

VOLUME TWO OF NINE

STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM LEXINGTON COUNTY

Lee S. Alford, Circuit Court Judge

RECEIVED

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S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

NORMAN STARNES,

APPELLANT

RECORD ON APPEAL

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*NOTE: COURT'S EXHIBIT 10 (DVD OF REENACTMENT) ARE FILED AT THE SOUTH CAROLINA SUPREME COURT

1 murder?

2 A. No, sir.

3 Q. So you would weigh all of the information that you had
4 and make a decision based on that as to what the appropriate
5 sentence would be?

6 A. Yes, sir.

7 Q. Thank you, ma'am.

8 Please answer any questions that the solicitor might
9 have, or Mr. Starnes, the defendant would have.

10 MR. GOWDY: May it please the court.

11 THE COURT: Yes, sir.

12 VOIR DIRE EXAMINATION BY MR. GOWDY:

13 Q. Good afternoon, ma'am.

14 Just like the judge said, there are no right answers
15 and there are no wrong answers. There are just your answers
16 and nobody is going to challenge them or second guess them.

17 A. Okay.

18 Q. But I would like to ask you what your -- what your
19 general views on the death penalty or capital punishment are
20 and what the source or origin of those views may be?

21 A. I just think it depends on the case and the
22 circumstances and to what the punishment should be.

23 Q. Sometimes it's appropriate, sometimes it's not?

24 A. Absolutely.

25 Q. I know the judge made this abundantly clear. I just

1 want to ask it one more time. The law in South Carolina
2 never requires you to impose the death penalty. Life is
3 always an option, no matter what.

4 A. Uh-huh.

5 Q. Understanding that, that the law is never going to
6 dictate that you reach this verdict --

7 A. Uh-huh.

8 Q. -- could you still in some circumstances give death?

9 A. Yes.

10 Q. All right. And if you -- if that were your verdict,
11 after you heard the evidence and listened to the judge's
12 instruction on the law, would you be able to sign your name
13 to a form that said this is my verdict?

14 A. Yes.

15 Q. Okay.

16 MR. GOWDY: Thank you, ma'am.

17 JUROR NUMBER 288: Yes.

18 VOIR DIRE EXAMINATION BY MR. STARNES:

19 Q. Hi, Ms. Turkett. How are you?

20 A. Fine.

21 Q. Ms. Turkett, have you ever served on a jury before?

22 A. No.

23 Q. This is your first time?

24 A. Yes.

25 Q. Ms. Turkett, do you understand that not all killings

1 are murder?

2 A. Yes, sir.

3 Q. And by saying that, do you understand that the defense.
4 has certain defenses?

5 A. Yes.

6 Q. Do you understand that the State has the burden of
7 proof and they have to prove guilt beyond a reasonable
8 doubt?

9 A. Yes, sir.

10 Q. Would you follow Judge Alford's instruction regarding
11 reasonable doubt, or any other instructions as he would give
12 it to you, and would you follow the law?

13 A. Yes, sir.

14 Q. And would you follow the law, even though you did not
15 agree with it? In other words, would you follow what the
16 judge gives you and not what you thought the law ought to
17 be?

18 A. Yes, I would follow the law.

19 Q. Okay. Thank you, Ms. Turkett. That's all we can ask.

20 THE COURT: Thank you, ma'am.

21 If you will wait outside for just a moment at the
22 door. We will have you back in in just a minute, okay?

23 (Whereupon, Juror Number 288 left the courtroom)

24 THE COURT: Position of the State?

25 MR. GOWDY: She's qualified, Your Honor.

1 THE COURT: Defense?

2 MR. STARNES: She's qualified, Your Honor.

3 THE COURT: All right. I agree. She is so
4 qualified.

5 Please bring her back in, sir.

6 (Whereupon, Juror Number 288 entered the
7 courtroom)

8 THE COURT: Ma'am, you can just stand right there,
9 if you will.

10 Ms. Turkett, you have been qualified as a juror in
11 this case. Now, what I'm going to instruct you to do is
12 free you up at the moment. I'm going to ask you to report
13 back to the courtroom here. Report back to the court on
14 Wednesday at three p.m.. Wednesday at three p.m..

15 However, you can call tomorrow night, Tuesday
16 night, after six o'clock, and get instructions as to whether
17 that's changed or not, if you wish, okay? Or you can check
18 with the clerk's website. And on the website it will have a
19 reference to jurors who have been qualified on the case,
20 qualified jurors, and there will be an instruction as to
21 qualified jurors. So if there is any change in that, it
22 would also be on the website. So you can check, plus you
23 have the number for that. Otherwise please report at three
24 p.m. on Wednesday.

25 JUROR NUMBER 288: Okay.

1 THE COURT: Thank you, ma'am.

2 (Whereupon, Juror Number 288 left the courtroom)

3 MR. STARNES: Your Honor, if I may take up one
4 small matter?

5 THE COURT: Yes, sir.

6 MR. STARNES: Would it be possible -- I'm not
7 being hyper-technical, to call the first part the merits
8 phase, rather than the guilt phase?

9 I know in the court's discussing this with the
10 jurors, we are talking about the guilt phase, and that
11 doesn't necessarily mean that's what the first part is,
12 because -- I mean, I don't think that's --

13 THE COURT: What else is it?

14 MR. STARNES: Well --

15 THE COURT: The jury usually finds you guilty or
16 not guilty in the first phase. That's why -- it's always --
17 I have read a hundred cases. They all refer to it as the
18 guilt phase and the penalty phase. Not anything about the
19 merits phase.

20 So I think in a criminal case, everyone out there
21 in the general public understands guilty or not guilty, or
22 guilt phase trial of the trial. And I'm instructing them
23 that the State has to prove the charges beyond a reasonable
24 doubt in order to find you guilty.

25 If you are found not guilty, that would be the end

1 of it. I would instruct them on that.

2 If it goes to the second phase, which is called
3 the penalty phase.

4 I think that's an appropriate instruction.

5 MR. STARNES: Well, can the defendant explore that
6 on voir dire?

7 THE COURT: Well -- I beg your pardon?

8 MR. STARNES: Would it be okay if I explore that
9 on voir dire, on questioning the jurors?

10 THE COURT: Well, it depends upon what it is. You
11 can't stake them out as to lesser included offenses and
12 things like that. They haven't heard any of that.

13 I didn't have a problem with you saying do you
14 understand that there could be lesser included offenses, but
15 the question is, you know, I -- I have no question that you
16 asking do you understand that the State would have to prove
17 you guilty beyond a reasonable doubt before you would reach
18 the second phase. I have no problems with that at all, and
19 I'm trying to make that clear to them myself, but I don't
20 have any problem -- I don't want to ask the same questions
21 over and over, but I don't have any problems with you making
22 that clear to them --

23 MR. STARNES: Yes, sir.

24 THE COURT: -- that we don't get to the second
25 phase, unless the State has proven the case against you

1 beyond a reasonable doubt in the first phase of the trial.
2 I don't have any problem with that, but I'm trying to do
3 that too. If I fail to do it, you are welcome to do it.

4 MR. STARNES: Thank you, Your Honor.

5 THE COURT: Okay.

6 (Whereupon, Juror Number 171 entered the
7 courtroom)

8 VOIR DIRE EXAMINATION BY THE COURT:

9 Q. Ma'am, you are Paula Mallory, juror number 171 --

10 A. Yes, sir.

11 Q. -- is that correct?

12 Ms. Mallory, I want you just to relax. Nobody is going
13 to give you a third degree or disagree with you in any way
14 or anything like that.

15 The whole purpose of this is just to ask you some
16 questions about your views towards the death penalty, and
17 perhaps some other things. And so what I would ask you to
18 do is just relax. Just answer the questions as honestly as
19 you can. There are no right or wrong answers. Nobody is
20 going to disagree with you or argue with you or anything
21 like that. That's not the purpose. It's simply asking you
22 these questions and ask you for your honest responses to
23 these questions.

24 A. Yes.

25 Q. I would remind you that you are still under oath, just

1 as you were this morning when I placed you under oath for
2 the information you provided the court.

3 You gave a juror questionnaire in this case when you
4 were summonsed by the --

5 A. Yes.

6 Q. Is there anything that's changed on that, that you need
7 to modify or change on that?

8 A. No, sir.

9 Q. Ma'am, there was a list of potential witnesses that you
10 saw I think back in the jury room. Did you have a chance to
11 go over that?

12 A. I did look at those.

13 Q. All right. Ma'am, don't identify them by name if you
14 knew any them, but did you recognize any names on there, any
15 potential witnesses?

16 A. No, sir, I did not.

17 Q. Hopefully all those witnesses are not going to be
18 called. I don't think that they will be, but we need to
19 know in case they are.

20 Now, there was a question -- a form back there with
21 three paragraphs about three different type jurors. They
22 are not all inclusive, of course, but let me ask you whether
23 if you had a chance to read that, and would you identify
24 yourself with any one of those three potential jurors?

25 A. Well, I read it four times.

1 If you had asked me 20 years ago, I would not have been
2 able to give anyone the death penalty.

3 If you asked me today, I -- honestly I don't know
4 whether I could or not. I can't honestly say that I
5 wouldn't be able to. I mean, I know that I would definitely
6 not be one of those to say okay, you are guilty, you are
7 going to have a death penalty. I'm not one of those.

8 But I honestly don't know. I mean, I guess it would
9 have to be the circumstances, on how horrific was the crime,
10 what happened. I don't know what I would -- I don't know if
11 I could or not. I guess until I'm in that situation, I
12 honestly can't tell.

13 Q. Okay. Well, I'm going to ask you a couple more
14 questions. And, again, answer them as honestly as you can.
15 Just be as honest as you can with the court.

16 Do you understand that in the death penalty case the
17 first thing that happens is we have a trial in which the
18 State has to prove the defendant guilty of the charge of
19 murder beyond a reasonable doubt, or the charges for that
20 matter, beyond a reasonable doubt.

21 If the State failed to prove a murder charge against
22 the defendant, then that would be the end of the matter and
23 the jury's function would be ended at that point. Do you
24 understand that?

25 A. Yes, sir.

1 Q. However, if the jury panel decided the State had proven
2 the charge of murder against the defendant beyond a
3 reasonable doubt, then we would go to the second phase of
4 the trial, which is what we call the penalty phase.

5 And in the penalty phase, there would be evidence
6 presented by the State by means of -- with regard to
7 aggravating factors. And information would be provided --
8 or evidence introduced, testimony introduced, with regard to
9 mitigating factors on behalf of the defense. Do you
10 understand that?

11 A. Yes, sir, I do.

12 Q. And after all of that is done and the court instructs
13 you with regard to the law that applies to the issues in
14 that case, the jury would then be asked to -- based on all
15 that information, to decide on the verdict, either the death
16 penalty or life without the possibility of parole. Do you
17 understand that, ma'am?

18 A. Yes, sir, I do.

19 Q. And, of course, the death penalty does not have to be
20 imposed, regardless of whatever it's produced in court. Do
21 you understand that?

22 A. Yes, sir.

23 Q. The jury can give life without parole, just as
24 something as the act of mercy without any other reason. Do
25 you understand that?

1 A. Yes, sir.

2 Q. Now, let me ask you, if we got to that stage of the
3 trial and all of that evidence was presented to you, could
4 you, if you thought it was appropriate, render a verdict for
5 the death penalty?

6 A. I honestly don't know. I mean, I'm just being honest.
7 I don't know that I couldn't send someone. I mean, again,
8 it would have to be -- I would need to know what the person
9 did and how horrific it was and --

10 Q. Well, let me ask you one other question. Would you
11 always give the sentence of life without parole?

12 A. I don't think so.

13 I'm trying to answer this as honestly as I can.

14 Q. I understand. Well, I'm going to ask you now, if you
15 will, please, ma'am, to answer the questions that may be
16 asked of you by the State and also by Mr. Starnes, the
17 defendant?

18 A. Okay.

19 MR. GOWDY: May it please the court?

20 THE COURT: Yes, sir.

21 VOIR DIRE EXAMINATION BY MR. GOWDY:

22 Q. Good afternoon, ma'am.

23 A. Hi.

24 Q. When did you work for the Park Association?

25 A. Oh, in '83, I believe.

1 Q. '83.

2 Just like Judge Alford said, there are no right
3 answers. There are no wrong answers. They are your
4 answers. Nobody is going to cross-examine them.

5 Having said that --

6 A. Okay.

7 Q. -- we do have to have a sense of not just your
8 willingness to consider one punishment or the other --

9 A. Right.

10 Q. -- but actually to impose it. So, let me start by
11 asking you what are -- you mentioned 20 years ago you
12 might -- I think all of us would have had a different view
13 in life 20 years ago.

14 A. Right.

15 Q. What's changed and why in 20 years?

16 A. Well, I was very young and I knew then, and the way I
17 was raised is tried not to judge people and there is good in
18 everyone, but I'm 46 now and I believe there are people that
19 are evil. I don't think it's black and white any more.
20 There is gray. I mean, nothing is just black or white, and
21 I think that is why I have changed.

22 This has come up before. I watch a lot of criminal
23 court TV, and my husband and I have talked about this
24 briefly before, you know, could you or couldn't you, and my
25 answer is I don't know.

1 I'm not one of those people -- I know I'm not juror one
2 who would say yes, you are guilty, you are going to get the
3 death penalty, you are going to fry, or whatever.

4 But honestly, I don't know -- I mean, I think I
5 probably could give someone the death penalty, but I really
6 honestly don't know. I mean, I don't know. I really don't.

7 Like I said, I would have to know the details. I would
8 have to know what happened, how -- obviously it's a horrific
9 crime, I mean, if they are getting ready to impose that
10 option, but without knowing any details, I mean, I can't
11 tell you yes or no.

12 Q. In the South Carolina law you always have the option of
13 life without parole, no matter what. No one -- it's not a
14 math equation where this equals that, you have to impose the
15 death.

16 A. Right.

17 Q. You always have the option of life.

18 A. I would definitely not have a problem of giving them
19 life without parole. I mean, that would be --

20 Q. All right.

21 A. That would not be the most difficult decision.

22 Q. Are there circumstances under which you could impose
23 the sentence of death?

24 A. Yes, there are.

25 Q. And your answer yes, there are, would be true, even if

1 life were -- life without parole were an option?

2 A. Yes. I mean, again it would have to -- it depends upon
3 what the crime was, how horrific it was.

4 Q. When you say I don't know, which is a perfectly
5 legitimate answer, one that I give to a lot of questions I
6 get asked, are you saying I don't know in this case, because
7 that's entirely appropriate?

8 A. I don't know anything about this case. So, yes, I
9 mean, I have no idea what this is about.

10 Q. But you are not saying I don't know in general, because
11 if you -- if you are -- you have to be willing to not just
12 consider it, but impose it.

13 A. I know, and I think -- I have thought about this. I
14 mean, I think under certain circumstances in my mind, okay,
15 I could impose the death sentence for particular things in
16 my mind. I guess maybe I should have rephrased that.

17 I don't know how else to answer that question. I'm
18 being honest as I can.

19 Q. And I agree with you. These are hard questions. Hard
20 questions. And I think all either side is looking for is
21 somebody who is fair and open minded and could, depending
22 upon the circumstances and the evidence, impose either
23 sentence. Not consider it, not debate it, but actually
24 impose it.

25 A. Okay. Yes, I could.

1 Q. All right.

2 A. I could. Yes, I could.

3 Q. You have a relative that is in law enforcement in
4 Augusta?

5 A. Oh, that was years ago. She isn't anymore.

6 Q. Okay.

7 A. Yes, she used to be a police officer.

8 Q. Thank you for your candor.

9 A. Okay.

10 MR. STARNES: If it please the court, Your Honor.

11 THE COURT: Yes, sir.

12 VOIR DIRE EXAMINATION BY MR. STARNES:

13 Q. How are you doing?

14 A. I'm fine, thanks.

15 Q. You are Ms. Mallory?

16 A. Mallory, I'm sorry.

17 Q. Ms. Mallory, is this the first time that you have
18 served on a jury panel before?

19 A. Of this magnitude, yes.

20 Yes, I have done small, like a prom dress, where people
21 would draw -- or a little traffic incident, but nothing of
22 this magnitude.

23 Q. Okay. Do you understand that not all killings are
24 murder?

25 A. Yes, I do, actually.

1 Q. So, in other words, at some point in this trial you
2 learned that I actually killed somebody, do you understand
3 that that doesn't necessarily mean it's murder?

4 MR. GOWDY: Your Honor --

5 A. It depends upon what you did.

6 MR. GOWDY: Your Honor, I would object to the
7 personalization of the question, first of all.

8 Second of all, this is the sentencing phase and
9 not guilt questions, so I don't -- I would object to the
10 relevance of the question he just asked.

11 THE COURT: All right, sir.

12 Let's please avoid personal questions from you
13 personally, Mr. Starnes. Ask it in the third person, if you
14 will.

15 You may ask questions about what happens in the
16 first phase of the trial and why you get to the second
17 phase. I'll let you ask them that.

18 Go ahead.

19 BY MR. STARNES:

20 Q. Do you understand you are not compelled to get into
21 that second part?

22 A. Which second part are you referring to?

23 Q. The penalty phase, the part that the solicitor was
24 talking about.

25 A. (Shaking head yes)

1 Q. And do you understand that the defendant has certain
2 defenses that he could rely on?

3 A. I really don't know what you mean by that.

4 Q. I asked you earlier do you understand that not all
5 killings are murder?

6 A. If it's self-defense, I don't think it's murder.

7 Q. If it's self-defense, you don't think it's murder?

8 A. Yes.

9 Q. So then do you understand that the defendant does have
10 certain defenses that he could rely on?

11 A. As, yes, everyone.

12 Q. And do you understand that if the jury does not convict
13 of murder, then we never get to that penalty phase?

14 A. Right.

15 Q. And could you follow the law as the judge instructed
16 you after you have heard all the evidence?

17 A. Yes.

18 Q. Could you follow the law, even though you may not agree
19 with it; in other words, follow the law as the judge gives
20 it to you and not what you think it is?

21 A. Yes, correct.

22 Q. And you could do that?

23 A. Yes, sir.

24 Q. In this case?

25 A. Uh-huh.

1 Q. That's all we can ask for. Thank you very much.

2 THE COURT: All right. Thank you, ma'am.

3 Please, ma'am, if you will stand outside just a
4 minute and we will have you back in in just a minute.

5 JUROR NUMBER 171: Okay. Thank you.

6 (Whereupon, Juror Number 171 left the courtroom)

7 THE COURT: Position of the State?

8 MR. GOWDY: Your Honor, she is a classic example
9 of a life prone, but otherwise qualified juror.

10 MR. STARNES: She's qualified, Your Honor.

11 THE COURT: I agree.

12 I think she is on the other end of the spectrum
13 from Mr. Elmore, I think, that we had so much problems with.
14 I think he leans towards the death penalty but wouldn't
15 always give it. I think she leans towards life, but would
16 not always give it. So they are at the other end of the
17 pole and I think they are both qualified.

18 Please bring her back in.

19 (Whereupon, Juror Number 171 entered the
20 courtroom)

21 THE COURT: Ma'am, you can stand right there, if
22 you would.

23 We have found you qualified to serve on the jury.

24 I want to give you this instruction. I'm going to
25 free you up now until Wednesday, at three p.m..

1 JUROR NUMBER 171: Okay.

2 THE COURT: And ask you to return to court at
3 Wednesday, at three p.m.. However, you have a voicemail
4 number or a number to call to get a voicemail. You can call
5 that tomorrow night, Tuesday night, after six o'clock and
6 get voicemail for qualified jurors. Get the message for
7 qualified jurors and it may alter that time.

8 JUROR NUMBER 171: Okay.

9 THE COURT: So you call in and get that, or you
10 can go on the website, the clerk's website, and get the part
11 that talks about qualified jurors, and it could change the
12 report time or date. Okay. But other than that, you would
13 be expected to report Wednesday at three p.m..

14 JUROR NUMBER 171: Okay. I am on the jury?

15 THE COURT: Yes, ma'am. Well, you are -- let me
16 explain to you that. What we are doing right now is
17 qualifying a jury panel to determine whether they were
18 qualified. From that group a jury will be selected.

19 JUROR NUMBER 171: Okay.

20 THE COURT: But, no, you are not actually on the
21 jury.

22 JUROR NUMBER 171: Okay.

23 THE COURT: You are in the pool from which the
24 jury would be selected. Okay?

25 JUROR NUMBER 171: Yes, sir. Three o'clock

1 Wednesday. Thank you.

2 THE COURT: Yes, ma'am. Thank you, ma'am.

3 (Whereupon, Juror Number 171 left the courtroom)

4 THE COURT: Let's try to at least finish with the
5 first panel and then we will take a break.

6 (Whereupon, Juror Number 305 entered the
7 courtroom)

8 VOIR DIRE EXAMINATION BY THE COURT:

9 Q. Sir, for the record you are Claude Wessinger, is that
10 correct?

11 A. Yes, sir.

12 Q. Mr. Wessinger, I want to ask you just relax. Just
13 relax where you are. Nobody is going to give you the third
14 degree or ask you a bunch of questions or argue with you.
15 That's not the purpose of this hearing for your being here.

16 A. All right.

17 Q. The purpose is simply to determine your views
18 concerning the death penalty and life penalty and that kind
19 of thing. So just relax and give as honest answers as you
20 can.

21 Let me remind you that you are still under oath from
22 the information that you provided to the court today, this
23 morning.

24 Let me ask you, you supplied a juror questionnaire to
25 the clerk's office when you received the jury summons. Is

1 there anything on that that's changed, sir, that you need to
2 modify or change in any way?

3 A. No, sir.

4 I would like to add that I am a teacher and if I had
5 known of the circumstances of this case, I probably would
6 have tried to use that as an exemption, because I do teach
7 first semester courses. And if this case drags out, then
8 that might present a problem for my students.

9 Q. All right. Well, let's move on with our questions, if
10 we can, first, and then --

11 Did you see a list of potential witnesses in this case
12 back in jury room where you were?

13 A. Yes, sir.

14 Q. And if you know any of them, please don't identify them
15 by name, but only by number. Did you recognize any names on
16 that, know any of those folks?

17 A. I recognized two names.

18 Q. Please give me just the number, if you would.

19 A. Number 80.

20 Q. Okay.

21 A. And number 86, I believe. I'm not sure about the first
22 name, but I do know -- I recognize the middle and last name.

23 Q. Let me ask you, sir, these are potential witnesses.

24 All of them will not be called, but some of them obviously
25 will be called.

1 The question is if either of these two persons were to
2 be called by either side in this case as witnesses, would
3 the fact that they be witnesses in this case interfere in
4 any way with your ability to give both the State and the
5 defendant a fair and impartial trial?

6 A. I don't think so.

7 Q. I have to ask for a more definitive answer.

8 A. No, sir.

9 Q. Thank you.

10 Now, sir, did you see a sheet back in the jury room
11 which lists three types of jurors back there, that list
12 three different paragraphs?

13 A. Yes, sir.

14 Q. Of course, that's not an all inclusive list with regard
15 to jurors, but would you identify yourself with any more
16 like one of those three?

17 A. Number three.

18 Q. Number three.

19 So you could listen to the testimony and evidence to be
20 presented during the course of the trial and the court's
21 instruction on the law and render a decision that would be
22 fair and impartial as the both the State and the defendant,
23 is that correct?

24 A. Yes, sir.

25 Q. Okay. Do you understand that the first part of this

1 trial, in a trial in which the State is seeking the death
2 penalty, that in the first phase of that trial the State
3 would be required to prove the defendant guilty beyond a
4 reasonable doubt to the charges against him?

5 And if they were not able to do that, obviously that
6 would end the jury's function. Do you understand that --

7 A. Yes.

8 Q. -- if he was not found guilty of murder.

9 If he were to be found guilty of murder, then we would
10 then go to the second phase of the trial. And in the second
11 phase of the trial, the State would present aggravating
12 factors they say which make the case worse. And the
13 defendant would be entitled to present mitigating factors,
14 which means he ought to be considered in deciding in which;
15 penalty he should receive. And based on all of that, the
16 instruction of the law by the court, you would be asked to
17 help the jury render a verdict between the death penalty and
18 life in prison without the possibility of parole. One of
19 those two choices. Do you understand that?

20 A. Yes, sir.

21 Q. And would you have any difficulty doing that? Could
22 you do that, sir?

23 A. I could do that.

24 Q. Okay. Let me ask you whether if somebody was found
25 guilty of murder, would you always give the death penalty?

1 A. No, sir.

2 Q. If someone was found guilty of murder, would you always
3 give life without parole?

4 A. No, sir.

5 Q. So you could listen to the testimony and the evidence
6 and the law and make that decision, sir?

7 A. Yes, sir.

8 Q. Please answer any questions that the solicitor might
9 have.

10 MR. GOWDY: Thank you, Your Honor. May it please
11 the court?

12 THE COURT: Yes, sir.

13 VOIR DIRE EXAMINATION BY MR. GOWDY:

14 Q. Good afternoon, sir.

15 What courses do you teach?

16 A. I teach government and econ to seniors.

17 Q. Are you the head football coach?

18 A. 9th grade.

19 Q. 9th grade.

20 How did y'all do this year?

21 A. We went seven and zero.

22 Q. Any chance that you would come coach the defense at the
23 University of South Carolina?

24 A. No, sir, I'm a Clemson graduate.

25 Q. That's why I asked.

1 Just like the judge said, there are no right answers,
2 no wrong answers, only your answers.

3 Can you generally tell us your views on capital
4 punishment for the death penalty and where they came from?

5 A. I believe there is a place for it in certain
6 situations. And that's just -- just my opinions. I teach
7 government and econ for 18 years, so we often what -- well,
8 we do talk about your rights, if you are accused of a crime.
9 We often have discussion about the death penalty in class,
10 and I get -- you know, my students have probably influenced
11 me over the years with some of their discussions also.

12 Q. If I understand you correctly, you would listen to both
13 sides, keep a fair and open mind and listen to the judge's
14 instruction on the law?

15 A. Yes.

16 Q. If you think the defendant is guilty of murder, you are
17 going to find him guilty? And if you don't think he's
18 guilty of murder, you are going to vote not guilty?

19 A. Yes, sir.

20 Q. And if we get to the sentencing phase, if you think
21 that the crime warrants society's ultimate punishment for
22 death, you would vote that way?

