14 Mr. Bartosh or one of these other lawyers will
15 make that opening statement, if he chooses to make
16 one. Then at the end of the guilt phase, the lawyers
17 have an opportunity to make closing argument. The
18 defendant also has opportunity to make closing
19 argument. So in that respect, the lawyers will be,
20 as you say, speaking for the defendant or for their
21 own clients. In terms of making arguments, yes.

22 But the other thing the defendant can do is to
23 testify, if he wants to. The lawyers can not testify
24 on his behalf. If he chooses to testify, he would
25 will testify. If he chooses not to testify, it will

1 be made very clear to you that you may not hold that
2 against him. You may not discuss it. You may not
3 even think about it while you are deliberating.

4 MS. BROCK: Okay.

5 THE COURT: You understand?

6 MS. BROCK: All right. Sorry.

7 THE COURT: It is okay. You just made a
8 comment that was perfectly appropriate about,
9 something about hearing his side of the story. This
10 has come up several times this week. Whenever that
11 comes up, our ears all perk up like this because we
12 want to make sure you understand that he does not have
13 to tell his side of the story if he does not want to.
14 All right.

15 MR. BARTOSH: Thank you, Your Honor.

16 BY MR. BARTOSH:

17 Q Having said all of that --

18 THE COURT: Let me just do this. Let me take
19 this precaution, ma'am. Will you mind stepping in the
20 hall for just one second? And let me speak to the
21 lawyers just for a second.

22 MS. BROCK: Okay.

23 (WHEREUPON, Ms. Brock exits at approximately 11:15
24 a.m.)

25 THE COURT: Is there any objection to what I

1 said or how I handled that?

2 **MR. BARTOSH:** No, sir. I would like to be
3 allowed to have one or two follow up questions.

4 **THE COURT:** Oh, yeah. I am not cutting you
5 off. I just wanted to -- I didn't want to put you in
6 the position of having to go through that whole
7 explanation and perhaps lose her attention. I felt
8 like it was my responsibility to make that
9 explanation.

10 Mr. Gowdy?

11 **MR. GOWDY:** I have no objections to what
12 Your Honor said.

13 **THE COURT:** Bring her in.

14 (WHEREUPON, Ms. Brock enters at approximately 11:16
15 a.m.)

16 **THE COURT:** All right, ma'am. Mr. Bartosh is
17 going to continue to ask you a few questions.

18 **BY MR. BARTOSH:**

19 **Q** I don't want to belabor the point. But I just
20 want to be sure that you understand that the burden is
21 always on the State to prove a person guilty. It is never
22 upon the individual to prove himself not guilty. Do you
23 understand that?

24 **A** Say that one more time please.

25 **Q** The burden is always on the State to prove a

1 person guilty.

2 A Yes.

3 Q The individual does not have to offer any
4 evidence if he chooses not to. Let me ask you this.
5 From what you have said, would that affect you, would that
6 cause you some problems if Mr. Lindsey did not offer any
7 evidence?

8 A I would find it very difficult just in general
9 trying to do that, but no. I guess if they are just
10 presenting their side and he is just sitting over there
11 saying nothing, is that kind of what you're saying? Not
12 him, your group.

13 Q What I'm saying is if Mr. Lindsey chose to
14 produce no evidence, would that cause you a problem?

15 A Uh, no evidence of why he is not guilty?

16 Q No evidence period.

17 A And you guys aren't going to say anything. I got
18 to know I understand this.

19 Q What you have to understand is we are a cohesive
20 unit. We are, for all intents and purposes, Marion
21 Lindsey.

22 A Okay.

23 Q We're not separate.

24 A All right.

25 Q If Mr. Lindsey chose not to put any evidence up,

1 would that cause you any problem?

2 A No, it would not.

3 Q It would not cause you any doubt?

4 A No.

5 Q At the end of this, you know, if the State does
6 not carry its burden of proving beyond a reasonable doubt
7 that Mr. Lindsey is guilty of murder, we do not go any
8 further, you understand that?

9 A If he is not proven guilty of murder, --

10 Q Of murder. .

11 A -- you don't take the case anywhere else.

12 Q It stops right there.

13 A Okay. That is fine.

14 Q Okay. You are agreeable to that?

15 A Yes.

16 Q But because we are trying to decide your opinions
17 and things like that, not to be nosy but to try to get an
18 idea of how you look at things. Let's say that they do
19 carry their burden and Mr. Lindsey is proven guilty of
20 murder. We move into the penalty phase. All right?

21 A (Nods head affirmatively.)

22 Q Now, at that time, what is going to happen is the
23 State is going to produce evidence aggravating, of
24 aggravating circumstances which they feel show that it
25 makes the murder a more serious murder. And Mr. Lindsey,

1 if he chooses to, will have evidence that, in mitigation to
2 show that, will lessen the seriousness of the murder.
3 Certain evidence of upbringing or perhaps mental illness or
4 things like that.

5 Would you have a problem listening to both sides at
6 that time, listening both to the State and their
7 aggravators and listening to Mr. Lindsey's mitigators, if
8 any? Would you have a problem giving both sides an open
9 and fair hearing on those?

10 A Not at all.

11 Q Okay. You understand this is the only procedure
12 where the jury decides life or death? They impose the
13 sentence. And it must be unanimous. All twelve must
14 agree either for life or for death.

15 A (Nods head affirmatively.)

16 Q Okay. And that death is never mandatory? Do you
17 understand that?

18 A Even though everyone agreed to it?

19 Q What I'm saying is there is always the choice of
20 life.

21 A Okay. I understand.

22 Q You do not have to choose death.

23 A I understand.

24 Q Now --

25 A But that is what it's coming down to. That is

1 what the jury is for. That is what this is all about,
2 right, if he is going to get life or death?

3 A That's correct.

4 Q Correct. But I just want you to understand that
5 death is never mandatory.

6 A Yes, I understand.

7 Q Okay. So that the two possible, as you put it,
8 the two possible verdicts or punishments are life or death.
9 If it is life, it is life without parole. Mr. Lindsey
10 would die in the Department of Corrections should he be
11 given a life sentence. If it is death, of course, he
12 would be executed.

13 Now, way back when we first started talking, you
14 indicated a preference that if someone were accused of
15 murder or someone was found guilty or convicted of murder
16 that you felt death was the appropriate sentence. Do you
17 still feel that way?

18 A It is all going to depend on the circumstances.
19 It is all going to depend on if there is mental illness.
20 No, I do not feel that way.

21 Q So you have been able to put aside --

22 A Yes.

23 Q -- your opinion from about 15 minutes ago --

24 A Yeah.

25 Q -- until right now that --

1 **MR. GOWDY:** Your Honor, I object to that
2 characterization. She was very clear that that was
3 her personal opinion. And then she followed that up
4 by saying that she would be fair and do what she was
5 instructed to do. There's a mischaracterization of
6 her testimony.

7 **BY MR. BARTOSH:**

8 **Q** But at any rate, you would be willing to listen
9 to both sides?

10 **A** Yes.

11 **Q** And then decide whether or not life is
12 appropriate or death was appropriate?

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

14 **Q** You understand that --

15 **THE COURT:** Let's get her to answer that
16 question out loud. She was shaking her head.

17 **MS. BROCK:** I'm sorry.

18 **THE COURT:** I want the record to reflect that
19 answer.

20 **MS. BROCK:** Yes, sir.

21 **BY MR. BARTOSH:**

22 **Q** And you will be able to put aside everything that
23 you know about the case and put aside any personal
24 prejudices that you may have or personal opinions that you
25 may have and give both sides a fair and impartial hearing

1 and at the end of the whole process, you could vote for
2 life if you felt that was appropriate?

3 A If I felt that it was, yes.

4 Q Likewise you could vote for death, if you felt
5 that it was appropriate.

6 A Yes.

7 Q You are saying that you have no preference to
8 either one of those?

9 A When you come in here as a juror, you have to
10 just come in with an open mind. You can not have your
11 opinions. If I was chosen, yes, I would do that. I
12 would put all of that aside and come in with an open mind.
13 Outside, I have my opinions. But having to come in here
14 and work for the courts, you cannot come through the doors
15 with an opinion. You have to be blank upstairs.

16 Q You would leave all of that outside?

17 A I would have to leave it all outside.

18 Q Well, you would leave it all outside?

19 A Yes.

20 Q Thank you.

21 MR. GOWDY: May it please the Court, Your
22 Honor.

23 THE COURT: Yes, sir.

24 BY MR. GOWDY:

25 Q Good morning, Ms. Brock. How are you?

1 **A** I am fine.

2 **Q** Uh, the Court has asked you most of the questions
3 that I wanted to ask you. I appreciate the patience that
4 you have shown with us in answering what may at times seem
5 like a repetitive question. So I'm going to do my best not
6 to be repetitive. On the issue of you and me knowing one
7 another, is it fair to say that the church that we go to is
8 a large church?

9 **A** Yes, I was going to say that.

10 **Q** We have not been at Sunday school class together?

11 **A** Like I said, it was more of an acquaintance just
12 through the ex.

13 **Q** Right. He was a year older than me in high
14 school. But my wife and I never did anything with y'all
15 socially?

16 **A** No.

17 **Q** And whereas I may know your formal in-laws, you
18 and I have never done anything socially or never had the
19 same conversation or than beyond that way.

20 **A** Right.

21 **Q** Is that fair?

22 **A** Yes.

23 **Q** Okay.

24 **A** The only reason I brought it up is because the
25 judge said do you know anybody.

1 Q No, that was absolutely --

2 THE COURT: You did right thing, ma'am.

3 MR. GOWDY: I'm sorry, Your Honor.

4 MS. BROCK: And that's why I didn't answer the
5 first time. I was like well. And then when you came
6 back around to that same question, I was like well,
7 yeah. I mean I do know you.

8 BY MR. GOWDY:

9 Q I have had former school teachers that refuse to
10 admit that they knew me and people that I barely knew that
11 said they did. You did the proper thing. I just wanted
12 everyone to know that was not, it has not been a
13 relationship that we see each other on a regular basis or
14 that we go socially. We go to a church with 6000 members.
15 Which brings me to my next question. There are actually
16 two Mark Finleys. There is one that goes to church with
17 us. And there is one that works for the Sheriff's
18 Department.

19 A I know the one at the Sheriff's department.

20 Q My last question, if I understood your answers to
21 Mr. Bartosh and I think I did, you would come into this
22 courtroom with an open mind. And you would make decisions
23 based on what happened in this courtroom?

24 A Yes.

25 Q And if you thought life was the appropriate

1 punishment, you would vote for life?

2 A Yes.

3 Q And if you thought death was the appropriate
4 punishment, you would vote for death?

5 A Yes.

6 Q You could do either one?

7 A Yes.

8 Q And if you were called upon to do so, you could
9 go sign your name to a document evidencing your intent to
10 choose life or death?

11 A Yes.

12 Q You could do that?

13 A Well, I have a question. When he said life
14 without parole --

15 Q Yes, ma'am.

16 A -- is that a definite? You can't go back and
17 say five years later and say, we want to bring this case
18 back up like people do, attorneys do?

19 Q I probably cannot answer that question for you.
20 I can tell you that life means life without parole. I
21 think the Court will instruct you on that should we get to
22 that point. I think you should assume that life means
23 life without parole. Does that change your answer to any
24 --

25 A No, that was just a question.

1 **Q** Thank you very much for your patience and also
2 for answering these questions.

3 **A** Okay.

4 **THE COURT:** Anything further?

5 **MR. BARTOSH:** (Shakes head negatively.)

6 **THE COURT:** All right, ma'am. Let me get you to
7 step in the hall just one second. We will get you to
8 step back in and talk to you in just a second.

9 **MS. BROCK:** okay

10 (WHEREUPON, Ms. Brock exits at approximately 11:25
11 a.m.)

12 **THE COURT:** Any objection to her qualifications?

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

14 **THE COURT:** I will hear it.

15 **MR. BARTOSH:** Your Honor, my first objection
16 is, maybe lie is too strong of a word. But she lied
17 about her arrest.

18 **THE COURT:** All right. Let me address that,
19 okay?

20 **MR. BARTOSH:** All right.

21 **THE COURT:** We had several other people where
22 this had come up. Now, Ms., is it Muenger, is that
23 how she say it?

24 **MR. GOWDY:** I just call her Ms. Brock.

25 **THE COURT:** Oh, yeah, Brock. Ms. Brock is a

1 bright woman. Do you agree with that? She might
2 not be a genius, but she is no idiot. She put on
3 this form in very clear language that she had been
4 charged with DUI and tried and found not guilty. If
5 she was going to lie about her arrest and she is no
6 idiot, why would she have told the truth about all of
7 that?

8 There are a lot of people who come into this
9 court system as jurors or witnesses or whatever and
10 they don't understand like we do. They may have some
11 idea as to what an arrest is but it is not technically
12 exactly correct. And I believe that is what happened
13 with Ms. Brock. I do not believe that Ms. Brock
14 was trying in any way to conceal the fact that she had
15 been arrested.

16 If you look at the answer to question 16, have
17 you ever been accused of a crime, the first word she
18 wrote is me. Then she wrote but not convicted.
19 Then her explanation was DUI, never charged.
20 Obviously, she was charged. She was charged with
21 DUI. And she was tried. She must have, it is crazy
22 to think that when she wrote never charged that she
23 was lying. She is not lying. She just
24 misunderstands exactly how that process worked. I
25 don't think she lied.

3 THE COURT: All right.

8 **THE COURT:** That puts her into a category with
9 probably 90 percent of the judges and 95 percent of
10 the lawyers and about 99 percent of the general
11 public.

17 THE COURT: Okay.

24 When she believes that he has the burden or he
25 has the burden to prove that he did not do it and he

1 believes that even though he is not speaking, his
2 lawyers are going to speak for him and they are the
3 ones that are going to present his proof. If she
4 believes that death is not mandatory, which I think
5 she had a little misunderstanding about that.

6 **THE COURT:** She misunderstood the question.
7 She thought you were saying that if they returned a
8 verdict to the death penalty that somebody else maybe
9 could decide that he was not going to get the death
10 penalty.

11 **MR. BARTOSH:** I think it is also clear that she
12 knows about the case. She has had contact with one
13 of the investigating officers who was involved and who
14 will testify. I think it is clear that she believes
15 that if anyone is convicted of murder, they deserve
16 the death penalty. I think in her body language in
17 the first question you asked her about being able to
18 give life, she said, she paused and then she said if I
19 believed in it. Then you asked if she could give
20 death, she immediately answered yes.

21 Your Honor, I just think that there is just so
22 much there. I think she had, a lot of people have a
23 lot of misunderstandings about the judicial system.
24 I think that given the fact of her great
25 misunderstanding of the judicial system, I just don't

1 believe that it would be fair to Mr. Lindsey to put
2 her on an O.J.T. course to learn the judicial system
3 during the conduct of a death penalty trial. I would
4 ask that she be disqualified.

5 **THE COURT:** All right. Solicitor?

6 **MR. GOWDY:** Your Honor, I find myself in the
7 unique position of disagreeing with everything Mr.
8 Bartosh said. When Ms. Emma Ellis was qualified, she
9 too failed to disclose upon our questioning previous
10 arrests. There was never one motion to disqualify
11 her.

12 **THE COURT:** I have already ruled on her
13 credibility. There's no doubt in my mind that she
14 was anything other than mistaken and that she did not
15 tell the Court anything that was not true.

16 **MR. GOWDY:** I bring up the failure to treat
17 jurors similarly, Judge. If he can sit here, if
18 anyone can sit here and say that jurors 274 and 294
19 have a command of our criminal justice system, I have
20 been in the wrong courtroom. She answered the
21 questions as well as she could. It may have been the
22 questions weren't clear. But she answered them as
23 well as she could. And there's no doubt that she is
24 qualified.

25 **THE COURT:** I think that she is qualified. The

1 fact that she was misinformed about and made the
2 comment about the defendant having the opportunity to
3 tell his side of the story is certainly not unusual.
4 If we thought the whole general public understood the
5 right to remain silent, the presumption of innocence
6 and the burden of proof, we would not have to explain
7 it to them in our charge. I am not concerned a bit
8 about the fact that she asked that question.

9 The statement about the lawyers speaking for her
10 is correct. There's nothing incorrect about that. I
11 think that the focus of your argument is an alleged
12 misunderstanding of the legal system. I don't
13 believe that is a basis to disqualify her. There is
14 a question and it's not, it's like with a lot of these
15 jurors, it is not a totally easy question as to
16 whether or not her views about the death penalty and
17 her previous exposure to information about this case
18 disqualified her.

19 In my view, after listening to her testify for
20 now about an hour, after evaluating her testimony and
21 as you suggest her body language, I do not believe
22 that there's anything about her view on the death
23 penalty or anything that she heard or concluded about
24 this case before the trial began will substantially
25 impair her ability to follow my instructions and to

1 perform her responsibilities as a juror. I find that,
2 she is qualified.

3 Bring her back in.

4 (WHEREUPON, Ms. Brock enters at approximately 11:27
5 a.m.)

6 **THE COURT:** Ms. Brock, I find that you are a
7 qualified juror in this case. I'm going to ask you
8 to stay in touch with us by calling the telephone
9 number that you were given on Monday morning. We had
10 at one time expected to have everybody ready to go at
11 2 o'clock. But we are little bit behind that
12 schedule now.

13 So call that number a little bit later in the
14 early part of the afternoon about 1:00 maybe and see
15 what it says about when you should show back up here
16 for jury selection. Remember that you might be
17 sequestered and that you need to bring enough clothing
18 and other things with you to be prepared to stay for
19 five or six days.

20 **MS. BROCK:** Uh, let me ask you a question.

21 **THE COURT:** All right.

22 **MS. BROCK:** My son is going to have to go to
23 North Carolina. So is there any way that you can
24 narrow it down for me so that I could tell my mother
25 to come or I can meet her halfway?

1 **THE COURT:** I can tell you that we would not need
2 you before two o'clock. That's about all I can tell
3 you. This does not mean that you are on the jury.
4 You may come up here this afternoon and you end up not
5 getting on the jury.

6 **MS. BROCK:** What I'm staying though is that if
7 you want me to stay at the Marriott, I've got to do
8 something with my son.

9 **THE COURT:** I realize that. I suppose that you
10 will have to make arrangements with your, with whoever
11 is going to keep him to get him into their custody
12 this afternoon. We can work with you.

13 If that is difficult, I realize you are one of
14 the last jurors to be qualified. Your son is in
15 school. He might not know anything about this. His
16 grandparents are in North Carolina. If you have, you
17 try to arrange it now. And you run into a problem, we
18 will take care of it. Whatever we need to do.

19 If you want me to, I will even put him in the
20 car with a S.L.E.D. agent and have him driven up to
21 North Carolina. But we will take care of getting
22 your son to wherever it is that he needs to go or we
23 will at least assist you in doing that.

24 **MS. BROCK:** Okay.

25 **THE COURT:** All right?

1 **MS. BROCK:** That is fair.

2 **THE COURT:** Continue to not allow anyone to talk
3 to you about this case. Do not talk to anyone
4 yourself. Don't read or listen to or watch anything
5 about this case. We will see you later this
6 afternoon.

7 **MS. BROCK:** Okay.

8 **THE COURT:** Thank you.

9 **MS. BROCK:** Thank you.

10 **THE BAILIFF:** Your Honor, Ms. Martin is here.

11 **THE COURT:** Sir?

12 **THE BAILIFF:** Ms. Martin is here.

13 (WHEREUPON, Ms. Brock exits at approximately 11:30
14 a.m.)

15 **MR. BARTOSH:** Your Honor, there is one matter.

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

17 **MR. BARTOSH:** Your Honor, we would
18 respectfully object to the qualifications of Ms.
19 Brock based upon the arguments that were made earlier.

20 **THE COURT:** All right, sir.

21 We have Ms. Martin. What I'm going to do is
22 just bring her in here. And I am going to, I'm not
23 saying that y'all can't but it's my intention that I'm
24 going to ask her about anybody contacting her. Does
25 that suit y'all?

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

2 **THE COURT:** Does it suit you?

3 **MR. BARTOSH:** Yes, sir. My only concern is
4 as I expressed last night, I don't know if there's any
5 possible criminal charges that could arise out of
6 this.

7 **MR. GOWDY:** I appreciate that concern. But
8 she was not qualified. And she told the Court she had
9 been contacted. So I cannot imagine what she has done
10 that would lead to that.

11 **THE COURT:** I have the responsibility to insure
12 that the jury selection process is conducted properly
13 and without outside interference. There is a concern
14 that has been brought before me that maybe there's a
15 problem there. Maybe.

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

17 **THE COURT:** Uh, I am going to investigate that
18 concern. And I don't know, if she says something that
19 incriminates her, which I agree with Mr. Gowdy sounds
20 farfetched, but if she says something that
21 incriminates her, maybe she's got some sort of
22 immunity or something. But I'm going to ask her the
23 question. And I know you are not telling me I should
24 do it.

25 But, you know, that could happen with any one of

1 these jurors. If I said have you talked to anybody or
2 has anybody talked to you, if any one of them said,
3 yes, sir, Your Honor, I deliberately went out and
4 bought the Spartanburg Herald and read it. And not
5 only that, I got on their Internet site. And I went
6 through all of the archives. And I read every article
7 that ever been written about this case.

8 And not only that, I committed it to memory. And
9 not only that, I refuse to forget. Now, they are in
10 contempt of court. And I forgot to tell them of their
11 right to remain silent before I do that. This is not
12 an investigation into anything that she did. And I
13 don't think there is a right to counsel that attaches
14 or any need to appoint somebody. So thanks for
15 bringing that to my attention.

16 Bring her in.

17 (WHEREUPON, Joyce Martin, Juror number 175, enters at
18 approximately 11:33 a.m.)

19 **THE COURT:** Hey, Ms. Martin.

20 **MS. MARTIN:** Hi.

21 **THE COURT:** How are you this morning?

22 **MS. MARTIN:** Wondering why I'm back.

23 **THE COURT:** Well, I'm going to explain it to you.
24 I'm sorry that we had to bring you back. As I recall,
25 I asked you yesterday if anybody had contacted you

1 about this case. And you started off telling me that
2 somebody started to ask you about it. And you very
3 appropriately stopped them and had not allowed them to
4 tell you anything about this case. And I appreciate
5 that. You did, as far as I can tell, exactly what you
6 were supposed to do.

7 **MS. MARTIN:** Uh-huh (affirmative).

8 **THE COURT:** The only question I want to ask you -
9 - and again, I am not suggesting in any way that you
10 did anything inappropriate. It sounds to me that like
11 you did everything the way you were supposed to have
12 done. The only thing I want to know is who is the
13 person who talked to you, who is the person you were
14 referring to when you said somebody tried to contact
15 you.

16 **MS. MARTIN:** They didn't contact me. It was just
17 a little conversation going on. It was a member of my
18 family.

19 **THE COURT:** Okay.

20 **MS. MARTIN:** And it was not, I think they were
21 mostly just joking to see what I was going to say.

22 **THE COURT:** Okay. Who was the person?

23 **MS. MARTIN:** It was my sister.

24 **THE COURT:** And what's her name?

25 **MS. MARTIN:** Delacy Miller.

1 **THE COURT:** Delacy Miller?

2 **MS. MARTIN:** Uh-huh (affirmative).

3 **THE COURT:** Okay. Has anybody else other than Ms.
4 Miller -- and this is very important, ma'am. Has
5 anybody other than Ms. Miller said anything at all to
6 you about this case?

7 **MS. MARTIN:** No.

8 **THE COURT:** Okay.

9 **MS. MARTIN:** It was a gentleman who come out and
10 ask me did I know a name. But I don't know that name.

11 **THE COURT:** You don't know that name?

12 **MS. MARTIN:** Huh-uh (negative.) That he asked
13 me.

14 **THE COURT:** Thank you, Ms. Martin. That's all
15 there is. I appreciate you coming back.

16 **MS. MARTIN:** All right. Thank you.

17 **THE COURT:** And you are free to go.

18 **MS. MARTIN:** All right. Thank you.

19 (WHEREUPON, Ms. Martin exits at approximately 11:36
20 a.m.)

21 **MR. GOWDY:** Thank you, Your Honor. That
22 takes care of my concern on that matter.

23 **THE COURT:** Bring us another juror.

24 (WHEREUPON, Carole Hill, Juror number 125, enters at
25 approximately 11:36 a.m.)

CAROLE HILL

having previously been sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q Ms. Hill?

A Yes.

Q Good morning.

A Good morning.

Q You recall that on Monday morning, we put you under oath?

A Yes.

Q You understand you are still under oath today?

A Yes, sir.

Q Since you left here Monday afternoon, has anybody talked to you or have you talked to anybody about this case?

A No.

Q Have you read or heard or seen anything about this case?

A No.

Q We're going to ask you to some questions now. And I apologize if these questions seem like we're getting into your private life, but we have to ask you these questions. There are no right or wrong answers. We just want you to be open and honest with us and tell us how you

1 feel and tell us what you think.

2 We are going to get into a discussion about a possible
3 penalty phase. And I want you to understand that that
4 doesn't mean anything about this defendant or about this
5 case. It just means that we know we might get there and we
6 need to ask you some questions about some issues that will
7 come up if we do.

8 A Okay.

9 Q If you are a juror in this case, can you accept
10 and apply the law precisely as I give it to you and set
11 aside anything that you might have heard or seen, any
12 conclusions that you might have reached about this case
13 before the trial began, set all that aside and render a
14 verdict that is based solely on the testimony and evidence
15 that you see and hear in this courtroom. Can you do that?

16 A Yes, sir.

17 Q You can?

18 A Uh-huh (affirmative).

19 Q You understand that this is a criminal case where
20 the State bears the burden of proving the defendant guilty
21 beyond a reasonable doubt?

22 A Yes.

23 Q And you know it is a murder case?

24 A Yes.

25 Q Could you, depending on the facts and

1 circumstances that you find to have been proven and
2 considering the law as I will give it to you, could you
3 find the defendant either guilty or not guilty depending on
4 whether or not you feel the State has met its burden of
5 proof?

6 **A** Yes, sir. I can.

7 **Q** If you are a juror in this case and if the jury
8 finds the defendant guilty of murder, we would move into
9 the sentencing phase of the trial. And I'm going to talk
10 to you now about some of the issues that will come up
11 during that phase. Aggravating circumstances are facts,
12 incidents or details of an occurrence that the State of
13 South Carolina has declared to aggravate or to make worse
14 the crime of murder. Aggravating circumstances increase
15 the enormity of the crime of murder and add to the injury
16 that is caused by that crime.

17 Mitigating circumstances, on the other hand, are
18 facts, incidents or details of an occurrence that South
19 Carolina has declared to lessen the severity of the crime
20 of murder. And they serve to extenuate or to reduce the
21 degree of moral culpability or responsibility for the crime
22 of murder.

23 If you are on the jury in the sentencing phase of this
24 case, you would have two options as to what your verdict
25 could be. The verdict could be a life sentence or it could

1 be the death penalty. Could you, depending on the
2 circumstances and the facts that you find to exist,
3 considering any aggravating or mitigating circumstances and
4 considering the law that I would give to you, could you
5 vote to impose a life sentence?

6 A Yes, sir.

7 Q Could you vote to impose a death penalty?

8 A I would have a problem with that.

9 Q Tell me why.

10 A I'm a morally against the death penalty.

11 Q All right. Ma'am. Do you believe that there are
12 no circumstances in which someone should receive the death
13 penalty?

14 A That's correct.

15 Q And do you believe that if you were a juror, you
16 would always impose a life sentence for murder and never
17 impose the death penalty?

18 A 99 percent of the time I would.

19 Q 99 percent of the time.

20 A There could be a one percent window.

21 Q And in that one percent window, would you vote to
22 impose the death penalty?

23 A Yes, sir.

24 Q All right. So you say you are morally opposed to
25 it, but yet you are willing to impose it under the

1 appropriate circumstances?

2 **A** Under severe context, yes.

3 **Q** All right. Now, ma'am, you have said and I am
4 using your words that you have a moral opposition to the
5 death penalty?

6 **A** Correct.

7 **Q** Now if you are a member of the jury, your
8 responsibility would be to come in here and listen to what
9 is put before you and to think objectively and open-
10 mindedly and to deliberate with your fellow jurors and
11 decide whether the penalty should be life in prison or the
12 death penalty.

13 **A** Right.

14 **Q** Do you believe that your moral opposition to the
15 death penalty will interfere with your ability to do that,
16 to be open-minded about what the sentence should be?

17 **A** Yes, sir.

18 **Q** Do you believe it will be very difficult for you
19 to vote to impose the death penalty if you were put on this
20 jury?

21 **A** Yes, sir.

22 **Q** All right. Ma'am, I'm going to give the lawyers
23 a chance to question you. Then I might come back and
24 question you again myself.

25 **THE COURT:** Mr. Bartosh.

1 **MR. BARTOSH:** Thank you, Your Honor.

2 **EXAMINATION**

3 **BY MR. BARTOSH:**

4 **Q** Ms.. Hill, are you an anthropologist?

5 **A** I am an anthropologist.

6 **Q** Okay. The kind of folks that go out in the
7 desert and --

8 **A** No, that's an archeologist. I studying living
9 people.

10 **Q** All right. Okay. What we are here about today
11 is, you told the judge, when he asked you, that you have a
12 moral opposition to death penalty?

13 **A** Correct.

14 **Q** But under certain circumstances, you would feel
15 that you would be able to impose it, is that correct?

16 **A** Correct.

17 **Q** You understand that when we to get to the second
18 part of this -- this is a bifurcated procedure.

19 **A** Yes.

20 **Q** First, they would have to decide whether the
21 defendant is guilty of the crime of murder.

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

23 **Q** If the jury decides that the State has not met
24 its burden there, then we all go home.

25 **A** Yes.

1 Q We never get to the second part. For purposes
2 of our discussion, let's say we get to the second part.

3 A (Nods head affirmatively.)

4 Q You understand in South Carolina death is never
5 mandatory. There is always an option of life.

6 A Uh-huh (affirmative).

7 Q In South Carolina, life means life without
8 parole.

9 A Right.

10 Q The person never gets out of jail. Also
11 penalties have to be, all twelve jurors must agree on the
12 penalty.

13 A (Nods head affirmatively.)

14 Q It has to be unanimous. If it's life, all
15 twelve have to agree on life. And if it's death, all
16 twelve have to agree on death.

17 A Uh-huh (affirmative).

18 Q Now, the question I have for you is you could be
19 fair and give both sides, both the State and the defense a
20 fair hearing?

21 A Uh-huh (affirmative).

22 Q At the penalty phase, the State would present
23 evidence, aggravating circumstances that they believe make
24 the offense more serious, okay?

25 A Uh-huh (affirmative).

1 Q They would argue and hope to convince the jury
2 for death, okay. Of course, the defense at that
3 particular portion is going to present mitigating
4 circumstances which we feel, which we hope will convince
5 jurors for life that would lessen the culpability or lessen
6 the seriousness of the crime and convince them that the
7 appropriate penalty would be life. Okay.

8 A (Nods head affirmatively.)

9 Q Now, could you, first of all, give both of the
10 sides a fair hearing?

11 A Yes.

12 Q And listen to both sides, to what the State says
13 makes it worse and what the defense says makes it less.
14 And if you believe that the death penalty was the
15 appropriate punishment, could you vote for death, if you
16 believed it was the appropriate punishment?

17 A If I believed it was, yes, I could.

18 Q If you believed that life was the appropriate
19 punishment, could you vote for life?

20 A Yes.

21 Q Okay. Now, the most difficult question. There
22 is a form that every juror must sign no matter what the
23 decision is, okay?

24 A Uh-huh (affirmative).

25 Q It is a sentencing sheet. If it is life, all

1 twelve will sign the life sentence. If it is death, all
2 twelve will sign the death sentence. Let's say for the
3 sake of argument that you happen to be the last juror to
4 get that sheet. All eleven prior to you had signed it.
5 You have got to remember this is after everybody has
6 discussed it and they come to the decision that death is
7 the appropriate punishment in this case.

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

9 **Q** That is the only time this issue will come up
10 after everybody has decided. As I said, it has to be
11 unanimous. And you decided along with the other eleven
12 that death is the appropriate punishment.

13 **A** Okay.

14 **Q** And that piece of paper come to you and you knew
15 that when you signed that that was going to condemn Mr.
16 Lindsey to death.

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

18 **Q** If you felt that death was an appropriate
19 punishment, could you sign it?

20 **A** Yes, if I felt that way.

21 **Q** Thank you, ma'am.

22 **MR. GOWDY:** May it please the Court.

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

24 **EXAMINATION**

25 **BY MR. GOWDY:**

1 Q Almost good afternoon, but I think it's still
2 morning.

3 A Yes.

4 Q Will you object if I call you Dr. Hill. It looks
5 like you have a Ph.D. I would rather call you Doctor, if
6 that's okay.

7 A Fine.

8 Q Anybody go to school that long to get a degree,
9 I'm going to call them Doctor. I appreciate your answers
10 to questions. I want to tell you right now that nobody is
11 trying to disabuse your mind or whatever your position is
12 of capital punishment or any other issue. We just have to
13 know what that position is. Whatever it is, it is.

14 A All right.

15 Q I'm not going to debate with you because first of
16 all, I will lose that debate. Second of all, that is not
17 what we are here about. What we need are twelve folks
18 that are going to be fair. They are going to be fair to
19 the defendant and fair to the State. You said you were
20 morally opposed to the death penalty.

21 A Yes.

22 Q That is a strong sentence. That is a strong
23 thing to say.

24 A Yes, it is.

25 Q Then you said there is a one percent window --

1 **A** Right.

2 **Q** -- where you could either consider it or impose
3 it?

4 **A** Yes.

5 **Q** Was it consider or impose when you say the one
6 percent window. Are you saying there's one percent of the
7 cases where you can actually impose it or one percent of
8 the cases where you could actually consider it?

9 **A** Impose it.

10 **Q** Okay. A murder is the unlawful killing of
11 another human being with malice aforethought. Those are
12 the only cases we're talking about. It has got to be a
13 murder. Are you telling me that one percent of all
14 intentional killings with malice aforethought would be
15 eligible for the death penalty in your judgment?

16 **A** Yes, that makes sense to me.

17 **Q** Okay. I would not do it if I could and I'm not
18 going to do it. I'm not, I can't tell you the facts of
19 this case.

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

21 **Q** But by the same token, I've got to know that that
22 one percent is Timothy McVeigh or John Wayne Gacey, I've
23 got to know that. I've got to know if that one percent is
24 such an obscure and unusual fact pattern as to virtually
25 never come up.

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

2 **Q** So what is the one percent? What you mean when
3 you say one percent?

4 **MR. BARTOSH:** Objection, Your Honor. He's
5 trying to stake the juror.

6 **MR. GOWDY:** No, I'm not, Judge. I'm trying
7 to get her to explain her answer. One percent, if it
8 is 9/11, then the State has to know that.

9 **THE COURT:** Ma'am, if you had thought about how
10 to arrive at the figure of one percent and in the
11 process of thinking of that figure, if you had thought
12 about specific circumstances and you have them on your
13 mind now, you can answer that question in terms of
14 those specific circumstances. We don't want you to
15 put you in a position of having to -- I say that
16 because I want to give you an opportunity to explain
17 your answer of one percent We don't want to put you
18 in a position of having to come up with a defense of
19 your answer. We are not challenging your answer.

20 **MS. HILL:** Right.

21 **THE COURT:** So I'll ask you the question this way.
22 Tell us what it is that went into your thinking that
23 led you to come up with one percent. And if that
24 includes, if it includes, maybe it does not. But if
25 it includes specific circumstances, you can tell us

1 about those.

2 **MS. HILL:** Well, I said one percent because there
3 is a small window. It could be one-tenth of one
4 percent. It could be one and one-fourth percent.

5 **MR. GOWDY:** I am very poor in math, but I
6 think those numbers are even smaller than one percent.

7 **THE COURT:** One of them is and one isn't. You
8 are very bad in math. One and a fourth percent is
9 more than one percent.

10 **BY MR. GOWDY:**

11 **Q** I thought you said one-fourth of one percent.

12 **A** No.

13 **Q** I apologize.

14 **A** I think circumstances that are so horrific, what
15 example comes to mind is like a pedophile that kills
16 children. To me, that goes over the line. Extreme
17 torture goes over the line, and with malice and
18 aforethought as you say. Continual torture, continual
19 killing of children. Those kinds of circumstances.

20 **Q** And so I can be respectful to the Court's
21 admonition and may other people stop me if I am not, I'm
22 trying to ask the questions in a proper way. But if a
23 murder does not involve children, is there a circumstance
24 under which you can see yourself imposing the death
25 penalty?

1 A Yes.

2 Q I mentioned children because you mentioned
3 children.

4 A Okay. But I also mentioned other things.

5 Q Torture?

6 A Torture, yes.

7 Q Over an extended period of time?

8 A Yes.

9 Q All right. Let me ask it this way. If a murder
10 does not involve children or does not involve torture over
11 an extended period of time, is there a circumstance or a
12 set of circumstances under which you can see yourself
13 imposing the death penalty?

14 A Those are two examples. Generally, it is the
15 context, as I said before, the context of the situation.
16 Whatever the context would be. I think probably if I sat
17 down, can come up with ten or twelve contextual situations
18 where I could say yes, I think that the death penalty would
19 be appropriate.

20 Q Okay. Thank you. What is the basis of your
21 belief on the capital punishment? Moral, spiritual,
22 educational?

23 A Moral.

24 Q I notice you are a member of the Humane Society?

25 A Correct.

1 Q On the --

2 A I give money to the Humane Society.

3 Q I know the Court did an excellent job of
4 explaining it to you. I don't know that I understood it
5 like I should have. Under South Carolina law, you never
6 have to impose the death penalty.

7 A No.

8 Q There's never a set of facts where we're going to
9 tell you tell you as a juror that you've got to impose a
10 death penalty. You always have a choice of life. You
11 don't have to give a reason for life.

12 A Uh-huh (affirmative).

13 Q You can vote for life for any reason or no
14 reason. So accepting that no one will ever tell you to
15 vote for death and that life means life without parole, if
16 you have a choice between life without parole and death,
17 will you always pick life without parole?

18 A I think I stated not always.

19 Q One percent?

20 A One percent, right. This is circular.

21 Q I guess what I'm trying to get at is when the
22 judge first asked you, you seem very definitive with your
23 moral opposition.

24 A Correct, I am.

25 Q And again I'm not in any way challenging your

1 view. But to be that strongly morally opposed to it and
2 then carve out a percentage where that moral objection does
3 not exist, I am trying to understand your belief. And it
4 is not incumbent upon you to explain it to me. I'm trying
5 to understand the strength of that first comment with where
6 we are now which is ten to twelve circumstances where
7 you --

8 A It is a slight moral stance. The 100 percent
9 rarely, in my mind, applies to every context in every
10 situation of any kind of belief. So, I think, generally,
11 I think that we as a society should not take the life of
12 another human being. I think Moses said that, if I'm not
13 mistaken.

14 Q He did, but he also killed somebody.

15 A I think the Ten Commandments say that. So it is
16 based on -- people who commit -- you are trying to get my
17 philosophy. So as an anthropologist, I will explain it.
18 People who commit crimes, each of those have specific
19 circumstances. It can be aggravating circumstances or
20 maybe mitigating circumstances.

21 And an individual in society has a role to play in all
22 of that. It depends on the specific circumstance in my
23 mind as to how severe the punishment should be. But
24 generally speaking, I think that it would be, the right to
25 take a life should be very carefully thought out.

1 **Q** I think most people would agree with that. It
2 is something that should be done only after great
3 reflection.

4 **A** Correct. That's what I meant.

5 **Q** My last question, and I thank you for your
6 patience. I am satisfied based on your answers that your
7 views on the death penalty do not prevent you from ever
8 imposing capital punishment.

9 **A** Correct.

10 **Q** The next question is do believe in your well of
11 souls or your judgment that your views on capital
12 punishment would substantially impair you from being able
13 to impose it? Not prevent, but substantially impair.

14 **A** What you mean impair? Can I ask you a question?

15 **Q** You can. I don't know that the rules will allow
16 me to define that. That is a term of law.

17 **THE COURT:** Actually I already asked her that
18 question. I left out the word substantially because
19 that is a judgment that I have to make.

20 **MR. GOWDY:** Yes, sir.

21 **THE COURT:** Ma'am, I asked you, Mr. Gowdy, I'm
22 treading on his feet. But I asked you earlier that
23 moral opposition -- I've got it on my screen. The
24 exact question and answer is right here on my screen.
25 Would your moral opposition to the death penalty

1 impair your ability to be an open-minded juror and to
2 follow my instructions and to consider whether or not
3 to impose the life sentence or death penalty. You
4 said it would. Do you want to expand on that at all?

5 **MS. HILL:** No.

6 **THE COURT:** Do you want to explain that?

7 **MS. HILL:** No, that's fine.

8 **THE COURT:** Okay. I mean other than giving her
9 a chance to explain what impair means to her, I think
10 I've made got to make a judgment about whether the
11 impairment is substantial. But you can follow up on
12 that all you want to.

13 **MR. GOWDY:** I don't necessarily want to,
14 Judge. I may not have heard her answer to it. I heard
15 your question. Was her answer no to your question?

16 **THE COURT:** Her answer was yes, sir.

17 **MS. HILL:** Yes, sir.

18 **THE COURT:** It would impair her ability. Then
19 I asked her if it would be very difficult for her to
20 impose the death penalty. She said yes.

21 **MS. HILL:** Uh-huh (affirmative).

22 **MR. GOWDY:** Thank you for answering all of
23 our questions and filling out this questionnaire.

24 **THE COURT:** Ms. Hill or Dr. Hill, would you
25 mind stepping, would you mind stepping into the hall

1 for just a second please, ma'am.

2 MS. HILL: Sure.

3 (WHEREUPON, Ms. Hill exits at approximately 12:00
4 p.m.)

5 THE COURT: Mr. Bartosh.

6 MR. BARTOSH: She is qualified, Your Honor

7 THE COURT: Do you have any argument you want to
8 make?

9 MR. BARTOSH: Your Honor, I asked her if after
10 she, hearing all of the evidence and if after
11 considering all of the evidence if she believe that
12 the death penalty was the appropriate punishment, she
13 said yeah, she could impose it. I asked if after she
14 deliberated with the jury and the jury had decided,
15 all twelve of them had decided that the death penalty
16 was the appropriate punishment, could she sign her
17 name to the document knowing that she was condemning
18 Mr. Lindsey to death, she said she could do it. I
19 think that makes her qualified.

20 THE COURT: Okay. Mr. Gowdy, do you want to
21 make any argument?

22 MR. GOWDY: Your Honor, I'm trying to make
23 an argument that is actually a fair one based on the
24 law. I'm frankly little bit conflicted. I think
25 the reason I put a question on her is number one, she

1 was winning. And number two, you had already asked
2 the question which was a less strict question than the
3 one I asked.

4 Your Honor did not use the word substantially.
5 You just said would it impair. From my reading of
6 the cases, they used the word substantially which is a
7 heightened level. She said it would be impaired by
8 her beliefs on it. So we don't even get to the
9 next --

10 **THE COURT:** I think you got it backwards. I
11 think you do. It is not question of whether it
12 impairs it. Her beliefs could impair her ability to
13 follow my instructions and yet she would still be
14 qualified. The reason I did not ask her if it was
15 substantial impairment is because I kind of expected
16 the answer that you got. That is, what do you mean
17 by substantial.

18 That is a judgment call that I have to make. So
19 a juror can be only impaired by their views and still
20 be qualified. In order for them to be disqualified,
21 they've got to be substantially impaired by their
22 views.

23 **MR. GOWDY:** Your Honor, I frankly do not
24 know. She said at various times one, 1.25 and .1
25 percent of the time she can impose the death penalty.

1 I know that the cases are clear that if a juror can
2 only impose the death penalty if it is a family
3 member, if they witnessed the crime, if it is some set
4 of unreasonable, uh, if 9/11 then they are not
5 qualified which is why I wanted to ask her what those
6 circumstances were.

7 If it was some mass murderer, she is not
8 qualified as a juror. If not, then maybe she is. I
9 am reluctant to tell this Court that she is not
10 qualified based on my reading of the law. It is clear
11 you can have opposition to the death penalty and be
12 qualified. It is clear that it could be difficult to
13 impose the death penalty and be qualified. I'm not
14 sure that it is clear that somewhere between .1 and
15 1.25 percent of the time involving extended cruelty to
16 somebody or torture or children qualifies one
17 generally for a capital case in South Carolina.

18 **THE COURT:** But you believe she is not
19 qualified?

20 **MR. GOWDY:** Your Honor, I can not represent
21 to this Court, I cannot represent to this Court -- I
22 don't know. I just don't know. I don't want to
23 tell you the wrong thing. I hate to be fair.

24 **THE COURT:** I know that's difficult for you.

25 **MR. GOWDY:** It is extraordinarily difficult

1 for me. I do not want to stand up here and say she
2 is not qualified just because I don't like her answer.
3 I want to try to be candid with the Court. I don't
4 know.

5 **THE COURT:** Well, let me ask you this. Are you
6 agreeing that she is qualified?

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

8 **THE COURT:** Or are you simply -- so your position
9 is that she is not qualified?

10 **MR. GOWDY:** My position is --

11 **THE COURT:** Am I going to have to rule on it or
12 do you agree to it?

13 **MR. GOWDY:** I do not agree that she is
14 qualified.

15 **THE COURT:** Anything you want to say, Mr.
16 Bartosh?

17 **MR. BARTOSH:** Your Honor, she did not limit
18 the children and torture and all of that. She said
19 there were ten or eleven others.

20 **THE COURT:** Right, she did.

21 **MR. GOWDY:** But when I wanted to go into it,
22 you objected, Judge. So that's where I am. I can't
23 ask her if it's Timothy McVeigh or John Wayne Gasey
24 cause he objected.

25 **THE COURT:** Who is John Wayne Gasey?

1 **MR. GOWDY:** He killed 37 children in Chicago
2 and buried them in the basement and crawl space of his
3 house.

4 **MR. BARTOSH:** They were not children, Your
5 Honor. They were nurses.

6 **MR. GOWDY:** No, they weren't. That was
7 another murderer. John Wayne Gasey dressed up as a
8 clown. I know my mass murderers. John Wayne Gasey
9 dressed up as a clown and lured young boys through the
10 crawl space of his house.

11 **THE COURT:** I think that focusing on the one
12 percent answer and focusing on the specific situations
13 that she described is kind of missing the point. I
14 bet you that if you did a statistical analysis of the
15 murder defendants who got the death penalty, it
16 wouldn't surprise me if it was one percent or less.

17 But, that really is not, does not seem important
18 to me in this analysis. What I have got to do is
19 figure out, we've got what she describes has a strong
20 moral opposition to the death penalty. Mr. Gowdy
21 asked her if she was definitive in her moral
22 opposition. She very quickly and emphatically said
23 yes. When I initially asked her could you vote -- I
24 don't have her, recall her exact answer.

25 All right. I said could you vote to impose the

1 death penalty and she without a whole lot hesitation,
2 as I recall it, said I would have a problem with that.
3 And I believe I said why. And this is a dirty
4 transcript. So it's kind of hard to, meaning it has
5 not been edited, so some of the words are not exactly
6 right. She said I am morally against the death
7 penalty. And I said you believe that there are no
8 circumstances in which someone should receive the
9 death penalty. And she said that is correct.

10 Then I said you believe that as a juror you would
11 always impose a life sentence for murder and never
12 give the death penalty. That is when she said 99
13 percent of the time. So I am left with one of those
14 jurors who has given us conflicting answers about
15 where she stands.

16 Mr. Bartosh?

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

18 **THE COURT:** Any time you want to speak.

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

20 **MR. GOWDY:** Your Honor, if I may, in the
21 interest of not trying to shuck off my responsibility
22 on the Court, I am happy to consider her qualified.
23 I had suspicious doubt. I don't want to put the
24 Court in the position of having to make any more
25 difficult decisions than it already has to make. I

1 am qualified -- I'm prepared to say that she is
2 qualified.

3 **THE COURT:** All right. Without any dispute to
4 the qualifications of the juror, I find her qualified.
5 But if you're going to take away from me the privilege
6 of making hard decisions, what am I going to do? I
7 mean, I like having you in here. But I'm not having
8 all that much fun sitting here admiring you.

9 **MR. GOWDY:** My two lawyers have convinced me
10 that it is a close enough question, just like I said
11 when I stood up, I cannot tell you that she is
12 unqualified. I cannot tell you with the same moral
13 certainty that Mr. Bartosh can that she is qualified.
14 But I think that the doubt probably at this point has
15 to be in favor of the defense.

16 **THE COURT:** Bring her in.

17 (WHEREUPON, Ms. Hill enters at approximately 12:10
18 p.m.)

19 **THE COURT:** Ms. Hill, I find that you are a
20 qualified juror. We would like you to return this
21 afternoon for jury selection. Please stay in touch
22 with us by calling the telephone number that you were
23 given on Monday morning. Throughout the course of
24 the day, the recording on the phone number will be
25 updated with information about when you should return.

1 **MS. HILL:** Okay.

2 **THE COURT:** Now, keep in mind, if you are on the
3 jury, you could be sequestered. Bring with you when
4 you come enough clothing and everything else that you
5 need to stay with us for five or six days. Of
6 course, we will put you up in a nice hotel. Don't
7 talk to anybody about this case. And don't read,
8 listen to or watch anything about this case. We will
9 see you hopefully some time this afternoon. Do you
10 have a question?

11 **MS. HILL:** When I do, I need to bring clothes?

12 **THE COURT:** Your stuff, Yes, ma'am. Leave it
13 in your car, of course, when you come up here. But
14 bring it to the courthouse with you.

15 **MS. HILL:** Okay.

16 (WHEREUPON, Ms. Hill exits at approximately 12:13
17 p.m.)

18 **THE COURT:** All right. We need a short break.
19 Let me see y'all up here one second for a question.

20 (WHEREUPON, a bench conference was held off the
21 record.)

22 (WHEREUPON, a short recess was taken at approximately
23 12:14 p.m.)

24 (WHEREUPON, the Court resumed at approximately 12:43
25 p.m.)

1 **THE COURT:** We've got one full panel and another
2 one that is due right now. We'll let's talk about it.
3 I've got 33.

4 **MR. GOWDY:** That includes Netherton and
5 Smith?

6 **THE COURT:** No, that includes Netherton but not
7 Smith. How many chairs do we have over there? What
8 do y'all usually get, three alternates or two?

9 **MR. GOWDY:** Three.

10 **THE BAILIFF:** We've got 15 chairs.

11 **THE COURT:** All right. We've got 15 chairs.

12 **MR. GOWDY:** Unless Mike agree to go with
13 eleven jurors, we can drop down. We've done that
14 before.

15 **MR. BARTOSH:** Want to try it again?

16 **MR. GOWDY:** That would be up to the Court.

17 **MR. BARTOSH:** You want to try it again?

18 **THE COURT:** If we do that, it will be done again.
19 That's what Mike said. I thought you meant try the
20 question again.

21 **MR. GOWDY:** There's a case on appeal now that
22 was tried with eleven jurors.

23 **THE COURT:** Death penalty?

24 **MR. GOWDY:** Not death penalty, a murder case.

25 **THE COURT:** Oh, a murder case.

1 **MR. GOWDY:** How many -- what would we have to
2 do, put a seat over there?

3 **THE BAILIFF:** No, sir. We have 15 chairs.

4 **THE COURT:** Is it being heard on direct appeal?

5 **MR. GOWDY:** Yes, sir. There are a merit of
6 issues.

7 **THE COURT:** That couldn't be a direct appeal
8 issue.

9 **MR. GOWDY:** Whether or not legally you can
10 try a case to eleven jurors is a matter of law.

11 **THE COURT:** The only -- seems to me the only --
12 look at here, it's so much fun to get sidetracked.
13 The only way it can happen is if there was no
14 objection raised to it which would make it a non-
15 appealable issue.

16 **MR. BARNETT:** Not unless you did it in writing,
17 both sides agree in writing.

18 **MR. GOWDY:** The only issue I see with the
19 jurors, Judge, is when we begin to use the overhead
20 projector, the ones in the chair where Deputy Hagood
21 is right now would have a hard time seeing that
22 projector.

23 **THE COURT:** We'll figure that out. We've got 33.
24 -- We need 27 to pick the jury if everybody uses all
25 their strikes which as I understand the way we're

1 going to do it is y'all know the order in which they
2 will be called.

3 MR. BARTOSH: Yes, sir.

4 THE COURT: So I can guarantee you the defense is
5 going to use all of their strikes. The State's going
6 to do that based on whether they like the jurors or
7 not. So we are looking at 25 to 27 probably.

8 MR. GOWDY: Will you do the presentation
9 method just like a regular trial? They'll walk up
10 here.

11 THE COURT: I have always done that in a criminal
12 case. I never had a criminal case where the lawyers
13 knew the order in which the jurors will be called
14 which strikes me as somewhat odd. But we boxed
15 ourselves in with it, so here we are.

16 MR. GOWDY: We typically have done dry
17 strikes without the jury in here to take care of
18 Batson issues with the caveat being that we are stuck
19 with the strikes. We can't change our mind between a
20 dry strike and a real strike. I can tell you that the
21 State will be exercising its full peremptory strikes.

22 THE COURT: It will?

23 MR. GOWDY: Yes, sir.

24 THE COURT: All right. So that's what I had
25 actually figured. At this point, we could get two

1 more jurors and be guaranteed of having two alternates
2 unless one of our jurors become disqualified.

3 **MR. BARTOSH:** Three.

4 **THE COURT:** Two. You need four jurors per
5 alternate in order for each side to use all their
6 strikes and get -- but you are less likely to use all
7 of your strikes on the alternate page. If you do
8 that, that means the fourth person each time is going
9 to be stuck. And you may not want the fourth person.

10 If we -- let's say we go for another panel and
11 then do dry strikes and see if we have enough to get
12 three alternates, that might be all we need to do.

13 **MR. GOWDY:** Is the Court going to bring Ms.
14 Netherton back?

15 **THE COURT:** I am willing to talk individually with
16 any juror that either side wants to talk to. Maybe
17 there's an objection to it and I will hear the
18 objection. But I'm willing to talk individually to
19 either side. I believe that we should talk
20 individually to Ms. Netherton because of the concerns
21 that she has raised.

22 There may be other jurors that you all want me to
23 speak individually with. I would propose that we
24 would get all of the qualified jurors in here. And I
25 guess this becomes the problem with dry strikes.

1 We've got to ask them if they talked to anybody and I
2 would like to ask them five or six questions. Is
3 there anything you want to bring to my attention? Can
4 you be a fair juror? All of those statutory
5 questions. And if anybody brings up anything that we
6 need to speak with them individually about, we will do
7 it.

8 That may make it difficult to do it with a dry
9 strike because depending on what order we do it, we
10 have to go back and do that voir over again.

11 **MR. GOWDY:** I guess when I say dry strike, I
12 mean just a matter of maybe 15 minutes before we
13 actually do it for real or do it on paper to see if
14 there are Batson issues.

15 **THE COURT:** Yeah. I was using that term as a way
16 of seeing if we have enough people without having to
17 go through the whole process. If we get, we've got
18 six people above 27 now. And if we get three or four
19 more, we very realistically could have enough to get
20 three alternates. But we won't know that until we go
21 through the strikes. And we will not be ready to make
22 y'all commit to strikes until we finish the voir dire.

23 And if we do the voir and then find out we don't
24 have enough people, then we might have to do the voir
25 dire over again. Maybe that's not a huge problem.

1 Let's just go ahead and do another juror now unless
2 there is some other concern that needs to be raised.

3 Let me put -- let me do one thing. Greenway, we
4 can't find him. We've tried to call him. We can't
5 reach him. Apparently the address that he has, the
6 only address -- no, he's got an address right there on
7 the questionnaire. We will send
8 somebody to and see if they can
9 bring him in. Make sure they explain to him that he's
10 not in trouble. He hadn't done anything wrong. We
11 just needed to talk to him again. And we couldn't
12 find him, so we sent somebody looking for him.

13 Give us a juror.

14 (WHEREUPON, Linda Jones, Juror number 143, enters at
15 approximately 12:43 p.m.)

16 **LINDA JONES**

17 having previously been sworn, testified as follows:

18 **EXAMINATION**

19 **BY THE COURT:**

20 **Q** Ms. Jones?

21 **A** Yes, sir.

22 **Q** How are you, ma'am?

23 **A** Fine. Thank you.

24 **Q** Do you recall that Monday morning, we put you
25 under oath?

1 **A** Yes, sir.

2 **Q** And you understand you are still under oath right
3 now?

4 **A** Yes, sir.

5 **Q** Since you left us Monday afternoon, has anybody
6 tried to talk to you about this case or have you talked to
7 anybody?

8 **A** No, sir.

9 **Q** Have you read or seen or heard anything about
10 this case since Monday afternoon?

11 **A** Yes, sir.

12 **Q** Ma'am, we we're going to ask you some questions.
13 We don't want to pry too deeply into your life, but we do
14 have to ask you these questions. There are no right or
15 wrong answers to the questions. We just want you to be
16 open and honest with us and tell us how you feel and what
17 you think.

18 We are going to talk a little bit about a possible
19 sentencing phase. That does not mean anything about this
20 defendant or about this case case. It simply means that
21 because we know we might get to a sentencing phase, we need
22 to ask you some questions about some issues that will come
23 up if we do.

24 If you were a juror in this case, could you accept and
25 apply the law precisely as I would give it to you, set

1 aside anything that you might have heard or learned about
2 the case before the trial began and render a verdict that
3 is based solely on the testimony and the evidence that you
4 hear in this courtroom?

5 A Yes, sir.

6 Q You understand this is a criminal case in which
7 the State has the burden of proving the defendant guilty
8 beyond a reasonable doubt?

9 A Yes, sir.

10 Q You understand this is a murder case?

11 A Yes, sir.

12 Q Could you, based on the facts and circumstances
13 that you find to have been proven and in light of the law
14 as I will explain it to you, could you return a verdict of
15 either guilty or not guilty depending on whether you
16 believe the State has met its burden of proof?

17 A Yes, sir.

18 Q If you are a juror in this case and if the jury
19 finds the defendant guilty of murder, we would move into
20 the second phase or the penalty phase of the trial. There
21 are some issues that are going to come up in that phase
22 that I will talk to you about now. Aggravating
23 circumstances are facts, incidents or details of an
24 occurrence that the State has declared to aggravate or to
25 make worse the crime of murder. Aggravating circumstances

1 increase the severity of the crime and add to the injury
2 that results from the crime.

3 Mitigating circumstances, on the other hand, are
4 facts, incidents or details of an occurrence that South
5 Carolina has declared to lessen the severity of the crime.
6 They serve to extenuate or to reduce the degree of moral
7 culpability or responsibility for the crime of murder.

8 If you are a juror in the sentencing phase of a death
9 penalty trial, you will have two options as to what your
10 verdict could be. You could have a verdict for a life
11 sentence or you can have a verdict for the death penalty.
12 Could you, depending on the facts and circumstances that
13 you find to exist, considering any aggravating or
14 mitigating circumstances and considering the law that I
15 will now give to you, could you vote to impose a life
16 sentence?

17 **A** Yes.

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

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

20 **Q** You don't know?

21 **A** Huh-uh (negative.)

22 **Q** Let's talk a little bit more about that. Do you
23 believe that all people who are convicted of murder should
24 get a life sentence and that nobody should get the death
25 penalty?

1 A No.

2 Q You do believe that the death penalty is
3 appropriate in some circumstances?

4 A Yes.

5 Q Ma'am, if you were on the jury and you found in
6 your mind that in that case the death penalty was
7 appropriate, -- well, first of all, do you think that you
8 could ever conclude that a death penalty was appropriate in
9 a particular case?

10 A If I believed everything was true, yes.

11 Q All right. Or maybe if you just thought the
12 circumstances were appropriate for the death penalty, you
13 could conclude that the death penalty was appropriate?

14 A Yes.

15 Q If you reached that conclusion, could you
16 actually vote to impose it?

17 A I don't know.

18 Q I'm going to let the lawyers talk to you a little
19 bit about that, ma'am.

20 MR. BARTOSH: You can do that now, Mr. Bartosh.

21 MR. BARTOSH: Thank you. Your Honor.

22 EXAMINATION

23 BY MR. BARTOSH:

24 - Q Good afternoon, Ms. Jones.

25 A Hi.

1 Q I am Mike Bartosh. Along with Doug Brennan and
2 Karen Quimby, we represent Marion in this case. As
3 everybody said, we are going to ask you some questions.
4 We try not to be too prying into your personal matters.
5 There are no right answers. There are no wrong cases.
6 They are just questions. We would like to get your
7 feelings on certain things. You are the, are you still
8 the postmaster?

9 A Postmaster, yes.

10 Q Postmaster. And how long have you been doing
11 that?

12 A I've been 19 years at that Post Office. I have
13 been Postmaster 14.

14 Q And when we were here on Monday, you indicated
15 that you were familiar with some folks on our side?

16 A Mr. Brennan. I was on a jury one time when he
17 had a case.

18 Q You sat on a case where he represented someone?

19 A Yes, sir.

20 Q You also said that you had heard about this case?

21 A Yes, sir.

22 Q Can you tell me what you heard about it?

23 A I just heard them talking about it. I was here
24 in the courthouse and heard the police talking about it.

25 Q Was that the first thing you heard about the

1 case?

2 A Yes, sir.

3 Q Can you tell me what you heard?

4 A They were just discussing that there was going to
5 be a death penalty case. They said it was the man from
6 Inman.

7 Q Did you know about that case?

8 A No, sir.

9 Q Okay. Fair to say, you do not know any of the
10 facts that the State alleges about this case?

11 A No, sir. Just what I read in the newspaper before
12 all of this came up.

13 Q What did you read in the newspaper. All right.
14 And what did the newspaper say?

15 A They were talking about three death penalty cases
16 this year. That is the only one I read.

17 Q It just mentioned that this was one of them?

18 A Yes.

19 Q You do not recall any of the individual facts?

20 A No, sir.

21 Q Fair to say, you don't really know anything about
22 this case?

23 A No.

24 Q Okay. You belong to the Startex Retirees?

25 A Yes, sir.

1 Q Is that the social club where everybody gets
2 together?

3 A They get together. It's not that I'm old. It
4 is just because I'm the Postmaster. I'm not retired yet.

5 Q Okay. Let's get to why we are here, okay? The
6 judge has already explained what this case, how this case
7 would go. These kind of cases are in two parts. The
8 first part is like a regular trial where the State will
9 present the evidence that they have to convince the twelve
10 jurors that Mr. Lindsey is guilty of the crime of murder.
11 Okay?

12 If the State carries its burden and convinces each of
13 the twelve jurors beyond a reasonable doubt that Mr.
14 Lindsey is guilty of murder, we will move into the second
15 phase of this proceeding. If, on the other hand, they
16 don't convince all twelve jurors beyond a reasonable doubt
17 that he is guilty of murder, then it stops there. There
18 would not be second phase. All right?

19 The first thing I want to ask you about is this. The
20 Judge is going to tell you if you are chosen on the jury,
21 the Judge is going to tell you from the very beginning of
22 the trial that every person accused of a crime no matter
23 how serious the crime itself, that every person accused of
24 a crime is presumed to be innocent of that crime. Even
25 today as Marion sits there, he is innocent of this crime.

1 Now would you have any problem accepting that? That is a
2 real and substantial right that is guaranteed to everybody
3 under our constitution.

4 A No problem.

5 Q You would not have any problem with that at all.
6 You could follow the Judge's instructions to that and view
7 him as being innocent?

8 A (Nods head affirmatively.)

9 Q He would be presumed to innocent up until all
10 twelve of the jurors are convinced he is no longer entitled
11 to the presumption. You would not have a problem with
12 that?

13 A (Shakes head negatively.)

14 Q All right. Now the second part of this. Let's
15 say that they do carry their burden, the State carries
16 their burden. The second part of that is to decide what
17 the punishment is. This is the only kind of case in South
18 Carolina where the jury decides the punishment. They
19 decide what the appropriate punishment is. Okay?

20 A (Nods head affirmatively.)

21 Q In that phase, the State is going to produce or
22 offer evidence that they believe are aggravating
23 circumstances that means makes the crime worse or increases
24 the severity of the crime. Okay. They're hoping to
25 convince all twelve folks on the jury that the appropriate

1 verdict is death for punishment. The defense on other
2 hand will try to present mitigating circumstances which
3 means circumstances that we feel lessen the severity of the
4 crime, things that a jury can take into account so that
5 they will come and believe that life is the appropriate
6 punishment for this crime. Okay.

7 And in South Carolina, life is life. There is no
8 parole. He would never get out of jail Mr. Lindsey, were
9 he to be found guilty, were he to be given the life
10 sentence, he would die in the Department of Corrections.
11 And the judge will tell you that. Now, could you, as a
12 juror, listen to both sides, both in the prosecution and
13 both the defense, give them a fair and impartial hearing
14 and use what they present to make up your mind without
15 being prejudiced or without being biased to one side or the
16 other?

17 A Yes, sir.

18 Q Could you do that?

19 A Yes, sir.

20 Q You understand too that death is not mandatory.
21 The death penalty -- if we get to that point, life is
22 always an option, okay?

23 A (Nods head affirmatively.)

24 Q So if, after hearing all of the evidence and all
25 twelve of you decided that life was the appropriate

1 punishment for this crime, could you impose a life
2 sentence?

3 A Yes.

4 Q Now, if you, on the other hand, you and the
5 eleven other jurors after having deliberated and having
6 examined and having considered all of the evidence that's
7 been presented of that particular phase, if you felt that
8 death was the appropriate punishment, could you impose a
9 death sentence?

10 A I don't know.

11 Q Okay. I don't think there would be too many
12 people that would know.

13 A I never had to do it. I don't know.

14 Q Just about everybody hope they never would have
15 to decide that.

16 A Right.

17 Q But --

18 A If there was enough evidence, yes.

19 Q So you would consider the evidence?

20 A Uh-huh (affirmative).

21 Q And if you believed based upon evidence that it
22 warranted to death penalty, you can impose it?

23 A Uh-huh (affirmative).

24 Q You understand that has got to be unanimous?

25 A Yes.

1 Q All twelve of you have to agree.

2 A Yes.

3 Q Okay. One question and then I'll sit down.

4 Let's say for argument's sake that there is a sentencing
5 sheet there that everybody has got to sign. And what that
6 does is every juror puts their name on it whether it is
7 life or whether it is death. Let's say just by the luck
8 of a juror or just by a circumstance that you are the 12th
9 juror. And the other eleven have signed the sentencing
10 sheet. And it comes to you.

11 This is after you and your other eleven jurors have
12 sat and considered everything and had decided based upon
13 the evidence that death is the appropriate sentence, could
14 you signed that piece knowing that by your signature, you
15 were condemning Mr. Lindsey to death if you believed, once
16 again, if you believed after considering all the evidence
17 that that was the appropriate punishment?

18 A Yes, if the evidence presented it.

19 Q If you believe the evidence, if you thought the
20 evidence --

21 A Yes.

22 Q All right. Thank you?

23 **MR. BARNETT:** May it please the Court, Your
24 Honor.

25 **EXAMINATION**

1 BY MR. BARNETT:

2 Q Hi, Ms. Jones. My name is Barry Barnett.
3 Along with Trey Gowdy and Donnie Willingham, we will be
4 prosecuting the case for the State. Let's follow Mr.
5 Bartosh's questions. I noticed that you hesitated any
6 time the death penalty is talked about.

7 To follow up on his question of what we call the death
8 form, the jury decides the sentence. And the Judge has
9 nothing to do with the sentencing. Knowing that life
10 without parole is the other option that he would never get
11 out, when it came down to that sentencing sheet, could you,
12 could you sign the death form knowing that that would be
13 the last signature that would --

14 A Yes.

15 Q Let me ask you a few questions about your belief
16 of the death penalty. What is your basis for that? Have
17 you thought about it? Is it your background, your
18 religious background or anything like that?

19 A Just my conscience. It's something I have to
20 live with the rest of my life.

21 Q Do you think that you could live with that?

22 A If there's enough evidence and I think he's
23 guilty, yes.

24 Q And you would look at the evidence?

25 A Yes.

1 Q And would your conscience override what the
2 evidence showed or would you follow what you thought was
3 what the evidence did show?

4 A I will go by what the evidence showed.

5 Q Would you listen to both sides and fairly
6 evaluate that?

7 A Yes.

8 Q I noticed you said that you knew Mr. Brennan or
9 not knew Mr. Brennan, but Mr. Brannan represented someone
10 on the jury?

11 A It was one of his cases.

12 Q Was it a civil or criminal case?

13 A I don't know.

14 Q Was it magistrate court?

15 A It was downstairs.

16 Q It was downstairs in magistrate court?

17 A Yes.

18 Q Was it involving a criminal charge or was money
19 involved?

20 A Money.

21 Q Did Mr. Brennan win or lose?

22 A He lost. I'm sorry.

23 Q I'm just curious.

24 A I know.

25 Q And you worked at the Post Office for 18 years?

1 A 19.

2 Q You go to Methodist Church?

3 A Yes, sir.

4 Q Does that having any basis on your view of the
5 death penalty?

6 A No.

7 Q Are you for or against the death penalty?

8 A I'm for it.

9 Q I noticed you lived in Iowa, Kansas and Missouri
10 before. Was that during your childhood?

11 A Yes.

12 Q You lived most of your adult life here?

13 A Yes.

14 Q Ms. Jones, thank you for answering my questions.

15 THE COURT: Ms. Jones.

16 MR. BARTOSH: May I ask one other question?

17 THE COURT: Yes, sir.

18 EXAMINATION

19 BY MR. BARTOSH:

20 Q Ms. Jones, I may have misunderstand your response
21 to one of Mr. Barnett's questions. You said you can
22 impose the death penalty if he were guilty.

23 A If he had enough evidence to prove him guilty.

24 Q Well, you understand that we can only get to the
25 life or death person portion if he is proven guilty?

1 **A** Right.

2 **Q** By saying that, do you mean if he is proven
3 guilty in the guilt phase, in the first part, that if he is
4 proven guilty, you will always give the death penalty?

5 **A** Oh, no.

6 **Q** If you would, explain what you mean by if he's
7 proven guilty.

8 **A** If he is guilty of murder.

9 **Q** Maybe the judge -- you understand there are two
10 parts?

11 **A** Right.

12 **Q** The first part is guilty or not guilty?

13 **A** Right.

14 **Q** If it's not guilty, nothing happens?

15 **A** Right.

16 **Q** If Mr. Lindsey is found guilty of murder, then
17 it goes to the penalty part to determine whether or not he
18 should be given the death penalty or whether he should be
19 given life. Okay?

20 **A** Okay.

21 **Q** The solicitor will present evidence that he
22 thinks will show that it is a worse crime, certain
23 circumstances make this a worse crime. Okay? Aggravating
24 circumstances to try to convince you that the appropriate
25 punishment for this particular crime would be death. We

1 will present evidence of mitigating circumstances which we
2 would try to convince you lessen the seriousness of the
3 crime.

4 Now, that is what the second part is about. It is
5 not determining whether or not he's guilty or innocent.
6 It is just to determine what punishment he should receive.
7 If -- you are saying if he is convicted of murder, he
8 should receive death. Is that what you are saying?

9 A No.

10 Q You are saying after you hear all of the
11 aggravating circumstances and the mitigating circumstances
12 if you feel he should receive the death penalty, you will
13 vote for the death penalty but you would always keep your
14 option open?

15 A Right.

16 Q If you felt that he should deserve a life
17 sentence, you will vote for life?

18 A Right.

19 Q You would have no preconceived notion of which
20 way you will vote. You have to hear all the evidence in
21 the penalty phase?

22 A Right.

23 Q Not in the first phase?

24 A Right.

25 Q I just wanted to clear that up. Thank you.

1 **THE COURT:** Ms. Jones, would you mind stepping
2 into the hall for just one second please.

3 (WHEREUPON, Ms. Jones exits at approximately 1:04
4 p.m.)

5 **THE COURT:** Any objection to Ms. Jones?

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

7 **MR. BARNETT:** No, sir.

8 **THE COURT:** Bring her back.

9 (WHEREUPON, Ms. Jones enters at approximately 1:04
10 p.m.)

11 **THE COURT:** Ms. Jones, I do find that you are a
12 qualified juror in this case. We hope to begin jury
13 selection some time this afternoon. We told the rest
14 of the jurors to come back at 2 o'clock. We are not
15 going to be ready for them right at 2 o'clock.

16 What I need for you to do is go home and get your
17 stuff together. Let me ask you this question. I did
18 not ask you this a few minutes ago. If you are on the
19 jury and I sequester the jury and require you to be
20 put up in a hotel for five or six days while we try
21 this case and I don't let you to go home to your
22 family, is that going to impose a terrible burden on
23 you?

24 **MS. JONES:** (Shakes head negatively.) No.

25 **THE COURT:** The witness list that you were given

1 when you got here, have you had a chance to read over
2 that list?

3 **MS. JONES:** Yes, sir.

4 **THE COURT:** Have you read every name on that list?

5 **MS. JONES:** Yes, sir.

6 **THE COURT:** Do you know anybody or are you
7 related to anybody on that list?

8 **MS. JONES:** I know one person.

9 **THE COURT:** Who is it?

10 **MS. JONES:** John Dyas.

11 **THE COURT:** How do you know him?

12 **MS. JONES:** He used to be at Startex. I just know
13 him from coming in the Post Office.

14 **THE COURT:** Other than knowing him from being in
15 the Post Office, do you have any other relationship
16 with him?

17 **MS. JONES:** No, sir.

18 **THE COURT:** If he is a witness in this case, would
19 that interfere with your willingness or your ability
20 to give the both the State and the defendant a fair
21 and impartial trial?

22 **MS. JONES:** No, sir.

23 **THE COURT:** Do you know of any reason why you
24 cannot give the State and the defendant a fair and
25 impartial trial?

1 **MS. JONES:** No, sir.