23 A. Yes.

24 Q. And if you don't, you won't?

25 A. Yes, sir.

1 Q. Thank you.

2 MR. STARNES: If it please the court, Your Honor.

3 THE COURT: Yes, sir, Mr. Starnes.

4 VOIR DIRE EXAMINATION BY MR. STARNES:

5 Q. How are you doing, Mr. Wessinger?

6 A. Fine.

7 Q. Mr. Wessinger, have you ever sat on a jury panel
8 before?

9 A. No, sir.

10 Q. So this is your first time?

11 A. Uh-huh, except for magistrate court, something like
12 that.

13 Q. Magistrate court. Was it a criminal offense?

14 A. They pleaded out before we got into the courtroom.

15 Q. Okay. So you never actually sat on a jury?

16 A. Right.

17 Q. Do you understand that not all killings are murder?

18 A. Yes, sir.

19 Q. The fact that someone kills another individual doesn't
20 mean that it's murder?

21 A. Yes, sir.

22 Q. Do you understand that a defendant has certain defenses
23 that he can rely on?

24 A. Yes, sir.

25 Q. And do you understand that in a case where someone is

1 killed, there may be lesser included offenses?

2 A. Yes, sir.

3 Q. Mr. Wessinger, do you understand that the State is --
4 they carry a burden, what's called the burden of proof?

5 A. Uh-huh.

6 Q. And in this case if you sat as a juror, would you hold
7 the State to that burden of proof?

8 A. Yes, sir.

9 Q. Okay. Could you follow the law as the judge instructed
10 you?

11 A. I believe I could, yes, sir.

12 Q. You would.

13 Even though you may not agree with the law, you would
14 follow the law as Judge Alford give it to you and not what
15 you thought the law would be?

16 A. Yes, sir.

17 Q. Some people say they can do something and some can't.
18 In other words, if we get into the penalty phase -- and I
19 say if, but we may not. But if we get into a penalty phase
20 and you feel that the facts and circumstances in this case
21 warrant it, could you sign your name on a piece of paper and
22 put someone to death?

23 A. I believe I could, yes, sir.

24 Q. You believe you could?

25 A. Uh-huh.

1 Q. Okay. That's all we can ask from you. Thank you very
2 much.

3 THE COURT: Thank you, sir.

4 If you would wait just outside the courtroom door.
5 Thank you. We will have you back in in just a minute, okay?

6 (Whereupon, Juror Number 305 left the courtroom)

7 THE COURT: Kind of late in that plea, maybe. If
8 this case is going to take two or three weeks, maybe he just
9 as soon be back in his government class, but he's where he
10 is now.

11 MR. GOWDY: He's qualified, I believe, Your Honor,
12 my judgment.

13 MR. STARNES: I believe he is qualified, Your
14 Honor.

15 THE COURT: The court agrees. I think he's
16 qualified, so we will find him qualified.

17 Please bring him back in, sir.

18 (Whereupon, Juror Number 305 entered the
19 courtroom)

20 THE COURT: Sir, you can stand right there.

21 Mr. Wessinger, the court finds you qualified to
22 serve on this jury. What I'm going to ask you to do is to
23 return back to the court Wednesday, at three p.m..

24 JUROR NUMBER 305: Okay.

25 THE COURT: Okay. And also I would add that you

1 can call into a voicemail number that you have, that was
2 given to you, I think. And on that voicemail number you
3 would look -- you would listen for a message for qualified
4 jurors, those that have been qualified, and it may change
5 the instruction from Wednesday at three. So you can listen
6 to that. That would be available Tuesday, tomorrow night
7 after six p.m. you can call that number.

8 JUROR NUMBER 305: All right.

9 THE COURT: Also it would be on the clerk's
10 website. On the website there are qualified jurors. It may
11 change at the time when you are to report, okay, but you can
12 check those two sources. And, otherwise, report back
13 Wednesday at three o'clock.

14 I would tell that you some people think maybe that
15 when they are found qualified, they are automatically on the
16 jury. That's not the case. What we are doing right now is
17 getting a qualified pool of jurors from which the jury would
18 be selected.

19 JUROR NUMBER 305: Okay.

20 THE COURT: So just because you have been
21 qualified doesn't necessarily mean that you are going to be
22 on the jury.

23 JUROR NUMBER 305: All right.

24 THE COURT: Thank you, sir.

25 JUROR NUMBER 305: Thank you.

1 (Whereupon, Juror Number 305 left the courtroom)

2 THE COURT: All right. Let's take about five
3 quick minutes. I know we are getting behind. I'm always
4 behind.

5 (Whereupon, proceedings were recessed)

6 (Whereupon, proceedings were reconvened)

7 THE COURT: Is everybody ready to go?

8 MR. GOWDY: State is, Your Honor.

9 MR. STARNES: Defense is ready, Your Honor.

10 THE COURT: Please bring the next one in, please.

11 (Whereupon, Juror Number 213 entered the
12 courtroom)

13 VOIR DIRE EXAMINATION BY THE COURT:

14 Q. Ma'am, if you could -- Ms. Paquin, please, if you will
15 turn and face the mike and get up as close to the mike as
16 you can. Talk directly into the mike so everybody can hear
17 you. If you could speak up just a little bit so everybody
18 can hear you.

19 A. Okay.

20 Q. I want you just to be relaxed in that chair.

21 Our purpose is not to quiz you or do a third degree,
22 and that's not that. It's just a very informal session. We
23 are just going to ask you some questions about your views as
24 to the death penalty or life without parole, that kind of
25 thing.

1 So let me remind you that you were earlier placed under
2 oath and you continue to be under oath in the information
3 that you provide to the court. Do you understand that?

4 A. Yes, sir.

5 Q. If you would speak up louder.

6 A. Yes.

7 Q. You see, the court reporter has to be able to hear all
8 the way over here. If you speak up loud now.

9 Now, ma'am, you provided the clerk's office a -- ma'am,
10 you filled out a questionnaire that they sent you with your
11 juror summons with information on it. Do you recall that?

12 A. Yes, I do.

13 Q. Is there anything about that that you need to update or
14 change or modify in any way?

15 A. No.

16 Q. Ma'am, did you see a list of potential witnesses in
17 this case back in the other room? That's up there in front
18 of you as well.

19 A. Yes.

20 Q. Did you have a chance to go over that?

21 A. Yes, I did.

22 Q. Ma'am, if you know nobody on there, don't give me their
23 names, but just their numbers, but do you recognize any
24 names on there? Do you know any of those folks?

25 A. I recognize one name, but it's a very common name. I'm

1 not sure if it --

2 Q. Same one?

3 A. Yes.

4 Q. Give us that number, please, ma'am.

5 A. 79.

6 Q. Let me ask you, ma'am, if that witness were to be
7 called, that particular witness were to be called by either
8 side in this case, would the fact that that person is a
9 witness in this case for either side interfere in any way
10 with your ability to give both sides a fair and impartial
11 trial?

12 A. No, it wouldn't.

13 Q. Now, ma'am, you saw back in the jury room there was a
14 sheet with three -- a list of three different types of
15 jurors on it?

16 A. Yes.

17 Q. And three different paragraphs. This is, of course,
18 not an all inclusive list, but did you identify with any of
19 those three types of jurors on this one sheet?

20 A. Yes, I can identify with number three.

21 Q. Number three?

22 A. Yes.

23 Q. Okay. So you are the type of juror who wouldn't have
24 your mind made up, but you would listen to the testimony and
25 evidence that comes in during the course of the trial and

1 also the court's instruction on the law and render a
2 decision, based on that information, is that right?

3 A. That's right.

4 Q. And do you understand that in the first part of that
5 trial -- there are two parts of the trial.

6 Let me put it this way. The first thing that happens
7 then is that we have a regular trial in which the State
8 would have to prove the defendant guilty beyond a reasonable
9 doubt of the charges against him. Do you understand that?

10 A. Yes, I do.

11 Q. And if the jury were to find the State failed to prove
12 him guilty beyond a reasonable doubt, then that would be the
13 end of the matter. We wouldn't go any further with it, do
14 you understand that?

15 A. Yes, sir.

16 Q. But, on the other hand, if the jury found that the
17 State had proven the charges against the defendant beyond a
18 reasonable doubt, then we would go to a second part of the
19 trial, the second phase of the trial, which is what we call
20 the sentencing phase, for lack of a better word.

21 In that phase the State would present any aggravating
22 factors that they wish to present. The defense would be
23 entitled to present any mitigating factors, that is, factors
24 that would be favorable to the defendant, present all that,
25 and then the court would instruct you again on the law, the

1 jury again on the law that applies. And you would be asked
2 to render a decision and -- asked to render a verdict. And
3 the possible verdicts would be the death penalty, and the
4 other possible verdict would be life without the possibility
5 of parole. Do you understand that?

6 A. Yes, sir.

7 Q. Now, ma'am, would you have -- would you be able to do
8 that, listen to the testimony and the evidence, and based on
9 all of that, would you be able to issue a verdict for either
10 the death penalty or life without the possibility of parole,
11 based on the facts and circumstances presented to you?
12 Would you be able to do that?

13 A. Yes.

14 Q. Now, let me ask you if a person was found guilty of
15 murder, would you always give the death penalty for that?

16 A. No.

17 Q. All right. If a person was found guilty of murder,
18 would you always give life without parole?

19 A. No.

20 Q. So you could -- depending upon the facts and
21 circumstances and the law, you could render a decision that
22 you think would be appropriate under the circumstances, is
23 that correct?

24 A. Yes, sir.

25 Q. All right. Thank you, ma'am. Please answer any

1 questions that the State may have.

2 MR. BULSA: Thank you, Your Honor.

3 VOIR DIRE EXAMINATION BY MR. BULSA:

4 Q. Ms. Paquin?

5 A. Paquin.

6 Q. Ma'am, I notice that you are of the Catholic faith?

7 A. Yes.

8 Q. How does that factor into your viewpoint?

9 A. Well, I believe in some of it -- most of the teachings
10 in the Catholic church, but I think they are biblical, and I
11 realize that they are against the death penalty and abortion
12 and that sort of thing, and I feel like there is some --

13 THE COURT: Ma'am, excuse me. I'm sorry to
14 interrupt. The court reporter is trying to hear you, and so
15 he has to record what you say, so please can you just speak
16 a little towards the mike and just a little louder, please.

17 THE CLERK: Dont be afraid of it. It's not going
18 to bite you. Just talk right on into it.

19 A. I just -- I feel like that's a personal decision and I
20 have -- I have not -- I have always felt that the death
21 penalty was always an option for certain crimes.

22 BY MR. BULSA:

23 Q. Were you a regular attendant of church?

24 A. Yes, I am.

25 Q. And if you were to sit on this jury and would vote

1 death, would that impact your fellow church members view, do
2 you think?

3 A. Well, they wouldn't know, for one thing, but, no, I
4 don't think so. I think that -- I think that Catholics have
5 all kind of different views, and I don't think that we
6 are -- it is definitely have to be described by what the
7 church teaches.

8 Q. I'm just cautious about whether it would put you in an
9 uncomfortable position later after.

10 A. I'm very -- there is some teachings that just don't
11 feel right to me.

12 Q. Thank you. So on your personal view you could vote
13 death, if you feel it's appropriate?

14 A. Yes.

15 Q. Or life, if you feel it's appropriate?

16 A. Yes.

17 Q. You would listen to the facts and the law as the judge
18 would give it to you?

19 A. I would.

20 Q. Now, ma'am, if you were to vote for the death sentence,
21 you would be required to sign what we call a death
22 certificate. Could you sign your name to that document?

23 A. What exactly is the document?

24 Q. It's a form where it's stating that you agree to
25 sentence the defendant to the death penalty. You would have

1 to actually sign your name.

2 A. If I felt that was the proper thing?

3 THE COURT: Solicitor, I'm -- again, I apologize
4 for interrupting, but if you are going to ask that of a
5 potential juror, please explain it in the way it is. It is
6 a form and all the jurors sign it.

7 MR. BULSA: Yes, sir, I'm sorry.

8 BY MR. BULSA:

9 Q. You, alone with -- you would collectively, with every
10 member of the jury, if that's the jury decision, everybody
11 would have to sign that document. You wouldn't have a
12 problem doing that?

13 A. If the jury decides that that's the penalty, even if I
14 disagreed with how the jury --

15 Q. No, ma'am. You have to all agree one way or the other.

16 A. All agree. So we all agreed, then I would -- yeah, I
17 would sign it.

18 Q. Okay. Thank you. That's what I'm trying to get it. I
19 appreciate it.

20 Answer any questions the defendant would have.

21 MR. STARNES: Thank you. May it please the court?

22 THE COURT: Yes, sir, Mr. Starnes.

23 VOIR DIRE EXAMINATION BY MR. STARNES:

24 Q. How are you doing today?

25 A. Fine.

1 Q. Paquett (sic) is that --

2 A. Paquin.

3 Q. Ms. Paquin, do you believe that not all killings are
4 murder?

5 A. Not all killings are murder? I think all killings are
6 murder.

7 Q. You think all killings are murder?

8 A. Yes.

9 Q. So, in other words, if -- in the first part of this
10 case, if you believed that I shot and killed --

11 THE COURT: Wait a minute. Avoid personal
12 references. Put that in the third person. Okay?

13 MR. STARNES: Yes, Your Honor.

14 BY MR. STARNES:

15 Q. So you believe that all killings are murder?

16 A. Yes.

17 Q. Do you believe that the defendant has certain defenses?

18 A. I'm sorry, say that again, please.

19 Q. In a case in which the State has brought a murder
20 indictment against the defendant, do you believe that a
21 defendant has certain defenses that he could rely on?

22 A. I guess so. You mean talking about self-defense?

23 Q. Yes, ma'am.

24 A. Then, yes, I think that -- there are -- somebody might
25 be killed in self-defense.

1 Q. Do you believe that there are lesser included offenses?
2 In other words, not all killings are murder, that there are
3 lesser included offenses that may not qualify for
4 self-defense, but may not qualify for murder, that may be
5 somewhere in between?

6 A. I -- I can't think of any.

7 Q. You can't think of any. Okay.

8 Mr. Derrick asked you about the penalty phase. If you
9 all agreed that the death penalty was appropriate, that you
10 could sign your name to that form and vote for the death
11 penalty. You could do that?

12 A. Yes, I believe so.

13 Q. If eleven jurors wanted to vote for death, could you
14 vote for life, if you felt that it was the appropriate
15 punishment?

16 A. Yes.

17 Q. Could you follow the law as Judge Alford instructed you
18 from the bench?

19 A. I'm sorry, in which?

20 Q. Could you follow the law that Judge Alford instructed
21 you?

22 A. Yes.

23 Q. Would you, excuse me, follow the law, even though you
24 didn't agree with it, that may not believe that that's what
25 law should be?

1 A. Yeah.

2 Q. Okay. Do you understand there is something called a
3 burden of proof and that the State is bound by that burden
4 of proof?

5 A. Yes.

6 Q. And that they have to prove a defendant guilty beyond a
7 reasonable doubt?

8 A. Yes. Yes, sir.

9 Q. Could you hold the State to that burden of proof?

10 A. Yes.

11 Q. Thank you, ma'am. That's all we can ask of you.

12 MR. BULSA: Just briefly, Your Honor.

13 RE-VOIR DIRE EXAMINATION BY MR. BULSA:

14 Q. Ms. Paquin, Mr. Starnes asked you about all killings
15 and whether you felt they were murder.

16 Do you understand that the judge would be instructing
17 you on various points of the law and you would be required
18 to listen to that law?

19 A. Right.

20 Q. And apply it to the facts that come from the witness
21 stand and testimony and evidence?

22 A. Yes.

23 Q. Okay. So you didn't go to law school, did you?

24 A. No.

25 Q. So while you might think all killings are murder, you

1 could listen to the law and decide whether it is or not?

2 A. Right, I could. I guess I wasn't thinking of the legal
3 definition of murder. I was just thinking in my mind what
4 killing is, and to me it's -- it would be murder, but that's
5 not legal definition of it.

6 Q. You could follow the law?

7 A. Yes, yes.

8 Q. And if it were a lesser included offense, if the judge
9 gave you one, you would feel that you could follow his
10 instructions, if that's what you felt the evidence met?

11 A. Yes, ma'am.

12 Q. Thank you, ma'am.

13 MR. STARNES: Your Honor, could I follow up,
14 please?

15 THE COURT: Yes, briefly.

16 RE-VOIR DIRE EXAMINATION BY MR. STARNES:

17 Q. If the judge give you an instruction regarding
18 self-defense in this case, could you follow that law?

19 A. If I -- I would follow the instructions of the judge.

20 Q. And you could follow the law regarding self-defense?

21 A. As the judge would present it, yes.

22 Q. Thank you, ma'am.

23 THE COURT: All right. Thank you, ma'am.

24 If you will please wait just outside the courtroom
25 door for me. We will have you right back in.

1 (Whereupon, Juror Number 213 left the courtroom)

2 THE COURT: Position of the State?

3 MR. BULSA: She's qualified, Your Honor.

4 THE COURT: Defense?

5 MR. STARNES: Qualified, Your Honor.

6 THE COURT: Yes, sir, I agree she's qualified.

7 I'm trying to give her a lesson on the law. She
8 doesn't understand all that, but she knows what she could
9 do.

10 Let's bring her back in, please.

11 (Whereupon, Juror Number 213 entered the
12 courtroom)

13 THE COURT: You may stand right there, please,
14 ma'am.

15 JUROR NUMBER 213: Uh-huh.

16 THE COURT: Let me explain to you that the court
17 finds you qualified as a juror, which means that you will be
18 in the jury pool. It doesn't mean you necessarily are going
19 to serve on the jury. You would be in the pool from which
20 the jury is drawn.

21 JUROR NUMBER 213: Okay.

22 THE COURT: What I'm going to do is to free you up
23 now and ask you to report back Wednesday at three p.m..
24 However, tomorrow night, Tuesday night after six o'clock,
25 you can call the voicemail number that you have, and call

1 the voicemail and listen to the response for qualified
2 jurors, because you would be qualified juror. It will tell
3 you if they have changed the date and time that you are to
4 return. Okay. It will also be on the clerk's website for
5 qualified jurors. Look at that and it may tell you when the
6 time has been changed. Of course, you could always call the
7 clerk's office, but check those first, if you will. And,
8 otherwise, report back on Wednesday at three p.m. Thank you
9 ma'am.

10 JUROR NUMBER 213: Thank you, sir.

11 (Whereupon, Juror Number 213 left the courtroom)

12 (Whereupon, Juror Number 84 entered the courtroom)

13 THE COURT: That's good.

14 VOIR DIRE EXAMINATION BY THE COURT:

15 Q. Sir, you are Everett Ernst, is that correct?

16 A. Yes, sir.

17 Q. Juror number 84?

18 A. Yes, sir.

19 Q. Mr. Ernst, I would ask you to please just relax. This
20 is a very informal session. Some questions will be asked of
21 you regarding your views as to the death penalty or a life
22 sentence, and that kind of thing, some questions along those
23 lines.

24 There are no right or wrong answers. Nobody can
25 disagree with you or argue with you about anything like

1 that. It's not a third degree type thing. We're just
2 trying to get a little information.

3 I would remind you that you are still under oath. You
4 were placed under oath this morning with the jury and you
5 are still under oath.

6 Now, you submitted a juror questionnaire form,
7 information form, back to the clerk's office. Is there
8 anything on there that needs to be changed, updated? Any
9 changes need to be made on that?

10 A. No, nothing needs to be changed.

11 Q. All right. Did you see -- back in the jury room did
12 you see a long list of potential witnesses in this case?

13 A. Yes, sir.

14 Q. Sir, there is long list of witnesses. All of those
15 witnesses will not be called in this case, but some of them
16 will be called. And the question I wanted to ask you is,
17 and if you know any of those potential witnesses, I would
18 ask that you refer to them by number and not by name. But
19 did you recognize or know any of those people who were on
20 that list?

21 A. Not to my knowledge.

22 Q. Not to your knowledge. All right, sir.

23 Now, did you see back in the jury room there was a
24 sheet with three paragraphs on there that talked about three
25 different kinds of jurors. This was not an all-inclusive

1 list of jurors, obviously, but did you identify yourself as
2 being like one of those three potential jurors?

3 A. More like the third type.

4 Q. Third type.

5 And so you would be the type of juror who would not
6 have his mind made up in advance, but you would be willing
7 to listen to the testimony and evidence that comes in during
8 the course of the trial, the court's instructions on the law
9 and apply that to the facts, and then reach your decision
10 based on that, sir?

11 A. Yes, sir.

12 Q. All right. And do you understand that in this case --
13 in a death penalty type case where the State is seeking the
14 death penalty, the procedure is a little bit different, in
15 that in the first part, the first thing that happens is that
16 there is a regular trial. And if -- the State has to prove
17 the defendant guilty of the charges against him beyond a
18 reasonable doubt.

19 If they fail to do that, of course, that would be the
20 end of the matter and your juror service would be ended at
21 that point.

22 However, if the jurors found -- if the jury found that
23 the State had proven the elements of those offenses, the
24 offense of murder, beyond a reasonable doubt, then we would
25 go to a second phase of the trial, in what's called, for

1 better -- for lack of a better word penalty phase. And in
2 that the jury would hear aggravating factors presented by
3 the State mitigating factors presented by the defense, and
4 then looking at all of that, the court's instruction on the
5 law that applies, determine what would be the appropriate
6 punishment, which would be either the death penalty or life
7 in prison without the possibility of parole. Do you
8 understand that, sir?

9 A. Yes, sir.

10 Q. All right. And so let me ask you whether you could
11 listen to the testimony and evidence, and all the evidence
12 presented to you and the law, and make a decision on that
13 that you think would be appropriate, insofar as punishment?

14 A. Yes.

15 Q. Okay. If someone was convicted of murder, would you
16 always give the death penalty, sir?

17 A. I can't say always, no.

18 Q. If someone was convicted of murder, would you always
19 give life without the possibility of parole?

20 A. No.

21 Q. So it would depend upon the facts and circumstances?
22 You would make a decision based upon that?

23 A. Yes.

24 Q. And you could find either way, if the circumstances
25 warranted it?

1 A. Yes.

2 Q. Thank you, sir. Answer any questions, please, that the
3 solicitor may have for you.

4 VOIR DIRE EXAMINATION BY MR. BULSA:

5 Q. Good afternoon Mr. Ernst.

6 A. Good afternoon.

7 Q. Are you doing okay today?

8 A. Oh, yeah.

9 Q. I noticed that you have been married for 37 years.
10 Congratulations.

11 I just a few questions.

12 A. That's not a life sentence.

13 Q. Now, the judge asked you almost everything, but I just
14 want to ask you one last question. If you sat on the jury
15 and collectively agreed unanimously to vote for the death
16 sentence, could you sign your name to the death certificate?

17 A. Yes.

18 Q. Thank you, sir.

19 THE COURT: Solicitor, I'm going to ask you not to
20 refer to this as the death certificate.

21 MR. BULSA: Okay.

22 THE COURT: But a verdict form.

23 MR. BULSA: Verdict form, I'm sorry.

24 THE COURT: I think -- that's what I would
25 appreciate you saying.

1 MR. BULSA: Yes, I'm sorry.

2 THE COURT: Mr. Starnes.

3 VOIR DIRE EXAMINATION BY MR. STARNES:

4 Q. How are you doing okay?

5 A. Not too bad.

6 Q. Good. Did you ever sit on a jury before?

7 A. Yes, sir. Not a criminal jury.

8 Q. Not a criminal jury?

9 A. No.

10 Q. Civil jury?

11 A. Yes.

12 Q. Do you believe that not all killings are murder?

13 A. True. Yes, I do. I'm sorry, I said true. Yes.

14 Q. Could you tell me a little bit?

15 A. Well, what do you mean all killings? A human life is
16 taken regardless, okay, whether they are killed or murdered.

17 Killing occurs on battlefields all the time. That's --
18 there is a difference between a killing and a murder.

19 Murder is usually predisposed, in my mind. We will
20 find out later.

21 Q. Okay. Do you believe that an individual charged with
22 murder has certain defenses that they can rely on?

23 A. I would imagine so.

24 Q. Could you tell me how you feel about that?

25 A. Well, true. What happened in the situation? You know,

1 that to me is the truth is the answer. You know -- okay.
2 How can I say this? Someone driving down the street,
3 somebody jumps out from behind the bush and someone dies.
4 It wasn't meant to happen. Pure accident.

5 Someone driving down the street, someone walking along
6 the side of the street, a little swerve and a person dies,
7 that's murder, because they intended to hit the individual.

8 Q. Okay. So, in other words, if someone intends to kill
9 someone, you would say that was murder?

10 A. In civilian circumstances, yes.

11 Q. Could you follow the law as the judge instructed you in
12 this case? For instance, if you -- could you follow the law
13 in this case if the judge instructed you on self-defense?

14 A. On what the law is determined to be self-defense, is
15 that what you are saying?

16 Q. Yes, sir.

17 A. Yes, I would have to.

18 Q. Would you listen to all the testimony and see all the
19 evidence?

20 A. You would have to hear all sides.

21 Q. And you would follow that law as the judge instructed
22 you?

23 A. Yes.

24 Q. Do you understand that in the event that the defendant
25 is found not guilty, we would not enter that penalty phase;

1 but do you understand there is a lesser included possible
2 offenses?

3 A. Lesser -- oh, we have two counts -- according to what I
4 remember, two counts of murder and one of unlawful holding
5 of a weapon or something. I don't remember that one.

6 Yeah, that's the lesser charge, right? In other
7 words --

8 Q. Such as manslaughter.

9 A. Oh, oh, I see, in the penalty -- I'm sorry.

10 Q. If the first part, not the penalty --

11 A. Right.

12 THE COURT: Mr. Starnes, we are really asking
13 questions regarding -- or asking questions regarding the
14 penalty phase, so we don't need to get -- most of the jurors
15 won't have any understanding about lesser offenses on this
16 until it's instructed by the court, and then sometimes they
17 have trouble understanding them, so let's not go there.

18 MR. STARNES: Yes, sir.

19 BY MR. STARNES:

20 Q. In the event we do get to the penalty phase in this
21 case, do you have a problem signing a verdict form; in other
22 words, sentencing someone to die? Can you sign your name to
23 that, giving someone the death penalty?