2 **THE COURT:** Okay. You are a qualified juror.
3 You will need to be back here -- can you get home and
4 get your stuff back and be back here by when?

5 **MS. JONES:** 2:30

6 **THE COURT:** 2:30. Try to be back by 2:30.
7 Let's say 3 o'clock. Would it be safe to say 3
8 o'clock?

9 **MR. BARTOSH:** Yes.

10 **MR. BARNETT:** I believe so, Your Honor.

11 **THE COURT:** We will say 3 o'clock. Be back by
12 3 o'clock. You need to pack enough stuff. You
13 might not have to use it but you might have to use it.
14 Pack enough stuff to be ready to be able to stay with
15 us for five or six days. If I sequester you and the
16 jury, then you would be put up in a hotel during that
17 time. And we would keep you from going home. Okay?

18 **MS. JONES:** (Nods head affirmatively.)

19 **THE COURT:** All right. Don't talk to anybody
20 about this case. Don't let anybody talk to you.
21 Don't read, listen to or watch anything about this
22 case. We will see you in a couple of hours.

23 (WHEREUPON, Ms. Jones exits at approximately 1:07
24 p.m.)

25 **THE COURT:** All right. Give us another juror.

1 Do you want one to -- I have ordered lunch for me
2 and my crowd. Do you want to think about doing that
3 for your people so we can eat?

4 And why don't we -- so we don't get caught
5 watching deputies and other county employees having to
6 run out too quickly. Can you go ahead and get
7 something for the county employees that are here in
8 this in the courtroom and the folks who are working
9 with me on this case?

10 **THE CLERK:** Yes, sir.

11 (WHEREUPON, Jane Vellines, Juror number 281, enters at
12 approximately 1:07 p.m.)

13 **JANE VELLINES**

14 having previously been sworn, testified as follows:

15 **EXAMINATION**

16 **BY THE COURT:**

17 **Q** Ms. Vellines?

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

19 **Q** Did I pronounce that correctly?

20 **A** You pronounced it right.

21 **Q** Ms. Vellines, how are you this afternoon?

22 **A** Fine.

23 **Q** You recall that on Monday morning we put you
24 under oath?

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

1 **Q** You understand you are still under oath right
2 now?

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

4 **Q** Has anyone talked to you about this case or have
5 you talked to anybody about this case?

6 **A** No.

7 **Q** Have you read or heard or watched anything about
8 this case?

9 **A** No.

10 **Q** If you are a juror -- we're going to ask you some
11 questions now. I apologize if these seem like we are
12 intruding too much into your private life. There are no
13 right or wrong answers to these questions. We just want
14 you to listen carefully to us, be open and honest with us
15 and to tell us what you think and what you feel.

16 If you are a juror in this case, can you accept and
17 apply the law as I will state it to you and set aside
18 anything that you might have heard or seen before the trial
19 began and render your verdict based solely on the testimony
20 and the evidence that you would hear and see in this
21 courtroom?

22 **A** Yes.

23 **Q** You can do that?

24 **A** Yes.

25 **Q** You understand this is a criminal case in which

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

3 A Yes.

4 Q And this is a murder case.

5 THE COURT: You can go ahead, Carl.

6 THE DEPUTY: All right.

7 BY THE COURT:

8 Q This is a murder case. You understand that?

9 A Yes.

10 Q Could you, depending on the facts and
11 circumstances that you find to have been proven and in
12 light of the law as I will explain to you, could you return
13 a verdict of either guilty or not guilty depending on
14 whether you believe the State has met its burden of proof?

15 A Yes.

16 Q If you are a juror in this case and if the jury
17 finds the defendant guilty of murder, we will move into the
18 second phase of a trial. Which we would call the penalty
19 phase or the sentencing phase. Let me explain to you some
20 of the things that might come up during that phase of the
21 trial.

22 Aggravating circumstances are facts, incidents or
23 details of an occurrence which South Carolina has declared
24 to aggravate or to make worse the crime of murder.

25 Aggravating circumstances increase the enormity of the

1 crime and add to the injury caused by the crime.

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

8 If you are on the jury in a death penalty case in the
9 sentencing phase, you would have two options as to what
10 your verdict could be, a life sentence or the death
11 sentence. Could you, depending on the facts and
12 circumstances that you find to exist and considering any
13 aggravating or mitigating circumstances and considering the
14 law as I will explain to you, could you vote to impose a
15 life sentence?

16 A Yes.

17 Q Could you vote to impose the death penalty?

18 A Yes.

19 Q Ma'am, if you make it on to this jury or if you
20 are on the jury and if I sequester the jury, you will be
21 put up in hotel for five or six days and not allowed to go
22 home to your family. Would that impose a terrible burden
23 on you?

24 A No.

25 Q Have you had a chance to go over the witness list

1 you have been given?

2 A Yes.

3 Q Did you read every name on that list?

4 A Yes.

5 Q Do you know anybody or are you related to anybody
6 whose name is on that list?

7 A No.

8 Q Do you know of any reason why you cannot give
9 both the State and the defendant a fair and impartial
10 trial?

11 A No.

12 Q Ma'am, I'm going to let the lawyers ask you some
13 questions now. And then I will come back to you in a few
14 minutes.

15 MR. BARTOSH: Thank you, Your Honor.

16 EXAMINATION

17 BY MR. BARTOSH:

18 Q Ms. Vellines, you're a member of Southside
19 Baptist?

20 A Yes.

21 Q How long have you been a member of that church?

22 A 38 years.

23 Q Did you know Lloyd?

24 A Yes.

25 Q I'm sure everybody at the church was affected by

1 his death.

2 A Uh-huh (affirmative).

3 Q Do you believe that the fact that he was killed,
4 would that in any way affect you in deciding Mr. Lindsey's
5 case?

6 A No. This is different.

7 Q Now, on Monday, when the folks were asked if
8 anybody knew anything about this particular case to stand
9 up, you stood up on Monday.

10 A Uh-huh (affirmative).

11 Q Can you tell me what it is that you know about
12 the case?

13 A Right after we got the letter that it had been
14 postponed, an article came out in the paper about three
15 capital murder cases.

16 Q Yes, sir.

17 A And I read that.

18 Q Okay.

19 A I really don't remember that much about the case.

20 Q Okay. Is it fair to say that the details of the
21 case, you don't know any of the details of the case?

22 A No.

23 Q Now you are also affiliated with a victims rights
24 group?

25 A No.

1 **Q** You are not?

2 **A** Huh-uh (negative).

3 **Q** Are you affiliated or give monies to like C.A.V.
4 or Safe Homes or anybody like that?

5 **A** No, I had stood up. I gave money in the past to
6 M.A.D.D. That is the only

7 **Q** That is the only law-enforcement support group
8 that you have given money to?

9 **A** Yes.

10 **THE COURT:** Mr. Bartosh, hold on just one
11 second please.

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

13 **THE COURT:** Mr. Shruggs, do we have most of the
14 jurors for Panel 14 here?

15 **THE BAILIFF:** I'm going to have to check. The
16 last I checked I had four of them.

17 **THE COURT:** What time were they supposed to be
18 here?

19 **THE BAILIFF:** 2 o'clock.

20 **THE COURT:** And two of them did not show up.

21 **THE BAILIFF:** This was an hour ago.

22 **THE COURT:** Would you tell the people on Panel
23 14 that they can go to lunch and come back at 2
24 o'clock?

25 **THE BAILIFF:** Yes, sir.

1 **THE COURT:** Not 13. The rest of the people on
2 13 need to say here.

3 **THE BAILIFF:** Yes, sir.

4 **BY MR. BARTOSH:**

5 **Q** Okay. Ms. Vellines, the judge already explained
6 the basic procedure that we are going to go through if
7 you're chosen as a juror in this case.

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

9 **Q** What we want is we want someone who can be fair
10 both to the State and to the defense.

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

12 **Q** The ideal situation would be someone with a clean
13 slate who knows nothing about the case and the only thing
14 that they would know would be what they hear from that
15 witness stand that you're sitting in now.

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

17 **Q** That is the reason for these questions.

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

19 **Q** You understand what the judge is going to tell
20 you at the beginning of the case if you are chosen as a
21 juror that everyone in this country no matter what their
22 charges is presumed to be innocent.

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

24 **Q** And even as Mr. Lindsey sits there now, he is
25 presumed to be innocent. Would the fact that he is

1 charged with murder in any way prevent you from accepting
2 or following the judge's instruction that he is an innocent
3 man as he sits there now?

4 A Yeah. I mean, it would not. What was the
5 question?

6 Q I am sorry. The fact that he is charged with
7 murder, would that prevent you from following the judge's
8 instructions that he is presumed to be innocent?

9 A No, no.

10 Q He is presumed to be --

11 A Innocent.

12 Q -- innocent until the twelve folks on the jury
13 decide that the State's met its burden beyond a reasonable
14 doubt.

15 A Uh-huh (affirmative).

16 Q And that is when he loses it.

17 A Uh-huh (affirmative).

18 Q All right. Now, if the State carries its burden,
19 then we move on into the second part. If it does not
20 carry its burden and we don't convince the jury beyond a
21 reasonable doubt that he is guilty of murder, that will be
22 the end of the proceedings.

23 A Uh-huh (affirmative).

24 Q All right. Now, in South Carolina, there's no
25 mandatory death penalty. Okay. You always have a

1 choice.

2 A Uh-huh (affirmative).

3 Q It is either death or life. What the
4 prosecution would do is they will offer evidence of
5 aggravating circumstances which they hope will convince the
6 jury that makes this crime more serious. Okay? They
7 hope to convince the jury that the appropriate punishment
8 would be death.

9 Of course, what we are going to do is we are going to
10 present mitigating circumstances which we feel lessen the
11 severity of the crime. And we hope to persuade the jury
12 that the appropriate punishment is death. This is the
13 only proceeding in South Carolina where the jury decides
14 what the punishment is going to be.

15 A Uh-huh (affirmative).

16 Q Life or death.

17 A Uh-huh (affirmative).

18 Q As I said before, you never have to have a
19 mandatory death sentence. You always have the option of
20 life. If, after hearing all of the evidence from both
21 sides, could you, if you felt it appropriate along with
22 your eleven other jurors because it has got to be
23 unanimous, could you impose a life sentence?

24 A Yes.

25 Q Okay. Is there anything about murder or anything

1 like that that would prevent you from imposing a life
2 sentence?

3 A No.

4 Q You would have an open mind about it?

5 A Yes.

6 Q If, after hearing all of the evidence, you
7 considered, you and your eleven other jurors considered
8 that death is the appropriate sentence, could you impose a
9 death sentence?

10 A Yes.

11 Q I am sure -- let me ask you one more question
12 then I will sit down. There's a sentencing sheet that
13 everybody's got to sign on the jury. Be it life or be it
14 death, there's a sentencing sheet that must be signed by
15 all twelve jurors simply because it has got to be
16 unanimous.

17 A Uh-huh (affirmative).

18 Q All right. Let's say for whatever reason you are
19 the 12th juror. And let's say you and your fellow jurors
20 have decided after hearing all of the evidence that the
21 appropriate sentence is death. The sentencing sheet has
22 been around all the other 11. Now it comes to you. You
23 know that once you sign that sheet that you have condemned
24 Mr. Lindsey to death. Could you do that?

25 A Yes, if it was --

1 Q If you believed it?

2 A Yeah.

3 Q You also know that in South Carolina, life means
4 life. If he were to be given a life sentence, he would
5 never get out of the Department of Corrections. Do you
6 understand that?

7 A Uh-huh (affirmative).

8 Q But you could keep an open mind and determine
9 what the proper punishment was by what the evidence was and
10 how you viewed the evidence?

11 A Uh-huh (affirmative).

12 Q And only on that?

13 A Yes.

14 Q Thank you very much.

15 **EXAMINATION**

16 **BY MR. WILLINGHAM:**

17 Q Ms. Vellines, my name is Donnie Willingham.

18 This is Barrett Barnett and Solicitor Trey Gowdy.

19 A Uh-huh (affirmative).

20 Q I appreciate your being candid with us. I don't
21 have any other questions. Thank you.

22 **THE COURT:** Ms. Vellines, would you mind
23 stepping into the hall for just one second, ma'am.

24 (WHEREUPON, Ms. Vellines exits at approximately 1:19
25 p.m.)

1 **THE COURT:** Any objection to her qualifications?

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

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

4 **THE COURT:** Bring her in please.

5 (WHEREUPON, Ms. Vellines enters at approximately 1:19
6 p.m.)

7 **THE COURT:** Ms. Vellines, I find that you are
8 a qualified juror. We hope to be able to begin the
9 process of jury selection in a couple of hours. You
10 need to be prepared to be sequestered if you are on
11 the jury and if I decide to sequester the jury. That
12 means that you need to go home now and pack up your
13 stuff and be ready to come back up here and spend five
14 or six days with us.

15 **MS. VELLINES:** Okay.

16 **THE COURT:** Please be back at the courthouse --
17 and Mr. Scruggs will tell you where to go.

18 Right, Mr. Scruggs?

19 **THE BAILIFF:** Yes, sir.

20 **THE COURT:** Please be back at the courthouse by 3
21 o'clock. Can you do that?

22 **MS. VELLINES:** Yes.

23 **THE COURT:** And remember not to discuss the case
24 with anyone or to read or to listen to or to watch
25 anything about this case while you are gone. We look

1 forward to seeing you in a couple of hours.

2 MS. VELLINES: Okay.

3 THE COURT: Bring us a juror.

4 (WHEREUPON, Ms. Vellines exits at approximately 1:22
5 p.m.)

6 THE COURT: Bring us a juror.

7 (WHEREUPON, Matt Kern, Juror number 151, enters at
8 approximately 1:22 p.m.)

9 MATT KERN

10 having previously been sworn, testified as follows:

11 EXAMINATION

12 BY THE COURT:

13 Q Mr. Kern?

14 A Yes.

15 Q Good afternoon, sir.

16 A Hello.

17 Q You recall that on Monday morning we put you
18 under oath. Correct?

19 A Yes.

20 Q You understand you are still under oath right
21 now?

22 A Yes.

23 Q Since you left us on Monday afternoon, has anyone
24 talked to you about this case?

25 A No.

1 Q Have you talked to anyone about the case?

2 A Other than my wife knows that I have jury duty.
3 Other than that I have not.

4 Q As far as the facts of the case -- you may have
5 told her that this is a case where the State seeks the
6 death penalty. Did you talk about your views about the
7 death penalty or anything like that?

8 A No.

9 Q Have you read or listened to or watched or heard
10 anything about this case since you left Monday afternoon

11 A I know there was an article in the paper today.
12 But I did not read it.

13 Q Did you see anything about it?

14 A No, my wife cut it out.

15 Q You don't know anything about what was in that
16 article?

17 A No

18 Q All right, sir. We're going to ask you some
19 questions now. There are no right or wrong answers to
20 these questions. We want you to be open and honest with
21 us and tell us how you feel and what you think.

22 If you are a juror in this case, could you accept and
23 apply the law precisely as I will give it to you and set
24 aside anything that you might have heard or learned about
25 the case before the trial began and render a verdict that

1 is based solely on the testimony and evidence that you hear
2 and see in this courtroom, can you do that?

3 A Yes.

4 Q You understand this is a criminal case in which
5 the State has the burden of proof beyond a reasonable doubt

6 A Yes.

7 Q It is a murder case. You understand that?

8 A Yes

9 Q Could you, depending on the circumstances that
10 you find to have been proven and in light of the law as I
11 will give it to you, could you find a verdict for either
12 guilty or not guilty depending on whether you believe the
13 State has met its burden of proof?

14 A Yes.

15 Q If you are a juror in this case and if the jury
16 finds the defendant guilty of murder, we will move into the
17 second phase or the sentencing phase -- some people call it
18 the penalty phase -- of the trial. There are some things
19 that will come up in that trial in that phase that I will
20 talk to you about right now.

21 Aggravating circumstances are facts, incidents or
22 details about an occurrence that the South Carolina has
23 declared to aggravate or to make worse the crime of murder.
24 Aggravating circumstances increase the enormity of the
25 crime and add to the jury that results from the crime.

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

6 If you are a juror in the sentencing phase of this
7 case, you will have two options as to what your verdict
8 could be. It could be either a life sentence or the death
9 penalty. Could you, depending on the facts and
10 circumstances that you find to exist and considering any
11 aggravating or mitigating circumstances and considering the
12 law as I will give it to you, could you vote to return a
13 verdict for a life sentence?

14 A Yes.

15 Q Could you vote to return a verdict imposing the
16 death penalty?

17 A Yes.

18 Q Mr. Kern, if you are on this jury and I decide to
19 sequester the jury and put you in a hotel for five or six
20 days and don't allow you to go home to your family, would
21 that impose a terrible burden on you?

22 A No.

23 Q Have you read over the witness list that you were
24 given when you came here today?

25 A Yes.

1 Q Did you read every name on that list?

2 A Yes.

3 Q Did you know anybody or are you related to
4 anybody whose name is on that list?

5 A No.

6 Q Mr. Kern, do you know of any reason why you
7 cannot give both the State and the defendant a fair and
8 impartial trial?

9 A No.

10 Q I am going to let the lawyers ask you some
11 questions now. I will come back to you in a few minutes.

12 A Okay.

13 **EXAMINATION**

14 **BY MR. BARTOSH:**

15 Q Mr. Kern, you were born in Monterey?

16 A California.

17 Q Was your dad in the military?

18 A Yes.

19 Q How much time did you spend out there?

20 A Four years.

21 Q You are now a soccer coach?

22 A Yes.

23 Q I think on Monday you indicated that you knew or
24 you were related to some family member or knew someone in
25 the solicitor's office?

1 **A** Yes. I stood up for that question.

2 **Q** Who is that?

3 **A** Rob Rhoaden.

4 **Q** Okay. Do you have a social relationship with
5 Rob?

6 **A** I'm a soccer coach. And Rob had played for me in
7 the early 90's at a school I formerly coached at.

8 **Q** Have you seen him since you been here?

9 **A** I've seen him three times in the two years since
10 I've lived here.

11 **Q** You also said you knew something about the case.

12 **A** When I initially filled out the questionnaire, I
13 did not know about the case. And when the judge gave us an
14 opportunity to make any changes, I had seen maybe two
15 articles from the time I had returned that questionnaire
16 and Monday.

17 **Q** Can you tell me what you know about the case?

18 **A** A shooting in Inman and I think maybe the victim
19 was in the car. There were some other people in the car
20 as well, maybe children and a friend is the alleged article
21 that I read.

22 **Q** Do the facts as you know them to be and as you
23 understand them to be, is there anything about those facts
24 that would cause you to have problems being fair to Mr.
25 Lindsey?

1 **A** I don't believe so, no.

2 **Q** You would be to give him a full and fair on the
3 issues?

4 **A** Yes.

5 **Q** You understand now that, and the judge is going
6 to tell you this, if you are chosen for the jury that
7 everyone accused of a crime is presumed to be innocent.
8 And as Mr. Lindsey sits there today, he is innocent of any
9 crime he is charged with. Would you have any problems
10 accepting Judge's instruction on the presumption of
11 innocence knowing what you know from another source?

12 **A** No.

13 **Q** You will be even willing to leave all of that
14 behind?

15 **A** Yes.

16 **Q** In other words, have you formed an opinion as to
17 his guilt or innocence?

18 **A** No.

19 **Q** Now, what I briefly would like to ask you is you
20 understand this is a two part process. The first part, of
21 course, is just like a regular trial. The State must prove
22 beyond a reasonable doubt that Mr. Lindsey is guilty of
23 murder. They have got to do that to all twelve jurors.
24 Every juror on the jury has got to believe beyond a
25 reasonable doubt that Mr. Lindsey is guilty of murder.

1 If the State does not that carry its burden that is
2 where it stops right there. But because it is a
3 possibility that it could go to the penalty phase, then we
4 have to -- let's say the jury does find that he is guilty
5 of murder. Okay. It moves on to the penalty phase or the
6 sentencing phase. The first thing, you understand, there
7 is no mandatory death sentence in South Carolina. Life is
8 always an option. No one will ever tell you you have to
9 give that person death. You understand that?

10 A Yes.

11 Q Now you also understand that life means life. It
12 is not a legal fiction. If Mr. Lindsey were to be
13 convicted of murder and given a life sentence, he would
14 spend the rest of his life in jail and would die there.
15 Okay.

16 A (Nods head affirmatively.)

17 Q Of course, if he was given the death sentence, he
18 would be executed. At that second proceeding, the State
19 is going to produce evidence which they feel, as the Judge
20 told you, increases the seriousness of the crime.
21 Aggravating circumstances, okay.

22 A Okay.

23 Q And they, of course, hope to convince the jury
24 that that warrants the death penalty because of these
25 circumstances. Of course, the defense, we want to present

1 some mitigating circumstances. Circumstances we feel
2 lessens the severity of the offense. Would you have any
3 problem or have any bias either way, either towards the
4 defense or towards the prosecution that you know about? In
5 other words, would you be willing to give both sides a fair
6 and impartial hearing and be fair to both sides?

7 A Yes.

8 Q Would you be willing to base your decision as to
9 the penalty solely on what you hear in the courtroom?

10 A Yes.

11 Q And solely on what the State produces and what
12 the Defense produces?

13 A Yes.

14 Q Okay. And as I say, you understand also that
15 your decision, if you are on the jury, as to punishment has
16 got to be unanimous. All twelve jurors must agree.

17 Whether it is life or whether it's death, all twelve have
18 to agree. You understand that?

19 A Yes.

20 Q Okay. And this is my last question. Let's say
21 that you and your fellow jurors after hearing all the
22 evidence decide death is appropriate, the appropriate
23 punishment. There's a sentencing sheet that has got to
24 signed by all twelve jurors on whether it is life or
25 whether it is death.

1 Let's say it is passed around. And for whatever
2 reason, you are the last juror and you have to sign that
3 sheet. All the other eleven have signed it for death
4 because you decided, you and your jurors have decided that
5 death was appropriate. Could you sign that sheet knowing
6 that by signing that sheet you will be condemning Mr.
7 Lindsey to death?

8 A Yes.

9 Q If you thought it was appropriate and if after
10 considering all of the evidence?

11 A (Nods head affirmatively.)

12 Q That is all I have.

13 MR. BARNETT: May it please the Court, Your
14 Honor.

15 EXAMINATION

16 BY MR. BARNETT:

17 Q Mr. Kern, my name is Barry Barnett. Along with
18 Trey Gowdy and Donnie Willingham, we're going to be
19 representing the State in this case. Just a few follow up
20 questions. Your wife, she is the athletic director at --

21 A Yes.

22 Q How long have you been at Wofford?

23 A Two years. For about two years.

24 Q Mr. Bartosh asked all the questions I would ask.
25 I appreciate your time.

1 **A** Thank you.

2 **THE COURT:** Mr. Kern, step in the hall just one
3 second please.

4 (WHEREUPON, Mr. Kern exits at approximately 1:35
5 p.m.)

6 **THE COURT:** Any objection to his qualification?

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

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

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

10 (WHEREUPON, Mr. Kern enter at approximately 1:36
11 p.m.)

12 **THE COURT:** Mr. Kern, I find that you are a
13 qualified juror in this case. We hope to begin with
14 jury selection some time around 3 o'clock. Maybe a
15 little bit later. If I sent you home now and
16 directed you to pack up enough stuff to be with us for
17 five or six days, could you do that and be back here
18 by 3 o'clock conveniently?

19 **MR. KERNS:** Yes.

20 **THE COURT:** All right. The situation with your
21 children, your wife could handle that if you are with
22 us from 3 o'clock on?

23 **MR. KERNS:** Yes.

24 **THE COURT:** All right. I want you to do that.
25 Don't talk about the case with anybody. Don't read,

1 watch or listen to anything about this case. We will
2 see you back here around 3 o'clock. Mr. Scruggs
3 will tell you exactly where to come.

4 (WHEREUPON, Mr. Kerns exits at approximately 1:37
5 p.m.)

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

7 (WHEREUPON, Thaddeus Beck, Juror number 18, enters at
8 approximately 1:37 p.m.)

9 **THADDEUS BECK**

10 having previously been sworn, testified as follows:

11 **EXAMINATION**

12 **BY THE COURT:**

13 **Q** Mr. Beck, how are you, sir?

14 **A** How are you doing?

15 **Q** I'm doing very well. You recall that on Monday
16 morning we put you under oath?

17 **A** Right.

18 **Q** You are still under oath right now. You
19 understand that?

20 **A** Yes, sir.

21 **Q** Since Monday afternoon when you left us, has
22 anyone tried to talk to you about this case or have you
23 talked to anybody about the case?

24 **A** No, sir.

25 **Q** Have you read, seen or listened to or heard

1 anything about this case since Monday?

2 **A** I read it Monday morning before I came here.
3 That's the last thing I heard about it.

4 **Q** We will talk to you about that in just a minute
5 then.

6 **A** Okay.

7 **Q** We're going to ask you some questions. These
8 questions don't have right or wrong answers. We just want
9 you to listen carefully and be open and honest with us and
10 tell us how you think and how you feel. We may get into
11 some, we are going to get into some sentencing phase
12 questions. That does not mean anything about this case or
13 about this defendant. It just means that because we know
14 we might get to that phase, we need to ask you some
15 questions about some issues that will come up if we do.

16 **A** Okay.

17 **Q** If you are a juror in this case, could you accept
18 and apply the law as I would give it to you and set aside
19 anything that you might have read or heard about this case
20 before it began and render a verdict that is based solely
21 on the testimony and evidence that you hear and see in this
22 courtroom?

23 **A** Yes.

24 **Q** You can do that?

25 **A** Yes.

1 Q This is a criminal case where the State has the
2 burden of proof beyond a reasonable doubt. It is a murder
3 case. You understand all that?

4 A Yes, sir.

5 Q Could you, based on the facts and circumstances
6 that you find to have been proven and in light of the law
7 as I will explain it to you, could you return a verdict of
8 either guilty or not guilty depending on your view of
9 whether or not the State has met its burden of proof?

10 A (Nods head affirmatively.) Yes, sir.

11 Q If you are on the jury in this case and the jury
12 that convicts the defendant of murder, we will move into
13 the second phase or the penalty phase of the trial. There
14 are some issues that will come up then that I will talk to
15 you about right now. Aggravating circumstances are facts
16 or incidents or details of an occurrence that the State of
17 South Carolina has declared to aggravate or to make worse
18 the crime of murder. Aggravating circumstances increase
19 the enormity of the crime and add to the injury caused by
20 the crime of murder.

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

1 responsibility for the crime of murder.

2 If you are on the jury in this case in the penalty
3 phase, if we get there, you will have two options as to
4 what your verdict can be. One is the life sentence and the
5 other is a death penalty.

6 **THE COURT:** Mr. Scruggs, would you get him a
7 paper towel, I mean, a Kleenex or something so he can
8 spit that gum into it. I appreciate it. The trash
9 can will do.

10 **MR. BECK:** Sorry.

11 **BY THE COURT:**

12 **Q** If you are on the jury in the penalty phase of a
13 death penalty case such as this, you would have two options
14 as to what your verdict can be. One option is for a life
15 sentence and the other option is for the death penalty.
16 Could you, based on the facts and circumstances that you
17 find to exist considering any aggravating or mitigating
18 circumstances, considering the law as I will give it to
19 you, could you find, could you vote to impose a life
20 sentence?

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

22 **A** Yes.

23 **Q** Sir?

24 **A** Yes, sir.

25 **Q** If you are a juror in this case and I sequester

1 the jury and require you to stay with us for five or six
2 days and not allow you to go home to your family would that
3 impose a terrible burden on you?

4 A Not terrible, no.

5 Q All right. Sir, now have you had a chance to
6 read over the witness list that I gave you?

7 A Yes, sir.

8 Q Do you know anybody or are you related to anybody
9 on that list?

10 A No, sir.

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, sir.

15 Q All right. I'm going to let the lawyers ask you
16 some questions. I will come back and talk to you again in
17 a minute.

18 EXAMINATION

19 BY MR. BARTOSH:

20 Q Good afternoon, Mr. Beck. I am Mike Bartosh. I
21 am a lawyer here in Spartanburg. Along with Doug Brennan
22 and Karen Quimby, we represent Marion Lindsey in this case.
23 As the judge told you, we're going to ask a couple
24 questions. There are no right answers and no wrong
25 answers. Just things that we need to know about you.

1 Now you live in Inman?

2 A Yes, sir.

3 Q How long have you lived in Inman?

4 A About four years.

5 Q Okay. Do you know anything about this case?

6 A Nothing other than what I read in the paper.

7 Q When was that, Monday?

8 A Monday morning.

9 Q Okay. And you know this happened in Inman?

10 A Right.

11 Q Did you know that?

12 A Right.

13 Q At the time that it happened, did you hear
14 anything about it?

15 A Sure didn't.

16 Q Good. So you don't know anything about it other
17 than what you read in the paper?

18 A Right.

19 Q And what was in the paper?

20 A About he could face the death penalty or
21 whatever.

22 Q Were there any details about what had happened in
23 the paper?

24 A Yes, sir.

25 Q Do you recall those details?

1 A Yes, sir.

2 Q Can you tell me what those details were.

3 A She was hiding in the back seat and he shot her.
4 Then he got shot by another officer.

5 Q All right. Now, you understand and the judge is
6 going to tell you if you are picked on the jury that
7 everybody under our system of laws, everybody accused of a
8 crime is presumed to be innocent?

9 A Yes, sir.

10 Q Even as Mr. Lindsey is sitting there now, he is
11 an innocent man.

12 A Right.

13 Q Okay. Could you put aside what you read in that
14 newspaper and accept the judge's instructions as to the
15 presumption of innocence?

16 A Yes, sir.

17 Q And Mr. Lindsey will remain innocent until you
18 and your eleven other jurors decide, if chosen, that he is
19 no longer entitled to that presumption. Do you understand
20 that?

21 A Yes.

22 Q All right. Let's talk about the second part of
23 this because it is what we are really here about. Okay?

24 A Okay.

25 Q At the second part of this process, the State is

1 going to present evidence that they believe will show that
2 this, that makes this a worse crime, that increases its
3 severity. Those are called aggravating circumstances. Of
4 course, the defense is going to present evidence of
5 mitigating circumstances which we would hope, we would show
6 that the, that it would lessened the seriousness of the
7 crime. Okay?

8 A (Nods head affirmatively.)

9 Q Would you be able to give both sides, both the
10 State and the defense a fair and impartial hearing on the
11 evidence that they will present at the hearing?

12 A Yes, sir.

13 Q Could you impose a life sentence?

14 A Yes, sir.

15 Q Do you have a bias as to either one? Would you
16 favor death over life?

17 A Yes, sir.

18 Q Would you?

19 A Would I choose one over the other?

20 Q Over the other.

21 A I guess it's according to the evidence or
22 whatever.

23 Q It would depend on the evidence that you heard?

24 A Right.

25 Q And you understand it is never a mandatory death

1 sentence?

2 A Right.

3 Q You always have the option for life, choosing
4 life. And life now is life without parole. Once they
5 receive a life sentence, they never get out of jail. They
6 die in the Department of Corrections. You understand
7 that?

8 A Yes.

9 Q Of course, if they get the death sentence, they
10 are executed.

11 A Right.

12 Q So you could vote for life?

13 A Right.

14 Q Let's say -- now, there is a sentencing sheet
15 that everybody has to sign if you are on the jury. Of
16 course, if the jury decided that life was the appropriate
17 sentence in this case, all twelve would sign the sentencing
18 sheet for life. However, if all twelve decided that death
19 was the appropriate sentence, they would sign the sheet for
20 death.

21 Now, let's say that for whatever reason, you are the
22 last juror. The other eleven have signed it. And you and
23 your jurors have decided after viewing all the evidence and
24 deliberating that death is the appropriate sentence. And
25 it came to you. And you know that once you sign that piece

1 of paper that you are condemning Marion Lindsey to death.

2 Would you have a problem signing that paper?

3 A No, sir.

4 Q Okay. That's all I have.

5 EXAMINATION

6 BY MR. WILLINGHAM:

7 Q Mr. Beck, my name is Donnie Willingham. I am

8 one of the prosecutors along with Barry Barnett and

9 Solicitor Trey Gowdy. I want to ask you a few more

10 questions. What are your views on the death penalty?

11 A Just probable I guess.

12 Q In certain circumstances?

13 A Right.

14 Q Where do those views come from?

15 A Upbringing, I guess.

16 Q You thought it was appropriate to give life or
17 death depending on the circumstances?

18 A Right.

19 Q I want to ask you a few more things based on
20 something you stood up for on Monday. The judge ask you if
21 you have been a victim and you stood up at that point.

22 A A victim of?

23 Q Any time you or anybody close to you had been a
24 victim of any kind.

25 A My mom. It was domestic.

1 Q Your mom was a victim of domestic violence?

2 A Yes.

3 Q What happen to that?

4 A Her boyfriend was fighting and stuff.

5 Q How long ago was that?

6 A When I was in middle school.

7 Q Was anybody arrested?

8 A No.

9 Q Was the police even called?

10 A No.

11 Q If allegations of domestic abuse come out in this
12 case, would that affect your ability to be fair on both
13 sides?

14 A I guess, well, I guess no.

15 Q Why do you say you guess no?

16 A I mean, it bothers me because I know what it's
17 like to go through that. I guess know. I would put that
18 aside.

19 Q You could put that aside and be a fair and
20 impartial juror based on what you hear in this courtroom?

21 A Yes.

22 Q You also stood when asked if you know someone in
23 law enforcement?

24 A Uh-huh (affirmative).

25 Q Who do you know?

1 **A** Steve Young. He's in Asheville.

2 **Q** He's in North Carolina?

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

4 **Q** So you don't know any law enforcement officers
5 here in Spartanburg?

6 **A** Not personally. Not close.

7 **Q** All right. I'm not sure if Mr. Bartosh asked
8 this or not. I'll ask it again just in case. There will
9 be a form that you have to sign if you think death is
10 appropriate. Could you put your signature on that form?

11 **A** Yes.

12 **Q** Thank you, Mr. Beck.

13 **THE COURT:** Mr. Beck, step in the hall for just
14 one second, please.

15 (WHEREUPON, Mr. Beck exits at approximately 1:49
16 p.m.)

17 **THE COURT:** Any objection to his qualifications?

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

19 **MR. WILLINGHAM:** No, sir.

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

21 (WHEREUPON, Mr. Beck enters at approximately 1:49
22 p.m.)

23 **THE COURT:** Mr. Beck, I find that you are a
24 qualified juror. We hope to begin in an hour or a
25 couple of hours. I'm going to ask you if you can to

1 go home now and get your stuff together and prepare to
2 be back here at 3 o'clock and be ready to spend five
3 or six days with us if you are put on this jury. Can
4 you do that conveniently?

5 MR. BECK: Well, I would have to call in to work
6 and all.

7 THE COURT: Call work?

8 MR. BECK: Uh-huh (affirmative).

9 THE COURT: Well, they understand that, I'm sure.
10 I'm talking about just the logistics of getting home,
11 getting your stuff and getting back. Can you do that
12 by 3 o'clock?

13 MR. BECK: (Nods head affirmatively.)

14 THE COURT: Okay. Don't talk to anybody about
15 this case. Don't read or listen to or watch anything
16 about this case. We will see you back here at 3
17 o'clock. Mr. Scruggs will show you where to come.

18 MR. BECK: All right.

19 THE COURT: These jurors that are here, we've got
20 two more jurors in this panel. They have been here a
21 long time. Let's go ahead and talk to these two, then
22 we will take our lunch break.

23 Bring us a juror.

24 (WHEREUPON, Otis Campbell, Juror number 45, enters at
25 approximately 1:51 p.m.)

OTIS CAMPBELL

having previously been sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q Mr. Campbell, good afternoon, sir.

A Good afternoon.

Q You recall that we put you under oath on Monday morning?

A Yes, sir.

Q You understand you are still under oath right now?

A Yes, sir.

Q Since Monday afternoon when we let you go, has anybody tried to talk to you about this case or have you talked to anybody about the case?

A I have not talked to anyone about the case. But I live in Inman. Everywhere you go, that's all that's being talked about. So all I've been able to do is to turn around a leave. I hadn't been able to go to the grocery store or anywhere else.

Q Well, I appreciate you telling me that. Have you been successful in keeping yourself from hearing anything about this case?

A Yes, sir.

Q Have you read or watched or listened to or heard

1 anything about this case since Monday afternoon?

2 A No, sir.

3 Q I'm going to ask you some questions. There are
4 not any wrong or right answers to these questions. All I
5 want you to do is listen carefully and be open and honest
6 with me. Lawyers also are going to be asking you some
7 questions too. Tell us how you think and tell us how you
8 feel.

9 A All right.

10 Q We are going to talk a little bit about a
11 possible sentencing phase. That does not mean anything
12 about this defendant. It just means that we might get to
13 that phase. And in case we do, we need to ask you
14 questions about some issues that will come up that phase.

15 A Right.

16 Q If you are a juror in this case, can you accept
17 and apply the law as I will give it to you and set aside
18 anything that you might have heard about this case or seen
19 about this case before you, before the trial started and to
20 render a verdict that is based solely on the testimony and
21 the evidence that you will hear and see in this courtroom.
22 Can you do that?