24 A. Yes.

25 Q. If you felt the facts and circumstances didn't warrant

1 the death penalty but eleven jurors wanted to give the death
2 penalty but you didn't feel it was appropriate, could you
3 still vote for life?

4 A. Yes.

5 Q. Thank you, sir. That's all we can ask for.

6 MR. BULSA: Nothing further, Your Honor.

7 THE COURT: Sir, if you would stand just outside
8 of the courtroom for just a moment, we will have you back in
9 momentarily. Thank you.

10 JUROR NUMBER 84: All right.

11 (Whereupon, Juror Number 84 left the courtroom)

12 THE COURT: Position of the State?

13 MR. BULSA: He's certainly qualified, Your Honor.

14 MR. STARNES: He's qualified, Your Honor.

15 THE COURT: Thank you. The court agrees he's
16 qualified.

17 Please bring him back in.

18 (Whereupon, Juror Number 84 entered the courtroom)

19 THE COURT: Mr. Ernst, if you will stand right
20 there, please, sir.

21 The court finds you qualified to serve on the jury
22 pool in this case. I would explain to you that you are not
23 actually on the jury. You are in the jury pool from which
24 the jury will be selected a little later on in the week.

25 I'm going to excuse you at this time and ask you

1 to report back to court on Wednesday, at three p.m., okay?

2 Now, you can call into the voicemail number. I
3 think you were given that with your materials. Call that
4 number and get a voicemail and listen to a message for
5 qualified jurors, which you are now a qualified juror.
6 Okay. And they will have a message on there and it could
7 tell you -- it could change the date and time to return.
8 Okay. And so you would call in there and get that
9 information. That would be tomorrow night, Tuesday night,
10 after six p.m.. Okay.

11 You can also, if you have access to a computer,
12 you could check the website, the clerk's website, and there
13 would be on the website a message for qualified jurors will
14 also tell you when you are to report back, okay, which could
15 chance.

16 If you have any question, you could always call,
17 but please try those numbers first. Call that number first.
18 Otherwise, just please report back Wednesday at three p.m..
19 Okay. Thank you, sir.

20 JUROR NUMBER 84: Thank you.

21 (Whereupon, Juror Number 84 left the courtroom)

22 MR. STARNES: Your Honor, if I could, could we
23 take up a matter before the next juror comes in?

24 THE COURT: Yes. Hold up just a minute.

25 Yes, sir.

1 MR. STARNES: Your Honor, regarding the voir dire
2 process and the questions, I think I should be entitled to
3 explore the juror's views as lesser included offense
4 regarding this trial. I think I should be allowed to ask
5 them about lesser included offenses and could they consider
6 that.

7 THE COURT: Here is the problem with that.

8 You can already see they don't know what you are
9 talking about, and so because most jurors are not -- most
10 persons out there, lay persons, are not going to understand
11 that voluntary manslaughter is a lesser included offense of
12 murder.

13 They are not going to understand an involuntary
14 manslaughter may be a lesser included of murder, depending
15 upon the facts and circumstances.

16 They are not going to understand. So in order to
17 ask them that, they -- you can see they have no idea what
18 you are talking about when you are talking about lesser
19 included offense, so they won't know that. And really
20 that's not the purpose of voir dire.

21 I think the -- and based on the facts of the case
22 depends upon whether those lesser included offenses are even
23 going to be submitted to the jury.

24 Now, I understand it may have been submitted
25 previously in a previous trial, and that's a pretty good

1 indication they probably would be submitted again, if they
2 were submitted before, but I'm saying to you the jury is got
3 going to understand that. And what we are about with this
4 individual voir dire is to get their views towards the death
5 penalty or life, and that sort of thing, not feel them out
6 on whether they would be inclined to go for murder, or
7 voluntary manslaughter, or something like that. That's not
8 the purpose of this voir dire.

9 Now, I guess you certainly can ask them if they
10 would follow the instructions of the court as to the charge.
11 But to go further than that, it's going to depend on, you
12 know, facts and evidence that comes in during the course of
13 the trial.

14 I think that the jury is really not going to
15 understand what you are talking about. So how would you ask
16 that question so that they would understand what you are
17 talking about?

18 I have already told them if you are not found
19 guilty of murder, we don't go to the second phase. I'm
20 telling them that.

21 MR. STARNES: Yes, sir, I understand that, not
22 guilty, but there is something between not guilty and guilty
23 of murder.

24 THE COURT: Well, I mean -- well, they are not
25 asked to say today whether they would decide between the

1 two. You can't ask them that, because none of that is
2 before them.

3 MR. STARNES: Can I ask them could they consider
4 it? Would they consider it, and could I explore
5 self-defense? I mean, it's going to become apparent during
6 this trial that I shot and killed two individuals. That's
7 not going to be -- that's not going to be something that's
8 going to be denied. That's something -- and I think the
9 previous record and the previous opinion from the Supreme
10 Court, Your Honor, reflects that.

11 THE COURT: Well, I don't have any question about
12 that at all. I agree with the Supreme Court's opinion about
13 that. When I read it, I agreed with them. I mean,
14 naturally I follow it anyway, but I agreed with it. That is
15 the law and was the law.

16 I have no problems with you saying "could you
17 consider the defense of self-defense if it was instructed to
18 you by the court," something like that. I have no problems
19 with that.

20 And "would you consider any lesser included
21 offenses of murder" is the only way that you can ask it. I
22 just think it's going to be confusing to these potential
23 jurors because they are not going to know what you are
24 talking about.

25 MR. STARNES: I understand. So -- because I'm

1 kind of nervous about this, because I have never questioned
2 jurors, and that's why I'm kind of hesitant about asking
3 questions, because I don't want to ask a question that's
4 going to bring an objection from Mr. Gowdy, or get a
5 reprimand from Your Honor, or be interrupted. That's why I
6 would like to kind of establish a parameter here of the
7 questions I can ask and how I can ask them.

8 THE COURT: You know, the primary -- our primary
9 goal in this will individual voir dire and the reason we go
10 to individual voir dire is only in the death penalty cases
11 in South Carolina. And the reasons allowed for the
12 individual voir dire -- I have already voir dired the jury
13 with regard to certain general stuff, when we get to the
14 full panel. Do you remember me asking those questions?

15 MR. STARNES: Sure.

16 THE COURT: Do you know of any opinions; do you
17 know anybody; have you heard anything about the case; and
18 all that kind of stuff. That's standard voir dire. We
19 don't get into that on a regular trial.

20 We only get into this individual voir dire of
21 individual jurors in death penalty cases so that each side
22 can explorer whether the views of that individual juror with
23 regard to the death penalty. That's the primary purpose.

24 So having said that, I don't have any -- I guess I
25 don't have any problems with you asking them if they would

1 consider the defense of self-defense, if it was raised,
2 although we don't normally get into those things in voir
3 dire, individual voir dire. We don't usually get into those
4 kind of questions, because that's not the purpose of it,
5 okay? You are not allowed to feel jurors out in advance how
6 they feel about, you know, a lesser included offense they
7 don't know anything about, which may or may not be explained
8 to them.

9 MR. STARNES: I'm just going by the previous
10 record, because these questions were asked during the
11 previous trial about lesser included offenses. Mr. Salley
12 did ask numerous jurors about lesser included offenses and
13 the fact that I could -- that I could rely on self-defense.
14 He did explore that.

15 THE COURT: Yeah, and I think that's a legitimate
16 question about "do you understand that the defense can raise
17 the issue of self-defense and would you consider that." I
18 think that's appropriate, okay, and I told you that.

19 I don't have any problems with you asking about
20 lesser included offenses, or a lesser included offense, but
21 I don't want to get into any facts about it or anything like
22 that. You are not to allowed get into that --

23 MR. STARNES: Yes, sir.

24 THE COURT: -- of how they feel, or would this be
25 justified and that not be. You can't go that far with it.

1 So I guess if you could ask them "would you consider any
2 lesser included offenses that have been charged with
3 murder," I guess you could ask them that. I don't know if
4 that was asked at the previous trial.

5 MR. GOWDY: Well, I don't know -- I don't want to
6 address that, because with all due respect with the people
7 who were involved in the first trial -- we are back here
8 again for a reason, so I'm not persuaded by that.

9 What Your Honor said is 100 percent correct. If
10 this were a non-capital murder case, no matter how
11 aggravated, none of these questions would be asked.

12 THE COURT: That's true.

13 MR. GOWDY: None of them in a murder case.

14 The reason they are being asked is because it is a
15 death penalty case, and the questions should relate to the
16 death penalty.

17 Now if he wants to ask, as we have done, "you
18 agree all killings are not murder," that's fine.

19 If he wants to ask, "would you consider the
20 offense of self-defense," but most lawyers don't know the
21 difference between manslaughter, involuntary and murder.
22 And to expect a juror to know it --

23 THE COURT: They are not going to know. They
24 don't understand it. They don't even know what a lesser
25 included offense is, to be honest with you, and so that's

1 what what I say. In order to be able to explain it to them,
2 you know, you are going to have to get into a whole lot of
3 detail and they are probably not going to understand it.
4 You see where the problem is.

5 The purpose of this individual voir dire is to
6 determine their views as to the death penalty and whether
7 they would always give the death penalty, never give it, or
8 could give it, based on the circumstances. That's the real
9 basis of this individual voir dire.

10 I don't have a -- I don't have any problems with
11 you asking them whether "you understand that all killings
12 are not murder."

13 I don't have any problems with you asking "if the
14 defense of self-defense was raised, would you consider it?"
15 I think those are appropriate questions. But that's --
16 that's as far as you go.

17 If you are going to try to get into lesser
18 included offenses, it's difficult enough to try to -- for
19 the court to instruct the jury about it during regular
20 charges, but to do it in a voir dire situation you just
21 can't do it.

22 MR. STARNES: Yes, I understand.

23 THE COURT: You could ask them -- they are not
24 going to understand. That's what I'm saying. "Do you
25 understand that there might be a lesser included offense of

1 murder, and could you consider that, if the court instructed
2 you on it," I guess you could do that, but that's not what's
3 really -- I don't recall that being asked.

4 MR. STARNES: Your Honor, one other thing.

5 We had a hearing, it's been several months ago, in
6 regards to the questionnaire that we sent out, and there was
7 some questions on there that Mr. Gowdy got objections to,
8 and it was pretty lengthy, but he said some of those
9 questions could be asked today during voir dire.

10 THE COURT: Well, some of them are. You are able
11 to ask those today, but -- you are able to ask some of those
12 today.

13 MR. STARNES: Yes.

14 THE COURT: You know, but what's the use of asking
15 people "would you consider a lesser included offense?"
16 Well, we don't even know if a lesser included offense is
17 going to be submitted to them.

18 Secondly, they couldn't what you mean.

19 And you can't take up all day to explain to them
20 what it's meant by it, and they are not allowed to be pegged
21 out on it anyway.

22 You could ask them "could you consider -- you have
23 already asked them "would you follow the law instructed by
24 the court?" And every one of them has said yes. The court
25 will instruct them on the appropriate law, including lesser

1 included offense of murder. That's not our primary purpose
2 here today. You have asked them, every one of them, if they
3 could follow the law as instructed by the court, even if
4 they didn't agree with it, and they all said yes.

5 MR. STARNES: Yes, sir.

6 THE COURT: And that would include the court's
7 instruction on the lesser included offense of murder.

8 MR. STARNES: So it's my understanding I can ask
9 them could they consider self-defense and could they
10 consider following the law on self-defense?

11 THE COURT: Yes.

12 MR. STARNES: I'm permitted to ask those
13 questions, Your Honor?

14 THE COURT: Yes, sir.

15 MR. STARNES: Thank you, Your Honor.

16 THE COURT: If there was some way to legitimately
17 ask it, I wouldn't mind you asking about lesser included
18 offense, but I just don't think it's going to gain anything,
19 and I don't think that you are going to get any answers that
20 it's going to be meaningful, because they have no idea what
21 you mean about lesser included offense. Okay.

22 MR. STARNES: Well, I could ask them maybe
23 something between self-defense and murder.

24 THE COURT: Well, they are not going to understand
25 that. They don't know there is anything in between them.

1 They are going to be instructed later on in the trial.

2 And our purpose -- our main purpose here is to
3 determine their views as to the death penalty or not.

4 I don't have any questions raising the issue of
5 self-defense. You can raise that. Anything that might
6 affect their views as to the death penalty or life can be
7 asked. Okay. Self-defense you can ask.

8 MR. STARNES: Am I permitted to ask them about
9 willful or intentional killing?

10 THE COURT: No.

11 MR. STARNES: I'm not permitted to ask that.

12 THE COURT: In what context would you ask that?
13 You see, you get into the facts. You are going to get into
14 the facts, and I don't allow voir dire on the facts. The
15 court doesn't comment on the facts of the case. And so all
16 of that gets into the facts of the case. That's not the
17 purpose of this voir dire.

18 MR. STARNES: The last capital case that I watched
19 here a month ago from the press box over there, the attorney
20 asked that, each one of the individual jurors.

21 THE COURT: Asked them what?

22 MR. STARNES: Regarding intent, that the State had
23 to prove intent, because it's my understanding that they
24 have to prove intent with all crimes.

25 THE COURT: That's true.

1 MR. STARNES: And that during the voir dire of
2 that case, which was State --

3 THE COURT: But you don't get to feel them out and
4 say you realize the State has got to prove this, the State
5 has got to prove that. That's the purpose of voir dire for
6 you to feel out the juror or to ask them -- to develop a
7 profile of the jury.

8 You can do that with regard to the death penalty
9 or life. You can ask them questions designed to profile
10 them on that issue. Do you understand?

11 MR. STARNES: Yes, sir.

12 THE COURT: "Do you believe in the death penalty,
13 and anything about your religious beliefs that affects
14 that?"

15 "Do you -- you know, things like that that are
16 designed to help you determine what their views are in that
17 regard, and you are allowed to do that.

18 MR. STARNES: Yes, sir.

19 THE COURT: Okay. I'm not trying to hold you
20 back, but it's -- you know, but you are going -- you are not
21 getting any responses from the lesser included offenses,
22 because they don't know what you are talking about. We
23 haven't gotten a meaningful response yet.

24 MR. STARNES: I understand.

25 THE COURT: I'm not trying to limit you, really,

1 although that's not the purpose of this individual voir
2 dire, but you ask and I'll rule on it as we go. I'm not
3 trying to put parameters on you, but I'm trying to get you
4 to understand generally what the purpose of this individual
5 voir dire is. And so we will go from there.

6 All right.

7 MR. STARNES: Thank you, Your Honor.

8 (Whereupon, Juror Number 176 entered the
9 courtroom)

10 VOIR DIRE EXAMINATION BY THE COURT:

11 Q. Sir, you are H.L. McCart, is that correct?

12 A. Yes, sir.

13 Q. And you are juror number 176?

14 A. Yes, sir.

15 Q. Mr. McCart, I want you to relax. Just relax. This is
16 very informal. The only thing we are going to do is ask you
17 some questions to determine -- to help determine your views
18 with regard to the death penalty, life without the
19 possibility of parole, and perhaps some other things.

20 There are no right or wrong answers. Nobody is going
21 to disagree with you or argue with you. All we want you to
22 do is just give us open and honest answers as you can when
23 we ask these questions, okay?

24 A. Yes, sir.

25 Q. Just be relaxed, okay?

1 A. Yes, sir.

2 Q. Now, do you understand that you are still under oath?
3 You were put under oath this morning with the full jury, and
4 you are still under for the purpose or the information that
5 you are going to give the court. Do you understand that?

6 A. Yes, sir.

7 Q. Now, you had filled out and sent in a jury
8 questionnaire as to certain information in there, is that
9 correct?

10 A. Yes.

11 Q. Has anything changed on there that you need to modify
12 or change today?

13 A. I don't think so, sir.

14 Q. All right. And, sir, there was a list of potential
15 witnesses in this case, a long list of witnesses. All of
16 them will not be called in this case, but some of them will
17 be called. Did you see that long list of potential
18 witnesses?

19 A. The list here, sir?

20 Q. Yes, sir.

21 A. I know Harry Harmon. That's about the only one I know,
22 sir.

23 Q. Well, I don't want you to give me any names. Just give
24 me numbers.

25 A. I knew one.

1 Q. Just give me that person's number. What is that
2 person's number?

3 A. Hold on one second.

4 Q. Do you recall?

5 A. 38.

6 Q. 38.

7 Sir, let me ask you, if that potential witness were to
8 be called as a witness by either side in this case, would
9 that fact that they testified interfere in any way with your
10 ability to give both sides a fair and impartial trial in
11 this case?

12 A. No, sir.

13 Q. Did you see back in the jury room, there was a sheet
14 back there with three paragraphs on it that listed three
15 different types of jurors? Did you see that?

16 A. Yes, sir, I did.

17 Q. And, sir, of course this is not an all-inclusive list.
18 It's just kind of a general thing, but did you identify
19 yourself as being more like either one of those three types
20 of jurors?

21 A. The way it read to me, the way I represented it, I
22 could be partial -- I can be impartial as far as what the
23 jury goes about how I would feel about how you would -- how
24 this came about and what happened to it.

25 Now, if called, I would have no trouble not giving the

1 punishment, but I would also feel that if he deserved it, to
2 give the punishment, sir.

3 Q. All right. Would you say then that you are more like
4 the third type juror?

5 A. Yes, sir.

6 Q. All right. So you would not have your mind made up, or
7 at least the type juror you wouldn't have your mind made up
8 coming to court, but rather you would be willing to listen
9 to the testimony and evidence and the court's instruction on
10 the law and render a decision based on the testimony and
11 evidence and the law instructed by the court?

12 A. Yes, sir.

13 Q. And let me explain to you that in a case in which the
14 State is seeking the death penalty against a defendant,
15 there are possibly two parts of the trial.

16 The first part is the normal regular part, whereby the
17 State would have to prove the defendant guilty beyond a
18 reasonable doubt of the charges against him.

19 If the jury did not find that the State had proven the
20 elements of those offenses beyond a reasonable doubt, then
21 that would be the end of the matter and it would end, just
22 like any other trial. Do you understand that?

23 A. Yes, sir.

24 Q. But if the jury should find that the State had proven
25 the elements of those offenses beyond a reasonable doubt and

1 the defendant then was found guilty of the murder, then we
2 would go forward with the second part of the trial, which is
3 what's called, for lack of a better word, the penalty phase.

4 And in that phase, the State would be -- would present
5 whatever aggravated factors they felt like should be
6 introduced during the testimony and evidence in the case,
7 and the defense would be able to present all the mitigating
8 factors in there which ought to be considered with regard to
9 the appropriate sentence, and then the court would instruct
10 you on the law that applies. Do you understand that?

11 A. Yes, sir.

12 Q. All right. And then the jury would be asked to render
13 a decision as to the appropriate punishment, which would be
14 either the death penalty or life in prison without the
15 possibility of parole. Do you understand that?

16 A. Yes, sir.

17 Q. And could you do that, sir?

18 A. Yes, sir.

19 Q. Let me ask you whether if a person is found guilty of
20 murder, would you always give the death penalty?

21 A. It's according to the circumstances involved, sir.

22 Q. All right. And if a defendant was found guilty of
23 murder, would you always give life without the possibility
24 of parole?

25 A. There again, it's determined about the case itself,

1 sir.

2 Q. So you would want to know all the facts and
3 circumstances that would be presented during the trial
4 before you would make a decision?

5 A. Yes, sir.

6 Q. But if the facts and circumstances warranted it, you
7 could give either verdict, based on your view of the
8 testimony and evidence, is that correct?

9 A. Yes, sir, that's correct.

10 Q. Okay. All right. Thank you, sir.

11 Please answer any questions that the solicitor might
12 have for you.

13 MR. BULSA: Thank you, Your Honor.

14 VOIR DIRE EXAMINATION BY MR. BULSA:

15 Q. How are you doing, Mr. McCart?

16 A. Fine, sir.

17 Q. I'm sorry you had to wait so long this afternoon.

18 Just to clarify, I understand that you would be
19 impartial either way, is that true?

20 A. Yes, sir.

21 Q. And if you felt, after hearing the facts and
22 circumstances, the defendant deserved the death penalty, you
23 could issue that?

24 A. Yes, sir.

25 Q. And just as likely you could -- if you felt mercy was

1 warranted, then you could give him the life sentence?

2 A. Yes, sir.

3 Q. And would you have a problem signing, along with the
4 all the other jurors, a verdict form where a death sentence
5 had been issued?

6 A. No, sir.

7 Q. Thank you.

8 MR. STARNES: If it please the court, Your Honor.

9 THE COURT: Yes, sir, Mr. Starnes.

10 VOIR DIRE EXAMINATION BY MR. STARNES:

11 Q. Hi, Mr. McCart. How are you doing, sir?

12 A. Fine, sir.

13 Q. Mr. McCart, do you believe not all killings are murder?

14 A. Under certain circumstances.

15 Q. Certain circumstances?

16 A. Yes, sir, it would involve that answer.

17 Q. Would you listen to all the testimony and see all the
18 evidence in this case before you rendered a decision?

19 A. Yes, sir.

20 Q. And in doing that, would you listen to the law as Judge
21 Alford give it to you and apply that law to the facts and
22 circumstances of this case to give a just decision?

23 A. Sure will.

24 Q. In the event that the judge would instruct you on
25 self-defense, and the facts and circumstances there was

1 evidence of self-defense, would you be able to consider
2 that?

3 A. Yes, sir, I would be able to consider that.

4 Q. You would be able to consider that.

5 And you understand that if in the event that a not
6 guilty verdict -- or, in other words, you would have to find
7 me guilty of murder to enter that penalty phase?

8 THE COURT: Please avoid the personal reference,
9 sir.

10 BY MR. STARNES:

11 Q. I'm sorry. Do you understand that if a murder verdict
12 is not rendered, we do not enter the penalty phase?

13 A. Yes, sir.

14 Q. Okay. And in the event that we get into the penalty
15 phase, you would listen to all the evidence; in other words,
16 the aggravating and mitigating circumstances of this case?

17 A. I sure will.

18 Q. And in the event that eleven jurors wanted to vote for
19 the death penalty and you felt that the death penalty was
20 not warranted, could you still vote for life imprisonment?

21 A. I could vote my own conscience, yes, sir.

22 Q. You could vote on your own conscience?

23 A. Yes.

24 Q. And your own individual decision as to --

25 A. Yes, sir.

1 Q. -- to what you believed?

2 A. That's right.

3 Q. Thank you, Mr. McCart. That's all we can ask of you.

4 THE COURT: Thank you, sir. If you will wait just
5 outside the courtroom door. We will have you back in just
6 one minute, sir.

7 JUROR NUMBER 176: Yes, sir.

8 (Whereupon, Juror Number 176 left the courtroom)

9 THE COURT: Position of the State?

10 MR. BULSA: Mr. McCart is qualified, Your Honor.

11 THE COURT: Defense?

12 MR. STARNES: He's qualified, Your Honor.

13 THE COURT: I think he's qualified too.

14 Please bring him back in.

15 Those were very appropriate questions, Mr.

16 Starnes.

17 MR. STARNES: Thank you, Your Honor.

18 (Whereupon, Juror Number 176 entered the
19 courtroom)

20 THE COURT: Sir, you can stand right there, if you
21 will, please, sir.

22 JUROR NUMBER 176: Yes, sir.

23 THE COURT: Sir, we have qualified you to serve in
24 the jury pool in this case. That doesn't mean that you are
25 on the jury.

1. JUROR NUMBER 176: Yes, sir.

2 THE COURT: What it means is that you are in the
3 pool from which the jury will be selected.

4 What I'm going to ask you to do, I'm going to free
5 you up now and ask you to report back to court Wednesday at
6 three p.m..

7 JUROR NUMBER 176: This Wednesday at three p.m.?

8 THE COURT: Yes, sir.

9 JUROR NUMBER 176: Yes, sir.

10 THE COURT: Now, I would ask you, if you will, you
11 can call to the voicemail number. You should have been
12 given a number by the clerk's office --

13 JUROR NUMBER 176: Uh-huh.

14 THE COURT: -- there, and if you will call that
15 number, the voicemail, in the voicemail listen for a message
16 for qualified jurors. You are now a qualified juror. And
17 the message will tell you if that time and date changed. Do
18 you understand that --

19 JUROR NUMBER 176: Yes.

20 THE COURT: -- if three o'clock Wednesday has been
21 changed.

22 Also you can -- if you have access to the
23 computer, you can check the clerk's website for a message
24 for qualified jurors. Qualified jurors, if that time and
25 date has been changed, it will tell you on there that it has

1 been changed, but otherwise you would be expected to report
2 Wednesday at three.

3 JUROR NUMBER 176: Yes, sir.

4 THE COURT: Thank you very much.

5 JUROR NUMBER 176: Thank you, sir.

6 THE COURT: Yes, sir.

7 (Whereupon, Juror Number 176 left the courtroom)

8 (Whereupon, Juror Number 259 entered the
9 courtroom)

10 VOIR DIRE EXAMINATION BY THE COURT:

11 Q. Ma'am, you are Veronica Snow, juror number 259, is that
12 correct?

13 A. Correct.

14 Q. All right. If you would speak up just a little bit.

15 Ms. Snow, I want you to just relax. Okay. This is a
16 very informal session, and all we are going to do is ask you
17 some questions concerning your views as to the death penalty
18 or life without the possibility of parole, and perhaps a few
19 other things.

20 And there are no right or wrong answers. We want you
21 to just be as honest as you can and give us honest answers.
22 Nobody is going to argue with you or disagree with you.
23 Nobody is going to give you the third degree. Do you
24 understand?

25 A. Yes.

1 Q. Just answer as honestly as you can.

2 Now, you were placed under oath this morning with the
3 jury and you continue be under oath for the information that
4 you are providing the court at this time. Do you understand
5 that?

6 A. Yes, sir.

7 Q. Okay. And you sent in a juror questionnaire back to
8 the clerk's office that was sent to you, filled out. Did
9 you do that?

10 A. Correct.

11 Q. Ma'am, is there anything that's changed on that that
12 you need to modify or change, or notify the court about any
13 changes on that form?

14 A. No.

15 Q. Now, there was a list of potential witnesses in this
16 case, a long list, back in the jury room. Did you have a
17 chance to go over those names?

18 A. Yes.

19 Q. And if you recognize any of those names, I don't want
20 you to identify them by name, but identify by number, but
21 there is one of those sheets down in front of you being
22 referred to. Did you recognize any of those names that were
23 on there, ma'am? Just give us the number, if you did.