23 A To be honest with you, sir, I know so much about
24 this case that I do not feel that I could give an unbiased
25 opinion.

1 **Q** All right. Let me talk to you a minute about
2 that. And of course, I do want you to be honest with me.
3 I'm not trying to talk you out of that position.

4 **A** Right.

5 **Q** But let me explain to you what I would tell you
6 if you are on the jury about your responsibility and about
7 the law. First of all, the defendant is presumed innocent.
8 As he sits there right now, he is an innocent man. You
9 must accept that presumption of innocence. Can you do
10 that?

11 **A** I don't feel I can, sir.

12 **Q** All right. So you think that because you have --
13 you are from Inman. And I suppose you know and learned so
14 much about this case that you don't feel you can separate
15 yourself from that?

16 **A** Exactly.

17 **THE COURT:** All right. Either side want to ask
18 this juror any questions right now?

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

20 **MR. GOWDY:** I do not, Your Honor.

21 **THE COURT:** Would you step in the hall for just
22 one second please, Mr. Campbell?

23 **MR. CAMPBELL:** All right.

24 (WHEREUPON, Mr. Campbell exits at approximately 1:54
25 p.m.)

1 **THE COURT:** Do y'all agree that based on what he
2 has told us so far he is not qualified or do you
3 propose that I go forward with my questioning of him?

4 **MR. BARTOSH:** He's not qualified, Your Honor.

5 **THE COURT:** Bring him back.

6 (WHEREUPON, Mr. Campbell enters at approximately 1:54
7 p.m.)

8 **THE COURT:** Mr. Campbell, we appreciate you
9 coming in and being honest with us. And based on what
10 you've told us, we will not need your services any
11 more in this case. You are free to go.

12 Bring us the next juror.

13 (WHEREUPON, Mr. Campbell exits at approximately 1:55
14 p.m.)

15 (WHEREUPON, James Gentry enters at approximately 1:55
16 p.m.)

17 **JAMES GENTRY**

18 having previously been sworn, testified as follows:

19 **EXAMINATION**

20 **BY THE COURT:**

21 **Q** Mr. Gentry?

22 **A** Yes, sir.

23 **Q** How are you this afternoon, sir?

24 **A** Oh, pretty good.

25 **Q** Good. You recall that I put you under oath

1 Monday morning?

2 A Yes, sir.

3 Q You understand you are still under oath right
4 now?

5 A Yes, sir.

6 Q I'm going to ask you some questions. First, let
7 me ask you this. Since Monday afternoon when you left, has
8 anyone talked to you about this case or have you talked to
9 anybody about the case?

10 A No, sir.

11 Q Have you read or heard or seen anything about
12 this case since you left us Monday afternoon?

13 A No, sir.

14 Q I'm going to ask you some questions. The
15 questions don't have right or wrong answers. I just want
16 you to listen carefully and be open and honest with us and
17 to tell us what you think and how you feel. If you were a
18 juror on this case, could you accept and apply the law as I
19 will give it to you and set aside anything that you might
20 have heard or seen about this case before the trial began
21 and render a verdict that is based solely on the testimony
22 and evidence that you see in the courtroom? Can you do
23 that?

24 A I think so.

25 Q All right, sir. You did put down that you do

1 know something about this case?

2 A Yes, I know the defendant, I mean the lady. I
3 knowed her Father.

4 Q You knew her father?

5 A Uh-huh (affirmative).

6 Q Had you heard anything about what supposedly
7 happened?

8 A No, not really.

9 Q Okay. You understand this is a criminal case in
10 which the State has the burden of proving the defendant
11 guilty beyond a reasonable doubt?

12 A That is right.

13 Q You understand this is a murder case?

14 A Yes, sir.

15 Q Could you, based on the facts and circumstances
16 that you find to have been proven and in light of the law
17 as I will give it to you, could you return a verdict for
18 either guilty or not guilty depending on whether you
19 believe the State has met its burden of proof?

20 A Yes, sir.

21 Q If you get on the jury and if we get into the
22 penalty phase of the trial, that is, the jury finds the
23 defendant guilty, we will move into the penalty phase of
24 the trial. I'm going to tell you some of the issues that
25 we need to talk about for that phase. Okay?

1 **A** Okay.

2 **Q** Aggravating circumstances are facts, incidents or
3 details of an occurrence that South Carolina has the
4 declared to aggravate or to make worse the crime of murder.
5 Aggravating circumstances increase the enormity of the
6 crime and add to the injury caused by the crime of murder.

7 Mitigating circumstances, on the other hand, are
8 facts, incidents or details of an occurrence that South
9 Carolina has declared to lessen the severity of the crime.
10 Mitigating circumstances serve to extenuate or to reduce
11 the degree of moral culpability or responsibility for the
12 crime of murder.

13 If you are on the jury in the sentencing phase of this
14 case, you would have two options as to what your verdict
15 could be. You could have a verdict for a life sentence, or
16 you can have a verdict imposing the death penalty. Could
17 you, depending on the facts and circumstances that you find
18 to exist and considering any aggravating or mitigating
19 circumstances and considering the law as I will give it to
20 you, could you return a verdict or I should say vote to
21 return a verdict imposing the life sentence?

22 **A** Yes, sir. If I get all the evidence and stuff,
23 I think I could.

24 **Q** All right, sir. Could you vote to return a
25 verdict imposing the death penalty?

1 **A** I don't know about the death penalty. I don't
2 think that I would be able to take somebody's life.

3 **Q** You don't think you could?

4 **A** If the evidence and all shows, but it would be a
5 little hard I think.

6 **Q** All right, sir. Let me let the lawyers talk to
7 you a little bit about that for a few minutes okay.

8 **A** All right.

9 **THE COURT:** Mr. Bartosh.

10 **MR. BARTOSH:** Thank you, Your Honor.

11 **EXAMINATION**

12 **BY MR. BARTOSH:**

13 **Q** Mr. Gentry, I appreciate your honesty in this.
14 I would hope that nobody would think it was easy to impose
15 the death penalty on somebody. I appreciate your honesty.
16 There's a couple of things I would like to you about. You
17 said on your questionnaire that your son had killed your
18 wife?

19 **A** His wife.

20 **Q** His wife. Okay. He is presently incarcerated
21 for that?

22 **A** Yes.

23 **Q** Would that fact, let's set aside our discussion
24 of the death penalty for a little bit. Would the fact
25 that your son had killed his wife, would that have any

1 influence on you being able to give Mr. Lindsey a fair and
2 impartial trial?

3 A I would not think so.

4 Q You understand that if you were picked for the
5 jury, the judge is going to tell you at the very beginning
6 that under our system of laws, everybody accused of the
7 crime is considered to be innocent. They are presumed to
8 be innocent. Even as Mr. Lindsey sits there today, he is
9 an innocent man.

10 It is only until, if you were picked, you and your
11 eleven other jurors decided, after hearing the evidence
12 submitted by the State, decided beyond a reasonable doubt
13 that the State had carried its burden that he was no longer
14 entitled to that assumption. Do you understand that?

15 A (Nods head affirmatively.)

16 Q Would you be able to accept the judge's
17 instructions on the presumption of innocence?

18 A If it was proven.

19 Q What I'm saying is as he sits there right now, he
20 is innocent.

21 A Yeah.

22 Q The judge is going to you if you get chosen on
23 the jury from the very start of the trial, he is innocent.
24 Okay. And it is only until after hearing all the evidence
25 and the twelve folks on the jury decides that he is not

1 entitled to that anymore and that he is no longer, he no.
2 longer has that assumption. You understand?

3 He is innocent. As he sits there right now, he is
4 innocent. He is going to be innocent until the twelve
5 folks on the jury decides that he is not. Okay. They
6 have to decide that based on the evidence that the State
7 presents and they have to decide that beyond a reasonable
8 doubt. Okay. So would you have a problem with that?

9 A No.

10 Q Would the fact that you knew the alleged victim
11 in this case, you knew her father, would that in any way
12 prevent you from giving Mr. Lindsey a fair trial?

13 A No.

14 Q How close were you and he?

15 A I just knowed him by his business that he runs.

16 Q Okay. So you did not know him socially?

17 A No.

18 Q Y'all were not friends or anything like that.
19 You just knew of him?

20 A Yes.

21 Q Let's talk about the death penalty. Okay. When
22 the judge first talked to you about that, you said you
23 would find it difficult to give someone the death penalty?

24 A (Nods head affirmatively.)

25 Q As I said, I would hope that everybody would find

1 it difficult to give somebody the death penalty. I would
2 hope there would not be anybody who will find it easy to do
3 that. But let me tell you this. First of all, there is
4 no mandatory death penalty in South Carolina. You always
5 have the choice of life. You do not have to give the death
6 penalty.

7 The way this is going to work is if we get to that
8 point, once again the State is going to stand up and they
9 are going to produce what I call aggravating circumstances.
10 All that is are things that they say that are about this
11 crime that make it worse. These particular facts make
12 this crime worse. Therefore, Mr. Lindsey should be given
13 the death penalty.

14 What we're going to do, the three of us are going to
15 do is we're going to offer some evidence in mitigation,
16 which means we're going to try to convince the jury that
17 these factors lessen the severity of the crime. The
18 appropriate punishment is life in prison. Life in prison
19 means exactly that. If he, if Mr. Lindsey is given a
20 life sentence, he would never get out of jail. He will die
21 in the Department of Corrections. When was your son
22 convicted of murder? Has it been a while?

23 A '97 or '98.

24 Q You remember what sentence he got?

25 A 30 years.

1 Q Okay. The only sentence, only two sentences that
2 Mr. Lindsey, if we get to the sentencing phase, the only
3 two sentences he can receive are life and death. They
4 have got to be unanimous. That means you and the eleven
5 other people on the jury would have to agree, all agree it
6 is either life or death. Okay? Now could you impose
7 after hearing all of the evidence that will be presented at
8 that hearing, if you believed that life was the appropriate
9 sentence, could you impose a life sentence?

10 A Yes, I could.

11 Q Could you give Mr. Lindsey life?

12 A I think so.

13 Q Okay. If, on the other hand, after you and the
14 twelve jurors looked at all the evidence that have been
15 presented at that second hearing and look at the evidence
16 that the State presented and look at the evidence that the
17 defense presented and you decided that the appropriate
18 sentence should be death, could you impose, if after
19 hearing all the evidence and if after talking it over with
20 everybody and you believed that it was appropriate,
21 everybody believed that was appropriate, could you impose
22 the death sentence?

23 A I probably could.

24 Q Okay.

25 **THE COURT:** Mr. Gentry, let me just remind you

1 that the Court Reporter needs to be able to hear what
2 you say. Since you are speaking kind of in that
3 direction she might be having a little bit of trouble.
4 So just speak up a little bit. Thank you, sir.

5 **MR. GENTRY:** All right.

6 **BY MR. BARTOSH:**

7 **Q** I going to ask you one question, Mr. Gentry. I
8 appreciate your honesty. You have been very forthright
9 with me. One more question. No matter what the sentence
10 is, be it life or be it death, there is a form that has to
11 be filled out by the jury. It has to be signed by every
12 member of the jury. If it is life, all twelve of the
13 jurors have to sign it saying life. If it is death, all
14 twelve of the jurors have to sign that it is death.

15 Let's say for whatever reason you are the last juror
16 to sign the form after you and your fellow jurors have sat
17 down and looked at the evidence and thought about it and
18 talked about it and each of you decided death is the
19 appropriate sentence, okay?

20 And you knew that when you signed your name as being
21 the last person to sign that piece of paper, you knew that
22 by signing your name to that piece of paper, you were
23 condemning Mr. Lindsey to death, could you sign that piece
24 of paper if you felt that it was appropriate if you and
25 your fellow jurors had discussed it and looked at all the

1 evidence and had felt that it was appropriate, that death
2 was the appropriate sentence, could you sign that paper?

3 A I think so.

4 Q Okay. Thank you, sir.

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

7 THE COURT: Yes, sir.

8 EXAMINATION

9 BY MR. GOWDY:

10 Q Good afternoon, Mr. Gentry.

11 A Yes, sir.

12 Q How are you today?

13 A Pretty fair.

14 Q I'm going to stand here so Madam Court Reporter
15 can hear both of us a little bit better. My name is Trey
16 Gowdy. That is Donnie Willingham to your left and Barry
17 Barnett to the center. The three of us are going to
18 prosecute this case on behalf of the State.

19 A Okay.

20 Q Thank you for filling out the question -- sir?

21 A I said okay.

22 Q Okay. I know this is all -- you and I have never
23 met together. And we're asking you a bunch of questions.
24 So I'm going to do it as quickly as I can. You filled out
25 this questionnaire. It had some pretty personal

1 questions. I've got to go in to some of them with you.

2 Your son is serving a 30-year sentence now?

3 A Yes, sir.

4 Q Who prosecuted that case? Did it happen here?

5 A Yes, sir.

6 Q Would it have been the Solicitor's office who
7 prosecuted the case?

8 A Yes, sir.

9 Q Did it go to trial or did he plead guilty?

10 A He pled guilty.

11 Q Do you believe that your son was treated fairly
12 by the prosecutor's office?

13 A I pretty much think so.

14 Q Okay. Nothing happened during the course of the
15 investigation of that case or the prosecution of that case
16 that left you with a bad taste in your mouth?

17 A No.

18 Q Okay. The judge read you the indictment on
19 Monday. The allegation is that this defendant shot his
20 wife. That is an allegation. He is innocent until
21 proven guilty. But given the fact that you have had that
22 experience in your own family, are you confident in your
23 soul that you can be fair in a case that is as close to
24 home as that one might be?

25 A I think so.

1 Q Any hesitation at all in your mind. Sometimes.
2 we say we think so but we're not 100 percent certain. Are
3 you as certain as you can be that you could put it out of
4 your mind?

5 A That is kind of a hard question.

6 Q I'm sure it is. I just don't want a week from
7 now you just say I can not in a case involving facts like
8 that because that could be my son. I need to know today as
9 opposed to this time next week?

10 A Yeah. In my honest opinion, I think I could give
11 you a straight answer for it.

12 Q You think you can be fair?

13 A I can be fair.

14 Q Okay. I see you are both an usher and on the
15 Board of Trustees at your church, is that right?

16 A Yes, sir.

17 Q What are your religious or philosophical views on
18 capital punishment on the death penalty?

19 A Well, I wouldn't oppose the death penalty. If is
20 something should fall in that category, I think I could go
21 along with it.

22 Q I know. I feel for you. When you said fall in
23 that category, I don't want to replot the same grounds the
24 judge went over. But you know nobody is going to ever tell
25 you that you've got to impose the death penalty.

1 **A** Right.

2 **Q** It's always going to be your choice. Do you
3 think that you could choose to impose it if you thought it
4 was right.

5 **A** If I thought it was right.

6 **Q** Okay. And you are not morally opposed to the
7 death penalty?

8 **A** No, I'm not.

9 **Q** What was your son's name?

10 **A** James Gentry.

11 **Q** James Gentry?

12 **A** Junior.

13 **Q** Junior. You mentioned you know Stanley Staggs?

14 **A** Yes, sir.

15 **Q** From his restaurant?

16 **A** Yes.

17 **Q** You go there often?

18 **A** Not too often. Maybe once or twice a month.

19 **Q** You ever talk to him when you go down there?

20 **A** Sometimes we have a conversation. My daughter
21 knows his ex-wife.

22 **Q** I think you are confident we're not putting you
23 in an awkward position for a case where he's going to
24 testify?

25 **A** No, sir.

1 Q And you can come in the courtroom if you were on
2 the jury, if you thought life was right, you would vote for
3 life?

4 A Right.

5 Q If you thought death was right, you would be
6 fair?

7 A I would be fair.

8 Q I appreciate that, Mr. Gentry. Thank you.

9 **THE COURT:** Mr. Gentry, just step in the hall for
10 just one second. And I'll be right back with you.

11 (WHEREUPON, Mr. Gentry exits at approximately 2:14
12 p.m.)

13 **THE COURT:** Any objection to his qualifications?

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

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

16 **THE COURT:** Bring him back.

17 (WHEREUPON, Mr. Gentry enters at approximately 2:14
18 p.m.)

19 **THE COURT:** Mr. Gentry, I find that you are a
20 qualified juror in this case. We are going to
21 possibly begin jury selection at about 3 o'clock. Can
22 you get home and get your stuff together and get back
23 up here prepared to spend five or six days with us by
24 3 o'clock?

25 **MR. GENTRY:** I will do my best. I'll try. By 3

1 o'clock?

2 **THE COURT:** Yes, sir. We'll wait for you. Do
3 your best. Don't talk to anybody about this case.
4 Don't read, listen to or watch anything about this
5 case. Mr. Scruggs will show you where to come when
6 you get back. And remember that if you are selected
7 to be on the jury, you will need to be here with us
8 and have enough of your clothing or whatever else you
9 need to be with us for five or six days. Okay?

10 **MR. GENTRY:** Okay.

11 **THE COURT:** I think I might have stopped short. I
12 need to ask you a couple of questions. Is being here
13 for five or six days going to be a terrible burden on
14 you?

15 **MR. GENTRY:** I'm on medication. I've got sugar
16 and high blood pressure.

17 **THE COURT:** Can you take that medication yourself?

18 **MR. GENTRY:** Yes, sir.

19 **THE COURT:** So if you are here with us, you can
20 take the medication and you will be okay?

21 **MR. GENTRY:** Yes, sir.

22 **THE COURT:** Did you read over that witness list
23 that I gave you?

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

25 **THE COURT:** Did you read every name on the list?

1 **MR. GENTRY:** Most all of them.

2 **THE COURT:** You didn't read them all?

3 **MR. GENTRY:** I checked with most all of them.

4 **THE COURT:** I need to know if you read all of
5 them.

6 **MR. GENTRY:** I read through. I just notice Mr.
7 Staggs.

8 **THE COURT:** Mr. Staggs is the only one you know
9 and the only one you are related to.

10 **MR. GENTRY:** I'm not related to him.

11 **THE COURT:** Is that the one you asked him about?

12 **MR. GOWDY:** Yes, sir.

13 **THE COURT:** All right. Mr. Gentry, do you know
14 of any reason why you can not give both the State and
15 the defendant a fair and impartial trial in this case?

16 **MR. GENTRY:** No, sir.

17 **THE COURT:** All right. Go ahead and get your
18 stuff together and come on back.

19 (WHEREUPON, Mr. Gentry exits at approximately 2:16
20 p.m.)

21 **THE COURT:** Y'all, that gives us 37 jurors if
22 nothing changes. I'm going to rule that Richard Smith
23 is not qualified. So we are at 37.

24 **THE CLERK:** 38.

25 **MR. BRENNAN:** 38.

1 **THE COURT:** Is it 38?

2 **MR. BARTOSH:** Yes, Your Honor.

3 **THE COURT:** Well, that makes it even easier. 39
4 is the most that we would need to get a jury with
5 three alternates. So what I propose that we consider
6 is to begin with the striking at 3 o'clock as we
7 planned. And if, by some what I think would be an
8 unlikely circumstance, we need another juror, we've
9 got another panel back here. We can take a break. We
10 can qualify some more jurors and we can then resume.
11 Any objection to that?

12 **MR. GOWDY:** There's no objection to that,
13 Your Honor. I would hope the Court would entertain
14 our motion to voir dire Ms. Netherton a little
15 further.

16 **THE COURT:** We are going to do that. I've already
17 said that two or three times. We're going to do that.

18 **MR. GOWDY:** I know. It's just that if we're
19 starting back at 3:00 and we're going to do a dry
20 strike --

21 **THE COURT:** No, I'm not doing -- we're going to
22 start back at 3:00. Talking to Ms. Netherton is one
23 of the first things we'll do. Then I will bring the
24 whole jury in here. I will ask them those few
25 questions that I'll need to ask plus any others that

1 y'all want me to ask. When we are finished with that,
2 we will strike. I don't see --

3 MR. GOWDY: If we go through the process once
4 and there's a Batson issue, I -- it is just -- I don't
5 know. I could be wrong. It just seems to flow better
6 when we know if there's any issues before we bring the
7 jury in and go through the live process of calling
8 forward.

9 I mean, if he knows my strikes in advance and I
10 know his strikes in advance and we both are bound by
11 the strikes we give you the first time and he's got a
12 Batson or I've got an issue, then it just seems fair
13 to do it then than to bring it up with 40 people in
14 the room.

15 THE COURT: Mr. Bartosh?

16 MR. BARTOSH: I have no preference, Your Honor.

17 THE COURT: Uh, I believe that we will just go
18 forward and do it.

19 MR. GOWDY: Okay.

20 THE COURT: And that we will give each side the
21 opportunity to raise objections to the strikes under
22 Batson or whatever without prejudicing themselves in
23 front of the jury. All right?

24 MR. GOWDY: Okay.

25 THE COURT: We will take a break.

1 (WHEREUPON, a short recess was taken at approximately
2 2:26 p.m.)

3 (WHEREUPON, the Court resumed at 2:35 p.m.)

4 (WHEREUPON, a bench conference was held off the
5 record.)

6 **THE COURT:** Since I suppose we are putting this on
7 the record, stand back so that the Court Reporter can
8 see you. Yes.

9 **MR. BARTOSH:** The other issue is there is an
10 enhanced 911 tape that we would object to.

11 **THE COURT:** Is there any need to take that up now
12 before opening statements?

13 **MR. GOWDY:** Any of these issues that we can
14 take up now?

15 **THE COURT:** Enhanced 911 tape. Is there any need
16 to take that up now before you all make opening
17 statements?

18 **MR. GOWDY:** Well, he made reference in his --
19 I would hope -- I haven't read his opening statement
20 but I would hope that he might make reference to that
21 in his opening statement.

22 **MR. BARNETT:** The enhanced version is cut.
23 You've got two witnesses. You have one to testify to
24 the tape. Then we have somebody to testify to the
25 enhanced version.

1 **MR. BARTOSH:** Right. We are objecting to the
2 enhanced version.

3 **THE COURT:** What do you mean by enhanced?

4 **MR. GOWDY:** There is a place in Greenville
5 where you have scratchy tapes. They don't add
6 anything to it and they don't take anything from it.
7 They take what is on the tape and make it more
8 audible. They can suppress background.

9 **THE COURT:** And you are planning to play the
10 enhanced tape during opening statements?

11 **MR. GOWDY:** No, sir. But it's going to be
12 our first piece of evidence and second witness.

13 **THE COURT:** Wait a minute now. The first piece of
14 evidence is to play the enhanced tape?

15 **MR. GOWDY:** The first piece of evidence is
16 the unenhanced 911 tape. We are not going to play
17 that. We're going to ask the person in Greenville who
18 enhanced it, did you take this 911 tape and make it
19 more audible. Yes. Then we propose to play that.

20 **THE COURT:** So the foundation for the admission of
21 the enhanced 911 tape is put in through that witness
22 from Greenville. And it doesn't come in until that
23 foundation is laid. Right?

24 **MR. GOWDY:** That's correct.

25 **THE COURT:** So why can't I just let them put the

1 guy up on the stand like we normally do with just
2 about every other witness who ever testified. Let
3 them lay the foundation. If they lay it, it's
4 admitted. If they don't, it's not.

5 **MR. BARTOSH:** Because we are objecting to the
6 enhanced tape.

7 **THE COURT:** But you are not objecting to the
8 regular tape, are you?

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

10 **THE COURT:** That's all Barry is going to do in his
11 opening statement is refer to what the tape says. If
12 he ends up being wrong, that's a matter for the jury
13 to decide.

14 **MR. BARTOSH:** I may be just totally missing the
15 point here. There are a couple of things about the
16 tape. I guess the best way to resolve it would be for
17 the Court to listen to the tape. We could sit here
18 and describe it but there's a couple of things about
19 the tape that we have objections to. We object to the
20 enhanced version of the tape. We object to playing
21 the entire tape during the guilt phase. Now, if they
22 want to go into in the pen --

23 **THE COURT:** Hold on right there.

24 Are you going to play the entire tape during the
25 guilt phase?

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

2 **MR. GOWDY:** Yes, sir.

3 **THE COURT:** All right. When? At what point?

4 **MR. GOWDY:** It will be, we will call Freddy
5 Thompson, the 911 director, to establish that there
6 was a 911 tape. Then we will propose to play the 911
7 tape through Diana Daniels, the second witness. The
8 second witness, the second exhibit, first published
9 exhibit.

10 **THE COURT:** Okay. All right. That's the enhanced
11 tape?

12 **MR. GOWDY:** Yes, sir.

13 **THE COURT:** Your objection as to the tape itself
14 in its entirety and to the enhanced version of the
15 tape?

16 **MR. BARTOSH:** We object to the enhanced version
17 of the tape. We object to them playing the entire
18 tape, the entire tape during the guilt phase.

19 **MS. QUIMBY:** I can clarify. We don't object to
20 the original 911 tape. I think that we object to it
21 being played in its entirety.

22 **MR. GOWDY:** To cut to the chase, you hear
23 kids crying because the lady in the backseat with them
24 has been shot in the head four times and a bullet just
25 barely misses them and they are crying. We are not

1 going to play the entire tape, but we're not going to
2 stop it after the fourth gunshot goes off either which
3 is what they want us to do. Their ought to be some
4 middle ground here. The tape goes on and on for a
5 minute with the 911 dispatcher saying ma'am, ma'am,
6 ma'am with no response. What they want us to do is
7 turn it off after he fires his fourth shot.

8 **MR. BARTOSH:** That's correct. Beyond that,
9 there is no relevance.

10 **THE COURT:** Okay. How long will it take me to
11 listen to the tape to the point where you both agree
12 you're going to stop it during the guilt phase?

13 **MR. GOWDY:** About -- well, we don't agree
14 where we're going to stop it.

15 **MR. BARTOSH:** To get that point will be about
16 what, four minutes?

17 **MR. GOWDY:** Not even that I don't think. Two
18 minutes.

19 **THE COURT:** Let's, uh, we will begin at 3 o'clock
20 as I said. Once the jury is selected, we will send
21 the jury back to the hotel to get settled in. While
22 they are gone, one of the things that we will take up
23 is the tape. And we will take up everything that we
24 can.

25 But basically, I'm not really all that fond of

1 dealing with every evidentiary issue that's going to
2 come up in a trial in a motion in limine especially
3 when it comes to Rule 403 objections which is what
4 this apparently is. I need to kind of get my feet wet
5 in the case before I can understand the potential for
6 unfair prejudice. So since it is the second exhibit,
7 I'm going to have to dive in. But I will come back
8 and listen to the tape. And I will rule if I am ready
9 before you make opening statements. How about that?

10 And as far as the enhancement is concerned, I'm
11 going to let the witness from Greenville come over
12 here and testify and I will listen to the testimony.
13 You can voir dire him before he admits the exhibit.
14 And if the proper foundation is laid, I will admit it.
15 If it's not, I won't. There's no need to do a motion
16 in -- there is no need to address that in limine.
17 Anybody disagree with that?

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

19 **THE COURT:** Cause the jury is not going to hear
20 about it nor are they going to hear the enhancement
21 until I rule that it is admissible.

22 **MR. BARTOSH:** I thought you said you were going
23 to rule that the enhanced statements were admissible..
24 That's what I understood you said.

25 **MR. GOWDY:** He hadn't said that.

1 **THE COURT:** I said I'm going to listen to the
2 foundation.

3 **MR. BARTOSH:** I apologize, Your Honor. I
4 apologize.

5 **MR. GOWDY:** Just because when we start,
6 things are going to go at lightning speed. And we all
7 are going to be in the courtroom. And we've got to
8 make some decisions. To the extent that they are
9 going to rely upon psychiatric testimony or
10 neurological testimony in either the guilt phase or
11 the sentencing phase, I think we have a right to have
12 our people examine this defendant.

13 And at some point, we've got to cross that
14 bridge. We have a psychiatrist. We have a
15 neurologist. To date, we haven't seen the medical
16 records yet. I believe we are going to get that this
17 afternoon. I think the case law enables us to --

18 **THE COURT:** Do you object to that, Mr. Bartosh?

19 **MR. BARTOSH:** To be honest, sir, they can
20 examine him as many times and as often and as many
21 people as they want to.

22 **MR. GOWDY:** When?

23 **MR. BARTOSH:** Whenever.

24 **THE COURT:** Let's do it this way. When do you
25 want to do it?

1 **MR. GOWDY:** Tonight when we break.

2 **THE COURT:** Tonight. We'll address the specifics
3 of it while the jury is at the hotel. Is that
4 sufficient, Mr. Gowdy?

5 **MR. GOWDY:** It is for me, Your Honor.

6 **THE COURT:** All right.

7 (WHEREUPON, a short recess was taken at approximately
8 2:51 p.m.)

9 (WHEREUPON, the Court resumed at approximately 3:06
10 p.m.)

11 **THE BAILIFF:** Mr. Smith is here.

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

13 (WHEREUPON, Richard Smith, Juror number 257, enters at
14 approximately 3:06 p.m.)

15 **THE COURT:** Mr. Smith?

16 **MR. SMITH:** Yes, sir.

17 **THE COURT:** We appreciate you coming back to the
18 courthouse today. We will not be needing your
19 services in this case. So you are free to go.

20 **MR. SMITH:** Thank you, Your Honor.

21 (WHEREUPON, Mr. Smith exits at approximately 3:06
22 p.m.)

23 **THE COURT:** All right. Before -- hold just for
24 one second before you bring Ms. Netherton in.

25 Now, do you want me to talk to her first? Or do

1 you want me to just turn it back over to y'all for a
2 few minutes?

3 **MR. BARNETT:** Judge, I have three questions I
4 would like to ask her. But if you want to, you can
5 talk to her first.

6 **THE COURT:** I'm going to let you do it.

7 You have the right to go first if you want to.

8 **MR. BARTOSH:** I have no questions.

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

10 (WHEREUPON, Joann Netherton, Juror number 205, enters
11 at approximately 3:07 p.m.)

12 **JOANN NETHERTON**

13 having previously been sworn, testified as follows:

14 **THE COURT:** Ms. Netherton?

15 **MS. NETHERTON:** Hi.

16 **THE COURT:** How are you?

17 **MS. NETHERTON:** Just fine. Thank you.

18 **THE COURT:** Good. We wanted to address a few more
19 questions to you because of the things that you
20 brought up to us the other afternoon. I believe it
21 was yesterday afternoon when you came in. If you will
22 bear with us, I'm going to let the lawyers ask you
23 just a few questions. Then I may have a few more
24 questions for you. Okay?

25 **MS. NETHERTON:** Okay.

1 **THE COURT:** You are still under oath from when we
2 put you under oath Monday morning.

3 **MS. NETHERTON:** Okay.

4 **EXAMINATION**

5 **BY MR. BARNETT:**

6 **Q** Ms. Netherton, I just want to ask you a few
7 questions based on what you said yesterday. You said
8 yesterday that you thought you could issue a death sentence
9 if certain criteria were met.

10 **A** That's correct.

11 **Q** You understand that it would never be mandatory?

12 **A** I understand that.

13 **Q** Okay. The impression I got yesterday is if there
14 was A, B, and C, then automatically you would do death.
15 But you understand if you have A, B, and C, you still don't
16 have to choose death?

17 **A** Right.

18 **Q** You could choose life or death. You understand
19 that?

20 **A** Yes. I can understand that.

21 **Q** And one last question. You indicated you wanted
22 to talk to your priest. Serving on this jury, if you think
23 death is the appropriate sentence, do you think that Sunday
24 after this trial is over and you have found a death verdict
25 that you could look at your priest in the eye with a good

1 conscience?

2 **A** I could. I wasn't going to discuss the case with
3 him.

4 **Q** I understand. It was just a concern that we had.
5 I wanted to make sure that you could be a fair and
6 impartial juror without worrying about what your priest may
7 say or anybody else may say once the trial is over with.

8 **A** I'm not worried about what they'll say.

9 **Q** It's how you feel?

10 **A** It's my feeling.

11 **Q** You think you would be able to do it?

12 **A** I do.

13 **Q** Thank you, ma'am.

14 **THE COURT:** Mr. Bartosh?

15 **MR. BARTOSH:** No questions.

16 **THE COURT:** Uh, All right. Ms. Netherton, I'm
17 going to ask you to return to the jury assembly room
18 with the other members of the jury.

19 Mr. Scruggs, are all of the qualified jurors in
20 the jury room?

21 **THE BAILIFF:** I have not counted them, sir.

22 **THE COURT:** Would you go down there and make sure
23 that everybody is there and then report to me what you
24 find.

25 (WHEREUPON, Ms. Netherton exits at approximately 3:11

1 p.m.)

2 **THE COURT:** Anything y'all want to take up now?

3 **MR. BARNETT:** Your Honor, as far as the
4 discussion we had just right before lunch about our
5 expert witnesses to examine the defendant. I talked
6 to one of my witnesses. They would like the
7 opportunity to examine the defendant tonight after
8 court proceedings as well as tomorrow night after
9 court proceedings. And we would like an opportunity
10 to follow up with their witnesses.

11 **THE COURT:** To talk to what?

12 **MR. BARNETT:** To their experts in addition to the
13 defendant.

14 **MR. BARTOSH:** Your Honor, I don't think they
15 are entitled to do that. They can rely upon any
16 reports or any studies that they relied upon. I don't
17 believe that our experts are required to let them know
18 how they would testify.

19 **MR. BARNETT:** We're not saying that they are not
20 required to allow their experts to talk to us or talk
21 to our experts or anybody else. We're just asking
22 them to do that.

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

24 **THE COURT:** All right. Any objection to making
25 the defendant available to meet with their doctors

1 tonight and tomorrow night?

2 **MR. BARTOSH:** Absolutely none, Your Honor.

3 **THE COURT:** All right. We will rely on Mr. Ruth
4 and those others in his department to make that
5 happen.

6 Folks, what I propose to do --

7 You got room for all the jury?

8 **THE BAILIFF:** Where would you like them?

9 **THE COURT:** I would like to have them all on one
10 side if I could. There's not going to be room on this
11 side, I don't think. Is it?

12 **THE BAILIFF:** We've got 40 of them?

13 **THE COURT:** 38.

14 **THE BAILIFF:** I think we would be better off
15 moving everybody on this side.

16 **THE COURT:** Do that.

17 (WHEREUPON, the benches were cleared for the jury.)

18 **THE COURT:** Are there any questions that either
19 side wants me to put before the jury in terms of
20 additional voir dire when I bring them in here in just
21 a second?

22 **MR. GOWDY:** None from the State, Your Honor.

23 **THE COURT:** All right. Do you need -- I'm going
24 to ask them if they had any discussions or read
25 anything or seen anything or heard anything about the

1 case. Then I'm going to go through a few of the
2 statutory voir dire questions that I have not asked
3 yet. Any objection to that?

4 **MR. GOWDY:** None from the State, Your Honor.

5 **MR. BARTOSH:** Your Honor, may we approach a
6 moment?

7 **THE COURT:** Yes.

8 (WHEREUPON, a bench conference was held off the
9 record.)

10 **THE COURT:** All right. Before we bring the jury
11 in, I've got motions pending that I haven't ruled on.
12 The defendant has made a motion to not sequester the
13 jury. I have read the paperwork that has been
14 submitted.

15 Is there any additional argument you want to
16 present on that motion without repeating what is said
17 in the brief?

18 **MR. BRENNAN:** Yes, Your Honor, there is. Your
19 Honor, I have in my hand a copy of a Webpage from the
20 Spartanburg Herald dated February 29, 2004. It's an
21 interview that was conducted with the woman who served
22 as a juror in a death penalty case. She talks about
23 --

24 **THE COURT:** Wait a minute. Is there an
25 evidentiary objection to this?

1 **MR. GOWDY:** Your Honor, it's hearsay. I
2 don't have an objection. Can I see it?

3 **MR. BRENNAN:** That argument simply bolstered the
4 argument made in the written documents that the Court
5 has. And it talks about the relationship that is
6 created between the jurors and the individuals charged
7 with guarding them and transporting them back and
8 forth and how that relationship may affect the jurors
9 during sequestration.

10 **THE COURT:** Any objection?

11 **MR. GOWDY:** It's double hearsay.

12 **THE COURT:** You object?

13 **MR. GOWDY:** Yes, sir.

14 **THE COURT:** Any response to the objection?

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

16 **THE COURT:** Is it not just like any other
17 evidentiary, it is not like any other issue that comes
18 before the Court that if you want to submit evidence,
19 it's got to comply with the Rules of Evidence?

20 **MR. BRENNAN:** I agree that I do, Your Honor. In
21 fact, the gentleman who --

22 **THE COURT:** So then how are you going to get it
23 in?

24 **MR. BRENNAN:** The gentleman who wrote the article
25 is here, Your Honor. If I could have one second, I'll

1 get him.

2 **THE COURT:** No, I'm not going to do that. We've
3 had this motion pending for -- when did you file it?

4 **MR. BRENNAN:** Monday, Your Honor.

5 **THE COURT:** Monday. And about an hour and a half
6 ago or an hour ago, I announced that I was going to
7 start jury selection 3 o'clock. And only when I asked
8 if you had any additional evidence to submit do you
9 offer that you have this article. I'm sustaining the
10 objection. I'm not going to make this an open
11 evidentiary hearing. If you wanted that, then you
12 could have brought that to my attention months ago.