24 A. No, I don't.

25 Q. Okay. Ma'am, did you see a sheet back in the jury room

1 that had three paragraphs on it talking about three
2 different types of jurors?

3 A. I did.

4 Q. Okay. And ma'am, did you have a chance to look over
5 that?

6 A. Yes, sir, I did.

7 Q. And it's not an all-inclusive list, I understand, but
8 did you identify yourself as being more like one of these
9 three jurors?

10 A. Yes.

11 Q. And which one would you more likely be?

12 A. The second.

13 Q. The second one?

14 A. Yes.

15 Q. All right. And that one, it says that even though the
16 guilt of the defendant has been determined, under no
17 circumstances would you ever give the death penalty, is that
18 correct?

19 A. Correct.

20 Q. So there is no circumstances bad enough upon which you
21 could give the death penalty?

22 A. No.

23 Q. Okay. So if a person is convicted of murder, you would
24 always give a sentence of life without parole, no matter
25 what the circumstances might be?

1 A. Correct.

2 Q. Okay. Thank you, ma'am. Answer any questions that the
3 solicitor may have.

4 MR. BULSA: Your Honor, the State has no
5 questions.

6 THE COURT: Okay.

7 THE COURT: Mr. Starnes, any questions?

8 MR. STARNES: Thank you, Your Honor.

9 VOIR DIRE EXAMINATION BY MR. STARNES:

10 Q. Hi, Mrs. Snow, how are you doing?

11 A. Fine.

12 Q. My name is Norman Starnes. I'm the defendant in this
13 case.

14 If you sit as a juror on this case, could you follow
15 the law as Judge Alford instructed you?

16 A. I could.

17 Q. You could.

18 Could you consider life without parole?

19 A. Yes.

20 Q. In any circumstances could you consider the death
21 penalty?

22 A. No.

23 Q. Under no circumstances you couldn't consider the death
24 penalty?

25 A. None.

1 Q. Okay.

2 MR. STARNES: Thank you, Ms. Snow.

3 THE COURT: All right. Thank you, ma'am.

4 If you will wait just outside the courtroom door
5 and we will call you back in just a minute, okay?

6 JUROR NUMBER 259: Thank you.

7 (Whereupon, Juror Number 259 left the courtroom)

8 THE COURT: Position of the State?

9 MR. BULSA: Your Honor, clearly she's not
10 qualified.

11 THE COURT: Defense?

12 MR. STARNES: She would make an excellent foreman,
13 Your Honor.

14 She's not qualified.

15 THE COURT: I agree with you one that you would
16 like to have on there, but I agree that she's not qualify.

17 Please bring her in, sir.

18 (Whereupon, Juror Number 259 entered the
19 courtroom)

20 THE COURT: Ms. Snow, you can stand right there,
21 if you will.

22 We appreciate your openness and honesty in this
23 case and we are not going to require you to serve on this
24 jury, so we are going to excuse you at this time and thank
25 you very much for coming in, patience and sacrifice that you

1 have made today.

2 The clerk will put a check in the mail for your
3 service today. This will complete all your service for the
4 week. Okay?

5 JUROR NUMBER 259: Thank you.

6 THE COURT: Thank you, ma'am.

7 (Whereupon, Juror Number 259 left the courtroom)

8 THE COURT: Your Honor, I don't know. The next
9 juror 117, I don't have any information on this juror.

10 THE COURT: Do we have a questionnaire back?

11 THE CLERK: One second, Your Honor.

12 (Off the record)

13 (Back on the record)

14 THE COURT: Maybe we can go onto the next one
15 while we are waiting.

16 THE CLERK: If they have had time to review you
17 the documents.

18 THE CLERK: Did y'all get one.

19 MR. BULSA: We have one, yes, sir.

20 MR. GOWDY: We do.

21 THE CLERK: Judge, do you have your copy?

22 THE COURT: What number was she?

23 THE CLERK: 117.

24 THE COURT: Yeah, I do have it.

25 THE CLERK: Thank you, judge.

1 THE COURT: In this book.

2 Does everybody else have it now?

3 Yeah, it's in the book, my book.

4 (Off the record)

5 (Back on the record)

6 MR. STARNES: Your Honor, we are ready.

7 THE COURT: You are ready to go?

8 MR. STARNES: Yes.

9 THE COURT: We are ready, sir.

10 (Whereupon, Juror Number 117 entered the
11 courtroom)

12 VOIR DIRE EXAMINATION BY THE COURT:

13 Q. Sir, you are Rodney Heatly, juror number 117, is that
14 correct?

15 A. Correct.

16 Q. Mr. Heatly, I want you just to relax. This is a very
17 informal session.

18 We are going to ask you some questions related to your
19 views towards the death penalty and life without parole
20 sentences and that kind of thing.

21 There are no right or wrong answers to these questions.
22 We just want you to give open and honest answers. Give us
23 the best answers as you can. Nobody is going to disagree
24 with you or anything like that.

25 Now, do you remember this morning you were qualified,

1 along with all of the other jurors -- not qualified. You
2 were put under oath, along with all the other jurors?

3 A. Yes, sir.

4 Q. You continue to be under oath for the information that
5 you are going to provide the court at this time. Do you
6 understand that?

7 A. Yes, sir, I understand.

8 Q. Okay. Now, you have submitted a juror questionnaire,
9 the responses to that questionnaire to the clerk's office.
10 Do you recall that?

11 A. Yes, sir.

12 Q. Okay. Is there any -- have there been any changes that
13 need to be reflected on there, sir? Any modifications or
14 changes since you submitted it?

15 A. No, sir.

16 Q. Sir, there was a list of potential witnesses in this
17 case, a long list of potential witnesses back in the jury
18 room. All of these witnesses will not be called in this
19 trial, but some of them will be called.

20 And my question is to determine whether you recognized
21 them to be a name? If you did recognize any of those
22 persons, I would ask you to identify them by number, but not
23 by name. The list is there in front you, if you need to
24 refer to it.

25 Did you recognize any of those names that are on the

1 list? If so, please give us the numbers of those persons.

2 A. No, sir.

3 Q. You did not recognize any?

4 A. No.

5 Q. All right. Now, sir, back in the jury room there was a
6 sheet with a list of three paragraphs which listed three
7 different types of jurors. This not all inclusive. It
8 won't identify every juror, obviously, potential juror, but
9 did you identify yourself as being more like one of those
10 three types of jurors?

11 A. The third kind.

12 Q. The third type?

13 A. Yes.

14 Q. So you are the type of juror who could listen --
15 wouldn't have his mind made up before coming to court, but
16 could listen to the testimony and evidence that comes in
17 during the course of the trial, the court's instruction with
18 regard to the law that applies to it, and render a decision
19 which would be fair to both the State and the defendant, is
20 that correct?

21 A. Correct.

22 Q. Now, do you understand that the State has the burden of
23 proof as to the charges against the defendant? The State
24 would have to prove the guilt of these charges beyond a
25 reasonable doubt. Do you understand that?

1 A. Yes, sir.

2 Q. If he were found not guilty of the murder charge, then
3 that would be the end of the matter, like any other trial,
4 insofar as the jury's participation in it.

5 However, if the jury were to find that the State had
6 proven the charge of murder against the defendant beyond a
7 reasonable doubt, then the case would go to a second phase
8 of the trial. For lack of a better word, it's called the
9 penalty phase, in which the jury would be listening to
10 aggravating factors presented by the State and --
11 aggravating factors, including testimony and evidence. And
12 the defense would be entitled to present mitigating --
13 mitigation through testimony and evidence in the case. And
14 then the jury would be asked to just decide the appropriate
15 punishment, based on all of that information - the
16 aggravating factors, mitigating factors, and all of that.
17 Do you understand that?

18 A. Yes, sir.

19 Q. And the court would instruct the jury as to the law
20 that applies as to those issues. Do you understand that?

21 A. Yes, sir.

22 Q. Okay. Now, let me ask you whether you could follow
23 that testimony and evidence, consider all of that, and
24 follow the court's instructions with regard to the law that
25 applies and render what you feel is appropriate punishment

1 in that case, if you got to that stage?

2 A. I could.

3 Q. Okay. And the possible punishments would be the death
4 penalty or life without the possibility of parole. Do you
5 understand that?

6 A. Yes, sir.

7 Q. All right. And could you render a verdict, either of
8 those verdicts, if you thought they were appropriate under
9 the circumstances?

10 A. Yes, sir.

11 Q. Now, would you always give the death penalty if a
12 defendant was convicted of murder?

13 A. No, sir.

14 Q. Would you always give life without the possibility of
15 parole if the defendant was convicted of murder?

16 A. No, sir.

17 Q. All right. Thank you. Please answer any questions
18 that the State might have.

19 MR. BULSA: Thank you, Your Honor.

20 THE COURT: Solicitor.

21 VOIR DIRE EXAMINATION BY MR. BULSA:

22 Q. Good afternoon, Mr. Heatly.

23 A. How are you doing?

24 Q. Mr. Heatly, can you kind of explain to us a little bit
25 where you get your views on the death penalty from?

1 A. I guess my family. We did -- everybody deserve a fair
2 chance. No matter what they did or what crimes he
3 committed, everybody deserves a fair chance.

4 Q. Everybody deserves a fair chance?

5 A. Uh-huh.

6 Q. And what do you mean by that?

7 A. I guess basically whatever is presented, I look at it
8 that way and then basically make a decision off that.

9 Q. Okay. We are talking about the defendant here?

10 A. Uh-huh.

11 Q. Do you think he would deserve a fair chance?

12 A. Yes, sir.

13 Q. Okay. Does that mean a fair chance for life?

14 A. Fair chance to both.

15 Q. For both?

16 A. Uh-huh.

17 Q. How do you come to the distinction between which one
18 you choose?

19 A. Well, I would listen and then, like I said, I would
20 make my decision off that.

21 Q. But --

22 A. I couldn't be like well, he is guilty and he deserves
23 the death penalty, because it could be circumstances that he
24 don't deserve the death penalty.

25 Q. Okay. I'm a little confused, because you said about

1 deserve a fair chance?

2 A. Yes.

3 Q. That potentially suggests that they deserve to get a
4 life sentence?

5 A. Yeah, in certain circumstances I feel that it could
6 warrant just a life sentence.

7 Q. Okay. Are there circumstances where you feel he would
8 deserve the death penalty?

9 A. Yes.

10 Q. And do you think that would be a fair choice?

11 A. Yes.

12 Q. Mr. Heatly, the judge asked you about your
13 questionnaire, whether you needed to change anything. Do
14 you remember the jury form that was sent back to you and
15 asked you certain questions?

16 A. Yes.

17 Q. Okay. And I just want to see if you were mistaken
18 about one. You didn't answer the question where it has your
19 name listed.

20 May I approach, Your Honor?

21 THE COURT: Yes.

22 BY MR. BULSA:

23 Q. It highlighted it here that you had ever been convicted
24 of a crime, but you didn't answer that question. Was there
25 a reason for that?

1 A. No, I had -- they sent it to the wrong address and I
2 got it like a week before I was here, so I might have just
3 overlooked it. I didn't get it like everybody has got
4 theirs back in September. I got mine prior to -- week prior
5 to the beginning of this.

6 Q. So that was just an oversight on your part?

7 A. Yes, sir.

8 Q. All right. What is the answer to that question?

9 A. Yes. Not a felony crime. Just driving, traffic stuff
10 like that.

11 Q. Petty crimes and magistrate court?

12 A. Not even petty crimes. Just driving tickets, speeding,
13 and seat belt that stuff.

14 Q. And when was the shoplifting?

15 A. Oh, the shoplifting was like -- I think it would be
16 about 17.

17 Q. Okay. All right. Now, if you sat on this jury and
18 collectively and unanimously you all voted for the death
19 penalty, you would have to sign what's called the verdict
20 form. Would you sign your name to a verdict form sentencing
21 someone to death?

22 A. Yes, sir, I could.

23 Q. Do that and live with yourself for the next day?

24 A. Yes, sir, I could.

25 Q. You wouldn't face any repercussions from your family or

1 anybody?

2 A. No, sir.

3 Q. All right. Thank you.

4 MR. STARNES: If it please the court.

5 THE COURT: Yes, sir.

6 VOIR DIRE EXAMINATION BY MR. STARNES:

7 Q. How are you doing today, Mr. Heatly?

8 A. Okay.

9 Q. I'm Norman Starnes. I'm the defendant in this case.

10 Mr. Heatly, do you understand that the State has to
11 prove beyond a reasonable doubt that a murder has been
12 committed?

13 A. Yes, sir, I do.

14 Q. Can you hold these gentlemen to that burden?

15 A. Yes, I could.

16 Q. You could hold them to their burden of proof?

17 A. If they presented it, like they were supposed to, I
18 guess.

19 Q. And in doing that, could you listen to all the
20 evidence, hear the testimony from the witness stand and see
21 all the evidence, the court exhibits, and be fair to the
22 State and the defendant?

23 A. Yes, sir, I could.

24 Q. Mr. Heatly, do you believe that not all killings are
25 murder?

1 A. Yes, I do.

2 Q. Could you explain that to me, what you mean by that?

3 A. I feel some killings are -- because I went through
4 something like that, my brother did the same.

5 Q. Yes, sir.

6 A. A child was beaten to death by his ex-wife's boyfriend,
7 and my brother caught up with him one day and killed him.
8 And to me it was justified, but by law it was not, and he
9 got what he deserved.

10 Q. Yes, sir.

11 You say by law. If you sat as a juror in this case and
12 listened to the facts and circumstances to this case, would
13 you accept the law as Judge Alford give it to you?

14 A. Yes, sir, I would.

15 Q. And would you apply that law in making a just decision?

16 A. Yes, sir, I would.

17 Q. In the event that self-defense become an issue in this
18 case, could you consider that evidence?

19 A. Yes, sir.

20 Q. And if Judge Alford charged the law on self-defense,
21 give you the law on self-defense, could you follow that law?

22 A. Yes, sir.

23 Q. Okay. Do you understand, Mr. Heatly, that in the event
24 that the defendant is not found guilty of murder, that we
25 don't go into that second part?

1 A. Yes, sir.

2 Q. But if we did go into that second part, you could
3 consider life or you could consider death?

4 A. Correct.

5 Q. One more question, Mr. Heatly.

6 In the event that eleven of the jurors wanted to give
7 me the death penalty, but --

8 THE COURT: Avoid personal reference.

9 BY MR. STARNES:

10 Q. Could you -- could you make a sentencing decision on
11 your own personal belief and not what someone else wanted?

12 A. Correct.

13 Q. You could do that?

14 A. Yes, sir.

15 Q. Mr. Heatly, that's all we can ask of you. Thank you
16 very much.

17 MR. BULSA: Just briefly?

18 THE COURT: Yes, sir.

19 RE-VOIR DIRE EXAMINATION BY MR. BULSA:

20 Q. Mr. Heatly, I'm a little concerned. You said your
21 brother went through something?

22 A. Uh-huh.

23 Q. Was he charged with murder?

24 A. Yes, he was.

25 Q. Was he tried?

1 A. Yes, he was.

2 Q. And convicted?

3 A. And convicted.

4 Q. Okay. What was his sentence?

5 A. He had ten years, and he only he served seven.

6 Q. So he was convicted of something less than murder?

7 A. It was manslaughter.

8 Q. Okay. Now, could you put aside that personal
9 experience and sit on this case?

10 A. Yes, sir.

11 Q. Knowing that you have to decide a similar type of
12 question?

13 A. Yes, sir. He did the crime, like I say, he got to
14 do -- what -- you do the crime, you got to do the time.

15 Q. What concerned me in your answer was you said that you
16 felt it was justified in what he did.

17 A. Yeah, I felt, you know, it was a little child, one of
18 the worst things that you do in this manner. And like I
19 said, he, to me, he was justified in what he did, but by law
20 he wasn't supposed to do what he did.

21 Q. And if you had sat on that jury, would you have
22 convicted him?

23 A. No, I wouldn't.

24 Q. That means that you would have disregarded the law that
25 the judge would have given you?

1 A. Oh, no, I would have -- I would have convicted him.
2 From what I heard and everything that he told me, I mean, he
3 really -- he didn't even go -- it wasn't even really a
4 trial. He just pleaded out.

5 Q. Oh, he actually pled guilty?

6 A. Yes.

7 Q. Okay. All right. Thank you, sir.

8 THE COURT: Any followup, Mr. Starnes?

9 MR. STARNES: Yes, sir.

10 RE-VOIR DIRE EXAMINATION BY MR. STARNES:

11 Q. Mr. Heatly, you could follow the law as Judge Alford
12 instructed it, if you were a juror in this case?

13 A. Yes, sir.

14 Q. Thank you, sir. That's all we can ask of you.

15 THE COURT: Thank you, sir.

16 If you will please just step outside the courtroom
17 and we will have you back in just a minute, okay?

18 (Whereupon, Juror Number 117 left the courtroom)

19 THE COURT: Position of the State?

20 MR. BULSA: Your Honor, while we are not sure he
21 could set aside his bias, he does appear qualified.

22 THE COURT: Defense?

23 MR. STARNES: He's qualified, Your Honor.

24 THE COURT: Okay. The court finds he's qualified.

25 Please bring him back in.

1 (Whereupon, Juror Number 117 entered the
2 courtroom)

3 THE COURT: Mr. Healy, you can stand right there,
4 if you will.

5 You have been found qualified to go into the jury
6 pool. What that means is you are not actually on the jury
7 yet. You would be in a jury pool from which the jury would
8 be selected. Do you understand that?

9 JUROR NUMBER 117: Yes, sir.

10 THE COURT: What I'm going to ask you to do is to
11 return back to court Wednesday at three p.m.. This coming
12 Wednesday at three p.m..

13 Now, there is a voicemail number that you have on
14 the information given to you by the clerk's office. If you
15 will call that tomorrow night after six o'clock. In the
16 event the time for you to return changed, then they will
17 give that to you on the voicemail. Okay? It may say come
18 later than that, or something. Do you understand?

19 JUROR NUMBER 117: Uh-huh.

20 THE COURT: Or if you have access to the computer,
21 you can check the clerk's website for qualified jurors and
22 that's going -- the same way on the voicemail. You listen
23 to the message for qualified jurors, because you are now a
24 qualified juror, and follow that message, or on the clerk's
25 screen there you would follow the instructions for qualified

1 juror. That may change the time and date. But, otherwise,
2 if you don't get any other information, please report back
3 to Wednesday at three p.m.. Okay?

4 JUROR NUMBER 117: Yes.

5 THE COURT: Thank you.

6 (Whereupon, Juror Number 117 left the courtroom)

7 (Whereupon, Juror Number 212 entered the
8 courtroom)

9 THE CLERK: Are you related to Coconut?

10 JUROR NUMBER 212: She's my sister. I'm her older
11 brother.

12 THE CLERK: I love her. All right. I'm going to
13 ask you to sit as close as you can. Speak up directly into
14 the microphone.

15 VOIR DIRE EXAMINATION BY THE COURT:

16 Q. Sir, you are Eric Pantsari, Juror number 212, is that
17 correct?

18 A. That's correct.

19 Q. All right. Mr. Pantsari, I'm just going to get you to
20 relax, if you will. This is a very informal session. We
21 just simply want to ask you -- we are going to -- sir?

22 A. Very formal with all the people around here and you
23 want me to relax?

24 Q. Just relax. We are -- we are going to ask you a few
25 questions concerning your views concerning the death penalty

1 and life imprisonment without parole and some things like
2 that. I want you to give as open and honest answers as you
3 can. Honestly answer these questions to the best of your
4 ability. Nobody is going to disagree with you or argue with
5 you or give you the third degree or anything like that.
6 That's not the purpose of this. And so just -- so just be
7 relaxed, if you will.

8 Now, I would remind you that the whole jury panel was
9 placed under oath this morning, and you continue to be under
10 oath for purposes of the information provided to the court.

11 You provided a juror questionnaire responses back to
12 the clerk's office, is that correct?

13 A. That's correct.

14 Q. And is there anything that has changed that you need to
15 reflect as a change on there since the time that you sent it
16 in?

17 A. I don't recall anything that would have changed, no.

18 Q. Did you see back in the jury room a long list of
19 potential witnesses in this case? Did you see that long
20 list of names?

21 A. I did, yes, sir.

22 Q. Sir, what I'm going to ask you is do you recognize any
23 of them? If you did, please do not give us their names, but
24 give us the number of the person that's listed there. And
25 it's in front of you, if you need to refer to it there. Did

1 you recognize any of the names that were on that list?

2 A. No, I did not.

3 Q. Okay. Sir, did you see a form back in the jury room
4 with three paragraphs on it that listed three different
5 types of jurors?

6 A. I did.

7 Q. And, of course, this is not an all-inclusive list with
8 regard to the jurors, but did you identify yourself as more
9 like one of those three jurors?

10 A. Pretty much so, yes, sir.

11 Q. Which one was that?

12 A. Probably number three.

13 Q. Number three.

14 So you are the type of juror who would not have your
15 mind made up before coming trial, but you could listen to
16 the testimony and evidence that comes in during the course
17 of the trial and the court's instruction to you with regard
18 to the law that applies and form your decision based on
19 that?

20 A. Yes, sir, I could.

21 Q. Do you understand that the State has to prove the
22 defendant guilty of the charges against you beyond a
23 reasonable doubt? Do you understand that?

24 A. Yes, sir, I do.

25 Q. And if they failed to prove beyond a reasonable doubt

1 to the jury that the defendant was guilty of the charge of
2 the murder, then that would be the end of the matter and it
3 would wind up just like most trials do in General Sessions
4 Court. That would be end of it, insofar as the jury's
5 involvement. Do you understand that?

6 A. I understand that, yes.

7 Q. However, if the jury were to find that the State had
8 proven the elements of the offense of murder beyond a
9 reasonable doubt, then we would go to what's called a second
10 phase of that trial, which is, for lack of a better word, is
11 referred to as the penalty phase.

12 In the penalty phase the State would present by way of
13 testimony and evidence certain -- any aggravating factors
14 that they wish to present.

15 The defense would be able to present any testimony and
16 evidence, all the mitigating factors that they want you, the
17 jury -- want the jury to consider.

18 And then the jury would be asked -- and the court would
19 instruct the law that applies under those circumstances, and
20 the jury would be asked to render a verdict for the
21 appropriate punishment, which would either be the death
22 penalty or life imprisonment without the possibility of
23 parole. Do you understand that?

24 A. Yes, sir, I understand.

25 Q. Now, I would ask you, sir, whether you could listen to

1 the testimony and evidence through a penalty phase of the
2 trial and the court's instruction with regard to the law
3 that applies and reach a verdict which you feel would be
4 appropriate punishment under the circumstances?

5 A. I could do that, yes, sir.

6 Q. So you could -- depending upon what the facts and
7 circumstances would be, you could return a verdict of the
8 death penalty or you could return a verdict of life
9 imprisonment without the possibility of parole, depending on
10 which one you found appropriate, is that correct?

11 A. Correct.

12 Q. Let me ask you whether you would always -- if somebody
13 was found guilty of murder, would you always impose the
14 death penalty?

15 A. No, not always.

16 Q. Would you -- if someone was found guilty of murder,
17 would you always enter a sentence of life without the
18 possibility of parole?

19 A. No, not always.

20 Q. So depending on the circumstances, you could return a
21 verdict for either of those verdicts?

22 A. Yes, I could.

23 Q. Thank you, sir.

24 Please answer any questions that the solicitor may have
25 for you.

1 MR. BULSA: Briefly, Your Honor.

2 VOIR DIRE EXAMINATION BY MR. BULSA:

3 Q. Mr. Pantsari?

4 A. Yes, that's correct.

5 Q. How are you doing today, sir?

6 A. Fine.

7 Q. I was looking through your questionnaire and I noticed
8 that you had college sports stickers on your bumper?

9 A. Yeah, I did.

10 Q. And you listed three colleges; USC, Citadel and
11 Clemson?

12 A. Yes, sir.

13 Q. How do you get by with that?

14 A. I'm a Carolina graduate. My oldest son went to the
15 Citadel. I did have some Citadel stickers on his car when
16 he was there, and the youngest went to Clemson.

17 Q. Okay.

18 A. The rogue of the family, but we love him anyway.

19 Q. I thought it might be because you worked for the state
20 and you had to put both signs on there.

21 A. Okay.

22 Q. I just have one question on the case. You seen pretty
23 certain in your beliefs.

24 Would you have a problem signing the verdict form,
25 along with all the other jurors, if you voted for a death

1 sentence?

2 A. No. No, I would not.

3 MR. BULSA: Thank you, sir.

4 MR. STARNES: If please the court, Your Honor?

5 THE COURT: Yes, sir, Mr. Starnes.

6 VOIR DIRE EXAMINATION BY MR. STARNES:

7 Q. Mr. Pantsari, you don't have any prejudice against any
8 Tennessee fans, do you?

9 A. I try not to, no.

10 Q. Mr. Pantsari, if you were selected as a juror in this
11 case, you would listen to all the evidence?

12 A. I would.

13 Q. You would take that evidence from the witness stand?

14 A. I would.

15 Q. Could you apply the law as Judge Alford instructed it
16 to you?

17 A. I certainly would try to, yeah.

18 Q. Certainly would try to, okay.

19 Do you understand that the State has to prove the
20 defendant guilty beyond a reasonable doubt?

21 A. Yes, I do.

22 Q. And that if they failed to meet that burden, we don't
23 go into that second part of the trial?

24 A. I understand.

25 Q. Do you understand or realize that a defendant has

1 certain defenses?

2 A. I'm not sure what you mean. Yeah, I think I do, but
3 explain it.

4 Q. Such as self-defense.

5 A. Oh, yeah, certainly.

6 Q. So you could hear all the evidence and you could
7 convict someone if you felt that they were guilty of murder?

8 A. Could.

9 Q. Could you acquit somebody if you felt that it was
10 self-defense?

11 A. Oh, sure.

12 Q. Certainly?

13 A. Certainly.

14 Q. Okay. In the event that we were to get into a penalty
15 phase, that second part, would you consider giving a life
16 sentence because it would be your own individual decision?

17 A. Yeah.

18 Q. So if eleven wanted to give death and you felt that
19 life without parole was the appropriate punishment, you
20 could do that?