13 **MR. BRENNAN:** Your Honor, we would rely on the
14 written documents.

15 **THE COURT:** All right. Then I am going to deny
16 the motion to keep me from sequestering the jury and
17 also to deny the motion to have somebody other than
18 S.L.E.D. guard or to keep control of the jury.
19 Anything further?

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

21 **THE COURT:** Any other motions that I need to rule
22 on or anything else that we need to deal with before
23 we bring the jury around?

24 **MR. BARTOSH:** My previous motion.

25 **THE COURT:** Can we bring the jury around?

1 **THE CLERK:** They are not all here.

2 **THE COURT:** Who is not here?

3 **THE CLERK:** Eight of them.

4 **THE COURT:** There are eight who are not here?

5 **THE CLERK:** Yes, sir.

6 **THE COURT:** Well, I'd say we've got a significant
7 problem. We've got eight jurors who are not here.
8 I'm going to ask you, Martha, to get eight people in
9 the Clerk's office to simultaneously call those people
10 and tell them to get up here immediately. If they
11 don't understand what that means, let me know.

12 **THE CLERK:** Yes, sir.

13 **THE COURT:** Well, why don't we go ahead and
14 qualify a few more jurors while we are waiting.

15 **MR. BARTOSH:** Whatever pleases the Court. The
16 only thing we have is the tape issue. Whatever
17 pleases the Court.

18 **THE COURT:** We're going to have plenty of time to
19 deal with the tape I believe when the jury goes back
20 to the hotel. So I think we ought to qualify a few
21 more jurors just to make certain that we've got enough
22 and we know we're not going to have to go back and do
23 that after we start striking.

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

25 **THE COURT:** So, we need Pamela Bagwell.

1 (WHEREUPON, Pamela Bagwell, Juror number 9, enters at
2 approximately 3:20 p.m.)

3 **PAMELA BAGWELL**

4 having previously been sworn, testified as follows:

5 **EXAMINATION**

6 **BY THE COURT:**

7 **Q** Ms. Bagwell, how are you this afternoon?

8 **A** Fine.

9 **Q** Good. You recall that we put you under oath
10 on Monday morning?

11 **A** Yes, sir.

12 **Q** And you are still under oath right now.

13 **A** Yes, sir.

14 **Q** Do you understand that?

15 **A** Yes, sir.

16 **Q** Ma'am, since you left us Monday afternoon, have
17 you talked to anybody or has anybody talked to you about
18 this case?

19 **A** No, sir.

20 **Q** Have you read or heard or seen anything about
21 this case since Monday afternoon?

22 **A** No, sir.

23 **Q** All right. Ma'am, I'm going to ask you a few
24 questions right now. We apologize if these questions seem
25 to probe too much into your private life. But we do have

1 to ask you these questions. The questions don't have right
2 or wrong answers. We just want you to pay close attention
3 and to be open and honest with us. Tell us how you feel
4 and what you think.

5 We're going to talk a little bit about the possible
6 penalty phase. But that doesn't mean anything about this
7 case or about this defendant. It simply means that we
8 because we know we might get to a sentencing phase, we need
9 to ask you some questions about some issues that will come
10 up if we do.

11 If you were a juror in this case, would you be able to
12 accept and apply the law precisely as I will give it to you
13 and set aside anything that you might have heard before the
14 case began and render a verdict that is based solely on the
15 testimony and the evidence that you see and hear in this
16 courtroom?

17 A No, sir.

18 Q And why is that, ma'am?

19 A I guess because of the articles that I seen in
20 the paper, prior comments. Maybe not facts, but things,
21 some things that I heard that would be hard for me to keep
22 out of my mind.

23 Q All right. Ma'am, let me ask you this. I just
24 want you to tell me yes or no. Then I will get into the
25 details after that. Do you remember a whole lot of the

1 details about what you read and what people told you?

2 A Yes, sir.

3 Q You do?

4 A Yes, sir.

5 Q Now let me tell you what your obligations would
6 be as a juror and what I will tell you your obligations are
7 if you become a juror. You tell me if you think you can
8 comply with that, okay?

9 A Okay.

10 Q If you are on the jury, I will explain to you
11 very carefully that the defendant is presumed innocent and
12 you must accept that presumption of innocence. I will
13 explain to you that the State has the burden of proof and
14 they must prove the defendant guilty beyond a reasonable
15 doubt. And I will also explain to what the crime of murder
16 is, what all the elements of it are and exactly what the
17 State would have to prove in order to convict the defendant
18 of murder.

19 Then I would tell you that it's your responsibility as
20 a juror to come into this courtroom and listen very
21 carefully to all the testimony and evidence that is
22 presented, listen very carefully to the arguments of the
23 lawyers and the charge on the law that I would give you and
24 to set aside anything that you might have seen or heard or
25 any conclusions that you might have reached before you came

1 into this trial. Then, to render a verdict that is based
2 solely on the testimony and the evidence that you see and
3 hear in this courtroom. Could you do that, ma'am?

4 **A** No, sir..

5 **THE COURT:** All right. Any voir dire from
6 either side?

7 **MR. BARTOSH:** The last sentence was she could
8 not, Your Honor?

9 **THE COURT:** She could not do it.

10 **MR. BARTOSH:** No voir dire.

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

12 **THE COURT:** Ma'am, we won't be needing your in
13 this case. You are free to go.

14 (WHEREUPON, Ms. Bagwell exits at approximately 3:24
15 p.m.)

16 **THE COURT:** I assume that both sides agree that
17 Ms. Bagwell is not qualified to serve as a juror.

18 **MR. BARTOSH:** She's not qualified.

19 **MR. GOWDY:** I agree, Your Honor.

20 **THE COURT:** Bring us the next juror.

21 (WHEREUPON, Clara Cope, Juror number 57, enters at
22 approximately 3:20 p.m.)

23 **CLARA COPE**

24 having previously been sworn, testified as follows:

25 **EXAMINATION**

1 BY THE COURT:

2 Q Ms. Cope, how are you this afternoon?

3 A Fine.

4 Q Good. You recall that on Monday afternoon we put
5 you under oath?

6 A Yes.

7 Q You are still under oath this afternoon. You
8 understand that?

9 A Yes.

10 Q Since you left us Monday afternoon, have you
11 talked to anybody about the case or has anyone talked to
12 you about the case?

13 A No, sir.

14 Q Have you read or heard or seen anything about
15 this case since Monday afternoon?

16 A No, sir.

17 Q Ms. Cope, I'm going to ask you a few questions
18 right now. After that the lawyers may want to ask you
19 some questions. I don't mean to pry too deep into your
20 private life, but I need to ask you these questions. All
21 I need for you to do is listen carefully and be open and
22 honest with me. There are not any right or wrong answers.
23 Tell me how you feel and what you think. Do you
24 understand, ma'am?

25 A Uh-huh (affirmative).

1 Q We're going to get into a discussion about a
2 possible penalty phase. That does not mean anything about
3 this defendant. It simply means that because we know we
4 might get into that phase, we have questions we need to ask
5 you about some issues that will come up if we do.

6 A Uh-huh (affirmative).

7 Q If you are seated as a juror in this case, would
8 you be able to accept and apply the law precisely as I will
9 give it to you and set anything that you might have read or
10 heard about this case aside and render a verdict that is
11 based solely on the testimony and evidence that you see and
12 hear in this courtroom?

13 A Yes, sir.

14 Q You can do that?

15 A Uh-huh (affirmative).

16 Q You understand that this is a criminal case and
17 the State has the burden of proving the defendant guilty
18 beyond a reasonable doubt?

19 A Yes, sir.

20 Q You understand this is a murder case?

21 A Yes, sir.

22 Q Could you, ma'am, based on the facts and
23 circumstances that you determined to have been proven and
24 in light of the law as I will give it to you, could you
25 find a verdict of either guilty or not guilty depending on

1 whether you believe the State has met its burden of proof?

2 A Yes, sir.

3 Q If you are a juror in this case and if the jury
4 finds the defendant guilty of murder, we will move into the
5 penalty phase of the trial. There some issues that might
6 come up during that phase that I need to talk to you about
7 right now. Aggravating circumstances are facts, incidents
8 or details of an occurrence that South Carolina have
9 determined to aggravate or to make worse the crime of
10 murder. Aggravating circumstances increase the enormity
11 of the crime and add to the injury that the crime causes.

12 Mitigating circumstances, on the other hand, are
13 facts, incidents or details of an occurrence that South
14 Carolina has declared to reduce the severity of the crime
15 of murder. Those serve to extenuate or to reduce the
16 degree of moral culpability or responsibility of the crime
17 of murder.

18 If you were a juror in the penalty phase of this
19 trial, you would have two options as to what your verdict
20 could be. The verdict could be a life sentence or it can
21 be the death penalty. Could you, depending on the facts
22 and circumstances that you find to exist considering
23 aggravating or mitigating circumstances and considering the
24 law as I will give it explain it to you, could you vote to
25 impose a life sentence?

1 A Yes, sir.

2 Q Could you vote to impose the death penalty?

3 A No, sir.

4 Q Are you sure about that, ma'am?

5 A No, sir.

6 Q Why is that?

7 A Could I cause I don't believe in the death
8 penalty.

9 Q You don't believe in the death penalty?

10 A No, sir.

11 Q Do you believe that anybody ever should get the
12 death penalty for as a penalty for murder?

13 A Not really.

14 Q Ma'am?

15 A Not really.

16 Q Not really?

17 A Huh-uh (negative.)

18 Q So you think maybe there is some circumstances
19 where somebody might get the death penalty?

20 A In some cases.

21 Q In some cases?

22 A Uh-huh (affirmative).

23 Q If you were on one of those cases where you
24 thought that it was appropriate that the defendant get the
25 death penalty, could you vote as a juror to impose the

1 death penalty?

2 A Yes.

3 Q All right, ma'am. If you are on the jury in this
4 case, you are going to be put up in a hotel for five or six
5 days and not allowed to go home to your family. Is that
6 going to impose a terrible burden on you?

7 A No.

8 Q Have you read over the witness list that you were
9 given when you came here this afternoon?

10 A Yes.

11 Q Did you read every name on that list?

12 A Yes.

13 Q Do you know anybody or are you related to anybody
14 whose name is on that list?

15 A Yes.

16 Q Who are they, ma'am?

17 A Judge Bonnie Simmons.

18 Q Tell me a again please.

19 A Bonnie Simmons.

20 Q Simmons.

21 A Yes.

22 Q All right. Is he the only one that you know?

23 A Yes.

24 Q And you are not related to anybody?

25 A No.

1 Q Would the fact that you know Mr. Simmons
2 interfere in any way with either your willingness or your
3 ability to give both the State and the defendant a fair and
4 impartial trial?

5 A Yes.

6 Q It would interfere or it would not interfere?

7 A Not, no.

8 Q Do you know of any reason why you could not give
9 both the State and the defendant a fair and impartial
10 trial?

11 A No.

12 Q All right. Ma'am, the lawyers are going to ask
13 you some questions now. I will come back and talk to you
14 again in a minute. Okay?

15 A Uh-huh (affirmative).

16 **EXAMINATION**

17 **BY MR. BARTOSH:**

18 Q Ms. Cope, you remember on Monday when we were all
19 together it seems like it was a long time ago but we were
20 all together. All of the jurors were all together. It
21 was some questions asked and some jurors were asked to
22 stand up if they could answer yes to it.

23 A Yes.

24 Q The question was asked did you know Ms. Lindsey
25 or a member of her family?

1 A Uh-huh (affirmative).

2 Q You stood up?

3 A Uh-huh (affirmative).

4 Q Which member of her family or who do you know?

5 A Her mother.

6 Q Ms. Ruby Wright?

7 A Right..

8 Q The fact that you know Ms. Wright the mother of
9 the victim, of the alleged victim, would that affect your
10 ability to give Mr. Lindsey a fair and impartial trial?

11 A No.

12 Q The judge instructed you earlier that as Mr.
13 Lindsey sits there, he is innocent. Now, would you have a
14 problem accepting the judge's instruction on that and
15 seeing Mr. Lindsey as being innocent?

16 A No.

17 Q You would have no problem at all?

18 A Huh-uh (negative.)

19 Q Do you know anything about this case?

20 A No.

21 Q Do you remember filling out your questionnaire?

22 A Yes.

23 Q And on that questionnaire, there's a question
24 that said do you have any knowledge about the case of the
25 State versus Marion Lindsey. You remember the question or

1 would you like to see your questionnaire?

2 A Maybe I can see it.

3 Q Okay. It's number 24, right there.

4 A (Reviewing.) Uh-huh (affirmative).

5 Q Okay. So you do know something about the case?

6 A Yes.

7 Q And what do you know about it?

8 A The only thing I know is when it happened that he
9 killed his wife.

10 THE COURT: Would you repeat that answer,
11 ma'am.

12 MRS. COPE: When they showed on the news the day
13 when he did it, that is the only time that I know that
14 he killed his wife.

15 THE COURT: I still did not hear.

16 MR. BARTOSH: That he killed his wife. She
17 that got that from the news.

18 THE COURT: All right.

19 BY MR. BARTOSH:

20 Q Do you believe that Mr. Lindsey killed his wife?

21 A In a way, he look like a person that he would
22 not. And then in a way, he look like a person who would do
23 it.

24 Q I'm asking do you believe that he killed his
25 wife?

1 **A** Yes.

2 **Q** You do?

3 **A** Yes.

4 **Q** Could you put that belief aside and give him a
5 fair trial?

6 **A** No.

7 **Q** Okay. Under these circumstances, the fact that
8 you would not be able to set aside the fact that you
9 believe that he's guilty, which means you believe he killed
10 his wife?

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

12 **Q** You would not be able to set that aside and give
13 him a fair trial?

14 **A** Huh-uh (negative.)

15 **THE COURT:** Any questions at this time from the
16 Solicitor?

17 **MR. BARNETT:** No, sir.

18 **THE COURT:** Mrs. Cope, would you mind stepping in
19 the hallway for just one second please, ma'am.

20 (WHEREUPON, Mrs. Cope exits at approximately 3:34
21 p.m.)

22 **MR. BARTOSH:** She's not qualified.

23 **MR. BARNETT:** The State agrees, Your Honor.

24 **THE COURT:** Bring her back.

25 (WHEREUPON, Mrs. Cope enters at approximately 3:34

1 p.m.)

2 **THE COURT:** Mrs. Cope, thank you for coming back
3 this afternoon. We are not going to need your
4 services in this case. You are free to go, ma'am.

5 **MRS. COPE:** Thank you.

6 **THE BAILIFF:** Beck is here.

7 **THE COURT:** Huh?

8 **THE BAILIFF:** Mr. Beck.

9 **THE COURT:** All right. Bring him in. Don't
10 bring him in yet.

11 (WHEREUPON, Mrs. Cope exits at approximately 3:35
12 p.m.)

13 **THE COURT:** Y'all, Mr. Beck, whom we qualified a
14 little while ago, about 1:30 has told the bailiffs
15 that there is something he has to talk to me about.
16 That's all I know. Let me remind you that Mr.
17 Greenway, we still have not heard from him. Is there
18 going to be any objection to going forward even though
19 we hadn't heard back from Mr. Greenway?

20 **MR. BARTOSH:** None from the defense, Your
21 Honor.

22 **THE COURT:** All right. Bring in Mr. Beck.

23 I'm just going to ask him what it is that he
24 wants to tell me. Any objection to that?

25 **MR. GOWDY:** No, sir, Your Honor.

1 **THE COURT:** Mr. Bartosh, you heard what I said?

2 **MR. BARTOSH:** No, sir. I'm sorry.

3 **THE COURT:** Hold him just one second please, Mr.
4 Scruggs.

5 **MR. BARTOSH:** I apologize.

6 **THE COURT:** That's all right. I'm just going to
7 ask him what he wants to tell me and let him tell me.

8 **MR. BARTOSH:** No objection.

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

10 (WHEREUPON, Thaddeus Beck, Juror number 18, enters at
11 approximately 3:36 p.m.)

12 **THE COURT:** Mr. Beck?

13 **MR. BECK:** Yes.

14 **THE COURT:** I'm told there's something you want to
15 tell me.

16 **MR. BECK:** Yes, sir. On the way home, I started
17 thinking I don't really know if I can sign that death
18 warrant and just have that responsibility on me. It's
19 just simply too much.

20 **THE COURT:** All right. So you have reconsidered
21 whether or not you could listen to all of the
22 testimony and the evidence and listen to the
23 instruction on the law, listen to the arguments of the
24 lawyers and decide objectively whether or not to
25 impose the death penalty if the case gets into the

1 sentencing phase?

2 MR. BECK: Right.

3 THE COURT: So if I go back to the question and
4 say could you, depending on the facts and
5 circumstances that you find to exist, --

6 MR. BECK: Right.

7 THE COURT: -- considering any aggravating or
8 mitigating circumstances and considering the law as I
9 will explain it to you, could you vote to return a
10 verdict imposing the death penalty?

11 MR. BECK: I don't really think I could sign that.

12 THE COURT: You don't think you could sign it?

13 MR. BECK: No, sir. I could be a fair juror
14 during the guilty but I don't really know about having
15 somebody's life responsibility on me or signing the
16 warrant.

17 THE COURT: Any voir dire?

18 MR. BARTOSH: No, sir.

19 THE COURT: Mr. Beck, step out in the hall for
20 just a second please.

21 (WHEREUPON, Mr. Beck exits at approximately 3:38
22 p.m.)

23 THE COURT: Mr. Bartosh, what is your position on
24 this juror right now?

25 MR. BARTOSH: Your Honor, I don't think he's

1 qualified.

2 MR. GOWDY: I concur.

3 THE COURT: All right. Bring him back.

4 (WHEREUPON, Mr. Beck enters at approximately 3:38
5 p.m.)

6 THE COURT: All right. Mr. Beck, we certainly do
7 appreciate you being honest with us. We are not going
8 to be needing your services. So you are free to go.

9 MR. BECK: Thank you.

10 (WHEREUPON, Mr. Beck exits at approximately 3:39
11 p.m.)

12 THE COURT: Give us a juror.

13 (WHEREUPON, Thomas Oliver, Juror number 208, enters at
14 approximately 3:39 p.m.)

15 THOMAS OLIVER

16 having previously been sworn, testified as follows:

17 BY THE COURT:

18 Q Mr. Oliver, how are you?

19 A I'm pretty good. How about you?

20 Q I'm doing well. You recall that on Monday
21 morning we put you under oath?

22 A Yes, sir.

23 Q You understand that you are still under oath
24 right now?

25 A Yes, sir.

1 **Q** Since you left us Monday afternoon, has anyone
2 talked to you about this case or have you talked to anybody
3 about this case?

4 **A** I overheard some guys at work talking a little
5 bit about it but not a whole lot.

6 **Q** Did you hear anything they said about the case?

7 **A** A little bit.

8 **Q** What did you hear?

9 **A** Just where it happened in Inman or something like
10 that.

11 **A** Where did they say it happened?

12 **A** Near the police station or something.

13 **Q** Did they say anything else other than where it
14 happened?

15 **A** Not really because I split. I took off.

16 **Q** You split. You got away from them to comply with
17 my instructions?

18 **A** Yes, sir.

19 **Q** I appreciate it. Did they say anything about how
20 it happened or what happened or who did it or who was the
21 victim or anything like that?

22 **A** No, sir.

23 **Q** All right. Other than that, have you read
24 anything or heard anything or seen anything about this case
25 since you left us Monday afternoon?

1 A No, sir.

2 Q We're going to ask you some questions now, Mr.
3 Oliver. These questions do not have any right or wrong
4 answers. We just want you to listen carefully, to be open
5 and honest with us and tell us how you feel and how you
6 think.

7 A Okay.

8 Q We're going to talk a little bit about a possible
9 sentencing phase but that does not mean anything about this
10 case. That just means that because we might get to a
11 sentencing phase, we're going to talk to you about some
12 issues that we need to ask you some questions about so we
13 would know how you feel about it.

14 If you were a juror in this case, will you be able to
15 accept and apply the law precisely as I will explain it to
16 you, set aside anything that you might have heard or read
17 or seen about the case before the trial began and render a
18 verdict that is based solely on the testimony and the
19 evidence that you see and hear in this courtroom?

20 A Yes, sir.

21 Q You understand that this is a criminal case in
22 which the State has the burden of proving the defendant
23 guilty beyond a reasonable doubt?

24 A Yes, sir.

25 Q And this is a murder case. You understand that?

1 **A** Yes, sir.

2 **Q** Could you, depending on the facts and
3 circumstances that you find to have been proven and
4 depending on -- and in light of the law as I will explain
5 it to you, could you find a verdict of either guilty or not
6 guilty depending on whether you believe the State has met
7 its burden of proof?

8 **A** Yes, sir.

9 **Q** If you are on the jury in this case and if the
10 jury finds the defendant guilty of murder, you will move
11 into the second phase or the penalty phase of the trial.
12 There are several issues that are going to become relevant
13 during that phase that I need to talk to you about right
14 now.

15 Aggravating circumstances are facts, incidents or
16 details of an occurrence that South Carolina has declared
17 to aggravate or make worse the crime of murder.

18 Aggravating circumstances increase the severity of the
19 crime and add to the injury that is 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 reduce or to lessen the severity
23 of the crime of murder. Those act to extenuate or to
24 reduce the degree of moral culpability or responsibility
25 for the crime of murder.

1 If you are on the jury in the penalty phase of this
2 trial, you will have two options as to what your verdict
3 could be. You could have a verdict for a life sentence or
4 you could have a verdict imposing the death penalty.. Could
5 you, depending on the facts and circumstances that you
6 determine to exist and considering any aggravating or
7 mitigating circumstances and considering the law as I will
8 explain it to you, could you vote then to return a verdict
9 for a life sentence?

10 A Possibly. I don't know. No.

11 Q You could not return a verdict imposing a life
12 sentence?

13 A No.

14 Q Is that because you would always return a verdict
15 imposing the death penalty?

16 A I think so.

17 Q Let me explain something to you. In South
18 Carolina, the death penalty is not mandatory upon
19 conviction of a defendant for murder.

20 A Okay.

21 Q In addition to that, the State has to prove
22 beyond a reasonable doubt the existence of an aggravating
23 circumstance. After that happens, the jury decides using
24 its discretion and using its judgment whether or not to
25 impose a life sentence or to impose the death penalty.

1 Are you the kind of juror who if put in that situation
2 would always impose the death penalty, or are you open-
3 minded to considering the mitigating circumstances and
4 other factors that might lead you to conclude to impose a
5 life sentence? Could you impose a life sentence?

6 **A** I guess possibly, yes.

7 **Q** All right, sir. If you are on this jury, you're
8 going to be sequestered for five or six days and put into a
9 hotel away from home and your family. Would that impose a
10 to burden on you?

11 **A** A little bit.

12 **Q** Well, a little burden. It is going to
13 actually --

14 **A** Yeah. It will impose a burden.

15 **Q** Tell me how that is.

16 **A** Like I told you, I'm trying to leave and go see
17 my family during this time.

18 **Q** You got a brother who is sick.

19 **A** Yes, sir. And I would actually rather not be
20 sequestered and have to stay here when I could go and visit
21 with him.

22 **Q** Yeah.

23 **A** It would actually be a big burden.

24 **Q** How was your brother doing in the last few days?

25 **A** He is all right. He's all right.

1 Q Are the fish really biting up there?

2 A I don't know. I guess I have to hopefully get up
3 there and find out.

4 Q You think if you were to stick around for five or
5 six more days, the fish might still be biting?

6 A I don't know.

7 Q All right. Have you been 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 to whom you know or
13 to whom you are related?

14 A No, sir.

15 Q Other than what you talked about to us so far, is
16 there any reason why you can not give both the State and
17 the defendant a fair and impartial trial?

18 A No, sir.

19 Q All right. I'm going to let the lawyers ask you
20 some questions. Then I come back and talk to you after
21 that.

22 A Okay. Thanks.

23 EXAMINATION

24 BY MR. BARTOSH:

25 Q Just so I understand, Mr. Oliver, initially you

1 said you would always impose the death penalty?

2 A Yes, sir.

3 Q Is that right?

4 A Yes, sir.

5 Q What you mean is you believe that every murder
6 deserves the death penalty?

7 A For the most part. If it was self-defense, that
8 would be something different.

9 Q Well, you understand with self-defense, if the
10 defense could prove it, that's a complete defense. The
11 person would not be convicted of murder.

12 A Oh, okay.

13 Q All right. So do you believe that with every
14 murder, if the person is convicted of murder and it's a
15 capital case, everybody should be given the death penalty?

16 A Sure.

17 Q Thank you.

18 MR. WILLINGHAM: Very briefly, Your Honor.

19 EXAMINATION

20 BY MR. WILLINGHAM:

21 Q Mr. Oliver, there are said to be three types of
22 jurors.

23 A Okay.

24 Q There's one juror that in the sentencing phase
25 says I don't care what the State says, I don't care what

1 they say, --

2 A Uh-huh (affirmative).

3 Q -- I'm going to vote for life. Nothing is going
4 to change my mind.

5 A (Nods head affirmatively.)

6 Q There's another type of juror that says I don't
7 care. I don't care what the defense says. I don't care
8 what the State says, I'm voting for death. Then there's a
9 third type juror that says all right, I'll listen to them
10 and I'll listen to the State. If I feel that life is
11 appropriate, I will give life. If I feel death is
12 appropriate, I would give death depending on the
13 circumstances. Which category of jurors do you fall into?

14 A I would say death just like I said to him.

15 Q So if he's guilty of murder, then --

16 A Definitely.

17 Q -- you're going to give death?

18 A Uh-huh (affirmative).

19 Q Thanks.

20 THE COURT: All right. Mr. Oliver, you can go
21 fishing. I hope your brother does well. Sincerely
22 wish him a very quick and complete recovery. And I
23 hope y'all have a good time together.

24 MR. OLIVER: All right. Thank y'all very much.

25 THE COURT: Good luck to you.

1 **MR. OLIVER:** Y'all take it easy.

2 (WHEREUPON, Mr. Oliver exits at approximately 3:49
3 p.m.)

4 **THE COURT:** I was told that we would have a lot of
5 jurors who always would vote for the death penalty.
6 But I didn't realize that it would take a fishing trip
7 with his brother who's ill to make that happen. I'm
8 going to take a short break. And I will be right back
9 to qualify the next juror.

10 (WHEREUPON, a short recess was taken at approximately
11 3:50 p.m.)

12 (WHEREUPON, the Court resumed at approximately 3:55
13 p.m.)

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

15 (WHEREUPON, Leonard Cogdill, Juror number 53, enters
16 at approximately 3:55 p.m.)

17 **LEONARD COGDILL**

18 having previously been sworn, testified as follows:

19 **EXAMINATION**

20 **BY THE COURT:**

21 **Q** Mr. Cogdill?

22 **A** Yes, sir.

23 **Q** Good afternoon, sir.

24 **A** Afternoon.

25 **Q** You recall that on Monday morning, we put you

1 under oath?

2 A Yes, sir.

3 A Yes.

4 Q You are still under oath this afternoon. You
5 understand that?

6 A Yes.

7 Q Since you left us Monday afternoon, has anyone
8 talked to you or have you talked to anybody about the case?

9 A I just mentioned that I was on the jury to my
10 boss man at work. And I heard a couple of people at work
11 just mention about it.

12 Q So you told your boss that that was why you might
13 not be at work over the next few days?

14 A Yes, sir.

15 Q In doing that, did you discuss with him any of
16 the details of the case or anything that you knew about the
17 case?

18 A No, sir.

19 Q These people that you heard talking about it, did
20 they talk about any of the details of the case?

21 A No, sir.

22 Q From those conversations, did you learn anything
23 about this case?

24 A No, sir. They just mentioned about Mr.
25 Mackenzie. He was the one that done the murder is all.

1 Q The man's name is Mr. Lindsey. He is the
2 defendant. I don't know who this Mr. Mackenzie is. They
3 might have been talking about somebody else. But you heard
4 one of them say that somebody committed the murder?

5 A Yes, sir.

6 Q Okay. And that is a conversation that you
7 overheard in the last couple of days?

8 A That's all I heard.

9 Q All right. I'm going to ask you some questions
10 right now and then turn it over to the lawyers. These
11 questions don't have right or wrong answers. We just want
12 you to listen carefully, to be open and honest with us and
13 to tell us what you think and how you feel.

14 We may get into a discussion about a possible penalty
15 phase. We will in fact. But that does not mean anything
16 about this defendant. It just means that because we know
17 we might get into that phase, there are some issues that
18 will come up in that phase that we need to talk to you
19 about.

20 Now if you are a juror in this case, could you set
21 aside everything that you may have heard or seen or read
22 about this case and listen and apply the law as I will
23 explain it to you, listen to and apply the law as I will
24 explain it to you and render a verdict that is based solely
25 on the testimony and evidence that you see and hear in this

1 courtroom?

2 A Yes, sir.

3 Q You can do that?

4 A Yes, sir.

5 Q You understand that this is a criminal case in
6 which the State has the burden of proof?

7 A Yes, sir.

8 Q You understand this is a murder case?

9 A Yes, sir.

10 Q Could you, depending on the facts and
11 circumstances that you find to have been proven and in
12 light of the law as I will explain it to you, could you
13 return a verdict of either guilty or not guilty depending
14 on whether you believe the State has met its burden of
15 proof?

16 A Yes, sir.

17 Q Could you?

18 A Yes, sir.

19 Q If you are a juror in this case and if the jury
20 finds the defendant guilty of murder, we will move into the
21 second phase or the penalty phase of the trial. There are
22 some issues that might come up during that phase that I
23 need to talk to you about. Aggravating circumstances are
24 facts, circumstances or incidences that South Carolina have
25 said aggravate or make worse the crime of murder.

1 Aggravating circumstances increase the severity of the
2 crime and add to the injury that results from the crime.

3 Mitigating circumstances, on the other hand, are
4 facts, incidents or details of an occurrence that South
5 Carolina has declared to reduce the severity of the crime
6 of murder. Those serve to extenuate or to reduce the
7 degree of moral culpability or responsibility for the crime
8 of murder.

9 If you are a juror in the penalty phase of this trial,
10 you would have two options as to what your verdict could
11 be. One option is a life sentence and the other option is
12 the death penalty. Could you, depending on the facts and
13 circumstances that you find to exist, considering
14 aggravating or mitigating circumstances and considering the
15 law as I will give it explain it to you, could you vote to
16 impose a life sentence?

17 A Yes, sir.

18 Q Could you vote to return a verdict imposing the
19 death penalty?

20 A Yes, sir.

21 Q Now, sir, if you are put on this jury, you will
22 be sequestered. You will be put up in a hotel for five or
23 six days and not allowed to go home to your family. Would
24 that impose a terrible burden on you?

25 A I don't have any clothes or anything right now

1 though.

2 Q We'll take care of all that.

3 A I'd have to go home.

4 Q We'll have somebody take you home and get you
5 your stuff. I guess in your case, they would follow you
6 home, get you your stuff and bring you back up here for
7 work.

8 A Okay.

9 Q Can you do that?

10 A Yes, sir.

11 Q Have you been over that witness list that I gave
12 you?

13 A Yes, sir.

14 Q Have you read every name on that list?

15 A Yes, sir.

16 Q Is there anybody whose name is on that list whom
17 you know or to whom you are related?

18 A Tony Brown is the only one.

19 Q And who is Tony Brown?

20 A The Sergeant of Spartanburg County.

21 Q How well do you know Tony Brown?

22 A I've done some hunting and fishing with him. And
23 I bought a boat from him.

24 MR. GOWDY: May it please the Court, Your
25 Honor. We do not expect Mr. Brown to testify.

1 **THE COURT:** All right.

2 **BY THE COURT:**

3 **Q** You heard that. They don't expect him to
4 testify. But just in case he does, would the fact that he
5 is witness in this case interfere in any way with either
6 your willingness or your ability to give both the State and
7 the defendant a fair and impartial trial?

8 **A** No, sir.

9 **Q** It would not?

10 **A** No, sir.

11 **Q** Do you know of any reason why you cannot give
12 both the State and the defendant a fair and impartial
13 trial?

14 **A** No, sir.

15 **Q** I'm going to let the lawyers ask you some
16 questions. Then I will come back and talk to you after
17 that.

18 **MR. BARTOSH:** Thank you, Your Honor.

19 **EXAMINATION**

20 **BY MR. BARTOSH:**

21 **Q** Mr. Cogdill, where is your -- you work for a
22 packaging pack?

23 **A** Print packaging.

24 **Q** Where are they located?

25 **A** On 85 at Road 57 here in Spartanburg.

1 Q Okay. Now you said that when you left on Monday
2 and went back to work that somebody, you mentioned
3 something about having to be on the jury.

4 A Uh-huh (affirmative).

5 Q And then somebody said something about, what name
6 did they use?

7 A Mackenzie.

8 Q Mackenzie, okay, had done the killing?

9 A Yes.

10 Q Did you take that to mean that Mr. Mackenzie or
11 whoever that they had actually committed the murder?

12 A They just said that they remember seeing it on
13 the news on the TV.

14 Q Okay. Now, the judge, in the beginning of the
15 trial, if you are chosen to be on the jury, is going to
16 tell all twelve of the jurors that under our system of law
17 that everybody that is accused of a crime is presumed to be
18 innocent.

19 A Yes, sir.

20 Q And even as Mr. Lindsey sits there today, he is
21 innocent, he is to be presumed innocent of the crime.

22 A Yes, sir.

23 Q Even though you had heard someone saying that a
24 Mr. Mackenzie had done the killing, would you be able,
25 should you be picked on the jury, would you be able to

1 follow the judge's instructions and view Mr. Lindsey as
2 being innocent up until the jury after hearing all the
3 evidence against him decided beyond a reasonable doubt that
4 he was no longer entitled to that presumption.

5 A Yes, sir.

6 Q You could put aside anything you have heard about
7 that?

8 A Yes, sir.

9 A The judge told you this was in two parts.

10 A Yes, sir.

11 Q The first part is like a regular trial. The
12 State will present its evidence to try to convince the jury
13 beyond a reasonable doubt that Mr. Lindsey is guilty of
14 murder, okay?

15 A (Nods head affirmatively.)

16 Q If the jury does not believe that the State has
17 proven beyond a reasonable doubt that Mr. Lindsey is
18 guilty of murder, everything stops. We did not go to the
19 second part. But because there's always a chance that we
20 might go to the second part, we need to talk about that.
21 Okay?

22 A (Nods head affirmatively.)

23 Q The second part, it is up to the jury to decide
24 what the appropriate punishment is. Okay. It is probably
25 the only proceeding in the State where the jury decides

1 what the punishment is. Okay?

2 A (Nods head affirmatively.)

3 Q Now in that portion, what will happen is the
4 State once again will present like the judge said,
5 circumstances or evidence that they believe makes this
6 crime more serious.

7 A Uh-huh (affirmative).

8 Q Okay. And what they hope to do is to convince a
9 jury to impose the death penalty. Okay. And of course,
10 the defense is going to present evidence which they believe
11 mitigates or lessens the seriousness of the crime and to
12 try to convince the jurors that the life sentence is the
13 appropriate sentence. Okay.

14 A Uh-huh (affirmative).

15 Q Now, either way, it's got to be unanimous. All
16 twelve of the jurors must agree no matter whether it's life
17 or whether it's death. It's got to be unanimous. Now,
18 knowing all of that, could you give both sides, both the
19 State and the defendant a fair and impartial hearing and
20 set aside anything that you know or have heard about this
21 case?

22 A Yes, sir.

23 Q And base your decision as to the penalty solely
24 upon the evidence that you hear from the folks that testify
25 from the witness stand?

1 **A** Yes, sir.

2 **Q** Okay. As I told you, the two choices are life
3 and death. There is never a mandatory death sentence in
4 South Carolina. You will always have the option of life.
5 You cannot be told that you must impose death in this case.
6 That is always a option. It is got to be, as I said
7 before, it has got to be unanimous. There is a form that
8 once the jury reaches the verdict in the sense of what the
9 proper punishment should be, there is a form that everybody
10 signs. As I said before, all twelve have got to agree.

11 **A** Yes, sir.

12 **Q** If it is for death. If after listening, if after
13 listening to all of the evidence, you and your fellow
14 jurors decide life is the proper punishment, then all
15 twelve would have to sign the form saying that we believe
16 that the proper punishment is life.

17 **A** Yes.

18 **Q** Life means life. It means you go to jail and
19 you never get out. You die in the Department of
20 Corrections. All right.

21 **A** Yes, sir.

22 **Q** Now, if on the other hand, after hearing all the
23 evidence from both sides, you decide, you and your fellow
24 jurors decide death is the appropriate punishment, then
25 once again, you would have to sign the verdict form. Now,

1 let's say for a moment that you are the 12th juror for
2 whatever reason, okay?

3 A Uh-huh (affirmative).

4 Q And you all twelve agree that death is the
5 appropriate sentence. Eleven have signed. And you have
6 been given the sentencing sheet. Knowing that when you
7 sign that sentencing sheet, that you would be condemning
8 Mr. Lindsey to death. Okay? Could you sign that sheet
9 if you believe that was appropriate?