21 A. It would be difficult, but I think I could do that.

22 Q. It would be difficult, but you could do that?

23 A. Yeah.

24 Q. Thank you, Mr. Pantsari.

25 MR. BULSA: Nothing further.

1 THE COURT: Thank you, sir. If you will stand
2 just outside the courtroom door.

3 JUROR NUMBER 212: One comment. Vacation --
4 schedule-wise, I don't know how this court runs, but I do
5 have an out-of-country vacation planned for mid-December
6 so --

7 THE COURT: I can assure you, sir, that if we are
8 here in December, I will be over at the state hospital.

9 JUROR NUMBER 212: I just wanted to mention it. I
10 just wanted to mention it.

11 THE COURT: Yes, sir. If you will wait just
12 outside the courtroom door, we will have you back in just a
13 minute.

14 JUROR NUMBER 212: All right.

15 (Whereupon, Juror Number 212 left the courtroom)

16 THE COURT: Position of the State?

17 MR. BULSA: He's qualified, Your Honor.

18 THE COURT: Defense?

19 MR. STARNES: Qualified, Your Honor.

20 THE COURT: Thank you. I agree. He's qualified.
21 Please bring him back in.

22 (Whereupon, Juror Number 212 entered the
23 courtroom)

24 THE COURT: Sir, you can stand right there, if you
25 will, Mr. Pantsari.

1 The court has found you qualified to serve on the
2 jury panel. Let me explain to you that doesn't mean that
3 you are on the jury, but it means that you are on the jury
4 panel from which the jury will be drawn.

5 JUROR NUMBER 212: Okay.

6 THE COURT: So I'm going to excuse you at this
7 time and ask you to report back Wednesday, at three p.m..
8 However, in the event that time should change, I would ask
9 you to call in tomorrow night after six to that voicemail
10 number that the clerk has given you in your information
11 sheet and listen on the voicemail for a message to qualified
12 jurors. You are now a qualified juror. And if there is a
13 change in that time, that would be on that voicemail.

14 You can also check the clerk's website for a
15 qualified juror message. And on that if there is a change
16 in the time, you can get it off there.

17 JUROR NUMBER 212: Okay.

18 THE COURT: But if you don't get any other
19 information, please report Wednesday at three p.m..

20 JUROR NUMBER 212: Will do.

21 THE COURT: Thank you, sir.

22 (Whereupon, Juror Number 212 left the courtroom)

23 MR. STARNES: Could I take up one small matter up?

24 THE COURT: Yes, sir.

25 MR. STARNES: Your Honor, several months ago --

1 it's probably been about actually year and a half ago there
2 was an issue that arose in the Sixteenth Judicial Circuit
3 regarding cameras in the courtroom. I'm sure Your Honor
4 probably remembers that very well, because I have been in
5 York County. I noticed there is a camera right above this
6 projection screen here. I was told, but it's been probably
7 two years ago that when they built the courthouse, that this
8 camera can zoom in and read a newspaper. And I would ask
9 the court to consider instructing security not to record any
10 data or our notes that we are taking on this table, because
11 I'm very concerned about of that. I know it was an issue
12 that came up in the Sixteenth Circuit and --

13 THE COURT: Well, we never installed those
14 cameras. They were -- got to be installed for training
15 purposes so the solicitor could observe an assistant
16 solicitor from back in his office while they were doing
17 their final arguments.

18 MR. STARNES: Yes, sir.

19 THE COURT: The defense bar got all concerned
20 about that and we just -- it hadn't been quite installed, so
21 we didn't finish the installation, so it's not installed
22 there.

23 But can someone tell me about it? Is this a
24 security camera? Is that what it is, do you know?

25 THE CLERK: There is a security camera up there,

1 Your Honor. Yes, it is, but it is not positioned in any
2 way, shape or form that it would have anything, other than
3 their faces on this table right here. In fact, mostly it's
4 pointed at the witness stand and at the judge's bench for
5 security purposes.

6 THE COURT: All right. Let me ask those that are
7 here with security, if you make sure -- I'm not sure about
8 that camera. Make sure that it does not focus on anything
9 on the defense table to the point where you could read
10 anything in their notes or anything like that. Okay.

11 So they have been so noticed.

12 Anything else?

13 MR. STARNES: No, sir.

14 THE CLERK: It shows right here, judge. It shows
15 up on my computer screen in my office so that -- for
16 security purposes.

17 THE COURT: It maybe shows --

18 THE CLERK: It shows right here, judge. It
19 doesn't show anything out there.

20 THE CLERK: Do you understand, Mr. Starnes? It
21 just shows the bench and the witness chair is what it shows.

22 MR. STARNES: Okay. I just -- it was my
23 understanding that that camera could move.

24 THE COURT: Even if it can, I have instructed them
25 not to.

1 THE CLERK: Okay. It's focused on one position
2 and it with manually take someone to go up there and
3 re-position that camera for it to move.

4 THE COURT: Somebody would have to go up there and
5 move it by hand.

6 MR. STARNES: Thank you.

7 THE COURT: At any rate, they have been asked to
8 make sure that it does not get pointed at the defense table.

9 MR. STARNES: Your Honor, on the next juror, 298,
10 we just have an affidavit of legal service. There is no
11 questionnaire.

12 THE CLERK: Mr. Nettles, will you check the
13 remaining five on the next -- on the rest of the panel to
14 see if y'all missing anything else so we can provide them in
15 advance?

16 MR. NETTLES: I do have one on 298, I think.

17 THE COURT: Yeah, 298, Daniel Wallace, I have one.

18 THE CLERK: Does the State have one?

19 MR. COLER: Yeah.

20 THE COURT: He does have it.

21 MR. COLER: I got it, two pages. Do you want to
22 make a copy?

23 MR. STARNES: I have got an affidavit. That's all
24 I have.

25 THE COURT: All right. They will make a copy for

1 you. We will wait and make sure that you get a chance to
2 look at it.

3 MR. STARNES: Thank you, Your Honor.

4 (Off the record)

5 (Back on the record)

6 THE COURT: You need anymore time to look it the,
7 Mr. Starnes?

8 MR. STARNES: No, sir, we can proceed.

9 (Whereupon, Juror Number 298 entered the
10 courtroom)

11 VOIR DIRE EXAMINATION BY THE COURT:

12 Q. Sir, if you will please talk directly into that mike,
13 if you will, so that we can hear your voice.

14 A. Yes, sir.

15 Q. For the record, you are Daniel Wallace, juror number
16 298, is that correct?

17 A. That's correct, sir.

18 Q. Okay. Mr. Wallace, I want you to -- first of all,
19 invite you to be relaxed. This is a very informal session.
20 We are not going to give you the third degree or anything
21 like that. We are just going to ask you some general
22 questions to determine how you feel about certain issues,
23 and I want you to give as open and honest responses to the
24 questions that you might be asked, if you can. There are no
25 right or wrong answers. We just need to know generally how

1 you feel about some of these issues, okay?

2 A. Okay.

3 Q. Now, do you remember this morning the jury panel was
4 sworn, the whole jury panel, so you continue to be sworn and
5 under oath for the information that you are providing to the
6 court.

7 A. Yes, sir.

8 Q. Do you understand that?

9 A. Yes.

10 Q. All right. And you have provided to the court a juror
11 questionnaire form which you gave certain information.

12 Sir, is there anything in that form that needs to be
13 changed, any updated changes or anything need to be made on
14 that form, that you know of?

15 A. No, sir.

16 Q. Now, back in the jury room did you see a long list of
17 potential witnesses that might be called in this case?

18 A. Yes, sir.

19 Q. All of those witnesses are not going to go called, but
20 some of them are going to be called, and what we need to
21 know is -- and if you know any of those witnesses, don't
22 give me their names, but give me numbers, but did you
23 recognize any names on there or know any of those people
24 that are on the potential witness list?

25 A. I recognized --

1 Q. If you would, just give me numbers. You should have a
2 sheet in front of you that has them by number. If you will
3 give me their numbers.

4 A. As far as recognizing?

5 Q. Yes, sir.

6 A. Number 7 is who I think it is.

7 Q. Okay.

8 A. I think that's it.

9 Q. Okay. That's it.

10 Let me ask you if that potential witness were to be
11 called as a witness in this case by either side, would that
12 interfere in any way with your ability to give both sides a
13 fair and impartial trial in this case?

14 A. No, sir.

15 Q. Now, sir, did you see back in the jury room a sheet, a
16 one-page sheet with three paragraphs on it, which talked
17 about three different types of jurors? Did you see that,
18 sir?

19 A. Yes, sir.

20 Q. Did you have a chance to read it?

21 A. Yes, sir, I did.

22 Q. Sir, it's not an all-inclusive list, obviously, about
23 jurors, but did you identify yourself as more like one of
24 those three jurors?

25 A. The third.

1 Q. The third one.

2 So you would be the type of juror who would not have
3 his mind made up before coming to court and would want to
4 hear all the testimony and evidence in the case and the
5 court's instruction on the law that applies before you
6 formed an opinion about the case?

7 A. Absolutely.

8 Q. And do you understand that in a case in which the State
9 is seeking the death penalty against a defendant, that there
10 are potentially two phases of the trial?

11 The first phase is -- in the first phase the State
12 would be required to prove the defendant guilty beyond a
13 reasonable doubt of the charges against him. Do you
14 understand that?

15 A. Yes, sir.

16 Q. Okay. And if the State did not prove the elements of
17 those offenses beyond a reasonable doubt, then the jury
18 would render a verdict -- would find a not guilty charge or
19 would not find him guilty of the murder charge. Do you
20 understand that?

21 A. Yes, sir.

22 Q. Okay. Now, in the event, though, that the jury found
23 the State had proven the elements of that offense beyond a
24 reasonable doubt and found the defendant guilty of the
25 murder charge, then we would go to the second phase of the

1 trial.

2 In the second phase, for lack of a better word,
3 described as the penalty phase. And in that phase of the
4 trial the State would present any testimony and evidence,
5 determine any aggravating factors that they thought the jury
6 ought be considered, and the defendant would present any
7 testimony or evidence with regard to mitigating factors that
8 they think a jury should consider in deciding what would be
9 the appropriate punishment. Do you understand that?

10 A. Yes, sir.

11 Q. Okay. Now, could you listen to the instructions by the
12 court that applies in that phase of the trial, could you
13 consider all of the aggravating and mitigating factors in
14 that case and all the other instructions of the court and
15 render a decision with regard to the appropriate penalty in
16 the case?

17 A. Yes.

18 Q. And if you found, based on all the testimony and
19 evidence and the law as instructed to you, that the death
20 penalty was appropriate punishment, could you vote for the
21 death penalty, sir?

22 A. Yes.

23 Q. If you found that under all the circumstances --
24 testimony and circumstances and the charge on the law by the
25 court that the appropriate sentence was life imprisonment

1 without the possibility of parole, could you render that
2 verdict, sir?

3 A. Yes.

4 Q. So, as I understand, you could render either verdict,
5 based on your verdict of the facts and circumstances and
6 what's proven to you at that time?

7 A. Yes.

8 Q. Thank you. Please answer any questions that the
9 assistant solicitor might have for you.

10 MR. COLER: Thank you, Your Honor. May it please
11 the court?

12 THE COURT: Yes, sir.

13 VOIR DIRE EXAMINATION BY MR. COLER:

14 Q. Good evening, Mr. Wallace.

15 A. Good evening.

16 Q. Thank you for being here tonight. I'm not going to
17 keep you any longer than we need to. Just a couple of
18 questions.

19 The judge talked to you about the two phases of this
20 trial. Of course, we are talking now about the second
21 phase.

22 Describe for me, if you would, your -- just briefly
23 your thoughts on the death penalty and the basis for that.
24 What's your view?

25 A. Well, it's something, a final judgment like that is, it

1 would be something that would have to be overwhelming
2 evidence that would leave no shadow of a doubt in my mind
3 that I could render a verdict like that.

4 Q. And if we got to that second phase, of course, the
5 judge asked you if you found that a life sentence was
6 appropriate, you could do that?

7 A. Yes.

8 Q. And then, of course, if you found that the death
9 sentence was appropriate, you could do that?

10 A. I could.

11 Q. And you could sign a verdict form indicating that?

12 A. Yes.

13 MR. COLER: That's all I have, Mr. Wallace. Thank
14 you.

15 THE COURT: Mr. Starnes.

16 MR. STARNES: If it please the court, Your Honor?

17 THE COURT: Yes, sir.

18 VOIR DIRE EXAMINATION BY MR. STARNES:

19 Q. Hi, Mr. Wallace. How are you doing today?

20 Mr. Wallace, I noticed on your jury questionnaire you
21 worked at Tony's R.V.?

22 A. Yes.

23 Q. That's up on Pond Branch area?

24 A. Right.

25 Q. Have you ever discussed the death penalty with anybody

1 that you worked with there at Tony's R.V.?

2 A. Not to my knowledge.

3 Q. Not to your knowledge?

4 A. No.

5 Q. Do you understand or do you believe that not all
6 killings are murder?

7 A. Yeah.

8 Q. What do you mean by that?

9 A. Self-defense wouldn't be a murder.

10 Aggravated, some sort of, I imagine, would be
11 considered a murder.

12 Q. Aggravated. Okay.

13 Do you understand that the defendant has a right to
14 rely on certain defenses?

15 A. Yes.

16 Q. And if the judge instructed you on the law of
17 self-defense, would you consider that?

18 A. Absolutely.

19 Q. Would you listen to all the evidence from the witness
20 stand, take all the testimony, the court exhibits, and go
21 into that jury room and give a just decision?

22 A. I would.

23 Q. You would.

24 Do you understand that there is something called a
25 burden of proof, and that the State has a burden, they carry

1 that burden of proof to prove me guilty beyond a reasonable
2 doubt?

3 A. Yes.

4 Q. Can you hold the State to that burden?

5 A. I would have to, yes.

6 Q. If we did get into the penalty phase of that second
7 part and you felt that life without parole was the
8 appropriate punishment, could you make that on your own
9 individual decision?

10 A. I believe I could, yes.

11 Q. Do you think that you could do that?

12 A. Yes, sir.

13 Q. That's all we can ask of you, Mr. Wallace. Thank you.

14 MR. COLER: Just one followup question, Your
15 Honor, if I may?

16 THE COURT: Yes, sir.

17 RE-VOIR DIRE EXAMINATION BY MR. COLER:

18 Q. Mr. Wallace, just briefly.

19 The defendant asked you about the State's burden. The
20 judge is going to give you some instructions as a potential
21 juror. Would you be able to follow those instructions as
22 they were given to you by the judge?

23 A. Yes.

24 Q. And if the judge were to tell you about the burden of
25 the State being reasonable doubt, would you be able to

1 follow that instruction?

2 A. Yes.

3 Q. Because you had mentioned proof beyond a shadow of a
4 doubt. Would you be able to separate and understand or be
5 able to comprehend that if the judge were to tell you it was
6 beyond a reasonable doubt, that that would be the
7 appropriate burden?

8 A. Yeah.

9 Q. Okay.

10 MR. COLER: Thank you, Mr. Wallace.

11 MR. STARNES: Followup, Your Honor?

12 THE COURT: Yes, sir.

13 RE-VOIR DIRE EXAMINATION BY MR. STARNES:

14 Q. Mr. Wallace, Mr. Coler just asked you about a burden of
15 proof. If the Judge Alford instructed you that the State
16 had the burden to disapprove self-defense in this case,
17 could you hold them to that burden?

18 A. I believe so, yes.

19 Q. You believe so?

20 A. Yes.

21 Q. Thank you, sir.

22 THE COURT: All right. Thank you, sir. If you
23 please will wait just outside the courtroom door for just
24 one moment, we will have you back.

25 JUROR NUMBER 298: Yes, sir.

1 (Whereupon, Juror Number 298 left the courtroom)

2 THE COURT: Position of the State?

3 MR. COLER: He's qualified, Your Honor.

4 THE COURT: Defense?

5 MR. STARNES: He's qualified, Your Honor.

6 THE COURT: All right. I agree. I think he's
7 qualified.

8 Please bring him back in.

9 (Whereupon, Juror Number 298 entered the
10 courtroom)

11 THE COURT: Sir, if you will stand right there,
12 please.

13 Mr. Wallace, you have been found qualified to
14 serve in this jury panel. I have explained to you not --
15 that does not mean that you are on the jury in this case,
16 but you would be in the jury pool from which the jury would
17 be drawn. Do you understand that?

18 JUROR NUMBER 298: Yes.

19 THE COURT: What I'm going to ask you to do is I'm
20 going to excuse you at this time and ask you to report back
21 Wednesday afternoon at three p.m..

22 JUROR NUMBER 298: Okay.

23 THE COURT: Now, I would ask that you could call a
24 voicemail number that you have been given by the clerk's
25 office. It should be in the material given to you. On that

1 voicemail you can call tomorrow night, that's Tuesday night,
2 after six p.m..

3 JUROR NUMBER 298: Right.

4 THE COURT: Anytime after six. And there could be
5 a message on there for qualified jurors. You are now a
6 qualified juror. And the message would -- if the time has
7 changed, you would be given that in that voicemail message.
8 Do you understand that?

9 JUROR NUMBER 298: Yes, sir.

10 THE COURT: Or you would have -- you could check
11 with the clerk's website. And on it, it would be a message
12 for qualified jurors. And if the time has been changed, it
13 will be on there as well.

14 But if you don't hear anything otherwise, please
15 report back to Wednesday at three p.m.. Okay?

16 JUROR NUMBER 298: Yes.

17 THE COURT: Thank you very much.

18 (Whereupon, Juror Number 298 left the courtroom)

19 THE COURT: If anybody needs a quick break, let me
20 know.

21 (Whereupon, Juror Number 135 entered the
22 courtroom)

23 VOIR DIRE EXAMINATION BY THE COURT:

24 Q. Ma'am, you are Catherine Johnson, is that correct?

25 A. Yes, sir.

1 Q. Ms. Johnson, you are juror number 135, is that correct?

2 A. Yes, sir.

3 Q. Ms. Johnson, I'm going to ask you just to relax, if you
4 will. This is a very informal session. We are not going to
5 quiz you, or give you the third degree, or anything like
6 that.

7 We are going to ask you some questions, which are
8 designed to find out how you feel about certain things, but
9 there are no right or wrong answers. Nobody is going to
10 disagree with you, or argue with you, or anything like that.
11 Please answer the questions as openly and honestly as you
12 can, giving your honest opinions, okay?

13 A. I will.

14 Q. Now, I would remind you that, of course, that you were
15 put under oath this morning with the full jury and you
16 remain under oath for purposes of the information that are
17 providing the court. Do you understand that?

18 A. Yes.

19 Q. Now, you filed a juror information form with the clerk
20 when they sent you a juror summons, is that correct?

21 A. Yes, sir.

22 Q. Is there anything changed that you need to change on
23 that form, any updates or changes that need to be made?

24 A. No, sir.

25 Q. Did you see back in the jury room a long list of

1 potential witnesses names on a form back there?

2 A. Yes, sir.

3 Q. And I'm going to ask you if you recognize any of those
4 names, don't tell me the names, but just give me the number.
5 There is a sheet there in front you from which you could
6 just give me the number, but did you recognize any names on
7 that list?

8 A. Yes, sir, number 87.

9 Q. Number 87.

10 Any others?

11 A. That was it.

12 Q. Okay. Ma'am, let me ask you whether if that potential
13 witness were to be called as a witness in this case by
14 either side, would that interfere in any way with your
15 ability to give both the State and the defendant a fair and
16 impartial trial in this case?

17 A. It might.

18 Q. Okay.

19 A. Yes, sir.

20 Q. Wait just a minute.

21 THE COURT: Counsel, approach just a minute.

22 (Whereupon, the lawyers and the defendant
23 approached the bench for an off-the-record discussion)

24 BY THE COURT:

25 Q. Ms. Johnson, I'm going to go over the name with you

1 now. Juror number 87 is Marie Wearing, W-E-A-R-I-N-G?

2 A. Yes.

3 Q. Who is a representative of the South Carolina driver's
4 license division?

5 A. Yes.

6 Q. If she were to be called as a witness in this case, it
7 would be to verify a driver's license number and possibly
8 whether a driver's license was issued.

9 Now, if she were to testify to that, that was her only
10 testimony in this case with regard to that issue, would that
11 then affect your ability to be fair to both the State and
12 defendant in this case?

13 A. No, sir, it wouldn't.

14 Q. That wouldn't affect it?

15 A. No, sir.

16 Q. You could still be fair to both sides?

17 A. Yes.

18 Q. If that was the whole purpose of her testimony,
19 correct?

20 A. Yes, sir.

21 Q. Now, any other -- you didn't recognize any other names?

22 A. There was no others.

23 Q. Ma'am, did you see back in the jury room a sheet with
24 the list of three paragraphs with three different types of
25 jurors. Did you see that back there?

1 A. Yes, sir.

2 Q. Of course, this is not all inclusive. It doesn't
3 define every juror, but did you identify yourself with any
4 of those three types of jurors?

5 A. Number three.

6 Q. Number three.

7 So you would be the type of juror who could listen
8 to -- excuse me, you would not have your mind made up before
9 you came to court, but instead you would listen to the
10 testimony and evidence produced in the course of the trial
11 and the court's instruction to you with regard to the law
12 that applies to the issues in that case and render a
13 decision, which would be fair and impartial to both the
14 State and defendant in the case, is that correct?

15 A. Yes, sir.

16 Q. Now, ma'am, do you understand that in a case in which
17 the State is seeking the death penalty and against a
18 defendant, it's a little bit different, in that there are
19 possibly two trials, two phases of a trial.

20 The first part of that trial, maybe the only part, in
21 that part of the trial the State is required to prove the
22 defendant guilty beyond a reasonable doubt of the offenses
23 of which he's charged. Do you understand that?

24 A. Yes, sir.

25 Q. And, of course, if the jury found that the State had

1 failed to meet its burden of proof and did not find the
2 defendant guilty of the murder charge in that case, then
3 that would be the end of the matter and no second phase of
4 the trial would be necessary. But that would end the jury's
5 role in the case. Do you understand that?

6 A. Yes, sir.

7 Q. However, if the jury should find the State had proven
8 the elements of the offense of murder beyond a reasonable
9 doubt, then we would go to the second phase of the trial,
10 which, for lack of a better definition, is called a penalty
11 phase.

12 And in that part of the trial the State would be
13 allowed to put up any aggravating factors by way of
14 testimony and evidence that they wanted the jury to consider
15 on punishment. And the defendant would be entitled to
16 present by way of testimony and evidence all the mitigating
17 factors that he wished the jury to consider on the issue of
18 punishment. Do you understand that?

19 A. Yes, sir.

20 Q. And then the court would instruct the jury as to the
21 law that applies on it in that particular part of the trial.
22 Do you understand that?

23 A. Yes, sir.

24 Q. And then the jury would be asked, after receiving all
25 of that information, the court's instruction on the law, to

1 decide the appropriate punishment under the circumstances.

2 Do you understand that?

3 A. Yes, sir.

4 Q. Now, ma'am, if you believed -- after all the testimony
5 and evidence and instruction on the law, considering
6 aggravating and mitigating factors, everything that you
7 should consider, if you believed that the defendant should
8 receive the death penalty, could you vote for the death
9 penalty in that situation?

10 A. Yes, sir.

11 Q. All right. Now, ma'am, after the hearing all the
12 testimony and evidence and instruction on the law,
13 considering aggravating and mitigating factors and also the
14 fact, of course, as a matter of mercy the jury could
15 recommend life without the possibility of parole for no
16 other reason, but understanding that, could you also, if you
17 felt it appropriate punishment, give life without the
18 possibility of parole as a sentence?

19 A. Yes, sir.

20 Q. So as I understand it, you could give either the death
21 penalty or life without the possibility of parole, if you
22 reached that stage, if you thought it was appropriate?

23 A. Yes, sir.

24 Q. Is that correct?

25 A. Yes, sir.

1 Q. Thank you, ma'am. Please answer any questions that the
2 solicitor might ask you.

3 MR. COLER: Thank you, Your Honor.

4 VOIR DIRE EXAMINATION BY MR. COLER:

5 Q. Ms. Johnson, I just have a couple of questions for you.
6 I know it's late in the evening.

7 The judge was talking to you about the two phases of
8 this trial, the first part and the second part. I want to
9 ask you about primarily the second part.

10 In that part, if you were selected as a juror, you told
11 the judge that you could, if appropriate, sentence the
12 defendant to a sentence of life without parole, correct?

13 A. Yes.

14 Q. And by the same token, if you found it found
15 appropriate, after hearing all the evidence, you could
16 sentence the defendant to death?

17 A. Yes.

18 Q. And then as a result of that, you could take -- you
19 could sign a verdict form with your name, your signature on
20 that verdict form, indicating your verdict decision?

21 A. Yes, sir.

22 MR. COLER: Beg the court's indulgence for one
23 moment.

24 (Off the record)

25 (Back on the record)

1 MR. COLER: That's all I have.

2 Ms. Johnson, thank you.

3 THE COURT: Mr. Starnes?

4 MR. STARNES: May it please the court?

5 THE COURT: Yes, sir.

6 VOIR DIRE EXAMINATION BY MR. STARNES:

7 Q. Hi, Ms. Johnson. How are you doing?

8 A. I'm fine.

9 Q. Ms. Johnson, I'm Norman Starnes. I'm the defendant in
10 this case. I just have a couple of questions that I wanted
11 to ask you.

12 Do you believe that not all killings are murder?

13 A. Yes, sir, I do believe it.

14 Q. In other words, the fact that someone has been killed,
15 homicide has been committed, do you understand that the
16 defendant has certain defenses that he could rely on?

17 A. I'm not sure of your question. Say it one more for me.
18 I'm sorry.

19 Q. Such as self-defense. Do you believe that someone is
20 entitled to self-defense?

21 A. Yes.

22 Q. And in this case if self-defense become an issue, would
23 you consider that?

24 A. I would.

25 Q. And would you consider that and accept the law as Judge

1 Alford gives it to you regarding self-defense? Would you
2 apply that law to the facts and circumstances of this case
3 to give a just decision?

4 A. Yes.

5 Q. And would you pay attention to all of the testimony and
6 hear the testimony as it comes from the witness stand?

7 A. Yes.

8 Q. Ms. Johnson, in the event we did get into the penalty
9 phase, you said you could give life or you could give death?

10 A. Yes.

11 Q. Depending upon what you hear and what you see during
12 the trial?

13 A. Yes.

14 Q. In the event that eleven jurors wanted to give me the
15 death penalty and you felt that the appropriate punishment
16 was life without parole, could you give life without parole?

17 A. It would again depend upon the evidence and what I have
18 heard and I'm pretty firm on what I believe.

19 Q. Yes, ma'am.

20 And could you make that decision on whether life or
21 death, on your own individual decision?

22 A. Yes.

23 Q. Okay. And not what someone else thought?

24 A. Yes.

25 Q. Okay. Thank you, Ms. Johnson. That's all we can ask

1 of you.

2 THE COURT: Thank you, ma'am. If you will please
3 wait just outside the courtroom door. We will have you back
4 in in just a minute.

5 (Whereupon, Juror Number 135 left the courtroom)

6 THE COURT: Position of the State?

7 MR. COLER: She's qualified, Your Honor.

8 THE COURT: Defense?

9 MR. STARNES: She's qualified, Your Honor.

10 THE COURT: Court agrees she's qualified.
11 Please bring her back.

12 (Whereupon, Juror Number 135 entered the
13 courtroom)

14 THE COURT: Ms. Johnson, if you will stand right
15 there, please.

16 The court finds you qualified to serve as a juror
17 in this case. What that means is that -- it doesn't mean
18 that you are on the jury yet. What it means is that you are
19 qualified to be in the jury pool from which the jury would
20 be selected.

21 What I'm going to ask you to do is to report back
22 to court Wednesday, this coming Wednesday, at three p.m..
23 However, you can also check -- the clerk gave you number, I
24 believe, a voicemail number to call in after hours, and you
25 can call in tomorrow night. That's Tuesday, after six p.m..

1 Anytime after six. There's a voicemail on there. Listen
2 for a voicemail for qualified jurors. You are now a
3 qualified juror. And if there is a change in that time when
4 you are supposed to return, it would be reflected in that
5 voicemail.

6 You can also check the clerk's website on there,
7 if you have that ability to check on there. And on the
8 website there may be a message for qualified jurors, which
9 could change the time from Wednesday at three.

10 But if you do not hear anything else from anyone,
11 no changes made, please report back Wednesday at three p.m..
12 Okay?

13 JUROR NUMBER 135: Yes.

14 THE COURT: Thank you, ma'am.

15 (Whereupon, Juror Number 135 left the courtroom)

16 (Whereupon, Juror Number 218 entered the
17 courtroom)

18 VOIR DIRE EXAMINATION BY THE COURT:

19 Q. Sir, you are Charles Phipps, is that correct?

20 A. Yes, sir.

21 Q. Mr. Phipps, please relax, and realize we are not going
22 to give you the degree here. We are going to ask you, of
23 course, some questions to determine how you feel about
24 certain issues. Please answer those as openly and honestly
25 as you can as to those questions. There, of course, are no

1 right or wrong answers. We just need to know how you feel
2 about certain issues. Okay?

3 A. Yes.

4 Q. Now, you were, of course, sworn this morning as part of
5 the jury panel. You continue to be sworn and under oath for
6 testimony. Do you understand that?

7 A. Yes, sir.

8 Q. All right. Not testimony, but the information that you
9 are going to provide the court.

10 Now, you submitted a juror questionnaire form, is that
11 correct?

12 A. Yes, sir, I did.

13 Q. And is there anything on that form that needs to be
14 changed? Any updates that need to be made, any change since
15 you sent it in?

16 A. No, Your Honor, there is no changes.

17 Q. Did you see a list of potential witnesses back in the
18 room, in the jury room?

19 A. Yes, sir, I did.

20 Q. I'm going to ask you if you recognize any of those
21 names on there, please do not give us the names, but only
22 the numbers. And that form is there in front of you. So if
23 you recognize any of those names, if you would please give
24 me the numbers on them.

25 A. Okay. Yes, sir. I recognize number 27, number 28,

1 number 73, and I believe that's all, Your Honor.

2 Q. Let me ask you, sir, whether if -- all of these
3 witnesses, of course, are not going to be called, but some
4 of them are going to be called. And the question I have for
5 you, if any of these potential witnesses were to be called
6 as a witness by either side in the case, would that
7 interfere in any way with your ability to give both sides a
8 fair and impartial trial in this case?

9 A. No, sir, it would not.

10 Q. Did you see a one page form back in the jury room with
11 three paragraphs on it which talked about three different
12 types of jurors?

13 A. Yes, sir, Your Honor.

14 Q. Of course, you know, this is not an all-inclusive list
15 to describe jurors, but did you identify more with yourself
16 as being more like one of these three types of jurors?

17 A. Yes, sir, I did.

18 Q. Which one, sir?

19 A. Although I don't like everything about the way it's
20 described, I would be most like number two.

21 Q. Most like number two?

22 A. Yes, sir.

23 Q. And number two is described as although the guilt of
24 the defendant has been determined, under no circumstances
25 could you ever give the death penalty. Is this correct,

1 sir?

2 A. Yes, sir.

3 Q. All right. Let me ask you whether there are any
4 circumstances under which -- if a defendant was found guilty
5 of a murder, are there any circumstances under which you
6 could vote to give the death penalty?

7 A. If I were being asked to impose myself a death penalty,
8 I can't do that.

9 Q. You could not do that?

10 A. No, sir.

11 Q. All right. Thank you, sir. Please answer any
12 questions that the solicitor may have.

13 MR. GOWDY: No questions for Mr. Phipps. We do
14 thank you for your time.

15 THE COURT: Mr. Starnes?

16 MR. STARNES: Nothing, Your Honor.

17 THE COURT: Okay. All right. Mr. Phipps, if you
18 would please wait outside just a minute, we will have you
19 back in in just one minute.

20 JUROR NUMBER 218: Thank you.

21 (Whereupon, Juror Number 218 left the courtroom)

22 THE COURT: Position of the State?

23 MR. COLER: He's not qualified, Your Honor.

24 THE COURT: Defense?

25 MR. STARNES: Not qualified, Your Honor.

1 THE COURT: The court agrees he's not qualified.
2 Please bring him back in.

3 (Whereupon, Juror Number 218 entered the
4 courtroom)

5 THE COURT: Sir, just stand right there, if you
6 would, please.

7 Mr. Phipps, we appreciate you being here. We are
8 going to go ahead and excuse you from the jury, which means
9 this completes your service. You don't have to come back.
10 This completes your service for the week. You don't have
11 worry about any further service.

12 JUROR NUMBER 218: Right.

13 THE COURT: Thank you for your patience in being
14 here, and the clerk will put a check in the mail for your
15 service. Thank you very much. You are free to go.

16 JUROR NUMBER 218: Thank you very much.

17 (Whereupon, Juror Number 218 left the courtroom)

18 MR. NETTLES: In looking at my calendar, I
19 completed forgot to --

20 THE COURT: You had asked to be excused, Mr.
21 Nettles. You are free to go.

22 Mr. Delgado is he going to stay on?

23 MR. DELGADO: Yes, sir.

24 THE COURT: And, of course, Mr. Starnes has
25 already indicated he had no problems with that, is that

1 correct?

2 MR. STARNES: That's correct, Your Honor.

3 THE COURT: We will proceed on then.

4 MR. NETTLES: I'll see y'all in the morning.

5 THE COURT: We are going to start at nine o'clock.

6 MR. NETTLES: Yes, sir, I will be right here.

7 THE COURT: All right.

8 (Whereupon, Mr. Nettles left the courtroom)

9 (Whereupon, Juror Number 141 entered the
10 courtroom)

11 VOIR DIRE EXAMINATION BY THE COURT:

12 Q. Ma'am, I'm going to get you to please pronounce your
13 last name for me.

14 A. Kappauf.

15 Q. Kappauf?

16 A. Uh-huh.

17 Q. Close enough. I'll get it right. Kappauf?

18 A. Kappauf.

19 Q. Okay. So for the record you are Jo Ann Kappauf, is
20 that correct?

21 A. That's correct.

22 Q. Juror number 141?

23 A. Yes, sir.

24 Q. All right.

25 Ma'am, I'm going to get you just to relax. This is a

1 very informal session in which there is some questions will
2 be asked to determine your views concerning certain things.
3 There are no right or wrong answers. Nobody is going to
4 disagree with you, or argue with you, or anything like that.
5 We just simply want you to give your responses to how you
6 feel about certain things. Please do that as open and
7 honestly as you can.

8 Now, I would remind you that this morning you were
9 placed under oath with the full jury. You continue to be
10 oath for the purpose of the information that you are
11 providing tonight.

12 You filled out a juror questionnaire form and sent that
13 back to the clerk's office, is that correct?

14 A. That's correct.

15 Q. Now, is there anything that's changed since you sent it
16 in which you needed to update?

17 A. No, sir.

18 Q. Ma'am, did you see back in the jury room a long list of
19 potential witnesses names back there?

20 A. I knew three of them, yes, sir.

21 Q. And, of course, I wasn't sure -- all those witnesses
22 will not be called in this trial, but some will be called,
23 I'm sure, and what I'm going to ask you is if you recognized
24 any of those names or know any of those persons, please do
25 not give me their names at this time.

1 A. No, sir.

2 Q. Simply give me their number.

3 A. Doesn't sound familiar. I'm bad with names. I might
4 see the person, I might know them then.

5 Q. You didn't recognize anyone?

6 A. No.

7 Q. You didn't know any of them off the top of your head?

8 A. No.

9 Q. Ma'am, did you see back in the jury room, did you see a
10 page back there, one page with three paragraphs on it that
11 talked about three different types of jurors?

12 A. Yes, sir.

13 Q. And, ma'am, of course, this is not all inclusive. It
14 won't describe any of the jurors altogether, but did you
15 identify as yourself as being more like one of these three
16 types of jurors?

17 A. I would say the third.

18 Q. The third one?

19 A. Yes.

20 Q. So you would be the type of juror who would not have
21 made up your mind before you come to court, but rather you
22 would want to wait --

23 A. I want to hear all the facts.

24 Q. Pardon me?

25 A. You have got to hear all the facts first.

1 Q. Yes, ma'am. You would want to listen to the testimony
2 and evidence and instruction on the law that applies to the
3 issues in the case before you made --

4 A. Correct.

5 Q. -- the decision?

6 All right. And you realize this is a case in which the
7 State is seeking the death penalty, which is a little bit
8 different than the average case, in that there is
9 potentially two different phases of the trial.

10 The first phase is just like any other trial, in which
11 the State has to prove the elements of the offenses to which
12 the defendant is charged beyond a reasonable doubt.

13 And so if the jury did not find the State had met its
14 burden of proving the defendant guilty of the murder charge,
15 that would be the end of that case and it would complete the
16 juror's function as to the case. Do you understand that?

17 A. Yes, sir.

18 Q. However, if the jury should find that the State had
19 proven the elements of those offenses beyond a reasonable
20 doubt and the jury were to find the defendant guilty of
21 murder, then we would go to the second phase of the trial.

22 In the second phase of the trial, for lack of a better
23 word, it's called the penalty phase. And in the penalty
24 phase what would happen in that is that the State would
25 present any aggravating factors that they wished the jury

1 would consider on the issue of punishment, and the defendant
2 would be able to present any issues with regard to
3 mitigating factors which they want the jury to consider in
4 deciding whatever appropriate punishment would be in the
5 case.

6 And then based on all that information and the court's
7 instructions to you with regard to the law that applies to
8 the issues in the case, that part of the trial, then you
9 would be asked to make a decision as to what the appropriate
10 punishment would be, which would be either the death penalty
11 or life imprisonment without the possibility of parole. Do
12 you understand that?

13 A. Yes, sir, I understand that.

14 Q. Ma'am, let me ask you whether if we got to that phase
15 of the trial, if you could listen to the testimony and
16 evidence concerning aggravating and mitigating factors, the
17 court's instruction on the law that applies and render a
18 decision as to the appropriate punishment in the case?

19 A. Yes, sir.

20 Q. Ma'am, if you felt that the -- after considering all of
21 that, that the appropriate punishment was the death penalty,
22 could you vote for the death penalty?

23 A. Yes, sir.

24 Q. If you felt that the appropriate punishment, after
25 considering all of that information, was life imprisonment

1 without the possibility of parole, could you vote for that
2 sentence?

3 A. Well, I would have to, yes, sir.

4 Q. You have to?

5 A. Yeah, you have to choose one or the other.

6 Q. You have -- all right.

7 A. You know.

8 Q. In order to weigh --

9 A. Say that's the best punishment, I guess, would have to
10 go with that, if he's guilty.

11 Q. I understand, but if he were to be found guilty, and
12 that's the only way you would get to the second phase. If
13 he were to be found guilty, you got to the second phase,
14 then you would be required to consider all of the
15 aggravating and mitigating factors, and the court would have
16 an instruction on the law that applies and how that's to be
17 considered. Do you understand that?

18 A. I understand that.

19 Q. Could you listen to all of that, ma'am, including the
20 court's instruction, and then consider all of that before
21 you decided the appropriate punishment?

22 A. Yes, sir.

23 Q. And if you thought the appropriate punishment was one
24 or the other, could you vote for either of them, if you
25 thought they were appropriate?

1 A. Yes, sir.

2 Q. Okay. Thank you. Answer any questions that the
3 solicitor may have.

4 MR. GOWDY: May it please the court, Your Honor.

5 THE COURT: Yes, sir.

6 VOIR DIRE EXAMINATION BY MR. GOWDY:

7 Q. Good evening, ma'am?

8 A. Good evening.

9 Q. I'm embarrassed at my bad geography. Where in Germany
10 were you born?

11 A. In frankfurt.

12 Q. And how long did you live in Germany?

13 A. I came over when I turned 18.

14 Q. 18?

15 A. Two months before I turned 18, yes, sir.

16 Q. All right. Can you tell us your general views on
17 capital punishment and what informs them or where they come
18 from?

19 A. I'm going to put it, like right or wrong.

20 Q. Well, just -- you know, some people say it's a
21 political view I have. Some people say it's a family
22 tradition. Some people say my church teaches me.

23 I'm trying to get, ma'am, the source, if there is one,
24 or the origin of your beliefs.

25 A. I guess just right or wrong. I don't know. I don't

1 have a special way, you know.

2 Q. There is -- there is no right or wrong.

3 A. You know.

4 Q. There is no right or wrong.

5 A. I'm sorry, that's the way I feel.

6 Q. No, there is no right or wrong.

7 A. Okay.

8 Q. I'm just trying to identify what your beliefs structure
9 is and --

10 A. Okay.

11 Q. -- as the judge says, nobody is going to second guess.
12 We just have to know what they are.

13 A. I know. Okay.

14 Well, I feel like if they can prove somebody is guilty,
15 they should be punished for that. That's not that somebody
16 is teaching me or -- I don't know how to explain that.

17 Q. Is it --

18 A. Unless you want me to say --

19 Q. No.

20 A. I'm sorry.

21 Q. I'm not asking it right, so I'm the one that needs to
22 apologize. Not you.

23 Let me see if I understood you correctly when you
24 talked to Judge Alford.

25 A. Okay.

1 Q. If we get to the second phase or the penalty phase --

2 A. Uh-huh.

3 Q. -- you are going to listen to all the evidence that is
4 brought before you?

5 A. That's correct.

6 Q. With an open fair mind?

7 A. Uh-huh.

8 Q. And there are some circumstances under which you would
9 vote to impose death?

10 A. Yes, sir.

11 Q. And there is some where you would vote to impose life?

12 A. That's correct.

13 Q. You don't know yet which one way that you will fall,
14 because you ain't heard the evidence?

15 A. That's right.

16 Q. So all homicides are not the same.

17 A. That's correct.

18 Q. All murders --

19 A. Are not the same.

20 Q. -- are not the same.

21 A. Uh-huh.

22 Q. You are going to listen and decide if your judgment
23 what the proper punishment is, if we get to that phase?

24 A. That's correct.

25 Q. And if you think that proper punishment is life, you

1 will vote that way?

2 A. Yes, sir.

3 Q. And if you think it's death, you will vote that way?

4 A. Yes, sir.

5 Q. You would be able to sign your name to a verdict form
6 indicating which way you believe it?

7 A. Yes, sir.

8 Q. Thank. Good enough. Thank you.

9 A. You are welcome.

10 VOIR DIRE EXAMINATION BY MR. STARNES:

11 Q. Hi, Ms. Kappauf. How are you doing?

12 A. How are you doing?

13 Q. My name is Norman Starnes. I'm the defendant in this
14 case.

15 A. Yes, sir.

16 Q. I think Mr. Gowdy asked you about not all killings are
17 murder. Do you understand that the defendant has a right to
18 rely on certain defenses?

19 A. Yes, sir.

20 Q. Give me an idea what you think certain defenses are.

21 A. Well, if somebody attacks you, you fight back. If
22 something happened that's different circumstances, I think.

23 Q. Yes, ma'am, such as self-defense?

24 A. Yes, sir, or -- yes.

25 Q. You could convict somebody -- if facts and

1 circumstances warranted, you could convict somebody of
2 murder?

3 A. Yes, sir.

4 Q. Could you find somebody not guilty if they acted in
5 self-defense?

6 A. It depends. You got to listen to everything.

7 Q. You have to listen to all the facts and circumstances?

8 A. Yes, sir.

9 Q. And you would listen to all the facts and circumstances
10 and take the testimony as it comes from the witness stand?

11 A. Yes, sir.

12 Q. In South Carolina we have something called the burden
13 of proof. That means that the State has a burden to prove
14 the defendant guilty beyond a reasonable doubt. Can you
15 hold them to that burden of proof?

16 A. Yes.

17 Q. If self-defense was raised as an issue in this trial,
18 and there was facts and circumstances that come out
19 regarding self-defense, and Judge Alford instructed you that
20 the State had the burden to disprove self-defense, could you
21 hold them to that burden?

22 A. I have to see how it turns out.

23 Q. Yes, ma'am.

24 A. You see the evidence. You have to go from there. Even
25 if the judge said, hey, maybe he's guilty, or not guilty,

1 you still have to view it and go with that.

2 Q. If he instructs you it's the law that they have the
3 burden to disprove self-defense, in other words, that
4 self-defense was not there, could you hold them to that
5 burden?

6 A. I can listen to it and go with it, but it doesn't
7 mean -- I don't know how the outcome would be.

8 Q. Yes, ma'am, I understand that.

9 A. I'm sorry?

10 Q. But you could follow the law if the judge --

11 A. Yes, sir.

12 Q. Okay. In the event that we did enter that penalty
13 phase and eleven jurors wanted to give the death penalty,
14 but you felt your own individual decision was life without
15 the possibility of parole, could you vote for life without
16 parole?

17 A. You are supposed to say what you feel, what you
18 believe. I know if you don't with it, it would be a hung
19 jury, right?

20 Q. Well, I can't answer that.

21 A. Something like that. I don't know how that works, but
22 I guess I would be swayed over.

23 Q. In other words, I'm asking you would it be your own
24 individual decision?

25 A. At the time I would have to see it. I really don't

1 know.

2 Q. Because the defendant comes into the courtroom and he's
3 charged with an offense, do you believe that he's guilty
4 just because we are here and he's charged with an offense?

5 A. It's not guilty. You are proven guilty.

6 Q. Not guilty. It's proven guilty?

7 A. Yes.

8 Q. Thank you, ma'am. That's all we can ask.

9 A. You are welcome.

10 MR. GOWDY: Followup?

11 THE COURT: Yes, sir.

12 RE-VOIR DIRE EXAMINATION BY MR. GOWDY:

13 Q. You value your opinion and judgment as much as anyone
14 elses, I would imagine?

15 A. I guess so.

16 Q. So if the tide of popular opinion were going one
17 direction and you firmly believed that you were correct, you
18 would not go with the tide? You would say -- you would hold
19 to your convictions?

20 A. I'm usually pretty stubborn. I don't know. I'm sorry.

21 Q. That's good. So you will base your independent
22 decision based on the evidence?

23 A. Yes, sir.

24 Q. Not leaning, swaying to any your fellow jurors --

25 A. No.

1 Q. -- if you were firmly convinced?

2 A. That's correct.

3 Q. Thank you.

4 A. You are welcome.

5 THE COURT: Any followup, Mr. Starnes?

6 MR. STARNES: No. Thank you.

7 THE COURT: Ma'am, if you would stand just outside
8 the courtroom for a minute, we will have you right back in.

9 JUROR NUMBER 141: Okay.

10 (Whereupon, Juror Number 141 left the courtroom)

11 THE COURT: Position of the State?

12 MR. GOWDY: She's qualified, Your Honor.

13 THE COURT: Defense?

14 MR. STARNES: Qualified, Your Honor.

15 THE COURT: The court agrees. I think she's
16 qualified.

17 Let's bring her back in, please, sir.

18 (Whereupon, Juror Number 141 entered the
19 courtroom)

20 THE COURT: Ma'am, if you will just stand right
21 there.

22 Let me inform you that the court has found you
23 qualified to serve in this case. Let me explain, though,
24 being qualified does not mean that you are on the jury, but
25 it means that you are in the jury pool from which the jury

1 will be selected.

2 JUROR NUMBER 141: Okay.

3 THE COURT: We have to complete this process. And
4 what I would ask you to do is to return to court Wednesday,
5 this coming Wednesday, at three p.m.. Wednesday at three
6 p.m..

7 Now, the court -- excuse me, the clerk's office
8 has a voicemail number that they gave you in your materials.
9 If you would call that voicemail number tomorrow night
10 anytime after six o'clock.

11 JUROR NUMBER 141: Uh-huh.

12 THE COURT: And listen for a message to qualified
13 jurors, because you are now a qualified juror. And it may
14 have a message that will change that, I mean that time on
15 Wednesday, Okay?

16 JUROR NUMBER 141: Okay.

17 THE COURT: So you call in and find out if it's
18 been changed.

19 Also they have a website and they are going to
20 have a message on there say Wednesday night on their website
21 to qualified jurors. If the time has been changed, it will
22 be reflected there.

23 But if you don't hear anything different, please
24 report back Wednesday at three p.m..

25 JUROR NUMBER 141: Okay.

1 THE COURT: Thank you, ma'am.

2 You are free to go. Thank you.

3 JUROR NUMBER 141: Have a nice night. Bye, bye.

4 (Whereupon, Juror Number 141 left the courtroom)

5 (Whereupon, Juror Number 233 entered the
6 courtroom)

7 VOIR DIRE EXAMINATION BY THE COURT:

8 Q. Sir, you are Charles Roberson, is that correct?

9 A. That's correct.

10 Q. And you are juror 233, number 233?

11 A. That's correct.

12 Q. Okay. Mr. Roberson, I first of all want you to relax.
13 This is a very informal session. We are going to ask you
14 certain questions to determine how you feel about certain
15 issues.

16 There are no right or wrong answers to the questions.
17 Nobody is going to give you the third degree or disagree
18 with you in any way whatsoever. We just want you to be as
19 open and honest as you can. Give us your honest answers
20 about certain things that we ask.

21 Now, I would remind you that this morning you were --
22 the whole jury panel was placed under oath.

23 A. Yes.

24 Q. And you continue to be under oath now for purposes of
25 the information that you are going to provide today. Do you

1 understand that?

2 A. Yes, sir.

3 Q. And you sent in a jury questionnaire form with
4 information on it to the clerk's office, correct?

5 A. Yes, sir.

6 Q. Sir, is there anything happened since you sent it in
7 that would represent a change on that form, or anything that
8 you need to change or any of the information that you need
9 changed?

10 A. The only thing that was changed was my address.

11 Q. You did move? You have a new address?

12 A. Yes, sir.

13 Q. That's fine.

14 Now, sir, did you see back in the jury room a long list
15 of names of potential witnesses in this case?

16 A. Yes, sir.

17 Q. All of these witnesses, potential witnesses, are not
18 going to be called, but some of them are going to be called.
19 What we want to know is if you recognized any of those names
20 or know any of those persons, please don't give us their
21 names, but please give us the number as it appears on there.
22 There should be a sheet in front of you that has the same
23 list. And if you know any of them, we would like you to
24 give us the number of that person, not their name.

25 Did you recognize any of them?

1 A. I do not know anyone on the list.

2 Q. All right, sir.

3 Let me ask you whether you saw back in the jury room a
4 one page form back there which has three paragraphs which
5 lists three different types of jurors? Did you see that
6 back there, sir?

7 A. Yes, sir.

8 Q. All right. And we realize this list, these types of
9 jurors are not all inclusive, but could you identify
10 yourself as being more like any one of these three possible
11 jurors?

12 A. Yes, sir, I did.

13 Q. Which one, sir?

14 A. The third type of juror.

15 Q. Third type juror.

16 So, sir, you would be the type of juror who would not
17 make up his mind before coming to court about a case, but
18 would want to listen to the testimony and evidence and the
19 court's instruction to you as to the law that applies to the
20 issues in that case before you would make a decision?

21 A. Yes, sir.

22 Q. And do you understand that -- of course, this is a case
23 in which the State is seeking the death penalty in this
24 case, and it's treated a little bit differently, in that
25 there could be a second phase of the trial, depending upon

1 what happens with the first. Do you understand that?

2 A. Yes, sir, I do.

3 Q. Now, in the first phase of the trial the State would be
4 required to prove the defendant guilty of the charges
5 against him beyond a reasonable doubt. Do you understand
6 that?

7 A. Yes, sir.

8 Q. Now, if the State failed to prove the offense of murder
9 against the defendant by beyond a reasonable doubt, the jury
10 should so find, then that would be the end of the case and
11 the juror's role in the case would end at that point, just
12 like any other case. Do you understand that?

13 A. Yes, sir, I do.

14 Q. But if the jury should find the State had proved these
15 elements of the offenses beyond a reasonable doubt and the
16 defendant were to be found guilty of murder, then we would
17 go to the second phase of the trial.

18 And in the second phase of the trial the State would
19 present by way of testimony and evidence any aggravating
20 factors that they wish the jury to consider on the issue of
21 punishment. And the defendant would present to the jury, by
22 way of testimony and evidence, all issues of mitigation,
23 mitigation issue that they wished the jury to consider. And
24 then the court would instruct you as to how to consider all
25 of that and what you would consider in reaching an

1 appropriate punishment in that case. Do you understand
2 that, sir?