10 A Yes, sir.

11 Q You would not have any problems doing that?

12 A No, sir.

13 Q You would not, you are not, you don't lean one
14 way or the other either to death or to life?

15 A Yes, sir.

16 Q It is based upon what you hear and the evidence.

17 A Yes, sir.

18 Q Now, that is not something you would like to
19 think about. But as far as, when did you begin thinking
20 about the death penalty? When you got called up?

21 A Yes, sir.

22 Q Where would you say you draw your opinions of the
23 death penalty from? What is the basis of it?

24 A It would be depending on what the Court decides.

25 Q What I'm talking about, your beliefs about the

1 appropriateness of the death penalty, do you have any moral
2 -- is it based on your moral beliefs or your religious
3 beliefs or your upbringing or your life experiences?

4 **A** Mostly my life-bringing, my upbringing.

5 **Q** Okay. Thank you very much.

6 **A** Thank you.

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

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

10 **EXAMINATION**

11 **BY MR. BARNETT:**

12 **Q** My name is Barry Barnett. Along with me is Trey
13 Gowdy and Donnie Willingham. We will be representing the
14 State in this case. I just want to ask you a few follow
15 up. Mr. Bartosh asked you most of the questions I would
16 ask. I just want to ask you a few follow up questions.
17 I read here your wife is Bobby Cogdill. Is that right?

18 **A** Yes, sir.

19 **Q** She works at an insurance company?

20 **A** Right.

21 **Q** How many children do you have, sir?

22 **A** Two sons.

23 **Q** They are grown now, is that right?

24 **A** Yes, sir.

25 **Q** Thank you for answering my questions.

1 **A** Thank you.

2 **MR. BARNETT:** Thank you, Your Honor

3 **THE COURT:** Mr. Cogdill, would you stand
4 aside in the hall for just one second please.

5 **MR. COGDILL:** Okay.

6 (WHEREUPON, Mr. Cogdill exits at approximately 4:10
7 p.m.)

8 **THE COURT:** Any objections to the
9 qualifications of this juror?

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

11 **MR. BARNETT:** No, sir.

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

13 (WHEREUPON, Mr. Cogdill enters at approximately 4:10
14 p.m.)

15 **THE COURT:** Mr. Cogdill, I find that you are
16 a qualified juror in this case. I'm going to ask you
17 to go back down to the jury assembly room. Mr.
18 Scruggs will show you how to get down there. If you
19 need to, in a little while, we will make sure that you
20 can get home and can get your stuff packed and can
21 come back to work with us, okay?

22 **MR. COGDILL:** Okay.

23 (WHEREUPON, Mr. Cogdill exits at approximately 4:11
24 p.m.)

25 (WHEREUPON, Michael Weeks, Juror number 285, enters at

1 approximately 4:11 p.m.)

2 **MICHAEL WEEKS**

3 having previously been sworn, testified as follows:

4 **EXAMINATION**

5 **BY THE COURT:**

6 **Q** Mr. Weeks, how are you?

7 **A** Pretty good.

8 **Q** You recall that we put you under oath Monday
9 morning?

10 **A** Yes.

11 **Q** You understand that you are under oath right now?

12 **A** Right.

13 **Q** Since Monday afternoon when you left us, has
14 anyone talked to you about this case or have you talked to
15 anyone about this case?

16 **A** No, sir.

17 **Q** Have you read or heard or seen anything about
18 this case?

19 **A** No, sir.

20 **Q** I'm going to talk to you now and ask you some
21 questions. There are not any right or wrong answers to
22 these questions. I just want you to listen carefully and
23 be open and honest with us and tell what you feel and what
24 you think.

25 We're going to talk about a possible penalty phase in

1 this trial. That does not mean anything about this
2 defendant. That just means that because we know we might
3 get there, we need to ask you some questions about some
4 issues that will arise if we do.

5 If you are on the jury in this case, can you accept
6 and apply the law precisely as I will explain it to you and
7 set aside anything that you might have heard about this
8 case before you came into this court and render a verdict
9 that is based solely on the testimony and evidence that you
10 hear in this courtroom?

11 A Yes, sir.

12 Q You understand that this is a criminal case in
13 which the State has the burden of proving the defendant
14 guilty beyond a reasonable doubt?

15 A Yes, sir.

16 Q You understand that it is a murder case?

17 A Yes.

18 Q Could you, depending on the facts and
19 circumstances that you find to have been proven and the law
20 as I will explain it to you, could you find a verdict of
21 either guilty or not guilty depending on whether you
22 believe the State has met its burden of proof?

23 A Yes.

24 Q If you are on the jury in the case and the jury
25 finds the defendant guilty of murder, we will enter the

1 second phase or the penalty phase of the trial. There are
2 some issues that will come up in that phase that I am going
3 to talk to you about right now. Aggravating circumstances
4 are facts, incidents or details of an occurrence that South
5 Carolina has declared to aggravate or to make worse the
6 crime of murder. Aggravating circumstances increase the
7 enormity of the crime and add to the injury that is caused
8 by the crime of murder.

9 Mitigating circumstances, on the other hand, are
10 facts, incidences or, or details of an occurrence that
11 South Carolina has declared to lessen the severity of the
12 crime of murder. They serve to extenuate or to reduce the
13 degree of the moral culpability or responsibility for the
14 crime.

15 If you are on the jury in the penalty phase of this
16 trial, you would have two options as what your verdict can
17 be. Your verdict can be for a life sentence or your
18 verdict could be to impose the death penalty. Could you,
19 depending on the facts and circumstances that you find to
20 exist and considering any aggravating or mitigating
21 circumstances and considering the law as I will explain it
22 to you, could you vote to return a verdict imposing a life
23 sentence?

24 A Yes, sir.

25 Q Could you vote to return a verdict imposing the

1 death penalty?

2 A Yes, sir.

3 Q If you are on the jury, the jury would be
4 sequestered. You will be required to stay with us for
5 five or six days during the course of the trial. Would
6 that impose a terrible burden on you?

7 A No, sir.

8 Q Have you read over the witness list I gave you a
9 few minutes ago?

10 A Yes, sir.

11 Q Have you read every name on that list?

12 A Yes, sir.

13 Q Is there anyone on that list that you know or to
14 whom you are related?

15 A I know a couple of people on the list.

16 Q Can you tell me who they are?

17 A Robert Rosenberg and Susan Horton.

18 Q Are those the only two you knew?

19 A Yes, sir.

20 Q The fact that you know those people would that
21 interfere in any way with your willingness or your ability
22 to give both the State and the defendant a fair and
23 impartial trial?

24 A No, sir.

25 Q Do you know of any reason why you can not give

1 both the State and the defendant a fair and impartial
2 trial?

3 A No.

4 Q The lawyers are going to ask you some questions
5 now. I will come back and talk to you in a few minutes,
6 okay?

7 A Okay.

8 EXAMINATION

9 BY MR. BARTOSH:

10 Q Mr. Weeks, you work at BMG?

11 A Yes.

12 Q You been there about three years?

13 A About five years.

14 Q Do you know do you know a person named Celeste
15 Nesbitt who also works there?

16 A No, sir.

17 Q On your questionnaire, you said your grandfather
18 had been charged with a crime?

19 A Yes, sir.

20 Q Were you the victim of that crime?

21 A No.

22 Q Was it another family member?

23 A No, sir.

24 Q Was he convicted of that crime?

25 A Yes.

1 Q Did he go to jail?

2 A He was on house arrest.

3 Q Probation. And you also on Monday which was a
4 long time ago, you stood up and said that you have been,
5 some of your family have been arrested by the Sheriff's
6 Department or by the Police Department, was that your
7 grandfather?

8 A Yes.

9 Q Do you have any other?

10 A My aunt was arrested before.

11 Q What were you charged with?

12 A I really do not know.

13 Q You have an Associate's Degree from Spartanburg
14 Tech?

15 A Yes.

16 Q That is not something you think an awful lot
17 about, but have you been doing any thinking about your
18 views on the death penalty since you received the
19 questionnaire?

20 A Not really.

21 Q Were you aware that this was a capital case?

22 A Until Monday, I really do not know.

23 Q Since Monday, you thought anything about it?

24 A Not really.

25 Q Your opinion that you have, what is the source of

1 your opinion on the capital punishment? It is your
2 religious beliefs or moral beliefs or your upbringing.

3 A Probably upbringing.

4 Q Do you feel that capital punishment is
5 appropriate in every case?

6 A Not in every case.

7 Q What would you base your decision on?

8 A The crime itself.

9 Q When you say the crime itself, do you mean the
10 type of crime?

11 A Yes.

12 Q All right. In this case, you know the charge is
13 murder?

14 A Yes.

15 Q Do you believe that everybody that is charged
16 with murder who is convicted of murder should be --

17 A I believe so.

18 Q -- be given the death penalty?

19 A I believe so.

20 Q That would apply in every case?

21 A Yes.

22 Q The death penalty?

23 A As long as a person had murdered, I believe so.

24 Q That is all I have.

25 EXAMINATION

1 BY MR. WILLINGHAM:

2 Q Mr. Weeks, my name is Donnie Willingham. This
3 is Barry Barnett and Solicitor Trey Gowdy. We're going to
4 prosecute in this case. I want to follow a little bit on
5 that. You understand that if he was convicted of murder,
6 that is the first phase. If he is convicted of murder and
7 found guilty, we move to the second phase. At that point,
8 the jury decides what the appropriate punishment is.

9 I may have misunderstood you. I thought you told the
10 judge that if you got to that second phase, you could be
11 open-minded, you could listen to the evidence, you could
12 listen to what the State presented. You would listen to
13 anything that they put up in mitigation. And you could
14 decide between life and death. Did I understand you right
15 the first time?

16 A Yeah.

17 Q So what you're telling us is that you can listen
18 to both sides and you would be open to both sides?

19 A I would listen.

20 Q Okay. In addition to listening, if you thought
21 it was appropriate, could you impose a life sentence?

22 A Yeah, I probably could.

23 Q And by the same token, if you thought it was
24 appropriate, you could impose a death sentence?

25 A Right.

1 Q Is it fair to say that just because he is guilty,
2 after the guilt phase, is it fair to say that you're done
3 or would you listen?

4 A I would listen.

5 Q Okay. And after the guilt phase, would you
6 listen but automatically impose a life sentence?

7 A No.

8 Q Is it fair to say that you would listen and
9 automatically impose the death sentence?

10 A I will probably lean more towards it, but I would
11 not automatically impose it.

12 Q Could you be open to both sides?

13 A Yes.

14 Q And you could see yourself returning a life
15 verdict if you thought it was appropriate. Do you know
16 where your views on the death penalty come from?

17 A Mostly upbringing.

18 Q You said you know Robert Rosenberg?

19 A Yes.

20 Q How do you know him?

21 A He used to come out to BMG.

22 Q How what was Susan Porter?

23 A Childhood.

24 Q Okay. I know these are personal questions. But
25 I want to ask you a little bit about your grandfather.

1 What was alleged to have happened there?

2 A They never did tell me the whole story.

3 Q Was that here in Spartanburg?

4 A Yes.

5 Q Was it recently?

6 A No. It was back some ways.

7 Q How long ago was that?

8 A It has probably been five or six years ago.

9 Q Okay. I know you may not know any of the details
10 of it or know a very little about it, but do you think he
11 was treated fairly by law enforcement?

12 A Yes.

13 Q If he went to court, he was probably prosecuted
14 by someone in our office. Do you think he was treated
15 fairly by our office?

16 A Yes.

17 Q The reason I ask that is I just want to make
18 sure. We are going to have sheriff's deputies testify.
19 And we're going to be presenting the case. I just want to
20 make sure you're not going to hold that against us,
21 whatever happened to your grandfather in this case, hold
22 that against us in this case.

23 A No.

24 Q Excuse me just one second.

25 Thank you, Mr. Weeks.

EXAMINATION

BY THE COURT:

1
2
3 **Q** Mr. Weeks, let me ask you a question or two.
4 Now, both in the beginning when I talked to you and at the
5 end when Mr. Willingham talked to you, you indicated an
6 open-mindedness toward a life sentence and open-mindedness
7 toward the death penalty. But when Mr. Bartosh asked you
8 if just because somebody was convicted of murder you would
9 automatically impose the death penalty, you said yes. Why
10 did you say that?

11 **A** It would just depend on the crime it self.

12 **Q** Right. But what were you, did we misunderstand
13 what you said or did you say that you would impose a death
14 penalty on every murder conviction?

15 **A** If it is something like self-defense, then no.

16 **Q** Let me explain. If it is self-defense, it is not
17 murder. If it is self-defense, the defendant is not
18 guilty. Now, let me just get right back to the point,
19 okay. Could you and let's assume that the defendant is
20 found guilty of murder, could you depending on all the
21 facts and circumstances that you see and that you find to
22 exist and after considering aggravating circumstances and
23 mitigating circumstances and after listening to me explain
24 the law to you and considering that, could you vote to
25 impose a life sentence?

1 **A** Yes.

2 **Q** So you would not automatically impose the death
3 penalty?

4 **A** No.

5 **THE COURT:** Any more voir dire?

6 **MR. WILLINGHAM:** No, sir.

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

8 **THE COURT:** Would you step in the hall for just a
9 second, Mr. Weeks.

10 (WHEREUPON, Mr. Weeks exits at approximately 4:25
11 p.m.)

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

13 **MR. BARTOSH:** I don't think he is qualified.

14 **THE COURT:** Explain to me the difference
15 between --

16 What does the State say?

17 **MR. WILLINGHAM:** I think he's qualified, Judge.

18 **THE COURT:** Explain to me the difference between
19 the way this juror presents himself to me and the
20 Ph.D. Anthropologist who you were so sure was
21 disqualified. I mean qualified. What's the
22 difference?

23 **MR. BARTOSH:** I think she never, she never
24 actually ruled out the imposition of a death penalty.
25 She said she would find it very difficult to impose it

1 whereas he stated that if a person was convicted of
2 murder, maybe I don't -- if a person is convicted of
3 murder, he would always impose the death penalty.

4 **THE COURT:** All right. There was with this juror
5 some inconsistency in his responses. He initially
6 told me that he could vote to impose the life
7 sentence. And he told me and he told Mr. Willingham
8 that he could impose a life sentence. He told Mr.
9 Bartosh in response to one question after giving
10 responses in the other direction at other times during
11 Mr. Bartosh's examination that he would always impose
12 a death penalty for a murder.

13 It is true that these jurors are just like us.
14 They don't necessarily have their answers to these
15 questions rehearsed and down pat so that when they are
16 asked a question, in their minds, they press a certain
17 button and out pops the perfect answer that is
18 perfectly consistent with their views. My
19 responsibility is to observe these jurors and decide
20 whether or not their views on the death penalty or
21 anything would substantially impair their ability to
22 follow my instructions and to carry out the law as a
23 member of the jury.

24 - I believe that this juror understands that there
25 are two options. I believe that he will consider both

1 options. It's very clear to me that he leans more
2 towards the death penalty than he does towards a life
3 sentence. But that doesn't disqualify him. I think
4 he's willing to consider the facts and circumstances
5 of each case and that he will do that in this case and
6 that he is qualified. So I qualify him.

7 Bring us another juror.

8 **THE BAILIFF:** You want Mr. Weeks back first?

9 **THE COURT:** Oh, yeah. Sure.

10 (WHEREUPON, Mr. Weeks enters at approximately 4:27

11 p.m.)

12 **THE COURT:** Mr. Weeks, I find that you are a
13 qualified juror in this case. I'm going to ask you to
14 go down the hall to the jury assembly room. And if
15 you get on the jury, we will make arrangements for you
16 to get to your home and to bring your stuff back.

17 Okay?

18 **MR. WEEKS:** Okay.

19 (WHEREUPON, Mr. Weeks exits at approximately 4:27

20 p.m.)

21 **MR. BARTOSH:** Your Honor, we would respectfully
22 object to the Court's finding that he's qualified
23 based upon the arguments that we made.

24 **THE COURT:** All right.

25 Well, I suppose we keep going. We've got 39

1 jurors. Four of whom are not in the courthouse. Two
2 of those four are on their way. The other two are
3 unaccounted for. There is a sheriff's deputy in the
4 driveway of one of those two. And she is not home.
5 So I don't know what else to do except to keep
6 qualifying jurors until we are ready to strike a jury.

7 So bring us another juror.

8 Make sure you get in touch with the jail to make
9 sure they've got room to house a couple of wayfaring
10 jurors.

11 (WHEREUPON, Amanda Morton, Juror number 202, enters at
12 approximately 4:30 p.m.)

13 **AMANDA MORTON**

14 having previously been sworn, testified as follows:

15 **EXAMINATION**

16 **BY THE COURT:**

17 **Q** How are you, Ms. Morton?

18 **A** I'm fine. Thank you.

19 **Q** Good. You recall that we put you under oath
20 Monday morning?

21 **A** Yes.

22 **Q** You are still under oath right now. You
23 understand that?

24 **A** Yes, sir.

25 **Q** Since you left us Monday afternoon, has anybody

1 talked to you or have you talked to anybody about this
2 case?

3 A No, sir.

4 Q Have you read or heard or seen anything about
5 this case since Monday afternoon?

6 A No, sir.

7 Q I'm going to talk to you now and I hope these
8 questions don't go too much into your private life but I do
9 have to ask you these questions.

10 A Yes, sir.

11 Q The questions don't have right or wrong answers.
12 I just want you to listen carefully and be open and honest
13 with us and tell what you feel and what you think.

14 We're going to talk about a possible penalty phase.
15 That does not mean anything about this case or about this
16 defendant. It simply means that because we might get to a
17 sentencing phase, we need to ask you some questions about
18 some issues that will arise if we do.

19 A Okay.

20 Q If you were on the jury in this case, could you
21 listen to me explain the law to you and accept and apply
22 the law, could you set aside anything that you might have
23 heard or learned before the case began and render a verdict
24 that is based solely on the testimony and evidence that you
25 would hear and see in this courtroom?

1 **A** Yes, sir.

2 **Q** You understand that in this type of criminal
3 case, the State has the burden of proving the defendant
4 guilty beyond a reasonable doubt?

5 **A** Yes, sir.

6 **Q** And this is a murder case. You know that?

7 **A** Yes, sir.

8 **Q** Could you, depending on the facts and
9 circumstances that you find to have been proven and
10 considering the law as I will explain it to you, could you
11 find a verdict of either guilty or not guilty depending on
12 whether you believe the State has met its burden of proof?

13 **A** Yes, sir.

14 **Q** If you are on the jury in the case and if the
15 jury finds the defendant guilty of murder, we will move
16 into the sentencing phase of the trial. In that phase,
17 there will be some issues that will come up that I need to
18 speak to you about now.

19 **A** Okay.

20 **Q** Aggravating circumstances are facts, incidents or
21 details of an occurrence that South Carolina has declared
22 will aggravate or make worse the crime of murder.
23 Aggravating circumstances increase the severity of the
24 crime and add to the injury that is results from that
25 crime.

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

7 If you are on the jury in the penalty phase of this
8 trial, you would have two options as what your verdict can
9 be. One is to return a verdict for a life sentence. The
10 other is to return a verdict imposing the death penalty.
11 Could you, depending on the facts and circumstances that
12 you find to exist and considering any aggravating or
13 mitigating circumstances and considering the law that I
14 will explain it to you, could you vote to impose a life
15 sentence?

16 A Yes, sir.

17 Q Could you vote to impose the death penalty?

18 A Yes, sir.

19 Q If you are on the jury in this case, you will be
20 sequestered and not allowed to go home to your family for
21 five or six days. Would that impose a terrible burden on
22 you?

23 A No, sir.

24 Q Have you been over the witness list that I gave
25 you when you came in?

1 **A** Yes, sir.

2 **Q** Have you read every name on that list?

3 **A** Twice.

4 **Q** Do you know anybody or are you related to anybody
5 whose name is on that list?

6 **A** No, sir, I do not.

7 **Q** Do you know of any reason why you cannot give
8 both the state and the defendant a fair and impartial
9 trial?

10 **A** No, sir, I do not.

11 **Q** I'm going to let the lawyers ask you some
12 questions now. Then I might come back and ask you some
13 questions in just a minute.

14 **A** Okay.

15 **MR. BARTOSH:** Thank you, Your Honor.

16 **EXAMINATION**

17 **BY MR. BARTOSH:**

18 **Q** My name is Mark Bartosh. Along with Doug Brennan
19 and Karen Quimby, we represent Mr. Lindsey on this matter.
20 There is a couple of things on your questionnaire. And I
21 appreciate your honesty, but there were just few questions.
22 I will try to be as unintrusive as I possibly can. You
23 indicated on there that you have a condition that you are
24 being treated for by a doctor?

25 **A** Yes, sir, narcolepsy.

1 Q And that condition, you are able to control that
2 with medication?

3 A Yes, sir.

4 Q Do you think that that would impair your ability
5 to perform your duties as a juror?

6 A No, sir, I do not. I have no problems with my
7 job or anything like that.

8 Q You are able to work?

9 A Yes, sir.

10 Q And the medication is doing the job?

11 A Yes, sir.

12 Q You also indicated that at some point, some time
13 ago that a friend's grandmother was killed in a robbery?

14 A Yes, sir.

15 Q How long ago was that?

16 A Probably nine or ten years ago, I guess.

17 Q Was the person ever caught?

18 A I'm not sure. He was just a brief acquaintance.
19 Shortly thereafter, I went to college. I've not seen him
20 or spoke to him or his family since so I'm not really sure.

21 Q So other than knowing about the event, that's all
22 you know?

23 A Yes, sir.

24 Q And that would not have any affect on your
25 ability to give Mr. Lindsey a fair trial?

1 **A** No. Definitely not.

2 **Q** You also indicated that you do volunteer work for
3 your church in the Outreach Program?

4 **A** Yes, sir.

5 **Q** Is this for adults or for kids?

6 **A** With the church?

7 **Q** With the church.

8 **A** Both. I work with children and with adults.

9 **Q** And what ages of children do you work with?

10 **A** Pre-school to middle school.

11 **Q** I've always had difficulty with concept of middle
12 school. Middle school is like 7th, 8th and 9th?

13 **A** Right. Yes, sir.

14 **Q** Okay.

15 **A** The biggest age that I work with is middle
16 school. But I do some with pre-school too.

17 **Q** My son goes to junior high. And I can't figure
18 that out.

19 **A** Okay.

20 **Q** And so you do quite a bit of volunteer work with
21 your church?

22 **A** Yes, sir.

23 **Q** And you're working at Christian Supply also?

24 **A** Yes, sir.

25 **Q** Okay. Now, also you indicated that you had some

1 knowledge of Safe Homes?

2 A Safe Homes?

3 Q Safe Homes.

4 A I don't think so.

5 Q There's a note on my questionnaire. But do you
6 know what Safe Homes is or are?

7 A I know what safe homes are.

8 Q Okay. I don't know if it is is or are. You know
9 what they are. But you've had no experience with them?

10 A No.

11 Q Okay. Your husband is a dairy farmer?

12 A Yes, sir.

13 Q You attend First Baptist?

14 A Yes, sir.

15 Q Okay. There's a couple of things I would like to
16 just like to mention to you just to get your feelings on
17 these matters. The first thing is if you are chosen as a
18 juror, the judge is going to tell you in the beginning that
19 under our system of law everyone accused of a crime is
20 presumed to be innocent.

21 A Yes.

22 Q As Mr. Lindsey sits there, he is innocent. He
23 will remain innocent until the twelve folks on the jury
24 decide that he is no longer entitled to that presumption
25 after listening to all the evidence and they decide beyond

1 a reasonable doubt that the State has carried its burden.
2 Would you have any problem in following the judge's
3 instruction on that very significant right?

4 A No, sir.

5 Q Okay. Also as His Honor has explain to you, this
6 is a two-part process. If -- the State must first prove
7 Mr. Lindsey of murder beyond a reasonable doubt once again
8 to twelve folks of the jury. If they don't believe that
9 the State has carried its burden, nothing happens. Of
10 course, we have to take into account the possibility. So
11 now we're talking about the second part. Now, you never
12 have to automatically choose death. Do you understand
13 that?

14 A Yes, sir.

15 Q There's always a choice of life and death.
16 What's going to happen is, if we get that far, is the State
17 through the Solicitor's office is going to offer evidence
18 that they feel will show that crime is more serious or more
19 violent. And what they hope to do is convince a jury
20 beyond a reasonable doubt that the death penalty is the
21 appropriate punishment.

22 Of course, what the defense is going to try to do is
23 we're going to introduce some mitigating circumstances,
24 things that lesson the severity of the crime and hope to
25 convince a jury that life is the more appropriate

1 punishment. Now, life is life. I know there are a lot of
2 people that expect that they will be out in seven years or
3 something like that. But a person who receives a life
4 sentence in this state, it is life without parole. If Mr.
5 Lindsey were to get that, he would die in the Department of
6 Corrections. You understand that?

7 A (Nods head affirmatively.)

8 Q Of course, if he were to get the death sentence,
9 he would be executed?

10 A Okay.

11 Q Either way, it's got to be unanimous. All twelve
12 folks on the jury have to agree as to what the appropriate
13 sentence is?

14 Q Now, in either case, could you give both the
15 state and the defense a fair and impartial hearing as to
16 the evidence that they present? If it goes to the
17 sentencing phase, would you be able to have an open mind
18 and listen to both sides and not favor one side over the
19 other side or have any kind of preconceived notions?

20 A Yes, sir, most definitely.

21 Q You would be willing to listen to both sides?

22 A Yes, sir.

23 Q If you and the other jurors felt that life was
24 appropriate, you would find for life?

25 A Right.

1 **Q** By the same token, if you and your fellow jurors
2 felt that the death was appropriate, you would vote for
3 death?

4 **A** Yes.

5 **Q** You would not have any automatic --

6 **A** No, sir.

7 **Q** -- response to that. As I told you, it has got
8 to be unanimous. There is a sentencing sheet that
9 everybody signs. Whether it be life or death, you all
10 twelve sign life. If it is death, you will all twelve sign
11 death. The question that I have for you is if for whatever
12 reason, you are the 12th juror, and after considering all
13 the evidence and -- presented by both sides, you, in your
14 deliberations and your discussions, you and your fellow
15 jurors believe that death is the appropriate sentence.

16 The other eleven jurors have signed for the death.
17 And it comes to you. You happen to be that 12th juror, you
18 know that once you sign your name on that piece of paper,
19 that is going to condemn Mr. Lindsey to death and he would
20 be killed. Could you do that?

21 **A** If I believe that the evidence is strong enough
22 to support that.

23 **Q** What you would want to do is you would want to
24 hear all of the evidence and you want to make a decision
25 based upon --

1 **A** Yes, sir.

2 **Q** -- the evidence that will be presented?

3 **A** Yes, sir.

4 **Q** Thank you very much.

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

7 **EXAMINATION**

8 **BY MR. BARNETT:**

9 **Q** My name is Barry Barnett. Myself, Trey Gowdy and
10 Donnie Willingham represent the State in this case. Mr.
11 Bartosh asked about everything I could think of. There is
12 one thing I'm very curious about. I saw you have South
13 Carolina Cattle Association on here.

14 **A** Yes, sir.

15 **Q** Are you a member of that association?

16 **A** I am not currently. I have been in the past.
17 But I'm not currently.

18 **Q** Is that for cattle farmers? Are you a cattle
19 farmer? I'm just curious about that.

20 **A** My father is, but I'm not currently.

21 **Q** Thank you.

22 **MR. BARNETT:** Thank you Your Honor.

23 **THE COURT:** Ms. Morton, would you mind
24 stepping in the hall for just a second please.

25 **MRS. MORTON:** Yes, sir.

1 (WHEREUPON, Mrs. Morton exits at approximately 4:51
2 p.m.)

3 THE COURT: Is she disqualified because of her
4 former membership?

5 MR. BARNETT: No. I am all for it, Your Honor.

6 THE COURT: She is qualified?

7 MR. BARTOSH: No objection.

8 THE COURT: Bring her back.

9 (WHEREUPON, Mrs. Morton enters at approximately 4:51
10 p.m.)

11 THE COURT: Mrs. Morton, I find that you are
12 qualified to serve on this jury. I'm going to ask you
13 to go down the hall to the jury assembly room. If you
14 get put on the jury, which we should know within an
15 hour or two, then someone will help you to get home
16 and get your stuff packed and get you back up here --

17 MRS. MORTON: Okay.

18 THE COURT: -- so that you can be with us for
19 several days.

20 MRS. MORTON: Okay.

21 THE COURT: All right?

22 MRS. MORTON: Yes, sir.

23 THE COURT: You can head on down the hall.

24 (WHEREUPON, Ms. Morton exits at approximately 4:52
25 p.m.)

1 **THE COURT:** We got 40 jurors. I am told that all
2 40 are either in the building or in route. All right.
3 We got 37 in the building and three on the way.

4 **MR. GOWDY:** Will the Court allow Mr. Bartosh
5 and I to approach about scheduling matters?

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

7 (WHEREUPON, a bench conference was held off the
8 record.)

9 **THE COURT:** All right. We're short two jurors
10 now. They are supposed to be both on the way. We
11 will take a short break or a break. Is there anything
12 we can do before the jury gets here? Remember, there
13 was the guy, the juror, Ray, who brought up that
14 arrest or something. Was there any other jurors that
15 y'all want to talk to individually?

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

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

18 **THE COURT:** All right.

19 (WHEREUPON, a short recess was taken at approximately
20 4:57 p.m.)

21 (WHEREUPON, the Court resumed at approximately 5:03
22 p.m.)

23 **THE COURT:** We have Mr. Greenway here. If you
24 would like to, Mr. Bartosh, you can have a minute to
25 talk to your client about it.

1 (WHEREUPON, Mr. Bartosh consults with Mr. Lindsey.)

2 (WHEREUPON, Brandon Greenway, Juror number 112, enters
3 at approximately 5:05 p.m.)

4 **THE COURT:** All right. Mr. Greenway.

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

6 **THE COURT:** Listen. I'm sorry that we put you to
7 the inconvenience of letting you leave and then
8 calling you, waiting for you to get probably about as
9 far away as you can get.

10 **MR. GREENWAY:** Just about.

11 **THE COURT:** Calling you at work after you've
12 gotten started. And that's all my fault. I take full
13 responsibility for it. I do appreciate you coming
14 back. We're going to open up the questioning of you
15 again in a minute. But let me ask you this. Since,
16 well, first let me tell you, you realize that you are
17 still under oath from the oath that you took Monday
18 morning?

19 **MR. GREENWAY:** Yes, sir.

20 **THE COURT:** And since you left here today, have
21 you talked to anybody about this case?

22 **MR. GREENWAY:** No, sir.

23 **THE COURT:** All right. Thank you. Have you read
24 anything or seen anything or heard anything about the
25 case?

1 **MR. GREENWAY:** Had no time.

2 **THE COURT:** All right. We're going to open the
3 questioning back up. Mr. Bartosh is going to start
4 off by asking you a few questions.

5 **MR. GREENWAY:** All right.

6 **EXAMINATION**

7 **BY MR. BARTOSH:**

8 **Q** Mr. Greenway, I think the last time you were
9 here you indicated that you didn't believe that, if I have
10 it correctly, that your experience, your life experience,
11 your age, you didn't feel that you could impose the death
12 penalty. What did it come from?

13 **A** The problem is that it would be in my hands.

14 **Q** It would be more than the feeling that, not that
15 you couldn't impose it but you wouldn't be comfortable
16 imposing it. Is that fair enough?

17 **A** Yes, sir.

18 **Q** We would hope that there wouldn't be anybody
19 comfortable imposing the death penalty. So that's a very
20 natural reaction. You understand too, Mr. Greenway that
21 you never have to impose it?

22 **A** Right.

23 **Q** There is no mandatory death sentence in South
24 Carolina. Life in prison is always an option. Okay? What
25 would happen in this second process, it's a dual process.

1 The first one being like a regular trial. If you were
2 chosen as a juror, you would sit there. You would hear the
3 evidence that the Solicitor would present.

4 You would have to decide based upon the evidence that
5 they presented to you or to the jury or all twelve folks of
6 the jury that they had proven that Mr. Lindsey was guilty
7 of murder beyond a reasonable doubt. If the jury didn't
8 believe it, we would never get to the second part. But
9 because we are involved in trying to draw a jury or get a
10 jury panel together, we have to assume that it would be.
11 Okay.

12 Now, the first thing the judge is going to tell you is
13 that under our system of laws, everybody no matter what
14 they are charged with that they are presumed to be
15 innocent. As Mr. Lindsey sits there, he is innocent of any
16 crime he is accused of. Would you have any problem at all
17 accepting that instruction from the judge?

18 **A** No, sir.

19 **Q** Okay. Now, if we were to get to the second part,
20 what would happen would be the State or the Solicitor's
21 office would offer evidence that they believe would
22 aggravate the crime or make it worse. Of course, that
23 would be convincing the twelve jurors through their
24 evidence that the appropriate punishment was death.

25 What we would do would be we would offer evidence in

1 mitigation to try to convince the twelve folks of the jury
2 that it's less, that it's not as serious as the State says
3 and try to convince the twelve folks of the jury that the
4 appropriate punishment would be life. Okay? Now, as you
5 said, nobody is comfortable doing it. But that doesn't
6 disqualify you as a juror. Okay? I think that is a
7 natural reaction.

8 The question is could you give both sides a fair and
9 impartial hearing which means could you sit there or here
10 if you were chosen and listen to the evidence both sides
11 would present in the penalty phase. We've already moved
12 beyond the guilt phase. In the penalty phase, could you
13 sit there and listen to the evidence that would come from
14 that box and give both sides a fair and impartial hearing
15 and base your decision on what you hear from that box. And
16 that after hearing all the evidence, if you and the eleven
17 other jurors -- now it's got to be unanimous. Okay?

18 All twelve jurors must agree as to what the sentence
19 is going to be. It can't be 11 to 1. It can't be 7 to 5.
20 It must be unanimous whatever it is. If after listening to
21 all the evidence and if after hearing all the evidence and
22 talking to the other jurors, you come to the conclusion or
23 to the decision that the appropriate sentence is life,
24 could you impose a life sentence?

25 A Yes, sir.

1 **Q** If you thought it was appropriate and after all
2 twelve of you had discussed the evidence by both sides.
3 Could you do that?

4 **A** Yes, sir.

5 **Q** Okay. By the same token, if after you or your
6 twelve jurors hear all the evidence presented by both sides
7 and discuss it and talk about it and you and your fellow
8 jurors after considering everything feel that the death
9 sentence would be appropriate, the death penalty would be
10 appropriate and you believed it was appropriate, could you
11 impose the death penalty?

12 **A** I'm not sure. I don't think that I'm 100 percent
13 for the death penalty. That's the thing.

14 **Q** Are you saying that you could think of no time or
15 no circumstances under which you think the death penalty
16 would be appropriate?

17 **A** No, I'm not saying that. I'm saying that I'm
18 undecided on that. But say that the next three days, I
19 think about it long and hard and I'm against the death
20 penalty.

21 **Q** So you're saying that you don't have an opinion
22 of it right now?

23 **A** I'm 19 years old. I don't think about it a whole
24 lot.

25 **Q** I don't think about it a lot either except in

1 cases like this. Do you feel that you just haven't formed
2 your opinion of what it is?

3 A I guess so. But basically, it boils down to, my
4 point of it is, if I'm sitting -- and I want this to be
5 fair for everybody all the way around. I'm afraid that if
6 I'm sitting right there, that would not be.

7 Q Would you tell me why you feel that way.

8 A Cause I'm not exactly sure that I'm for the death
9 penalty. And if that's what these guys are pushing for and
10 before I even step up there that's something I don't
11 believe in, that's not fair to them.

12 Q So between now and -- it's possible that between
13 now and when we get to the point of whether you have to
14 decide the sentence, you may find that you are against the
15 death penalty?

16 A Maybe.

17 Q Or you may find that you are for the death
18 penalty. You may find that also, right?

19 A Yeah, I guess.

20 Q Fair enough. But as it stands right now, you
21 don't have any opinion one way or the other?

22 A I don't think it's the greatest thing in the
23 world. I'm leaning more towards being against it if that's
24 what you're asking me.

25 Q Okay. Do you think those feelings right now, you

1 still have to do some more thinking? Is that what you're
2 saying? You don't feel you can be fair?

3 **A** Honestly, I don't. I don't think anybody has the
4 right to take somebody else's life regardless of what Mr.
5 Lindsey is accused of doing. I don't think that it's up --
6 it shouldn't be up to me or anybody else to take his life.
7 And I just don't think that would be fair.

8 **Q** So as it stands right now, just so I understand,
9 you can't think of any circumstances where you would impose
10 the death penalty?

11 **A** I guess, no.

12 **Q** Thank you.

13 **MR. GOWDY:** No questions.

14 **THE COURT:** Mr. Greenway, would you step in the
15 hall for just a second please.

16 **MR. GREENWAY:** Absolutely.

17 (WHEREUPON, Mr. Greenway exits at approximately 5:13
18 p.m.)

19 **MR. BARTOSH:** He's not qualified.

20 **THE COURT:** He is not qualified?

21 **MR. BARTOSH:** No, sir. But I appreciate the
22 opportunity.