3 A. Yes, sir.

4 Q. All right. And then with receiving all of that
5 information, including the court's instruction on the law,
6 the jury would be asked to decide the appropriate punishment
7 in the case, which would be either the death penalty or life
8 imprisonment without the possibility of parole. Do you
9 understand that, sir?

10 A. Yes, sir.

11 Q. Now, let me ask you, sir, whether you could listen to
12 all the testimony and evidence that would be presented in
13 that phase of the trial, if we get to that phase?

14 A. Yes, sir.

15 Q. Including aggravating and mitigating factors, and then
16 decide on what an appropriate punishment would be in that
17 case, if we got to that stage?

18 A. Yes, sir.

19 Q. All right. And so if you felt that the testimony and
20 evidence and as considering the law that the court asked you
21 to consider, if you believe that the death penalty was the
22 appropriate punishment, could you vote for the death
23 penalty, sir?

24 A. Yes, sir.

25 Q. If you listened to all the testimony and evidence and

1 considered the law as instructed to you by the court, how to
2 consider all that, and if you found that life imprisonment
3 without the possibility of parole was the appropriate
4 punishment, could you vote for that, sir?

5 A. Yes, sir.

6 Q. So you could vote for either of those types of
7 punishment, depending on how you saw it, based on the
8 testimony and evidence and the law as given to you by the
9 court?

10 A. That's correct.

11 Q. Thank you. Please answer any questions that the
12 solicitor may have.

13 MR. COLER: Thank you, Your Honor. May it please
14 the court.

15 VOIR DIRE EXAMINATION BY MR. COLER:

16 Q. Mr. Roberson, I appreciate you being here at seven
17 o'clock on Monday. I have a couple of brief questions.

18 When Judge Alford was talking to you about the second
19 phase of the trial, he asked you if after hearing everything
20 you found it appropriate to sentence the defendant to life,
21 you could do that?

22 A. Yes, sir.

23 Q. And by the same token, if after hearing all the
24 evidence, you thought it was appropriate and you determined
25 it was appropriate, you could sentence the defendant to

1 death?

2 A. Yes, sir.

3 Q. And you could sign a verdict form to that effect?

4 A. Yes, sir.

5 Q. Act. Thank you.

6 MR. COLER: Beg the court's indulgence.

7 (Off the record)

8 (Back on the record)

9 MR. COLER: That's all I have. Thank you.

10 THE COURT: Mr. Starnes?

11 MR. STARNES: If it please the court, Your Honor?

12 THE COURT: Yes, sir.

13 VOIR DIRE EXAMINATION BY MR. STARNES:

14 Q. Hi, Mr. Roberson.

15 A. Hi.

16 Q. I'm Norman Starnes, the defendant in this case.

17 Do you understand that not all killings are murder?

18 A. Under different circumstances, I guess, yes, sir.

19 Q. Under different circumstances.

20 Can you give me an example of some of those
21 circumstances?

22 A. If someone was breaking into your home and trying to
23 threaten your life.

24 Q. If someone was threatening your life in your home?

25 A. Yes, sir.

1 Q. If self-defense was an issue in this case and the fact
2 and the circumstances would warrant an instruction and Judge
3 Alford would give you an instruction regarding self-defense,
4 would you follow that law?

5 A. Yes, sir.

6 Q. And at the end of his instruction he instructed you
7 that the State had the burden to disprove self-defense,
8 could you hold the State to that burden?

9 A. Yes, sir.

10 Q. In the event that we did get to the penalty phase and
11 eleven jurors wanted to vote for the death penalty, but you
12 felt that life imprisonment without the possibility of
13 parole was the appropriate punishment, could you vote for
14 life?

15 A. Yes, I could.

16 Q. You could.

17 How do you feel about the death penalty?

18 A. I have never been questioned about it, but I think we
19 are -- we're a land of laws and where everybody has to
20 answer for their things that they do, good or bad.

21 Q. Yes, sir.

22 So you could vote to give the death penalty to a
23 defendant.

24 Could you acquit a defendant and find him not guilty if
25 you were convinced beyond a reasonable doubt that an

1 individual acted in self-defense?

2 A. Yes, I could. Yes, sir.

3 Q. You could do that?

4 A. Yes, sir.

5 Q. That's all we can ask of you, sir. Thank you.

6 MR. COLER: Nothing further, Your Honor.

7 THE COURT: All right, sir. Thank you, sir. If
8 you would wait just outside the courtroom door and we will
9 have you back in just a minute.

10 (Whereupon, Juror Number 233 left the courtroom)

11 THE COURT: Position of the State?

12 MR. COLER: He's qualified, Your Honor.

13 THE COURT: Defense?

14 MR. STARNES: Qualified, Your Honor.

15 THE COURT: I agree he's qualified.

16 Please bring him back.

17 (Whereupon, Juror Number 233 entered the
18 courtroom)

19 THE COURT: Sir, if you will just stand right
20 there just for a minute.

21 Sir, we find you qualified to serve on the jury
22 pool in this case. Let me explain to you that you have not
23 been selected on the jury, but you have been selected to be
24 in the pool from which the jury will be selected.

25 And so what I'm going to do is excuse you at this

1 time and ask you to report back to court Wednesday, at three
2 o'clock. We are going to have to complete selection of the
3 jury pool before we actually select a jury.

4 Now, I would ask you, there is a voicemail number
5 that you have been given materials from the clerk's office.
6 If you will call that number tomorrow night, that is Tuesday
7 night, anytime after six o'clock. And if the time has been
8 changed for you to report back, it will be reflected in that
9 voicemail. You should listen for a message for qualified
10 jurors, because you have now been qualified. So if there is
11 a message for qualified jurors, you would follow that
12 instruction.

13 The clerk also has a website and there would be a
14 message. If the time has changed, there would be a message
15 on there for qualified jurors. And the time has been
16 changed, it would be reflected there as well.

17 But if you don't receive any other information to
18 the contrary, please report back Wednesday at three p.m..
19 Thank you, sir.

20 JUROR NUMBER 233: Thank you.

21 (Whereupon, Juror Number 233 left the courtroom)

22 THE COURT: This is the one we have been looking
23 for. The last one for the night.

24 (Whereupon, Juror Number 3 entered the courtroom)

25

1 VOIR DIRE EXAMINATION BY THE COURT:

2 Q. Ma'am, you are Laura Alexander?

3 A. Yes, sir.

4 Q. You are juror number 3?

5 A. Yes, sir.

6 Q. Ms. Alexander, the first thing I'm going to get you to
7 do is relax, okay?

8 A. Okay.

9 Q. Just relax.

10 Talk into the microphone. This is a very informal
11 session in which we are going to ask you certain questions
12 to determine how you feel about certain things.

13 There are no right or wrong answers. Nobody is going
14 to argue with you. We just need to know generally how you
15 feel about certain issues that you are going to be asked
16 about, so please give us open and honest answers, if you
17 will?

18 A. All right.

19 Q. Now, I need to ask you a couple of questions.

20 First, you realize that you were placed under oath this
21 morning with the full jury panel?

22 A. Yes, sir.

23 Q. And you continue to be under oath for the information
24 that you are providing to court at this time.

25 You sent back to the clerk's office a juror

1 questionnaire form with information in it, is that correct?

2 A. Yes, sir.

3 Q. Has there anything changed since then that would cause
4 you to want to change the forms or any updates you wish to
5 make to the form?

6 A. No, sir.

7 Q. Ma'am, did you see a list, a long list, of potential
8 witnesses in this case back in the jury room? Did you see
9 that long list?

10 A. Yes, sir.

11 Q. And all of these people are not going to be called as
12 witnesses in the case, but some of them are going to be
13 called. And what we would like to know is if you know one,
14 don't give me their names, but I want their numbers on that
15 list. Did you recognize any names or know any of those
16 people on that list?

17 A. I recognized --

18 Q. Just give me the numbers, please, ma'am.

19 A. Okay. I recognize number 7.

20 Q. Okay.

21 A. And number 38.

22 Q. 38?

23 A. Yes.

24 Q. Ma'am, let me ask you, if either of these witnesses, or
25 both of them for that matter, would be called as a witness

1 by either side in this case, would the fact that they were
2 testifying as a witness in this case interfere in any way
3 with your ability to give both sides a fair and impartial
4 trial?

5 A. Absolutely not.

6 Q. Okay. Now, ma'am, did you see back in the jury room
7 there was a one page back there with three paragraphs on it
8 which talked about three different types of jurors? We
9 realize this not all inclusive of jurors, but did you
10 identify yourself as being more like one of those three
11 types of jurors?

12 A. Yes, sir.

13 Q. And which one would that be?

14 A. The third type.

15 Q. Okay. So, ma'am, you would be the type of juror who
16 would not make up your mind in advance, but rather you would
17 want to hear all the testimony and evidence and the court's
18 instruction upon the law that applied to the issues in the
19 case before you formed an opinion about the case? Is that
20 correct?

21 A. Absolutely correct.

22 Q. Now, ma'am, do you understand that the State is seeking
23 the death penalty in this case, which means it's treated a
24 little bit differently, in that there are -- but possibly
25 two phases of the trial, depending upon what happened in the

1 first.

2 In the first phase of the trial the State has to prove
3 the defendant guilty beyond a reasonable doubt of the
4 charges against the defendant.

5 If the State failed to prove the charge of murder
6 beyond a reasonable doubt in that case, then that would
7 be -- and the jury so found, then that would be the end of
8 the matter and that would conclude the jury's role in that
9 case, just like any other criminal case. Do you understand
10 that?

11 A. Yes, sir.

12 Q. Okay. However, if the jury should find that the State
13 had proven the elements of the offense of murder beyond a
14 reasonable doubt, then we would go to the second phase of
15 the trial, which, for lack of a better definition, is called
16 the penalty phase.

17 In that phase of the trial the State will present any
18 aggravating factors they think the jury should consider in
19 determining what an appropriate punishment should be, and
20 the defendant would provide testimony and evidence as to all
21 of the mitigating factors that they think the jury should
22 consider in determining what an appropriate punishment would
23 be. Do you understand that?

24 A. Yes, sir.

25 Q. And then the court would instruct you on how you are to

1 receive that information, how to apply that information, and
2 anything else that you should consider with regard to the
3 issue of punishment in that case.

4 And then the jury would be asked to make a decision
5 with all that information as to the appropriate punishment.
6 And the possible punishment would be the death penalty or
7 life imprisonment without the possibility of parole. Do you
8 understand that?

9 A. Yes, sir.

10 Q. Now, ma'am, let me ask you whether if we got to the
11 second phase of the trial, if we reached that phase, and if
12 you felt, based on all the testimony and evidence regarding
13 aggravating and mitigating factors and the court's
14 instruction on the law that applies, if you felt the death
15 penalty was the appropriate penalty, could you vote for the
16 death penalty in the case?

17 A. If I was in the second phase, after I have heard all
18 the mitigation, yes, sir.

19 Q. Okay. After listening to all of the aggravating and
20 mitigating factors evidence in that regard and the court's
21 instruction as to how to consider all of that, if you found
22 that life imprisonment without the possibility of parole was
23 the appropriate sentence, could you impose that sentence,
24 vote for that sentence?

25 A. Yes.

1 Q. So as I understand it, based on all the testimony and
2 evidence, the aggravating and mitigating factors, the
3 court's instruction on the law, if you think it was
4 appropriate, you could decide what the appropriate
5 punishment would be, and you could vote for either the death
6 penalty or life imprisonment without parole, depending on
7 your view of the facts?

8 A. Yes, sir.

9 Q. Is that correct, ma'am?

10 A. Correct.

11 Q. All right. Thank you. Please answer any questions
12 that the solicitor may have.

13 MR. COLER: Thank you, Your Honor. May it please
14 the court?

15 VOIR DIRE EXAMINATION BY MR. COLER:

16 Q. Ms. Alexander, thank you for being here after seven
17 okay on Monday. I just have a couple of questions.

18 Judge Alford was describing the two phases of the
19 trial. You understood him to say that the first part would
20 be the guilt phase and then the sentencing phase. I just
21 want to ask you a couple of questions about the sentencing
22 phase.

23 If we got to that point, you essentially would have two
24 choices. Do you understand that?

25 Sentencing the defendant to life without parole or

1 death. Death sentence.

2 If, after hearing the aggravating circumstances and
3 mitigating circumstances, you could, if appropriate,
4 sentence him to life without parole, correct?

5 A. Correct.

6 Q. And then, of course, if you heard the mitigating and
7 aggravating circumstances and you thought it was
8 appropriate, you could sentence him to death?

9 A. Yes, sir.

10 Q. And if asked to do so, you could sign a verdict form
11 indicating your decision?

12 A. Yes, sir.

13 Q. Okay. Thank you. That's all I have. Thank you.

14 THE COURT: Mr. Starnes?

15 MR. STARNES: If it please the court, Your Honor?

16 THE COURT: Yes, sir.

17 VOIR DIRE EXAMINATION BY MR. STARNES:

18 Q. Hi, Ms. Alexander, how are you doing?

19 A. Fine. How about are you?

20 Q. Fine.

21 My name is Norman Starnes. I'm the defendant in this
22 case.

23 Ms. Alexander, I had a couple of questions I wanted to
24 ask you. Do you believe that all killings are murder?

25 A. No.

1 Q. Could you explain that to me?

2 A. I think -- even though I think in a case where somebody
3 is terminally ill and in pain and it's their choice to kill
4 themselves, I think that's not murder.

5 Q. Okay. Do you understand that -- or do you believe that
6 a defendant has a right to rely on certain defenses?

7 A. Can you elaborate on that?

8 Q. Such as self-defense.

9 A. Oh, absolutely.

10 Q. Absolutely?

11 A. Yes.

12 Q. So you wouldn't have any problem -- if you heard all
13 the facts and circumstances in this case, you wouldn't have
14 any problem finding a defendant guilty of murder, correct?

15 A. That's correct.

16 Q. In return, if the facts and circumstances warranted,
17 and Judge Alford was going to instruct you on self-defense,
18 could you follow that law?

19 A. Yes.

20 Q. Okay. And could you find somebody not guilty if they
21 acted in self-defense?

22 A. Yes.

23 Q. Now, if Judge Alford give you an instruction regarding
24 the burden of proof in self-defense; in other words, Judge
25 Alford tells you that the State has the burden to disprove

1 self-defense, can you hold them to that burden of proof?

2 A. Absolutely.

3 Q. Okay. You can do that.

4 In the event that we get into a penalty phase -- and do
5 you understand that we are not compelled to get into the
6 penalty phase?

7 A. I understand that.

8 Q. And in the event that we do get into the penalty phase
9 and eleven jurors wanted to give me the death penalty, but
10 you felt the appropriate punishment --

11 THE COURT: Mr. Starnes, it's about fourth or
12 fifth time. Please do not refer to person. Ask questions
13 regarding third person.

14 BY MR. STARNES:

15 Q. If you felt that the appropriate punishment was life
16 without parole, could you make that determination on your
17 own?

18 A. Yes.

19 Q. You could?

20 A. Yes.

21 Q. That's all we can ask from you. Thank you, Ms.
22 Alexander.

23 A. Thank you.

24 THE COURT: Any followup?

25 MR. COLER: No, sir, Your Honor.

1 THE COURT: All right. Thank you, ma'am.

2 If you will wait just outside the courtroom here
3 for just a minute, we will have you right back in. Okay.

4 (Whereupon, Juror Number 3 left the courtroom)

5 THE COURT: Position of the State?

6 MR. COLER: She's qualified, Your Honor.

7 THE COURT: Defense?

8 MR. STARNES: Qualified, Your Honor.

9 THE COURT: The court agrees she's qualified.
10 Please bring her back in.

11 (Whereupon, Juror Number 3 entered the courtroom)

12 THE COURT: Ma'am, if you could stand right there,
13 please.

14 The court has found you qualified to serve in the
15 jury panel on this case.

16 Let me explain what I mean by that. You have not
17 been selected on the jury itself. You have been found
18 qualified to be in the panel from which the jury will be
19 selected.

20 What I'm going to do is I'm going to excuse you at
21 this time and ask you to report back to court on Wednesday,
22 at three p.m.. You see, we have got to go through this
23 process to get a pool so we can select a jury, okay? And
24 that's Wednesday at three p.m..

25 Now, you have a voicemail number that the clerk

1 has given you with some information there to call in.

2 JUROR NUMBER 3: Uh-huh.

3 THE COURT: And if you will call in tomorrow
4 night, that's Tuesday night, anytime after six p.m., there
5 may be a voicemail on there for qualified jurors. You are a
6 qualified juror now. And they may change when you are
7 supposed to return. So if you will call that voicemail
8 number anytime after six o'clock tomorrow night.

9 You can also check the clerk's website for
10 qualified jurors, and it may be a message on there changing
11 the report time. Okay?

12 If you don't hear anything otherwise, please
13 report Wednesday at three p.m.. Thank you very much.

14 JUROR NUMBER 3: Can I get another one of those
15 pink cards?

16 THE CLERK: Yes. You need a pink card? The
17 bailiff right behind you will hand you one.

18 JUROR NUMBER 3: Thank you, ma'am.

19 (Whereupon, Juror Number 3 left the courtroom)

20 THE COURT: Well, I think we are moving along
21 pretty well. According to my count we have got 15 jurors so
22 far that's been qualified, and so that's a good start.

23 So we will report back in the morning. We will
24 get started at nine. Let's try to get started promptly at
25 nine and move right through them in the morning as soon as

1 we can.

2 So is there any matter we need to take up at this
3 time?

4 MR. GOWDY: Your Honor, I don't know that we need
5 to take up a matter, and I think all of us appreciate the
6 court's patience today, that they have been long hours.

7 I just don't think we should have to object to
8 every single juror where he refers to himself in the first
9 person. The court has told him four times not to do it. We
10 have to correct him. It makes us look like we are taking
11 advantage of a pro-se litigant. He knows what he's doing.
12 I couldn't ask a juror can you put this defendant to death,
13 and he shouldn't be able to ask that.

14 THE COURT: Well, here is the thing. When you
15 make it personal, Mr. Starnes, it's not fair, because you
16 try to identify yourself as with the jury, with the juror.
17 "It's me. Can you put me to death?" That's not
18 appropriate. Okay. It can't be personal.

19 Just because you are representing yourself does
20 not change the fact -- if you have a attorney standing up
21 there, he couldn't look over and say "could you put this man
22 to death?" You can't do that. And so you can't say "could
23 you put me to death?" Okay. It's not -- it's not right.
24 Okay. It's improper, and I want you to refer to the third
25 person. "Could you put a defendant? Could you give the

1 benefit of the doubt to the defendant, to a defendant, or a
2 person charged with a crime?" You cannot make it personal
3 and try to establish a personal relationship with that
4 potential juror. Do you understand what I'm saying?

5 MR. STARNES: I understand, Your Honor. So I can
6 refer -- say the word the defendant?

7 THE COURT: Yes.

8 MR. STARNES: Instead of me?

9 THE COURT: Of course. And that's what I mean by
10 the third person. A defendant. A person charged with a
11 crime.

12 MR. STARNES: Sure.

13 THE COURT: You got to talk in terms of like that,
14 as though it were not you.

15 MR. STARNES: I understand.

16 THE COURT: And because when you talk about me,
17 and makes it very personal between you and the juror.
18 That's improper, okay?

19 They have objected, and they don't want to object,
20 but they objected four or five time, and I have called you
21 on it four or five times, but you keep on doing it.

22 And so you should have learned at this point you
23 can't do that, so please refer to a defendant or a person
24 charged with this offense, okay? Don't refer to me.

25 MR. STARNES: Can I refer to the court's

1 instruction?

2 THE COURT: Oh, of course, absolutely.

3 MR. STARNES: Okay.

4 THE COURT: And you can identify yourself as "I am
5 Norman Starnes, I'm the defendant," and you ask questions.
6 That's okay. But you can't say "could you convict me?" Or
7 if they -- if I -- "I ask for self-defense, could you
8 consider self-defense?"

9 It's improper to do it referring to you. You have
10 to do it in what's called third person; a defendant, a
11 person charged with a criminal offense.

12 It's okay to say "could you follow the court's
13 instruction?" Of course, that's fine. That's not anything
14 to do with you, but can't refer to me, or I, could you do
15 this to me. Do you understand what I'm saying?

16 MR. STARNES: I understand, Your Honor.

17 THE COURT: Because that makes it -- you are
18 trying to make a personal connection with the jury and
19 that's not proper.

20 MR. STARNES: I understand. I'll do some
21 practicing tonight. This is my first day so --

22 THE COURT: I understand, but we have gone through
23 it several times.

24 MR. STARNES: Yes.

25 THE COURT: And so please try to avoid it. It's

1 not fair to make the State stand up and object, because it
2 looks like they are trying to take advantage of somebody who
3 is not --

4 MR. STARNES: I clearly understand, Your Honor.

5 THE COURT: All right. Well, I appreciate it. I
6 think we have done very well today, as far as moving through
7 them, although we run quite a bit late. That's me, though.
8 I'm just about always going to be running behind, because,
9 you know, maybe I'm worrying and maybe I just want to make
10 sure everybody gets to cover their bases.

11 Anyway, we will start in the morning at nine. And
12 if you will try to be on time, we will try to get started
13 right at nine. Thank you.

14 (Whereupon, proceedings were adjourned to November
15 6, 2007)

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF LEXINGTON) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 NORMAN EDWIN STARNES,) 1996-GS-32-3339
7 Defendant.) NOVEMBER 6, 2007
8) Lexington, South Carolina

9 (VOLUME II)

10 B E F O R E:

11 THE HONORABLE LEE S. ALFORD, JUDGE. ; and a jury.
12

13
14 A P P E A R A N C E S:

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23 Michael R. Watts
24 Circuit Court Reporter
25

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1 (PROCEEDINGS, November 6, 2007)

2 THE COURT: Good morning, solicitor. How are you
3 this morning?

4 MR. GOWDY: Good, Your Honor.

5 THE COURT: Are you ready to proceed?

6 MR. GOWDY: Yes, sir, Your Honor.

7 THE COURT: Mr. Starnes, how are you doing this
8 morning?

9 MR. STARNES: Good morning, Your Honor.

10 THE COURT: Are you ready to proceed this morning?

11 MR. STARNES: Yes, sir.

12 THE COURT: Are you ready to proceed?

13 MR. STARNES: Yes, sir, Your Honor.

14 THE COURT: Counsel. Are you doing okay this
15 morning?

16 MR. DELGADO: Yes.

17 MR. NETTLES: Yes, sir.

18 THE COURT: If everybody is ready to proceed, sir,
19 if you will bring in the first potential juror.

20 (Whereupon, Juror Number 273 entered the
21 courtroom.

22 VOIR DIRE EXAMINATION BY THE COURT:

23 Q. Good morning, ma'am.

24 A. Good morning.

25 Q. Ma'am, you are Emma Sutton, is that correct?

1 A. That's correct.

2 Q. Juror number 273?

3 A. Yes, sir.

4 Q. All right. Ms. Sutton, I want you to just relax and
5 don't feel uptight sitting there in the chair. We are in a
6 relaxed atmosphere here. We will ask you certain questions
7 to determine how you feel about certain things. Please just
8 answer those questions as open and honestly as you can, give
9 as honest answers as you can.

10 There are no right or wrong answers and nobody is going
11 to disagree with you in any way. Do you understand that,
12 ma'am?

13 A. Yes, sir.

14 Q. Now, do you remember that when we started this process
15 yesterday, the whole jury panel was placed under oath? Do
16 you remember that?

17 A. Yes, sir.

18 Q. Okay, ma'am, you continue to be under oath for the
19 information that you are going to provide the court today.
20 Do you understand that?

21 A. Yes, sir.

22 Q. And did you fill out an information sheet and send back
23 to the clerk's office when you were summonsed for jury duty?

24 A. Yes, sir.

25 Q. Now, is there anything that's changed since you sent

1 that in? Is there anything that you need to update or let
2 us know about any changes on that form?

3 A. No, sir.

4 Q. Now, Ms. Sutton, did you see back in the jury room a
5 long list of potential witnesses there that also had numbers
6 that were numbered, a number of names on the list back
7 there? Did you see those, ma'am?

8 A. Yes, sir.

9 Q. Did you have a chance to go over those?

10 A. Yes, sir.

11 Q. And one of those lists I think are there in front of
12 you.

13 If know any of them, please do not give me their names,
14 but please just give me the number outside their name. Did
15 you recognize any those names or do you know any of those
16 potential names on that list?

17 A. No, sir.

18 Q. Ma'am, did you see back in the jury room a sheet with
19 three paragraphs on it that talked about three different
20 types of jurors? Did you have a chance to read over that?

21 A. Yes, sir.

22 Q. And that should be in front of you as well there.

23 Now, of course, this is not an all-inclusive list of
24 jurors, but would you identify yourself as more like one of
25 these three potential jurors?

1 A. Number three.

2 Q. Number three?

3 A. Yes.

4 Q. So you would be the type of juror who would not make up
5 their mind in advance, would want to wait and listen to the
6 testimony and evidence and the court's instruction on the
7 law that applies before you form an opinion or judgment in a
8 case, is that correct, ma'am?

9 A. Yes, sir.

10 Q. Okay. And you understand that this is a case in which
11 the State is seeking the death penalty. And in a death
12 penalty case, the procedure is a little bit different,
13 because there may be, depending on what happens in the
14 first -- what happens in the first phase of the trial, there
15 could be a second phase of the trial, depending on what
16 happens in the first. Do you understand that?

17 A. Yes, sir.

18 Q. Now, I'll explain that to you.

19 But in the first phase the State is required to prove
20 the defendant guilty of the charge against him beyond a
21 reasonable doubt.

22 If the State is unable to do that or fails to prove the
23 defendant guilty of the charge of murder in that case, then
24 that would be the end of the matter and the juror's role
25 would end at that point. Do you understand that?

1 A. Yes, sir.

2 Q. Okay. If the jury should, however, find that the State
3 had proven beyond a reasonable doubt the elements of the
4 offenses and had proven their case and the defendant would
5 then be found guilty of murder, then we would move go to a
6 second phase of the trial.

7 And in the second phase of the trial the State would be
8 allowed to introduce testimony and evidence concerning
9 aggravating circumstances to be considered by the jury, and
10 the defense would be entitled to present testimony and
11 evidence concerning mitigating factors which the jury should
12 consider, and the court would then instruct you on the law
13 that applies as to how to receive all that information, how
14 it's to be received. And then based on that, the jury would
15 decide what the appropriate punishment would be.