23 **THE COURT:** My pleasure. Bring him back.

24 (WHEREUPON, Mr. Greenway enters at approximately 5:13
25 p.m.)

1 **THE COURT:** Mr. Greenway, where do you work?

2 **MR. GREENWAY:** I just do odds and ends work for my
3 cousin's construction company. I work especially with
4 drywall a little bit.

5 **THE COURT:** If I let you go now, are you going to
6 have to go back to work or is it too late?

7 **MR. GREENWAY:** Nah, especially drywall. I was
8 working up in Ellenburg today. I don't think I'll
9 make it back to North Carolina.

10 **THE COURT:** So you were up in North Carolina?

11 **MR. GREENWAY:** I was almost there.

12 **THE COURT:** Did they get you on the cell phone?

13 **MR. GREENWAY:** I left her a message cause I didn't
14 know what it was about. I left Ashley a message to
15 call me on my cell phone to see what it was about.
16 And she got in touch with me.

17 **THE COURT:** So in reality, I saved you the trouble
18 of having to go back to work and gave you the
19 privilege of being able to drive up and down the
20 scenic roads of North and South Carolina for several
21 hours that you would not otherwise have had.

22 **MR. GREENWAY:** Well, that sounds better. We'll go
23 with that.

24 **THE COURT:** All right. You can tell your boss
25 that you have my permission to be off for the rest of

1 the day. We don't need your services in this case.
2 It's too late to go back up to North Carolina. So
3 have a nice day.

4 **MR. GREENWAY:** Thank you, sir.

5 (WHEREUPON, Mr. Greenway exits at approximately
6 5:15 p.m.)

7 (WHEREUPON, a recess was taken at approximately
8 5:20 p.m.)

9 (WHEREUPON, the Court resumed at approximately
10 5:37 p.m.)

11 **THE COURT:** Can one of the S.L.E.D. guys take care
12 of Mrs. Brock's son? He will be coming in the door.
13 His name is John Michael.

14 (WHEREUPON, the jury panel entered at approximately
15 5:39 p.m.)

16 **THE COURT:** Mr. Humphrey, have we got all the
17 jurors in here?

18 **THE BAILIFF:** Yes, sir.

19 **THE COURT:** Ladies and gentlemen, welcome back.
20 Let me ask you a few more questions then we will move
21 into what we call striking the jury. Now, the first
22 question that I want to ask you is one that I promised
23 that I would ask you when you got back. That is is
24 there any member of the jury panel who since you last
25 were here and talked to me who has talked to anybody

1 about this case or has had anyone talked to you about
2 this case? If so, please stand.

3 (WHEREUPON, there was no response.)

4 **THE COURT:** Nobody is standing. Is there any
5 member of the jury panel who has read anything or
6 watched anything or listened to anything or in any
7 other way learned anything about this case since we
8 last talked? If so, please stand.

9 (WHEREUPON, there was no response.)

10 **THE COURT:** Is there any member of the jury panel
11 who has any particular interest in the outcome of this
12 case? If so, please stand.

13 (WHEREUPON, there was no response.)

14 **THE COURT:** Is there any member of the jury panel
15 who has formed or expressed any opinion as to the
16 guilt or innocence of this defendant? If so, please
17 stand.

18 (WHEREUPON, there was no response.)

19 **THE COURT:** Is there any member of the jury panel
20 who has any bias or prejudice either towards or
21 against the State or the defendant in connection with
22 this case? If so, please stand.

23 (WHEREUPON, there was no response.)

24 **THE COURT:** Now, ladies and gentlemen, we have all
25 been through a lot of talking together and answering

1 questions and not reading newspapers and not watching
2 TV and all sorts of stuff this week. I want you to
3 pay close attention and think very hard. This is a
4 very important question. Is there any member of the
5 jury panel who knows of any reason why you could not
6 give both the State and the defendant a fair and
7 impartial trial in this case? If you do, please
8 stand.

9 (WHEREUPON, there was no response.)

10 **THE COURT:** Is there any additional voir dire from
11 the State?

12 **MR. GOWDY:** Not from the State, Your Honor.

13 **THE COURT:** From the defendant?

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

15 **THE COURT:** You all ready to strike?

16 **MR. GOWDY:** Yes, sir.

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

18 **THE COURT:** Now, ladies and gentlemen, when your
19 name is called, please come to the front of the
20 courtroom and stand in the middle. Mr. Scruggs will
21 show you where to stand. And face the lawyers. The
22 State will go first and will either ask you to be,
23 return to your seat or present you to the defense.
24 The defense will ask you to either return to your seat
25 or to be put in the jury box.

1 You ready to proceed?

2 Hold on just one second.

3 Now, when I asked you those questions just a
4 minute ago, ladies and gentlemen, I assumed that you
5 all knew that you were still under the oath that we
6 administered to you on Monday morning. Is there
7 anybody who did not hear and respond to those
8 questions acknowledging your being under oath as we
9 put you under oath on Monday morning. If so, please
10 stand.

11 **MS. PRASANLACK:** Your Honor, my mom had mentioned
12 to me about. --

13 **THE COURT:** Okay. Hold on right there. And let
14 me tell you first how much we appreciate you bringing
15 this to our attention. Tell me your name, please.

16 **MS. PRASANLACK:** Janet Prasanlack.

17 **THE COURT:** Ms. Prasanlack?

18 **MS. PRASANLACK:** Uh-huh (affirmative).

19 **THE COURT:** I would like for you to come forward
20 and to talk to me and to the lawyers right here beside
21 the Court Reporter.

22 (WHEREUPON, a bench conference was held with Janet
23 Prasanlack, Juror number 218.)

24 **THE COURT:** Is the east courtroom clear?

25 **THE BAILIFF:** Sir?

1 **THE COURT:** I would like for you to take all the
2 members of the jury panel across to the east courtroom
3 except Ms. Prasanlack. We'll be only a few minutes.
4 (WHEREUPON, the jury panel exits at approximately
5 5:50 p.m.)

6 **THE COURT:** All right. Ms. Prasanlack, let's let
7 you come on up here to the witness stand. Again, you
8 did the right thing. You did the right thing to bring
9 this to our attention and we appreciate it.

10 All right. The purpose for sending the jury out
11 is so that we can openly either let Ms. Prasanlack
12 tell us what she said or we can repeat it so that Mr.
13 Lindsey can hear it and you can consult with Mr.
14 Lindsey as to what your position is or we can have a
15 further interrogation of her or questioning of her and
16 I can rule. Which would you like to do?

17 **MR. BARTOSH:** I would like for her to repeat
18 what it was she said.

19 **THE COURT:** All right. What I'm going to do is
20 I'm going to have the Court Reporter to read it back.
21 Ms. Prasanlack, you listen carefully to make sure we
22 don't get it wrong. Okay?

23 **MS. PRASANLACK:** Okay.

24 **COURT REPORTER:** She knew that I was going to be
25 called to testify --

1 **THE COURT:** Wait a minute. Could you say it loud
2 enough so they can hear?

3 **COURT REPORTER:** I'm sorry. She knew that I was
4 going to be called in a case -- about a case that she
5 had been talking to her friends about. And she asked
6 -- she knew that I was going to be coming down to a
7 case where he was going to jail for the rest of his
8 life or the death penalty. And she made a comment to
9 me saying that it was against our religion.

10 And it made me think that, I did not think that
11 it was not proper for me to go in. It almost made me
12 feel like thinking that I could not give him the death
13 sentence. The Court, all right. The Juror, I'm
14 sorry. I should have told you. The Court, you did
15 the right thing to bring it to my attention. The
16 Court --

17 **THE COURT:** All right. Let's stop right there.
18 And then I went, I followed up on that. Did you hear
19 all that?

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

21 **THE COURT:** All right. Then I followed up and
22 asked her the same --

23 (WHEREUPON, there was a pause.)

24 **THE COURT:** You ready?

25 All right. I followed up, repeated kind of what

1 she said. I asked her if it was that her mother's
2 comment that changed her mind about the death penalty
3 or was it the fact that it was her mother made the
4 comment and that the comment involved religion that it
5 put pressure on her and made her feel like she
6 couldn't impose the death penalty or made her feel
7 like she needed to bring that to our attention. And
8 she responded that it was the second one. It was not
9 the fact that her mother had changed her mind but it
10 was the pressure. Isn't that right, Ms. Prasanlack?

11 **MS. PRASANLACK:** Yes, sir.

12 **THE COURT:** Then I asked her the same question I
13 asked her during the original voir dire which was
14 could she, depending on the facts and circumstances
15 that she found to exist, considering any aggravating
16 or mitigating circumstances and in light of the law as
17 I would explain it to her, could she vote to impose a
18 life sentence. She said yes. Could she vote to
19 impose the death penalty? I think she said I don't
20 think I can.

21 You've got it down as Mr. Barnett. That's the
22 juror, right?

23 She said I don't think I can. That's when I
24 asked her whether it was the pressure or her changing
25 her mind. So if you want to, Mr. Bartosh, you have

1 the right to ask Ms. Prasanlack a few questions now.

2 MR. BARTOSH: Yes, sir. I would like to.

3 JANET PRASANLACK

4 having previously been sworn, testified as follows:

5 EXAMINATION

6 BY MR. BARTOSH:

7 Q Ms. Prasanlack, the last response was you didn't
8 think you could. Not that you couldn't. Is that fair that
9 you didn't think you could?

10 A Yeah. I can say that I'm going in the case with
11 kinda, with my mind kinda made up. I'm not saying made up,
12 but I kinda lean. I don't think it's kinda fair for that to
13 be under my hand. I will always hear my 'mom's voice
14 telling me you don't do that cause that's not what we do.
15 I don't think it's fair for me to already have a judgment.

16 Q I'm a little confused.

17 A Okay.

18 Q Do you feel like you're coming into this with a
19 preconceived notion of what the outcome ought to be?

20 A Uh-huh (affirmative).

21 Q And what is that outcome?

22 A I don't think I can actually sit here and put him
23 on the death sentence if he was found guilty. Instead, I
24 could see him, if he was to go to death or in jail for the
25 rest of his life, I can almost already see myself leaning

1 towards him just going to jail for the rest of his life
2 inside of the death penalty.

3 Q But if you were going to listen to the
4 aggravating circumstances, the aggravators that the
5 Solicitor would present, are you saying that you still
6 could not consider the death penalty even if you felt that
7 the aggravators made the death penalty appropriate?

8 A Honesty, I don't think I could put him in the
9 death sentence. I would rather him just be in jail if he
10 was found guilty.

11 THE COURT: Mr. Scruggs, would you mind taking
12 Ms. Prasanlack --

13 You've got any questions?

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

15 THE COURT: Taking her in the hall right here for
16 just one second please.

17 (WHEREUPON, Ms. Prasanlack exits at approximately
18 5:57 p.m.)

19 THE COURT: Any argument?

20 MR. BARTOSH: No, sir.

21 THE COURT: You agree she is not qualified?

22 MR. BARTOSH: Yes, sir.

23 THE COURT: Okay. Bring her back.

24 Go ahead and get the rest of the jury and bring
25 them back over here.

1 (WHEREUPON, Ms. Prasanlack enters at approximately
2 5:57 p.m.)

3 **THE COURT:** All right. Ms. Prasanlack, I'm going
4 to have the bailiff take you back in the back and put
5 you in the back. Okay?

6 **MS. PRASANLACK:** Okay.

7 **THE COURT:** You can just let her go.

8 You are free to go, ma'am.

9 Take her now.

10 (WHEREUPON, Ms. Prasanlack exits at approximately
11 5:57 p.m.)

12 (WHEREUPON, the jury panel enters at approximately
13 6:02 p.m.)

14 **THE COURT:** Mr. Nesbitt, we've got everybody back
15 in here?

16 **THE BAILIFF:** Everybody is in.

17 **THE COURT:** All right. Ladies and gentlemen, let
18 me ask you the question one more time. First of all,
19 is there any member of the jury panel who while you
20 were out of the courtroom just now had any
21 conversation with anybody about this case. If so,
22 please stand.

23 (WHEREUPON, there was no response.)

24 **THE COURT:** Is there any member of the jury panel
25 who knows of any reason why you could not give both

1 the State and the defendant a fair and impartial
2 trial? If so, please stand.

3 (WHEREUPON, there was no response.)

4 **THE COURT:** All right. Now, as I said, when your
5 name is called, please come to the center of the
6 courtroom and we will strike the jury.

7 **THE CLERK:** Juror number 133, John P. Houelsrud.
8 What says the State?

9 **MR. GOWDY:** Please excuse the juror.

10 **THE CLERK:** You are excused in this case, sir.
11 Juror number 77, Ashley D. Driscoll.
12 What says the State?

13 **MR. GOWDY:** Present the juror.

14 **THE COURT:** What says the defense?

15 **MR. BARTOSH:** Please swear the juror.

16 **THE CLERK:** Have a seat in the jury box, ma'am.
17 Juror number 162, Rick L. -- J. Lee.
18 What says the State?

19 **MR. GOWDY:** Present the juror.

20 **THE CLERK:** What says the Defendant?

21 **MR. BARTOSH:** Please excuse Mr. Lee from this
22 case.

23 **THE CLERK:** You're excused from this case.

24 Juror number 134, Carla S. Howell.

25 What says the State?

1 **MR. GOWDY:** Present the juror.

2 **THE CLERK:** Says the defense?

3 **MR. BARTOSH:** Please excuse Ms. Howell from

4 this case.

5 **THE CLERK:** You're excused from this case, ma'am.

6 Juror number 274, Darcy J. Thompson.

7 What says the State?

8 **MR. GOWDY:** Please excuse the juror.

9 **THE CLERK:** You're excused from this case, ma'am.

10 Juror number 100, James B. Gedroic.

11 What says the State?

12 **MR. GOWDY:** Present the juror.

13 **THE CLERK:** What says the Defendant?

14 **MR. BARTOSH:** Please swear Mr. Gedroic.

15 **THE CLERK:** Have a seat in the jury box, sir.

16 Juror number 205, Joann T. Netherton.

17 What says the State?

18 **MR. GOWDY:** Present the juror.

19 **THE CLERK:** What says the Defendant?

20 **MR. BARTOSH:** Please excuse Ms. Netherton from

21 this case.

22 **THE CLERK:** You're excused from this case,

23 ma'am.

24 Juror number 81, Emma Ellis.

25 What says the State?

1 **MR. GOWDY:** Please excuse the juror.

2 **THE CLERK:** You're excused from this case, ma'am.

3 Juror number 60, James E. Creel.

4 What says the State?

5 **MR. GOWDY:** Present the juror.

6 **THE CLERK:** What says the Defendant?

7 **MR. BARTOSH:** Please excuse Mr. Creel from

8 this case.

9 **THE CLERK:** You're excused from this case, sir.

10 Juror number 176, Miguel A. Martinez.

11 What says the State?

12 **MR. GOWDY:** Present the juror.

13 **THE CLERK:** What says the Defendant?

14 **MR. BARTOSH:** Please excuse Mr. Martinez from

15 this case.

16 **THE CLERK:** You're excused from this case, sir.

17 Juror number 240, Martha Sallis.

18 What says the State?

19 **MR. GOWDY:** Present the juror.

20 **THE CLERK:** What says the Defendant?

21 **MR. BARTOSH:** Please swear Ms. Sallis.

22 **THE CLERK:** Have a seat in the jury box, ma'am.

23 Juror number 106, Danny S. Gomes.

24 What says the State?

25 **MR. GOWDY:** Present the juror.

1 **THE CLERK:** What says the Defendant?
2 **MR. BARTOSH:** Please swear Mr. Gomes.
3 **THE CLERK:** Have a seat in the jury box.
4 Juror number 253, Brenda Smith.
5 What says the State?
6 **MR. GOWDY:** Present the juror.
7 **THE CLERK:** What says the Defendant?
8 **MR. BARTOSH:** Please swear Ms. Smith.
9 **THE CLERK:** Have a seat in the jury box, ma'am.
10 Juror number 179, Larry A. Mauldin.
11 What says the State?
12 **MR. GOWDY:** Present the juror.
13 **THE CLERK:** What says the Defendant?
14 **MR. BARTOSH:** Please swear Mr. Mauldin.
15 **THE CLERK:** Have a seat in the jury box.
16 Juror number 294, Isabell Williams.
17 What says the State?
18 **MR. GOWDY:** Please excuse the juror.
19 **THE CLERK:** You're excused from this case, ma'am.
20 Juror number 223, Donald Ray.
21 What says the State?
22 **MR. GOWDY:** Present the juror.
23 **THE CLERK:** What says the Defendant?
24 **MR. BARTOSH:** Please swear Mr. Ray.
25 **THE CLERK:** Have a seat in the jury box.

1 Juror number 138, Dean T. Israel.
2 What says the State?
3 **MR. GOWDY:** Present the juror.
4 **THE CLERK:** What says the Defendant?
5 **MR. BARTOSH:** Please swear Mr. Israel.
6 **THE CLERK:** Have a seat in the jury box.
7 Juror number 225, Jeffrey A. Rhineberger.
8 What says the State?
9 **MR. GOWDY:** Present the juror.
10 **THE CLERK:** What says the Defendant?
11 **MR. BARTOSH:** Please swear Mr. Rhineberger.
12 **THE CLERK:** Have a seat in the jury box.
13 Juror number 232, Kim Rogers.
14 What says the State?
15 **MR. GOWDY:** Present the juror.
16 **THE CLERK:** What says the Defendant?
17 **MR. BARTOSH:** Please excuse Ms. Rogers from
18 this case.
19 **THE CLERK:** You're excused from this case, ma'am.
20 Juror number 49, Kevin O. Cartledge.
21 What says the State?
22 **MR. GOWDY:** Please excuse the juror.
23 **THE CLERK:** You're excused from this case, sir.
24 Juror number 15, Samuel K. Barnwell.
25 What says the State?

1 **MR. GOWDY:** Present the juror.

2 **THE CLERK:** What says the defense?

3 **MR. BARTOSH:** Please swear Mr. Barnwell.

4 **THE CLERK:** Have a seat in the jury box, sir.

5 Juror number 268, Jami L. Sturgeon.

6 What says the State?

7 **MR. GOWDY:** Present the juror.

8 **THE CLERK:** What says the Defendant?

9 **MR. BARTOSH:** Please excuse Ms. Sturgeon from

10 this case.

11 **THE CLERK:** You're excused from this case, ma'am.

12 Juror number 255, Marvin Smith.

13 What says the State?

14 **MR. GOWDY:** Present the juror.

15 **THE CLERK:** What says the Defendant?

16 **MR. BARTOSH:** Please swear Mr. Smith.

17 **THE CLERK:** Have a seat in the jury box, sir.

18 Juror number 68, Michael T. Dawson.

19 What says the State?

20 **MR. GOWDY:** Present the juror.

21 **THE CLERK:** What says the Defendant?

22 **MR. BARTOSH:** Please excuse Mr. Dawson.

23 **THE CLERK:** You're excused from this case, sir.

24 Juror number 97, Pam L. Gardner.

25 What says the State?

1 **MR. GOWDY:** Present the juror.

2 **THE CLERK:** What says the Defendant?

3 **MR. BARTOSH:** Please excuse Ms. Gardner from

4 this case.

5 **THE CLERK:** You're excused from this case, ma'am.

6 Juror number 14, Jackie D. Barham.

7 What says the State?

8 **MR. GOWDY:** Present the juror.

9 **THE CLERK:** What says the Defendant?

10 **MR. BARTOSH:** Swear Mr. Barham.

11 **THE CLERK:** Have a seat in the jury box, sir.

12 **THE COURT:** We will have an alternate. Strikes

13 are one and two.

14 **THE CLERK:** Juror number 90, Judy D. Folk.

15 What says the State?

16 **MR. GOWDY:** Present the juror.

17 **THE CLERK:** What says the Defendant?

18 **MR. BARTOSH:** Please excuse Ms. Folk from this

19 case.

20 **THE CLERK:** You're excused from this case, ma'am.

21 Juror number 85, Stanley F. Fields.

22 What says the State?

23 **MR. GOWDY:** Present the juror.

24 **THE CLERK:** What says the Defendant?

25 **MR. BARTOSH:** Please swear Mr. Fields.

1 **THE CLERK:** Have a seat in the jury box, sir.

2 **THE COURT:** We will have another alternate.

3 Strikes again are one and two.

4 **THE CLERK:** Juror number 247, Jeffrey D. Seay.

5 What says the State?

6 **MR. GOWDY:** Present the juror.

7 **THE CLERK:** What says the Defendant?

8 **MR. BARTOSH:** Please swear Mr. Seay.

9 **THE CLERK:** Have a seat in the jury box, sir.

10 **THE COURT:** We will have a third alternate.

11 Strikes again are one and two.

12 **THE CLERK:** Juror number 212, William D. Parnell.

13 What says the State?

14 **MR. GOWDY:** Present the juror.

15 **THE CLERK:** What says the Defendant?

16 **MR. BARTOSH:** Please swear Mr. Parnell.

17 **THE CLERK:** Have a seat in the jury box, sir.

18 **THE COURT:** All right. I want you all to take
19 those members of the jury panel who are still seated
20 in the audience section of the courtroom back to the
21 East Courtroom.

22 And continue, ladies and gentlemen, not to
23 discuss this case. And don't allow anyone to discuss
24 the case with you.

25 Those members of the jury panel who are seated in

1 the jury box, I would like for you to take them down
2 to the jury assembly room.

3 Of course, you may not discuss this case. We
4 will be back with you in just a minute.

5 (WHEREUPON, the jury panel exits at approximately 6:19
6 p.m.)

7 (WHEREUPON, the jury exits at approximately 6:19 p.m.)

8 **THE COURT:** The courtroom is clear of jurors. Is
9 there any objection to the composition or manner of
10 selection of the jury?

11 **MR. GOWDY:** Not from the State, Your Honor.

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

13 **THE COURT:** All right. Bring them both back into
14 the courtroom. Well, let's start with those members
15 who were not chosen.

16 What?

17 **MR. GOWDY:** Uh, can Mr. Bartosh and I
18 approach.

19 **THE COURT:** Absolutely.

20 Hold them just one second, Jack.

21 (WHEREUPON, a bench conference was held off the
22 record.)

23 **THE COURT:** Bring them in.

24 Is there any -- what I intend to do in a minute
25 is of course to swear S.L.E.D., swear the bailiffs,

1 send the jury off to the hotel for the night, come
2 back in the morning. Well, we'll do whatever else we
3 need to do. We will come back in the morning to begin
4 with opening -- we will begin by swearing the jury in
5 the morning. Any objection to that?

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

7 **MR. GOWDY:** No, sir. Would you like the
8 indictment, Your Honor?

9 (WHEREUPON, the jury panel enters at approximately
10 6:24 p.m.)

11 **THE COURT:** Ladies and gentlemen, I feel like I
12 have spent a considerable part of my life with you. I
13 want you to know that I have enjoyed it. But your
14 services in this case are complete. You will no
15 longer be needed as jurors or as potential jurors.
16 You are certain now -- I also feel like you all have
17 invested a lot in this process. I know that some of
18 you were apprehensive perhaps about being on the jury.
19 Certainly, you had to come in here and bear a great
20 deal of your souls to get to this point.

21 You are welcome to stick around or to check in
22 during -- we're going to be here for a few days.
23 We'll be here all day Saturday probably, all day --
24 well, we have to have a waiting period -- if there is
25 a guilty verdict, we have to wait 24 hours before we

1 go into a sentencing phase. Apart from that, we will
2 be here from 9 o'clock in the morning until 6:00 or
3 7:00 every night until there is a verdict. So I say
4 that in order to tell you that you are welcome to come
5 back. The courtroom is always open. And if I see
6 you, I'll be happy about it. Otherwise, you are free
7 to go.

8 (WHEREUPON, the jury panel exits at approximately 6:26
9 p.m.)

10 **THE COURT:** Bring in my jury.

11 Let's -- should I swear you guys before I bring
12 them back in the courtroom? It doesn't matter to
13 y'all? Any objection to letting the jury see that so
14 that they know what S.L.E.D.'s obligations are?

15 **MR. GOWDY:** No objection from the State, Your
16 Honor.

17 **MR. BARTOSH:** See?

18 **THE COURT:** Me swear the --
19 Hold on just a second.

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

21 **THE COURT:** All right. Bring them in.

22 (WHEREUPON, the jury enters at approximately 6:27
23 p.m.)

24 **THE COURT:** All right. If I forget something, let
25 me know. Okay?

1 All right. Ladies and gentlemen, we're going to
2 be together for several days. I'm going to spend a
3 few minutes right now talking to you about what it's
4 going to involve. I want to put you at ease. We're
5 going to take care of you. We're going to make sure
6 that you are fed well and any needs you have is taken
7 care of. So if you have some need, do not hesitate to
8 let us know.

9 You've been working all this week with the
10 bailiffs in the red coats. And I'm sure you've gotten
11 to know them. They will continue to be around and to
12 be available to you if you need anything. But from
13 this point forward, you also are going to have some
14 other men and women who are going to be helping you
15 and with you. And they will also be monitoring you.
16 They will be protecting you from any outside
17 influences, any outside information. And they also
18 will just be there to help you and get you anything
19 that you need.

20 You're going to hear me talk to both of these
21 groups of men and women in just a second. So you will
22 understand the obligations that these bailiffs and
23 that these other men and women have towards you. You
24 will know from the oath that they take that they can't
25 talk to you about the case, really about a whole lot

1 at all. They can help you. If you need something,
2 you tell them about it. They can get it for you.

3 Now, you're all going to be staying up at the new
4 Marriott Hotel. It's a great place. I'm sure many of
5 you have been up there. It's a place that Spartanburg
6 County can be proud of for a long time to come. You
7 will be feed every night, every morning. You will be
8 given lunch. It will be paid for by the county.

9 We will work hard. We will start tomorrow
10 morning at 9 o'clock and we will work. There will be
11 opportunities for you to communicate with your family
12 through the telephone at night. If an emergency
13 arises, if any kind of need you have arises, do not
14 hesitate to let somebody know. There will always be
15 somebody near you whom you can contact to let them
16 know if you have some sort of need. It is my
17 responsibility to take care of you all. And I want to
18 be able to do that. So if you need anything, please
19 let me know.

20 The only two things that will not be paid for by
21 county money are tobacco products. If any of you use
22 any kind of tobacco, you need to be able to pay for
23 that yourself. And alcohol. Now, you are grown up
24 adult responsible people, among the most so of
25 Spartanburg County. And that is why you seated over

1 there.

2 There are some judges who get in this situation
3 and say that jurors can't have anything to drink at
4 night because of whatever. I'm not going to do that.
5 I'm going to leave that up to you. But you will have
6 people with you who have the authority to stop you if
7 it looks like you are getting out of hand which I'm
8 absolutely positive is not going to become a problem.

9 Now, uh, we will have the possibility that folks
10 from your family or somebody who is close to you can
11 come and visit you at appropriate times, at particular
12 times during the course of this trial. Let me just
13 tell you a little bit about, well, I've already told
14 you that we were going to try to start at 9:00 every
15 morning.

16 Now, a trial doesn't always go as expected.
17 There maybe things that will come up that I have to
18 deal with that don't involve the jury. So there will
19 be times when you will be in the jury room and we will
20 be out here working. There will not be times between
21 9:00 -- and we're going to try to quit between 6:00
22 and 7:00 each night. Take a generous lunch break.

23 But we are going to work hard and try to get this
24 thing done in a timely manner. But there will not be
25 any time between 9 o'clock in the morning and whenever

1 we quit that I'm not in here working to try to get
2 this case moved toward an efficient conclusion. I
3 want you to know that. Even though you're sitting
4 back there in the jury room, there might be a tendency
5 to say what in the world could they be doing. Maybe
6 that judge is sitting back there in his office with
7 his feet up on the desk enjoying a hot cup of coffee.
8 That won't be true.

9 Are all the bailiffs who are going to be working
10 with the jury in the courtroom?

11 **THE BAILIFF:** Yes, sir.

12 **THE COURT:** Would you please come up.

13 (WHEREUPON, the bailiffs approached the bench.)

14 **THE COURT:** Would you raise your right hands
15 please.

16 (WHEREUPON, the bailiffs complied.)

17 **THE COURT:** Do each of you swear or affirm that to
18 the extent that your duties require you to have
19 contact with the jury in this case that you will allow
20 no person to speak to them without leave of the court,
21 that you will not speak to them regarding this case,
22 nor permit them to speak with one another about this
23 case, that you will assist the State Law Enforcement
24 Division in the discharge of its duties to the extent
25 required of you and that you will follow the

1 instructions of this court? If you agree to be bound
2 by this oath, say I will at this time.

3 (WHEREUPON, all bailiffs respond affirmatively.)

4 **THE COURT:** All right. Thank you, gentlemen.

5 Mr. McCloud, will you and the other members of
6 your team come up here please.

7 (WHEREUPON, all S.L.E.D. agents approach the bench.)

8 **THE COURT:** Would you all five please raise your
9 right hand.

10 (WHEREUPON, all agents comply.)

11 **THE COURT:** Do each of you swear or affirm that
12 you will keep the jury in the appointed housing, that
13 you will allow no person to speak with them without
14 leave of court, that you will not speak to them
15 regarding this case nor permit them to speak with one
16 another about this case, that you will present them at
17 this court at the appointed times and see to their
18 care and safety while they are in your charge? If you
19 agree to be bound by this oath, please say I will at
20 this time.

21 (WHEREUPON, all agents respond affirmatively.)

22 **THE COURT:** Thank each of you. You may return to
23 your seats.

24 All right. Anything else y'all think I need to
25 cover with the jury at this time?

1 **MR. GOWDY:** Not from the State, Your Honor.

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

3 **THE COURT:** Ladies and gentlemen, when we get
4 together tomorrow morning, we will start off with me
5 speaking to you. The first thing we'll do is we'll
6 put you all under oath. Then I will speak with you
7 for a while about this case, well, not about the facts
8 of the case but about the procedure of the case and
9 about your and my obligations in this case.

10 And one of the things that I will tell you that
11 you have already heard several times before, but it
12 bears repeating now because of its importance, you may
13 not discuss this case. Do not discuss this case among
14 yourselves or with anyone else. If anyone, anyone
15 attempts to discuss this case with you or attempts to
16 give you any information or say anything to you about
17 this case, you bring that to my attention immediately.

18 And you can do that by alerting any of these men
19 and women who will be with you or alerting a bailiff.
20 They have my cell phone number. I will be available
21 24 hours a day. And I will know about it and I will
22 deal with it immediately. If somebody does try to
23 talk to you, not only should you tell me about it, but
24 you should move yourself from that situation
25 immediately.

1 And I know you will do that. I don't have any
2 doubt that you will do that. But it is very
3 important. I want to stress it to you right now. Are
4 there any of you who do not have with you now
5 everything you need for the next few days.

6 (WHEREUPON, Ms. Driscoll raises her hand.)

7 **THE COURT:** All right. Ms. Driscoll.

8 **MS. DRISCOLL:** My keys are locked in my car. All
9 of my stuff is in there.

10 **THE COURT:** Okay. I have been told that Mr.
11 Heyward is an expert at opening locked cars. We will
12 get your car opened right away. If there is not
13 anybody who can get that done, get a locksmith over
14 here now. Who can take care of that? Thank you.

15 Anybody else?

16 Now, listen. If it was me and somebody sent me
17 home and said pack and be ready to be somewhere for
18 five days and you can't go home and get something you
19 forgot, I would be in trouble. I would have forgotten
20 a number of things. If you have forgot something,
21 please let us know. We will arrange to have that taken
22 care of.

23 Now, are they going to be able to leave their
24 cars in the hotel or are we going to get their cars
25 home?

1 **S.L.E.D. AGENT:** To the hotel.

2 **THE COURT:** To the hotel. Are y'all going to
3 transport the cars?

4 **S.L.E.D. AGENT:** We're going to caravan them and
5 go into an underground garage.

6 **THE COURT:** Now, is there any of you who has any
7 kind of a cell phone or any kind of communication
8 device with you or in your car that you can use
9 between here and the Marriott Hotel?

10 (WHEREUPON, some jurors nod affirmatively.)

11 **THE COURT:** All right. What we're going to do
12 then is we're going to have these gentlemen and this
13 lady come with you to your cars. They will get from
14 you your cell phones before they leave, correct?

15 **S.L.E.D. AGENT:** Correct.

16 **THE COURT:** Then they will form a caravan so that
17 you all can go over there at the same time. Of
18 course, you know it's only about two blocks from here.
19 You go in and they will direct you where to park.

20 Any objection to that, Mr. Bartosh?

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

22 **THE COURT:** Any objection to the jurors being in
23 their on cars between here and the Marriott and to
24 that extent not under the direct supervision of
25 S.L.E.D.?

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

2 **MR. GOWDY:** No, sir, Your Honor.

3 **THE COURT:** So, your cars will be in the parking
4 garage at the Marriott Hotel during the time that you
5 are here. If anybody in your family needs the car, we
6 will work that out. We will work out anything you
7 need. Really, we're going to take care of you. Y'all
8 are going to be fine.

9 Now, uh, it's going to be an adjustment for the
10 next day or so especially. I'm told that when juries
11 are sequestered the first day or so it seems a little
12 bit burdensome. But after the first day or so,
13 everybody kind of settles in and it goes very
14 smoothly. So, be confident that you will do well and
15 we will take good care of you. And don't let
16 anything, any problem go unattended to. We will take
17 care of any problem you have.

18 Mr. McCloud, anything else I need to tell them?

19 **S.L.E.D. AGENT:** No, sir. We would just like to
20 go back to the jury room and take care of some minor
21 housekeeping matters as well.

22 **THE COURT:** That you will talk to them about?

23 **S.L.E.D. AGENT:** Yes, sir.

24 **THE COURT:** All right. All right. Ms. Driscoll,
25 you come on up. One of the S.L.E.D. agents will take

1 you to your car right now. We will get your keys out
2 of it.

3 (WHEREUPON, Ms. Driscoll complies.)

4 **THE COURT:** Now, listen, don't be breaking her
5 window to get those keys out.

6 (WHEREUPON, Ms. Driscoll and an agent exit at
7 approximately 6:50 p.m.)

8 **THE COURT:** From the standpoint of either the
9 State or the defense, is there anything else I need to
10 cover with the jury before I put them in the custody
11 of S.L.E.D.?

12 **MR. GOWDY:** Not from the State, Your Honor.

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

14 **THE COURT:** All right. Ladies and gentlemen, I
15 want you to now go back to the jury assembly room.
16 And in just a minute, the S.L.E.D. agents will be down
17 there to introduce themselves to you and to give you a
18 few little housekeeping bits of information. I look
19 forward to seeing you all tomorrow morning. And we
20 will start at 9 o'clock and all will go well. I will
21 see you in the morning.

22 (WHEREUPON, the remaining jurors exit at approximately
23 6:51 p.m.)

24 **THE COURT:** Now, before we leave, perhaps I could
25 and perhaps I should go over the details of the

1 sequestration order. I have ordered that there be no
2 television and no phones in their rooms and that kind
3 of thing. S.L.E.D. is used to covering that and will
4 do a fine job of it and has already made sure that
5 that's been taken care of in the hotel.

6 Do you think I need to do that, Mr. Bartosh?

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

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

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

10 **THE COURT:** All right.

11 **THE BAILIFF:** Your Honor, we still have two groups
12 of jurors out there.

13 **THE COURT:** Tell them they are dismissed. If any
14 of them feel inclined to take it out on me, then let
15 me know and I will go hide.

16 Okay. Let's hear some tapes. Is it going to
17 take you a second to get ready?

18 **MR. GOWDY:** Yeah, just a second.

19 **THE COURT:** Cause I'll take a short break.

20 **MR. GOWDY:** Yes, sir.

21 (WHEREUPON, a short recess was taken at approximately
22 6:52 p.m.)

23 (WHEREUPON, the Court resumed at approximately 6:55
24 p.m.)

25 (WHEREUPON, a bench conference was held off the

1 record.)

2 **MR. BARTOSH:** Your Honor, if it pleases the
3 Court, we have played this particular tape to Mr.
4 Lindsey on several occasions. He is thoroughly aware
5 of the contents of the tape. As you can imagine as we
6 told the Court at the bench, it is a very traumatic
7 experience for him. And he has asked us to tell the
8 Court that he would not like to be present for the
9 playing of the tape.

10 We have explained to him what the purpose of this
11 hearing is about. He has heard the tape in its
12 entirety. We have explained to him that he has a
13 perfect, a legal right to be present at all portions
14 of the proceedings. But he tells us that he wishes to
15 waive that right to this particular hearing as far as
16 the tape being played.

17 **THE COURT:** I've got several concerns. First of
18 all, the hearing that we are about to have is not
19 simply going to involve playing the tape. There are
20 going to be legal arguments. There are going to be
21 other discussions. We are really not limited in this
22 hearing as to what we're going to do. Because of the
23 way this courthouse is laid out, taking him out of the
24 courtroom is not as simple as it might seem.

25 We still have members of the jury who are milling

1 around the courthouse because if you remember Ms.
2 Driscoll had her keys locked in the car. We had
3 somebody from the sheriff's department try to open the
4 car and they couldn't get it open. She is still
5 around. There was another member of the jury who had
6 his car parked in a different location. He's having
7 to be taken in a different direction. In order for
8 the jail to move Mr. Lindsey, he's got to be
9 handcuffed.

10 You have been concerned appropriately so about
11 whether or not the jurors might see him being
12 transported in handcuffs and shackles. So, I'm
13 reluctant to do that.

14 **MR. BARTOSH:** If it's just for the Court to
15 listen to the tape, I guess it has to be on the Court
16 Reporter's -- we could play the tape.

17 **THE COURT:** He very well is going to have to
18 lis -- very likely is going to have to listen to it
19 again tomorrow or at some other point during the
20 trial. He's not going to be able to go out then.

21 **MR. BARTOSH:** I understand that, Your Honor.

22 **THE COURT:** I think that because of the concerns
23 that I raised, I will not have Mr. Lindsey
24 transported out of the courtroom during this hearing.

25 **MR. BARTOSH:** Thank you, Your Honor.

1 **THE COURT:** Are we ready to begin?

2 **MR. BRENNAN:** We are, Your Honor.

3 **THE COURT:** Where is Mr. Bartosh going?

4 **MR. BRENNAN:** He had to step out. He'll be right
5 back, Your Honor. Would the Court like to hear my
6 motion in reference to the tape before it is played or
7 after it is played?

8 **THE COURT:** It's your motion. I'll leave it up to
9 you.

10 **MR. BRENNAN:** Actually I think it would be better
11 after it is played, Your Honor.

12 **MR. GOWDY:** Your Honor, may it please the --
13 (WHEREUPON, there was a pause.)

14 **MR. GOWDY:** Your Honor, for purposes of this
15 hearing, it's my understanding I'm just going to play
16 the enhanced version of State's Exhibit 21(a) which is
17 a copy of a 911 recording. The sponsoring witnesses,
18 of course, will be here tomorrow when the time comes
19 for the formal introduction of the evidence. For
20 purposes of Mr. Brennan's motion, I think it is
21 sufficient to play the enhanced CD actually which I
22 will propose to do if the Court would like me to do
23 so.

24 **THE COURT:** Go ahead.

25 **MR. BRENNAN:** Your Honor, I would ask the Court

1 at some point to hear both the non-enhanced as well as
2 the enhanced.

3 MR. GOWDY: I will be happy to play the non-
4 enhanced first. Whichever would suit the Court.

5 THE COURT: I think it might help me to understand
6 the difference if you play the non-enhanced version
7 first.

8 MR. GOWDY: I may very well have to get some
9 assistance with this. All right, Your Honor, this is
10 21(a) which is the non-enhanced version of the 911
11 tape.

12 (WHEREUPON, State's Exhibit 21(a) was played at
13 approximately 6:58 p.m.)

14 MR. GOWDY: Your Honor, that is as much of
15 the tape as we propose to play in the guilt phase of
16 this trial of either the enhanced or the original. It
17 does go along but that is as much as we propose at
18 this stage to play.

19 THE COURT: All right.

20 MR. GOWDY: If the Court would like, I will
21 play the enhanced version.

22 THE COURT: Yes, sir.

23 (WHEREUPON, State's Exhibit 21 was played at
24 approximately 7:01 p.m.)

25 MR. GOWDY: That, Your Honor, is State's

1 Exhibit 21 which is the enhanced version. The
2 testimony tomorrow from the folks at Williams & Evans
3 in Greenville will be simply this, they increased the
4 volume. They didn't add anything that wasn't on the
5 tape. They didn't detract anything from the tape.
6 They simply increased the volume.

7 The significance of it is this, the State theory
8 is and continues to be that there were four gunshots
9 fired. That's what the ballistics report -- we know
10 she had three bullets in her head. There was another
11 one found in the trunk. You can hear four gunshots on
12 the enhanced version. It is less clear on the
13 unenhanced version which is exactly why we sent it
14 over there for it be enhanced. When I say enhanced,
15 the volume simply raised. The tape is exactly the
16 same.

17 **THE COURT:** Before you make your arguments, it
18 would be helpful to me to know what we're arguing
19 about. So let me hear his motion.

20 **MR. BRENNAN:** Your Honor, we would first argue
21 under Rule 403 that that -- that either tape, the non-
22 enhanced or the enhanced tape should not be admitted
23 during the guilt phase of this trial. Your Honor, it
24 is highly prejudicial and it is cumulative.

25 There are certain pieces of evidence that the

1 tape does not identify. It does not identify Mr.
2 Lindsey as the shooter. It does not identify -- well,
3 it does identify the location. But Your Honor, there
4 are Officer Harvey Godfrey, Officer Guy Carter and
5 Mark Finley, Celeste Nesbitt and Julia Martin are all
6 eyewitnesses to some or all of this event.

7 All of those people are capable of testifying as
8 to the identity, the location, they can testify that
9 the child or children were upset and crying. All of
10 the evidence that is portrayed on either one of the
11 tapes is going to come in and can come in through
12 eyewitness personal testimony. Therefore, the jury
13 will hear the evidence through spoken testimony from
14 the witness stand. The tape becomes cumulative. And
15 because of the nature of the tape, it becomes highly
16 prejudicial.

17 It actually has no probative value understanding
18 that Celeste Nesbitt was in the car and heard every
19 word spoken by the victim in this matter. Julia
20 Martin was in the car. Heard every word spoken by the
21 victim in this matter. Mr. Godfrey can testify --
22 Officer Godfrey can testify to the location, the
23 identity of Mr. Lindsey as the shooter. He can
24 testify as to how many shots was fired. He was there.

25 So could Celeste Nesbitt of course. And possibly

1 Julia Martin, although I don't know that she would be
2 able to specifically identify the number of shots.
3 All of the evidence that has been portrayed on both of
4 those tapes will come in through personal testimony.
5 Therefore, the tapes are cumulative and prejudicial,
6 highly prejudicial, Your Honor. We would move that
7 neither tape should be admitted during the guilt phase
8 of this trial.

9 In the alternative, Your Honor, I'm sure that the
10 Court heard it. The enhanced tape and Mr. Gowdy said
11 it, it made it louder. But Your Honor, it made it
12 louder at the point that the first two shots were
13 fired. In other words, it's the same volume through
14 the narrative of the two tapes. But at the point that
15 the first two shots are fired, that's when the
16 enhancement kicks in.

17 It's also important to note that the enhancements
18 clearly enhances the screams of the child. Far
19 outweighing any probative value, the prejudicial
20 affect it would have on the jury is detrimental to our
21 case, Your Honor. We would ask first that it not be
22 allowed at all in the guilt phase. But secondly, if
23 the Court finds that it should come in at all that it
24 should be the first tape, the unenhanced tape, because
25 of the affect the enhancement has on the volume of the

1 screams. Thank you, Your Honor.

2 **THE COURT:** All right. Let me make sure I've got
3 it right. Your argument is that it's the screams that
4 are unfairly prejudicial to your client?

5 **MR. BRENNAN:** Yes, Your Honor.

6 **THE COURT:** Is there anything else on that tape
7 that's unfairly prejudicial to your client?

8 **MR. BRENNAN:** Well, Your Honor, we believe that
9 is prejudicial and cumulative.

10 **THE COURT:** Well, now, let's get something
11 straight...I'm not going to foreclose either side any
12 opportunity to argue any point you want to argue. But
13 when I ask you a question about unfair prejudice, I
14 don't want to hear an answer that contains an argument
15 about it being cumulative.

16 **MR. BRENNAN:** I'm sorry, Your Honor.

17 **THE COURT:** Is there any other unfair prejudice in
18 that tape except for the scream of the children?

19 **MR. BRENNAN:** We believe that the whole tape is
20 prejudicial because it will be coming in through
21 personal testimony from the witness stand. Of course,
22 Your Honor, we argue that the screams are prejudicial
23 and they are made more prejudicial by the enhancement
24 of the 911 other tape.

25 **THE COURT:** Well, I'll tell you what, Mr. Gowdy,

1 can you play those two tapes for me again? I want to
2 be able to compare what I hear at the end of the tapes
3 again before I see the difference.

4 **MR. GOWDY:** Yes, sir.

5 **THE COURT:** Before I rule.

6 **MR. GOWDY:** For purposes of the record, Your
7 Honor, we are playing State's 21(a) which is the
8 unenanced version.

9 **THE COURT:** Sir?

10 **MR. GOWDY:** This is the unenanced version
11 that we are playing currently, Your Honor.

12 (WHEREUPON, State's Exhibit 21(a) was played at
13 approximately 7:08 p.m.)

14 **MR. BRENNAN:** Could we hear the rest of the tape?
15 Could we hear the full length of the tape? You can
16 tell --

17 **MS. QUIMBY:** I apologize, Your Honor.

18 **MR. BRENNAN:** Do you intend to stop the tape
19 there?

20 **MR. GOWDY:** I intend to stop it before I just
21 stopped it. I intend to stop it, Your Honor, when the
22 911 operator says ma'am twice and there is no response
23 which of course tends to support the notion that Mrs.
24 Lindsey is dead. The cell phone is in her hand. Your
25 Honor, for purposes of the record, this is State's 21

1 which is the enhanced version.

2 (WHEREUPON, State's Exhibit 21 was played at
3 approximately 7:11 p.m.)

4 THE COURT: How many shots are on there?

5 MR. GOWDY: Well --

6 THE COURT: How many do you think are on there?

7 MR. GOWDY: The State's theory is that Mr.
8 Lindsey fired twice from behind the car, twice from
9 beside the car. Fire was returned by Officer Benny
10 Godfrey of the Inman Police Department. Some point
11 either contemporaneous with those screams, masked by
12 those screams, there is undoubtedly addition gunshots.
13 Mr. Lindsey was shot by Bennie Godfrey. Mr.
14 Lindsey's position is that he in addition tried to
15 shoot himself. So there would be five shots by Mr.
16 Lindsey and at least four or five by Mr. Godfrey.

17 Our position, originally, when I first heard the
18 911 tape, the ballistics evidence and every other
19 version of the facts suggest that he fired four times
20 into that car. There were four bullet holes. There
21 are three bullets in her head. One in the trunk. But
22 you could not hear, I clearly heard two shots on the
23 unenhanced tape.

24 I can clearly hear four on the enhanced tape.

25 Now, there are more shots. But I can hear four. And

1 what I wanted to foreclose was the defense's argument
2 that somehow Benny Godfrey shot Nell Lindsey or the
3 shooter on the grassy knolls shot Nell Lindsey. I
4 want four shot contemporaneous with her saying I'm not
5 getting out of this car.

6 **THE COURT:** Okay. All right. Any further
7 argument from the State?

8 **MR. GOWDY:** Your Honor, I would simply say
9 this. Unless the defense is going to agree to not
10 cross-examine any of the witnesses that are going to
11 testify with regard to this incident, then I can not
12 believe the argument that it is cumulative. Ms.
13 Nesbitt will be cross-examined. Benny Godfrey will be
14 cross-examined. This tape is the single best piece of
15 evidence as to what happened. It's a contemporaneous
16 recording. To suggest that it is cumulative is
17 unbelievable for lack of a better word.

18 **THE COURT:** Well, let's don't focus on the
19 cumulative argument right now. Let's focus on the
20 potential for unfair prejudice or the danger of unfair
21 prejudice.

22 **MR. GOWDY:** I would agree that it is
23 prejudicial as most good evidence is. I do not think
24 that the prejudice outweighs the probative value for
25 this reason, there is going to be testimony that there

1 were other people in the car, other witnesses, other
2 potential witnesses. This portion of it, and again,
3 how long the tape plays after the shots is really
4 immaterial to me. I am happy to stop it after the
5 first ma'am.

6 When the 911 dispatcher says ma'am and gets no
7 response, I think that is highly probative evidence
8 that Nell Lindsey is dead and died from those four
9 gunshot wounds. You hear her talking. You hear four
10 shots. She is dead. Now, the cries begin before you
11 hear the other two shots. There is no way to totally
12 disabuse this enhanced tape from the cries. I am
13 happy to stop the tape for purposes of the guilt phase
14 at the first ma'am with no response.

15 That is what -- that is evidence that she is in
16 fact dead. It also corroborates Celeste Nesbitt whose
17 children were in the back seat. And Celeste Nesbitt's
18 testimony is going to be that she passed Marion
19 Lindsey, that he knew there were children in the back
20 of that car and he fired into it in addition to that
21 which is an element of malice or intended to be some
22 indication of malice.

23 So, yes, it is prejudicial. All good evidence
24 is. But the issue is does the prejudice outweigh the
25 probative value. And I would say no.

1 **THE COURT:** Any response?

2 **MR. BRENNAN:** Your Honor, the tape that I heard,
3 I heard two shots. There is clear evidence from
4 eyewitnesses and people that were there as to how many
5 shots were fired. The tape is prejudicial. All of
6 the evidence --

7 **THE COURT:** Okay. Another thing I'm going to do
8 throughout the course of this trial is I'm going to
9 direct you in the right direction when you need it.

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

11 **THE COURT:** Whether or not the tape is prejudicial
12 is not significant. As Mr. Gowdy points out, he
13 wouldn't have bothered to trouble us with it unless it
14 was prejudicial. The question is whether or not the
15 danger of unfair prejudice substantially outweighs its
16 probative value. So now, go ahead.

17 **MR. BRENNAN:** Every bit of the evidence can come
18 from the witness stand, the screams and the gunshots
19 can only --

20 **THE COURT:** Okay. Anything in response? You are
21 just repeating your first argument now. Anything in
22 response to what Mr. Gowdy said?

23 **MR. BRENNAN:** They've only played two shots, Your
24 Honor.

25 **THE COURT:** Are there more if the tape keeps

1 rolling?

2 MR. BRENNAN: There's only two shots on there,
3 Your Honor.

4 THE COURT: Help me with the significance of that.

5 MR. BARTOSH: Your Honor, if I may.

6 THE COURT: Yes, sir.

7 MR. BARTOSH: There, you can hear the two shots
8 on the tape. You can also hear Mrs. Lindsey say I'm
9 not getting out of the car. You can also hear them
10 say roll the windows and lock the door. Once she says
11 that, that's all she says. Once she says I'm not
12 getting out of the car, that's it. You don't hear
13 from her anymore.

14 It's right after that that the screams start.
15 And they go on for the entire rest of the tape. I
16 would respectfully submit that in the guilt phase at
17 least, I'm sure that -- they are certainly entitled to
18 play that tape in its entirety should we get to a
19 penalty phase. But at the guilt phase at this moment,
20 the probative value of hearing those two children
21 scream for that length of time is far outweighed with
22 the prejudicial effect that it's going to have on Mr.
23 Lindsey.

24 I've sat around. And I've watched the people of
25 this courtroom listen to the tape while the screaming

1 was going on. I'm sure it's exactly like Mr. Gowdy
2 says, all good evidence is prejudicial. But I think
3 the prejudice of hearing those children scream far
4 outweighs any probative value you get from the playing
5 of the tape beyond her saying I'm not getting out.

6 **THE COURT:** Let me ask a question. I don't hear
7 four shots, but I don't think that's significant. I
8 hear two shots or two collection of shots, two things
9 on that tape that sound me like shots. And they are
10 spaced. What's the testimony going to be from the
11 other eyewitnesses of the timing of Mr. Lindsey's --
12 of the shots that Mr. Lindsey fired?

13 **MR. GOWDY:** Your Honor, the testimony is
14 going to be that this is the back end of Celeste
15 Nesbitt's car.

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

17 **MR. GOWDY:** With Nell Lindsey in the back
18 seat behind the driver, with Celeste's then 7-year-old
19 daughter in the middle and then 3-year-old daughter in
20 the car seat behind the passenger.

21 **THE COURT:** Uh-huh (affirmative).

22 **MR. GOWDY:** Mr. Lindsey parks over here as
23 he comes into the police station. Gets out with his
24 gun. Fires two shots in the back window.

25 **THE COURT:** In rapid succession?

1 **MR. GOWDY:** That's what I hear on the tape is
2 bang, bang.

3 **THE COURT:** Okay.

4 **MR. GOWDY:** Then he walks to the side and
5 fires two through the side window. There are three
6 bullets in Nell Lindsey's head all of which --

7 **THE COURT:** Okay. And is the test, is the test --
8 your theory of the case is that the two things that I
9 just mentioned are the two sets of rapid fire shots,
10 one coming from the back and one set coming from the
11 side?

12 **MR. GOWDY:** Exactly. But the second set that
13 Your Honor said he had trouble hearing and I frankly
14 had trouble hearing the first time I listened to the
15 unenhanced tape, the second set is beginning to be
16 mashed by the cries of the children. I just heard
17 from the defense that they only heard two shots.
18 Well, we've got a host of witnesses including a
19 forensic pathologist who is going to tell us he took
20 three bullets out of her head and one out of the
21 trunk.

22 **THE COURT:** Okay.

23 **MR. GOWDY:** So I'm stuck with explaining to
24 the jury why you only hear two shots but there are
25 four bullets. It's the grassy -- it's grassy knoll

1 revisited, which is why I would like to have at least
2 until our version -- if the jury doesn't hear the
3 shots, that's fine. But to cut it off as Mr. Bartosh
4 says before you hear the first shot --

5 **THE COURT:** Okay. I'm ready to rule. Are there
6 any objections to what I've heard so far other than
7 the foundation for the enhancement and Rule 403?

8 **MR. BRENNAN:** Your Honor, it appears that the
9 only thing that was enhanced on the enhanced tape was
10 the screams. That's it.

11 **THE COURT:** That is a no?

12 **MR. BRENNAN:** That's a no. Thank you.

13 **THE COURT:** The rule -- I'm not going to rule on
14 the enhancement objection. I've got to hear the
15 testimony of the witness through whom the enhanced
16 version would come in. The Rule 403 objection is
17 overruled.

18 To me, the timing of the shots as explained by
19 Mr. Gowdy is significant on several issues. First of
20 all, the question of malice. To have already -- to
21 shoot if there is ever any doubt that there were
22 children in the back of that car, that doubt would
23 have been removed or could have been removed upon
24 hearing the screams of the children that came after
25 the first couple of shots.

1 Then he goes around to the side of the car and
2 shoots again. Now, that could possibly cut both ways
3 if you are looking at the difference between murder
4 and voluntary manslaughter if we ever even get to that
5 difference being in this case. It certainly bears on
6 the question of malice. The timing of the second pair
7 of shots coming after the hearing of the screams is a
8 very important piece of evidence to me on the question
9 of malice.

10 Then also the way the Solicitor has described the
11 position of the people in the back of the car. If he
12 shoots the first two shots through the back window, he
13 does not have any children in the background in case
14 he misses. But if he then walks around to the side and
15 shoots through the side with children in the
16 background, now, of course that relates to the
17 aggravating circumstance that they are going to put
18 forth in the penalty phase. But I think it also
19 relates pretty heavily to the question of malice.

20 And the difference in time, the amount of time
21 under the Solicitor's theory that it takes to fire
22 those two first shots and then walk around to the side
23 and fire those shots bears heavily on the difference,
24 if any, in this case between malice and the sudden
25 heat of passion and perhaps opportunity for cool

1 reflection. So I think that it is not a close call.

2 It is not close at all.

3 This is a situation where the potential for
4 unfair prejudice is not high in my view. And the
5 probative value is high. So the potential for unfair
6 prejudice does not substantially outweigh the
7 probative value of the evidence. And I overrule the
8 objection.

9 I will also say that I don't see a significant
10 difference in the affect of the screams between the
11 enhanced version and the unenhanced version. I will
12 reserve the 403 objection to the enhanced version
13 until tomorrow until I've heard the foundation of the
14 witness who will get it in or through whom it will be
15 offered. But I will tell you that I don't see a big
16 difference between the screams. All right. Is there
17 any further we can deal with tonight?

18 **MR. BRENNAN:** I have one question just for
19 clarification, --

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

21 **MR. BRENNAN:** -- Your Honor. If the Court
22 allows the enhanced version in, will that be the only
23 one that's played?

24 **THE COURT:** Are you asking me?

25 **MR. BRENNAN:** I guess I'm asking the -- I mean,

1 are we going to hear --

2 **THE COURT:** I don't know. If you and the
3 Solicitor want to have a discussion about that in the
4 hall after court recesses, that's fine. But we're not
5 going to engage in a discovery procedure in the middle
6 of a court proceeding.

7 **MR. BRENNAN:** Thank you, Your Honor.

8 **THE COURT:** All right. Here's the way we're going
9 to do this throughout the entire course of this trial.
10 And this is important to me and I want you all to
11 abide it. I will make myself available in the
12 courthouse every morning at about 8:00 or 8:15.

13 If there is any issue that needs to be dealt with
14 before we bring in the jury, I want it brought to my
15 attention then so that we can deal with it in time to
16 begin with the jury at 9:00. So tomorrow morning will
17 be no exception. I will be here in the 8:15 to 8:30
18 range tomorrow morning.

19 I will be in Spartanburg way before that. I'm
20 going to come over here and eat breakfast. Both of
21 you have my cell phone. If something comes up, call
22 me and we'll get it done before 9 o'clock and we will
23 start right at 9 o'clock. All right. See you all in
24 the morning.

25 (WHEREUPON, the Court adjourned at approximately 7:30

1 p.m.)

2 (WHEREUPON, State's Exhibits 1 through 64 were marked
3 for identification purposes only.)

4 (WHEREUPON, the Court resumed on May 21, 2004 at
5 approximately 9:03 a.m.)

6 **THE COURT:** Good morning, everybody.

7 **MR. GOWDY:** Good morning.

8 **MR. BARTOSH:** Good morning.

9 **THE COURT:** Are y'all ready to bring the jury in?

10 **MR. GOWDY:** The State is, Your Honor.

11 **THE COURT:** Yes, Your Honor.

12 **THE COURT:** Bring them in.

13 (WHEREUPON, the jury entered at approximately 9:07
14 a.m.)

15 **THE COURT:** Good morning, ladies and gentlemen.

16 I hope you all had a very nice stay at the Marriott
17 Hotel last night. Did everything go well?

18 (WHEREUPON, all juries respond affirmatively.)

19 **THE COURT:** Everybody seems to think that they
20 did. All right. Good. Let me take a minute to re-
21 familiarize myself with you folks and make sure I know
22 who our alternates are. Mr. Fields.

23 All right, sir.

24 Mr. Seay and Mr. Parnell. All right.

25 You gentleman should stay in those three seats

1 throughout the course of the trial. I'm sure the
2 bailiffs have told you that.

3 Swear the jury.

4 **THE CLERK:** Ladies and gentlemen of the jury,
5 would you please stand and raise your right hand.
6 (WHEREUPON, the jury complies.)

7 **THE CLERK:** You solemnly swear in the case about
8 to be tried that you will truly try the issues given
9 therein and a truth verdict render according to the
10 law and evidence so help you God?

11 (WHEREUPON, all jurors respond affirmatively.)

12 **THE CLERK:** Thank you. Be seated.

13 **THE COURT:** Let me talk to you for a few
14 minutes and explain to you a few things about what you
15 can expect throughout the course of these next several
16 days and kind of give you an idea of how the next
17 several days are going to go.

18 Obviously, this is the trial of the State of
19 South Carolina versus Marion Alexander Lindsey. As I
20 told you Monday morning, Mr. Lindsey has been
21 indicted in Indictment number 2002-GS-42-4753 for the
22 crime of murder. And in that indictment, it has
23 alleged that the defendant Marion Alexander Lindsey
24 did in Spartanburg County on or about September the
25 18th, 2002 feloniously, willfully and with malice

1 aforethought kill one Ruby Lindsey by shooting the
2 victim with a gun and the victim died as a proximate
3 result thereof. All in violation of Section 16-3-10
4 and 20 of the South Carolina Code of Laws.

5 Ladies and gentlemen, as I told you on Monday,
6 the indictment that I just read to you is not in any
7 sense evidence of the allegations that are contained
8 within that indictment. The indictment is simply the
9 document that serves to process the case and bring it
10 into this court for trial.

11 The defendant has pled not guilty to that
12 indictment. The plea of not guilty casts the burden
13 on the State to prove the defendant guilty beyond a
14 reasonable doubt. As members of the jury, that will
15 be your job to determine whether or not the State has
16 proven the defendant guilty of murder beyond a
17 reasonable doubt.

18 Ladies and gentlemen, it is a very important rule
19 of law in South Carolina and throughout our country
20 that the defendant in a criminal trial will always be
21 presumed to be innocent of the charges that have been
22 brought against him unless and until his guilt has
23 been proven by evidence that satisfies you of that
24 guilt beyond a reasonable doubt.

25 Now, this presumption of innocence that I am

1 talking about is not just a legal phrase. It is not
2 just legal theory. This is a substantial
3 constitutional right to which this defendant and every
4 one of us is entitled. The presumption of innocence
5 remains with the defendant from the time he is charged
6 throughout the trial and into the jury room until the
7 jury reaches a verdict of guilt that is based on
8 evidence satisfying you of that guilt beyond a
9 reasonable doubt. The defendant in a criminal trial is
10 never required to prove himself innocent. The burden
11 of proof remains on the State at all times.

12 Ladies and gentlemen, let me talk to you about
13 the trial and the structure of the trial. First of
14 all, as you know well, this is going to be what we
15 call a bifurcated trial, meaning simply that the trial
16 is divided in two parts. The first part that we're
17 going to begin right now is called the guilt phase.

18 In the guilt phase, it is the State's
19 responsibility to prove the defendant guilty beyond a
20 reasonable doubt. In the guilt phase, you need to
21 concern yourself with nothing except for whether or
22 not the State has proven that defendant guilty beyond
23 a reasonable doubt. You do not concern yourself at
24 all with what sentence might be appropriate or what
25 the second phase or the penalty phase might have in

1 store for you if we get there.

2 If the State is successful in proving the
3 defendant guilty of murder, we would then move into
4 second phase or the sentencing phase. If the jury
5 finds that the State has failed to prove the defendant
6 guilty beyond a reasonable doubt, then that would be
7 the end of the case. The case will be over. And
8 there would not be any consideration of any kind of
9 sentence. So during this guilt phase, this first
10 phase, do not concern yourself with anything regarding
11 a sentence.

12 The guilt phase itself will be just like any
13 other trial. This trial will be broken down into
14 five basic phases. I'm going to go over those phases
15 with you now. The first phase is called the opening
16 statements. In just a second, the solicitor will
17 make to you an opening statement.

18 In the opening statement, he will explain to you
19 what this case is about what the issues are in this
20 case and how the State stands on those issues. He
21 will discuss with you briefly what evidence you might
22 can expect to be introduced into this trial. The
23 defense attorney also has the opportunity to make an
24 opening statement if he chooses to do so.

25 After the opening statements, we will enter the

1 evidentiary stage. During the evidentiary phase,
2 witnesses will be called. And they will come here to
3 the witness stand to your right and my left. The
4 testimony that you hear from the witness stand along
5 with other exhibits that might be introduced into
6 evidence will eventually become the evidentiary basis
7 on which you will make your decision as to whether or
8 not the State has met its burden of proof.

9 Then we will enter the third phase after all the
10 evidence is in. We will hear the closing arguments of
11 the lawyers. At this time, the lawyers will stand
12 before you again. But they will argue to you this
13 time as to whether or not the State has met its burden
14 of proof.

15 After the closing arguments, we have the fourth
16 phase which we call the jury charge. That is when I
17 will explain to you the law that is applicable to this
18 case. Then you will go back to the jury room for the
19 fifth phase when you will deliberate and you will
20 decide as a jury, as a group, whether or not the State
21 has met its burden of proof.

22 Now ladies and gentlemen, let me spend a few
23 minutes talking to you about your responsibilities as
24 jurors. It is your responsibility, ladies and
25 gentlemen, to listen very carefully to all of the

1 evidence and to observe very carefully all of the
2 evidence that you will hear and see in this courtroom.
3 You must also listen very carefully to the lawyers'
4 arguments, to the opening statements.

5 Let me make it clear that what the lawyers say is
6 not evidence. The arguments are to help you to
7 understand the evidence, to point out evidence to you.
8 But the arguments and the questions that are asked by
9 the lawyers are not evidence. The evidence is the
10 answers that the witnesses will give and exhibits that
11 would be introduced. That is the evidence. Your
12 responsibility is to carefully consider the evidence
13 that comes before you in this courtroom.

14 I want to be very clear about that. Because as
15 we all know from the discussions we had during the
16 jury selection process, there had some been some
17 pretrial publicity about this case. It is your
18 responsibility, ladies and gentlemen, to set anything
19 that you may have heard or read or learned or any
20 conclusions that you might have reached before the
21 trial began, before right now, set that aside and do
22 not consider it. From this point forward is the
23 trial of this case. Anything that happened in the
24 pass has nothing to do this trial except insofar as it
25 is described in the evidence that is before you that

1 will come before you during this trial.

2 Ladies and gentlemen, as I have said to you
3 several times, I'm sure you know exactly what I'm
4 going to say. Do not talk to anybody about this case.
5 Do not allow anyone to talk to you about this case.
6 Do not talk among yourselves about this case. Only
7 after I have given you specific permission to begin
8 your deliberations which will be during the fifth
9 phase of this trial, only then may you discuss this
10 case among yourselves.

11 Also, ladies and gentlemen, it is very important
12 that you not begin to make up your mind about the
13 facts in this case. It is very important that you
14 not begin to make up your mind as to whether or not
15 the State has met its burden of proof until you have
16 been through all five of those phases that I've just
17 outlined for you. That includes getting into the
18 fifth phase where you have an opportunity to listen to
19 each other discuss the testimony and evidence. Only
20 then will you be in the right frame of mind and the
21 right position to make up your mind about whether the
22 State has met its burden of proof.

23 Now, ladies and gentlemen, you and I have very
24 different roles to play here. I'm going to talk a
25 little bit about the difference between your role and

1 my role. As members of the jury, ladies and
2 gentlemen, you are the exclusive judges of the facts.
3 I am not permitted under South Carolina law to have or
4 express any opinion about the facts of this case.

5 If, during the course of this trial, you hear me
6 say anything or see me do anything that might lead you
7 to believe that I have opinion about the facts, then
8 you must disregard that. Only the jury can make a
9 decision, the decision about the facts. Only the
10 jury can make a determination about whether the State
11 has met its burden of proof.

12 Ladies and gentlemen, the same law that makes you
13 the exclusive judges of the facts makes me the
14 exclusive judge of the law. If you have some idea as
15 to what the law is or what the law should be and if
16 that differs in any way from what I will tell you the
17 law is, then you are obligated under the oath that you
18 have just taken to set your notion of the law aside
19 and to accept and apply the law precisely as I will
20 give it to you.

21 One other role that I play is to decide on the
22 admissibility of evidence. From time to time, I am
23 sure that you will hear the lawyers making objections.
24 Let me make this clear. When a lawyer make an
25 objection, the lawyer is not trying to hide anything

1 from the jury.

2 That's the way our system of evidence works. We
3 have rules of evidence. When one lawyer believes
4 that evidence is being offered that does not comply
5 with the rules of evidence, then it is that lawyer's
6 responsibility not only to his or her client but also
7 to me and to the Court system to make an objection.
8 When the lawyer makes objection, it becomes my
9 responsibility to rule on the objection.

10 If I believe the evidence is admissible and that
11 I should allow it in for you to consider, I will
12 overrule the objection. Meaning, the evidence comes
13 in. If I believe the evidence is not admissible,
14 then I will sustain the objection. Meaning, the
15 evidence cannot come before the jury and the jury can
16 not consider it.

17 Many times, I will be able to do that as I'm
18 sitting here. You will hear the lawyers make
19 objections. You may hear them state very quickly the
20 grounds for the objection. Then you will hear me say
21 either sustained or overruled. Sometimes I will
22 bring the lawyers up here to the bench. We will have
23 a short discussion about the evidence question before
24 I rule. Sometimes I will send you back to the jury
25 room so that I openly discuss the evidence with the

1 lawyers before I rule on its admissibility.

2 Sometimes I have to hear the evidence. We will,
3 I suppose, come to points in time where there is a
4 dispute about the admissibility of some testimony that
5 is about to be brought out of a witness. Before I
6 can rule on that, I need to hear the testimony myself.
7 I may send you back to the jury room for ten or
8 fifteen minutes, maybe longer, while I listen to the
9 evidence myself, consider its admissibility and then
10 rule on it. That I will bring you back out here.
11 And we will resume.

12 Sometimes you might have lawyers say that they
13 have no objection. That's particularly true or
14 particularly likely when we are dealing with physical
15 evidence such as exhibits that might be introduced.
16 When a lawyer says they have no objection to the
17 admissibility of evidence, that does not mean that the
18 lawyer concedes that the evidence is true. That's
19 simply means that the lawyer concede that the evidence
20 is admissible. Then it becomes the jury's
21 responsibility to decide whether or not evidence is
22 true.

23 As members of the jury, in order to determine the
24 facts in this case, you will necessarily have to
25 determine, evaluate the credibility, which of course

1 means the believability, of the witnesses who will be
2 called on to testify. Some of the things you might
3 wish to consider as you decide whether or not to
4 believe a witnesses testimony about a particular
5 matter include these particular factors I'm going to
6 give you right now and others.

7 The manner and appearance of the witness is
8 testifying; is he or she straightforward or hesitant
9 in answering questions; is the testimony of the
10 witness consist or inconsistent; how did the witness
11 come to know the facts that he or she is testifying
12 to; and what is the witness' ability to know those
13 facts; is there some reason that witness might want
14 to give testimony that would help or hurt one side or
15 the other, in other words, is a witness biased towards
16 or against one side or the other; is the testimony of
17 the witness strengthened or weakened by other
18 testimony and evidence?

19 As members of the jury, you could believe as much
20 or as little of each witnesses' testimony as you think
21 it is appropriate to do. You can believe the
22 testimony of one witness against all the other
23 witnesses or you can do just the opposite. You are
24 not required to except testimony as true even if it is
25 uncontradicted.

1 Ladies and gentlemen, as I said during the fourth
2 phase of the trial, I'm going to come back and give
3 you a charge on the law. What I have given you just
4 now are some introductory remarks to kind of assist
5 you in understanding how this case is going forward
6 and to give you an idea of what your responsibilities
7 are. That is not my charge on the law. I will come
8 back and give you a detailed charge on the law during
9 the fourth phase.

10 Now, we are going to be here a while. I want
11 you all to settle in. That is your place over there.
12 Just feel comfortable. As you are moving around the
13 courthouse today between here and in the jury room, as
14 we take breaks and as I take a break to have you out
15 of the courtroom so I can hear evidentiary questions,
16 make yourself at home. As I said yesterday, please
17 remember if there's anything you need, let somebody
18 know. We will get it for you.

19 If you look around the courtroom, you will see
20 that the courtroom has cameras in it. Let me talk to
21 you a little bit about that. We know this case has
22 generated some interest in the press. There are TV
23 cameras in the courtroom. I want to make sure that
24 you know and are comfortable with the fact that these
25 TV cameras are forbidden to put your image on the

1 camera in the first place and to broadcast it in the
2 second place.

3 Your image, your pictures, your faces will not be
4 on TV. You can be comfortable about that. Just
5 disregard the fact that there are cameras in here.
6 I'm going to disregard it, you disregard it. We have
7 business to attend to. Very serious business.
8 Let's focus on that. And let's get it done.

9 Any objection to my comments?

10 **MR. GOWDY:** Not from the State, Your Honor.

11 **MR. BARTOSH:** No, Your Honor.

12 **THE COURT:** Solicitor, you may make your
13 opening statements.

14 **MR. BARNETT:** May it please the Court, Your
15 Honor.

16 Ladies and gentlemen of the jury, I want to take
17 you back to September 18th, 2002. And on that day,
18 Ruby Nell Lindsey was shot and killed by the defendant
19 Marion Lindsey. Ruby Nell Lindsey, she's commonly
20 known as Nell, her middle name. Nell worked that day
21 from 7 a.m. to 7 p.m.

22 She worked at Spartanburg Regional Medical
23 Center. She worked at Restorative Care on the 5th
24 floor. She's a patient care technician. Her job is
25 taking care of longtime patients that need help with

1 disabilities and so forth.

2 When she finished her shift that day, her car had
3 car trouble. She met her friend Celeste Nesbitt.
4 You will be hearing from Ms. Nesbitt. Met her there
5 at the hospital. Celeste was coming by to see her
6 great-grandmother. When she visit her, she came
7 down. They met. They left the hospital together.
8 Celeste also had her mother with her. She also had
9 her two young daughters, Kiera and Keysha. They were
10 7 and 3 years old.

11 They got in Celeste's car. It was approximately
12 8 o'clock that night. They went up Pine Street.
13 They were taking Nell back home. At that time, she
14 was living with her mother. As they were coming into
15 Inman, Celeste noticed a car was following her. They
16 all turned around. She had seen the car before.
17 That car appeared to be the girlfriend's car, Latresse
18 Smith, the girlfriend of Marion Lindsey. Nell and
19 Marion were separated at this time.

20 When they saw the car, they sped as quickly as
21 they could. When they approached Nell's mother's
22 home, Nell told Celeste to keep on driving. As she
23 was turning around, Marion came up to the car side-by-
24 side. Nell was scooting back in the back seat. And
25 you will see the windows are tinted. You will see