16 Now, the appropriate punishment would either -- the
17 jury would consider would be either the death penalty or
18 life imprisonment without the possibility of parole. Do you
19 understand those two alternatives?

20 A. Yes, sir.

21 Q. Now, ma'am, could you listen to the testimony and
22 evidence concerning aggravating factors and mitigating
23 factors and the court's instruction on the law and decide
24 the appropriate punishment in the case? Could you do that?

25 A. Yes, sir.

1 Q. Okay. And so if you felt that under all the facts and
2 circumstances and the law that the appropriate punishment
3 was the death penalty, could you vote for the death penalty?

4 A. I don't know --

5 Q. I'm sorry, I didn't -- I know that you are thinking
6 about it, but I couldn't hear your response.

7 A. Yes, sir. I could, yes, sir.

8 Q. You think that you could vote for the death penalty, if
9 you think the circumstances warranted it?

10 A. Yes, sir.

11 Q. And do you think that you could vote for life
12 imprisonment without the possibility of parole, if you
13 believed that the information or the factors warranted that
14 punishment?

15 A. Yes, sir.

16 Q. Let me ask you, would you always give the death penalty
17 if someone is convicted of murder?

18 A. No, sir.

19 Q. Would you always give life imprisonment without parole
20 if someone was convicted of murder?

21 A. Yes, sir.

22 Q. You would always give the life imprisonment without the
23 possibility of parole? Is that your response?

24 A. Yes, sir.

25 Q. All right. Please answer any questions that the

1 solicitor might have for you.

2 MR. GOWDY: May it please the court, Your Honor?

3 THE COURT: Yes, sir.

4 VOIR DIRE EXAMINATION BY MR. GOWDY:

5 Q. Good morning, ma'am.

6 A. Good morning.

7 Q. I can tell by the way that you are rolling your eyes
8 you think this is going to be worse than it is.

9 I'm going to start off by telling you that there are
10 absolutely no right or wrong responses to these questions.
11 It's just what you feel. Fair enough? Nobody is going
12 to -- it's not a debating society. I'm not going to
13 challenge your beliefs or views. We just have to find out
14 what they are. And whatever they are, is good enough. Fair
15 enough?

16 A. Yes, sir.

17 Q. All right. You -- I believe told the judge that you
18 would vote to impose life imprisonment, if given the
19 opportunity between life and death? Don't let me put words
20 in your mouth, but is that the last response that you gave
21 to the judge?

22 A. I would impose?

23 Q. You would impose, vote for life imprisonment?

24 A. Yes, sir.

25 Q. All right. Do you understand under South Carolina law

1 no one will ever tell you you have to vote for death?

2 A. Yes, sir.

3 Q. You always have the option of voting for life. Always.

4 Do you understand that?

5 A. No, I don't.

6 Q. All right. If we get to the penalty phase, life in
7 prison is an option and death is an option.

8 The judge will never tell you -- no one will ever tell
9 you that you have to vote for death. The law doesn't say if
10 this and this and this happened, you have to vote for death.
11 You always have the option of life.

12 If I hear you correctly, what you are saying is you
13 will always pick the option of life? Between life and
14 death, you will vote for life?

15 A. No, I won't.

16 Q. All right. Well, then I'm confused. Tell me what your
17 views are on the death penalty.

18 A. I would vote for the death penalty if, in my case, I
19 think needs the death penalty. Not life imprisonment. In
20 some cases you need life imprisonment and some cases you
21 need for death.

22 Q. Do you draw the distinction between life and death
23 based on your own set of beliefs and values, or -- I mean,
24 understand that the law says certain cases are not eligible
25 for death.

1 A. Sir, I don't know the law.

2 Q. All right. Well, I don't know the law either, but
3 certain cases are not eligible for the death penalty.

4 A. Right.

5 Q. Among those cases that are eligible for the death
6 penalty, you will always have the option of voting for life.
7 It doesn't matter how compelling the case is, how
8 overwhelming the case is, you can still vote for life for
9 any reason that you want.

10 A. Yes.

11 Q. Are you telling me that there is still circumstances
12 that you would vote for death?

13 A. Circumstances? I don't know. I really can't answer
14 that.

15 Q. Do you remember when I started, I said there are no
16 right answers, no wrong answers?

17 A. Yes.

18 Q. To sit as a juror, you have to be able not just to
19 consider both punishments, but actually impose them.

20 A. Uh-huh.

21 Q. And both sides have to know whether or not you are
22 capable of imposing a death sentence on somebody.

23 A. I would rather not do it.

24 THE COURT: Ma'am, if you speak up just a little
25 bit, because I couldn't hear the response.

1 JUROR NUMBER 273: I would rather not do death
2 penalty.

3 THE COURT: You would rather not do --

4 JUROR NUMBER 273: Death penalty.

5 THE COURT: Okay.

6 BY MR. GOWDY:

7 Q. All right. There is a reason people don't like lawyers
8 very much and I'm fixing to prove that to you one more time.

9 Not -- rather not to do it is an acceptable answer.
10 I'm not trying to get you to change your answer.

11 What I'm saying is you will always have the option of
12 life without parole; never get out of prison.

13 You said that you don't want to vote for death. If you
14 have the option of life without parole, is that what you are
15 going to pick?

16 A. Yes, sir.

17 Q. Thank you. And I'm sorry I didn't ask my questions
18 very well. Your answers are fine. My questions. Thank
19 you.

20 MR. STARNES: May it please the court, Your Honor?

21 THE COURT: Yes, sir.

22 VOIR DIRE EXAMINATION BY MR. STARNES:

23 Q. Hi, Ms. Sutton. How are you doing?

24 A. Fine.

25 Q. My name is Norman Starnes and I'm the defendant in this

1 case.

2 Ms. Sutton, correct me if I'm wrong, but did I hear you
3 say that in some cases you believed that some cases deserve
4 the death penalty?

5 A. Sir, I'm going to change my mind.

6 Q. Excuse me?

7 A. I'm changing my mind.

8 Q. You are changing your mind.

9 A. Yes, sir.

10 Q. You just don't believe in the death penalty?

11 A. No.

12 Q. Do you think that all killings are murder?

13 A. Yes.

14 Q. You think that all killings are murder?

15 A. Yes, sir.

16 Q. How about self-defense?

17 A. Still murder.

18 Q. Still murder?

19 A. Uh-huh.

20 Q. Tell me how you feel about that. There is no right or
21 wrong answers, like Mr. Gowdy said.

22 A. I can't answer that.

23 Q. I'm sorry?

24 A. I can't answer that.

25 Q. You can't do that.

1 Could you follow the law as the trial court instructed
2 you, if you were seated as a juror in this case?

3 A. Except still murder -- except death penalty, I cannot
4 follow that.

5 Q. You cannot follow the law?

6 A. No.

7 Q. So in no case whatsoever you could not impose the death
8 penalty?

9 A. No.

10 Q. Thank you, ma'am. That's all we can ask.

11 THE COURT: All right. Thank you, ma'am. If you
12 would wait just outside the courtroom door for a minute. We
13 will have you back in in just a minute, okay?

14 JUROR NUMBER 273: Yes, sir.

15 (Whereupon, Juror Number 273 left the courtroom)

16 THE COURT: Position of the State?

17 MR. GOWDY: Judge, honestly tough issues, but
18 she's not qualified.

19 MR. STARNES: I don't agree with that. When she
20 come in at the beginning she said that she was a number
21 three juror and that she could impose life or death,
22 depending upon the circumstances, depending upon the case.

23 THE COURT: Well, Mr. Starnes, she started off
24 that way, but she didn't wind up that way.

25 MR. STARNES: Yes, sir.

1 THE COURT: And she vacillated. She started
2 answering the questions. She had a hard time answering any
3 of the questions after she got through type number three.

4 And I think she would be type number three as to
5 phase one.

6 As to phase two, she actually finally just
7 declared she could not impose the death penalty and she
8 could not follow the law. You asked her those questions
9 yourself. She would not follow the law as to the death
10 penalty. She wouldn't give the death penalty.

11 MR. STARNES: Yes, sir.

12 THE COURT: She couldn't do it, and she made that
13 clear at the end. She was not so clear earlier, but by the
14 end she was very clear that she could not impose the death
15 penalty. She would not vote for the death penalty.

16 You asked her if she could follow the law. She
17 said she wouldn't follow the law as to the death penalty.
18 She couldn't give it.

19 I think it's pretty clear that this lady could not
20 impose the death penalty, if she was given the choice to do
21 so, I'm going to find her not qualified.

22 MR. STARNES: Your Honor, just to protect the
23 record to show that we feel that she's qualified. Thank
24 you.

25 THE COURT: You know, the record speaks for itself

1 and the record is clear.

2 I think clearly by the end of her testimony. It
3 was pretty clear after Mr. Gowdy questioned her, but it was
4 even more clear after you questioned her that she would not
5 even follow the law and give the death penalty, because she
6 would not give the death penalty, and she told you she
7 changed her mind about that as she went along, so I think
8 that's pretty clear.

9 All right. Please bring her back in.

10 (Whereupon, Juror Number 273 entered the
11 courtroom)

12 THE COURT: Ma'am, you can stand right there, if
13 you will, please.

14 Ms. Sutton, we are going to go ahead and excuse
15 you from this case, and so this will finish up your service
16 for the week, so you need not return this week for your
17 service. The clerk's office will put a check in the mail
18 for your service this week. We express our appreciation to
19 you for your participation being here. Thank you very much,
20 and you are free to go.

21 JUROR NUMBER 273: Thank you.

22 (Whereupon, Juror Number 273 left the courtroom)

23 (Whereupon, Juror Number 136 entered the
24 courtroom).

25

1 VOIR DIRE EXAMINATION BY THE COURT:

2 Q. Sir, you are Harry Johnson, Jr., is that correct?

3 A. Yes, sir.

4 Q. Mr. Johnson, I want to encourage you just to relax.

5 This is a very informal session and you will be asked some
6 questions about how you feel about certain issues. There
7 are no right or wrong answers. Nobody is going to disagree
8 with you or anything like that. We just simply need to know
9 how you feel about those issues. So just relax and be open
10 and honest with your answers, is all we ask you to do.

11 Now, do you remember yesterday the whole jury panel was
12 placed under oath, and you continue to be under oath in the
13 information that you are providing the court today, okay?

14 A. Yes.

15 Q. Now, you filled out a jury questionnaire form with
16 certain information and sent back to the clerk's office, is
17 that correct?

18 A. Yes, sir.

19 Q. Sir, is there anything that's changed that you need to
20 modify or would change that in any of the information on
21 there in any way?

22 A. Well, my job just changed to a shop foreman instead of
23 the other part. That's really all that's changed.

24 Q. Nothing else needs to be changed on there then?

25 A. No.

1 Q. Did you see back in the jury room there was a long list,
2 of potential witnesses names and numbers on a sheet back
3 there? Did you see those, sir?

4 A. Yes, sir.

5 Q. Now, I'm going to ask you if you recognized any of
6 those names, if you did, please do not give us the name, but
7 only the number beside the name, but did you recognize any
8 of those names or do you know any of the people on that
9 list?

10 A. I recognized some of the names. I'm not sure if it's
11 the same people that I know.

12 Q. Well, give us the number to those, please, sir.

13 A. Number 12 and number 59.

14 Q. Any others?

15 A. That was all.

16 Q. Let's assume for the moment that these are the people
17 you think they are. If either or both of them were to be
18 called as witnesses by either side in this case, would that
19 fact interfere in any way with your ability to give both
20 sides a fair and impartial trial in this case?

21 A. No.

22 Q. And did you see a sheet back in the jury room with
23 three paragraphs on it which discussed three different types
24 of jurors?

25 A. Yes, sir.

1 Q. Sir, this is not an all-inclusive list of jurors, of
2 course, but did you identify yourself as being more like one
3 of these three types of jurors?

4 A. I would consider myself like the third one.

5 Q. More like the third one?

6 A. Yes.

7 Q. So you would be the type of juror who would not form an
8 opinion in advance, but you would want to hear the testimony
9 and evidence in the case and the court's instruction on the
10 law before you would want to make a decision in this case,
11 is that correct?

12 A. Yes, sir.

13 Q. And do you understand that in this case the State is
14 seeking the death penalty in the case, which the procedures
15 are a little bit different in these type cases. There could
16 be two different phases on the trial.

17 The first -- and may only be one phase of the trial,
18 but in the first phase of the trial the State is required to
19 prove the defendant guilty beyond a reasonable doubt of the
20 charges made against the defendant. Do you understand that?

21 A. Yes, sir.

22 Q. And if the jury found that the State had failed to
23 prove the elements of those offenses to which he's charged
24 beyond a reasonable doubt, then that would be the end of the
25 matter. That would conclude the case. It would end there,

1 just like any other case. Do you understand that?

2 A. Yes, sir.

3 Q. But in the event that the jury found that the State had
4 proven the elements of these offenses against the defendant
5 beyond a reasonable doubt and were to find the defendant
6 guilty of a murder charge, then we would go to a second
7 phase of the trial, for lack of a better word called penalty
8 phase.

9 And in the penalty phase the State would be allowed to
10 present testimony and evidence concerning aggravating
11 factors, and the defense would be able to present testimony
12 and evidence concerning mitigation factors which ought to be
13 considered, and the court would instruct you on the law as
14 to how those factors or that information is to be received
15 and how to proceed on that and the law. Do you understand
16 that?

17 A. Yes, sir.

18 Q. Let me ask you, sir -- and then the jury would be asked
19 to determine what would be an appropriate punishment in the
20 case, based on all that information. Do you understand
21 that?

22 A. Yes, sir.

23 Q. And the two possible punishments in that situation
24 would be the death penalty or life imprisonment without the
25 possibility of parole. Do you understand that?

1 A. Yes, sir.

2 Q. Now, let me ask you, sir, whether you could -- if we
3 reached the second phase of the trial, could you listen to
4 the testimony and evidence concerning aggravating and
5 mitigating factors, the court's instruction on the law that
6 applies, and determine the appropriate punishment in that
7 case? If we reach that stage, could you do that?

8 A. Yes, sir.

9 Q. All right. And so if you found that under the
10 circumstances warranted imposing the death penalty, could
11 you vote to impose the death penalty?

12 A. Yes, sir.

13 Q. If you found that the facts did not support the death
14 penalty, could you then vote to impose a sentence of life
15 imprisonment without the possibility of parole?

16 A. I don't quite understand. You are saying if you --

17 Q. Let me rephrase it. I probably did not say it very
18 well.

19 If the circumstances warranted it, based on information
20 that -- the testimony and evidence and the law as instructed
21 by the court, if you found that the circumstances warranted
22 it, could you impose the death penalty?

23 A. Yes, I could do that.

24 Q. All right. If you found that the circumstances,
25 considering all of that, did not warrant the death penalty,

1 could you vote to impose a sentence of life imprisonment
2 without the possibility of parole?

3 A. Yes, sir.

4 Q. You could do that?

5 A. Yes.

6 Q. All right. So you could listen to the testimony and
7 evidence and the law as instructed by the court and
8 determine what would be an appropriate punishment in the
9 case, is that correct?

10 A. Yes, sir.

11 Q. Would you -- if someone is convicted of murder, would
12 you always vote for the death penalty, sir?

13 A. No.

14 Q. If someone was convicted of murder, would you always
15 vote for the sentence of life imprisonment without the
16 possibility of parole?

17 A. No.

18 Q. All right. Thank you, sir. Please answer any
19 questions that the solicitor may have for you.

20 MR. GOWDY: May it please the court.

21 VOIR DIRE EXAMINATION BY MR. GOWDY:

22 Q. Good morning, sir.

23 A. Good morning.

24 Q. The judge asked you almost everything that I wanted to
25 ask you.

1 If I understand you with correctly, with respect to the
2 guilt phase or the first phase, you are going to keep an
3 open mind? You are going to listen to both sides?

4 A. Oh, yeah.

5 Q. You think the State proved that he did it, you are
6 going to vote to find him guilty? And if you don't, you are
7 going to vote to find him not guilty, is that fair?

8 A. Yes, sir.

9 Q. And then when we get to the penalty phase, I know that
10 you told the judge that you could listen to all the
11 circumstances and that you were capable of imposing both
12 punishments, either, or both?

13 A. Right.

14 Q. There was a pause at the very end, and I don't mean to
15 be hyper-technical and these are serious issues, so maybe
16 pauses are good.

17 A. I just want to make sure I understood your question.

18 Q. Okay. And so we on the State's side understand your
19 views and perspective, whatever they are, if you believe
20 that the circumstances warrant society's ultimate
21 punishment, can you give that to a defendant?

22 A. Yes, sir.

23 Q. You would not always give life in prison --

24 A. Not always.

25 Q. -- if given the choice?

1 A. Not always. I would like to hear the whole thing to
2 see if he really deserves that.

3 Q. Absolutely. Great. Thank you. Appreciate it.

4 A. All right.

5 MR. STARNES: If it please the court, Your Honor?

6 THE COURT: Yes, sir, Mr. Starnes.

7 VOIR DIRE EXAMINATION BY MR. STARNES:

8 Q. Hi, Mr. Johnson, how are you doing?

9 A. All right.

10 Q. My name is Norman Starnes and I'm the defendant in this
11 case. I just have a couple of questions that I wanted to
12 ask you.

13 A. Okay.

14 Q. Mr. Solicitor was just asking you when we get to the
15 penalty phase. Now, do you understand that in this case
16 that you are not compelled to find anyone guilty, do you
17 understand that?

18 A. Right.

19 Q. And in the event that a guilty verdict was not
20 rendered, we don't have that penalty phase.

21 Now, you say that you could vote for life or could you
22 vote for death?

23 A. That's correct.

24 Q. Okay. So that means -- what I'm hearing then is that
25 you could convict someone of murder?

1 A. If it's proven that he done it.

2 Q. If it's proven that he done it?

3 A. Yeah.

4 Q. Well, let me ask you this. Could you acquit somebody?
5 Could you find somebody not guilty?

6 A. Yes.

7 Q. You could do that.

8 Okay. Could you explain to me some reasons why you
9 would find someone not guilty?

10 MR. GOWDY: Your Honor, only one reason I can
11 think of is that the State didn't carry its burden of proof.

12 THE COURT: Yes, sir.

13 You can rephrase your question, if you want to.

14 BY MR. STARNES:

15 Q. All right.

16 A. I'll give you one example that where I was in
17 Magistrate's Court and that's all -- the only reason that I
18 can do that is because the law enforcement did not prove the
19 DUI case.

20 Q. Okay.

21 A. That -- I mean, to answer that question.

22 Q. So you sat on a criminal jury before?

23 A. Well, it was a -- in Swansea it was a -- the
24 Magistrate's Court thing, and it was just a DUI case, where
25 the highway patrol presented his case and the other guy

1 presented his case.

2 Q. I see. How about self-defense? Can you give me your
3 personal feelings on self-defense?

4 A. If this is a true self-defense, yes, I can I
5 understand. You have to defend yourself, but I don't know
6 how to -- it's a -- I guess a big area there to cover, as
7 far as self-defense goes. I believe in defending yourself.

8 Q. You do?

9 A. Yes.

10 Q. So, in other words, you could listen to the testimony
11 as it comes from the witness stand, see all the evidence and
12 if self-defense was an issue, could you consider that in
13 your deliberations?

14 A. Yes.

15 Q. Would you be able to follow the law as the trial court
16 instructed you on self-defense, if the trial court did that?

17 A. Yes, sir.

18 Q. And if the trial court instructed you that the State
19 had the burden to disprove self-defense, could you follow
20 that instruction?

21 A. Yes, sir.

22 Q. You can do that?

23 A. Yes.

24 Q. In the event we did get into the penalty phase, Mr.
25 Johnson, and eleven jurors wanted to vote for death, but you

1 felt that the defendant should get life imprisonment without
2 the possibility of parole, could you vote for life
3 imprisonment?

4 A. Yes.

5 Q. You could do that?

6 A. Yes.

7 Q. Have you heard anything in the newspapers, seen any --
8 know anything about the case?

9 A. I have never heard anything about this case.

10 Q. I noticed on the questionnaire that you filled out that
11 you attend the Saluda River Baptist Church?

12 A. Yes, sir.

13 Q. No one in the church has talked about it?

14 A. No, sir.

15 Q. Thank you, Mr. Johnson.

16 A. All right.

17 MR. GOWDY: No.

18 THE COURT: Thank you, sir. If you will please
19 just wait just outside the courtroom door for a minute and
20 we will have you back in in just a minute, sir.

21 JUROR NUMBER 136: All right.

22 (Whereupon, Juror Number 136 left the courtroom)

23 THE COURT: Position of the State?

24 MR. GOWDY: He's qualified, Your Honor.

25 THE COURT: Defense?

1 MR. STARNES: Qualified, Your Honor.

2 THE COURT: The court agrees he will be qualified.
3 Please bring him back in.

4 (Whereupon, Juror Number 136 entered the
5 courtroom)

6 THE COURT: Sir, if you will just stand right
7 there, please.

8 Mr. Johnson, we have found you qualified to serve
9 in the jury panel in this case.

10 Let me explain to you that that doesn't mean that
11 you are on the jury. What it means is that you will be in
12 the pool from which the jury is selected. You have been
13 qualified as a juror to be in that pool.

14 What I'm going to ask you to do is to -- I'm going
15 to excuse you at this time and ask you to return tomorrow.
16 That's Wednesday at three p.m., here at the court.

17 JUROR NUMBER 136: Okay.

18 THE COURT: Now, you could -- you can check the
19 voicemail number. You should have a voicemail number on the
20 information given to you by the clerk's office. And if you
21 will call -- if you called that number tonight after six
22 o'clock and listen to the message for qualified jurors. You
23 are now a qualified juror. So listen for a message for
24 qualified jurors. And if it changes the time when you are
25 supposed to report tomorrow at three to a different time, it

1 would be on there; or, if you have access to the computer,
2 the clerk has a website. She will have that same
3 information anytime after tonight -- or tonight after six on
4 the website for qualified jurors. And it could also tell
5 you if the time has been changed. But if you don't hear
6 anything different from there, please report back tomorrow
7 at three p.m..

8 JUROR NUMBER 136: Okay.

9 THE COURT: Thank you, sir.

10 (Whereupon, Juror Number 136 left the courtroom)

11 (Whereupon, Juror Number 165 entered the
12 courtroom)

13 VOIR DIRE EXAMINATION BY THE COURT:

14 Q. Good morning, ma'am. You are Deanna Lucas, is that
15 correct?

16 A. Yes, sir.

17 Q. And you are juror number 165?

18 A. Yes, sir.

19 Q. Okay. Ms. Lucas, I'm going to ask you just to relax
20 there. This is not -- this is a very informal session, and
21 you would be asked some questions concerning your views on
22 certain things. I would encourage you just to give open and
23 honest answers to those questions.

24 There are no right or wrong answers to the questions.
25 We just need to know how you honestly feel about those

1 issues. And if you will please just be as open and honest
2 with your answers.

3 Now, do you recall that yesterday the pool jury here
4 that they were placed under oath. You continue to be under
5 oath for purposes of the information that you are going to
6 provide the court today. Do you understand that?

7 A. Yes, sir.

8 Q. And you sent in response to a jury questionnaire that
9 contains certain information to the clerk's office, is that
10 right?

11 A. Yes, sir.

12 Q. Is there anything that's changed since you sent that in
13 that you need to make us aware of, any modifications that
14 you need to make?

15 A. No, sir.

16 Q. Did you see back in the jury room a long list of names
17 with numbers beside them, potential witnesses in this case?
18 Did you see that back there?

19 A. That's what I assumed that's what it was.

20 Q. And there is a copy there in front of you as well.

21 Let me ask you, ma'am, if you recognize any of those
22 names, please do not give us the names, but would you please
23 give us the number beside the name, if you recognized any of
24 them? Did you, ma'am?

25 A. No, sir.

1 Q. You did not recognize any of them.

2 Ma'am, did you see a sheet back in the jury room three
3 paragraphs on it that talked about three different types of
4 jurors?

5 A. Yes, sir.

6 Q. All right. Of course, this is not all inclusive with
7 regard to types of jurors, but did you identify yourself as
8 more like one or the other of these three types of jurors?

9 A. I would have to say definitely more like three.

10 Q. Number three?

11 A. Yes, sir.

12 Q. So, ma'am, you would be the type of juror that wouldn't
13 make up your mind in advance, but rather you would want to
14 wait until you heard all the testimony and the evidence and
15 the court's instruction on the law before you decided the
16 case, is that correct?

17 A. Yes, sir.

18 Q. All right. And you understand that, of course, in this
19 case the State is seeking the death penalty in this case,
20 and it's treated a little bit different procedure. Now, it
21 may or may not involve two phases of a trial, depending upon
22 what happens in the first phase.

23 In the first phase of the trial the State is required
24 to prove the defendant guilty beyond a reasonable doubt.
25 And if the State failed to meet that burden of proof, the

1 jury didn't find that they met the burden of proof, then
2 that would be the end of the matter. It would not be second
3 phase of the trial, but rather it would end, just like a
4 regular trial. Do you understand that?

5 A. Yes, sir.

6 Q. But in the event that the jury found that the State had
7 proven the elements of the offense of murder beyond a
8 reasonable doubt, then we -- by the jury found that. Then
9 we would go to a second phase of the trial, for lack of a
10 better word or description, we call it the penalty phase.

11 Now, in the penalty phase the State would be
12 required -- or would be allowed to put up any aggravating
13 factors that they wish the jury to consider. The defense
14 would put up all mitigating factors to be able to resolve
15 mitigating factors that they want the jury to consider as to
16 the appropriate punishment. The court would instruct you on
17 the law as it applies to those -- to that phase of the case,
18 and jury would be asked to determine what the appropriate
19 punishment would be. And the two possible punishments in
20 that situation would either be the death penalty or life
21 imprisonment without the possibility of parole. Do you
22 understand that, ma'am?

23 A. Yes, sir.

24 Q. Now, let me ask you whether you could listen to the
25 testimony and evidence as to aggravating factors and

1 mitigating factors and the court's instruction on the law
2 that applies and determine the appropriate punishment, if we
3 reached that stage?

4 A. Yes, sir.

5 Q. And if you found that the circumstances warranted it,
6 could you impose the death penalty, vote to impose the death
7 penalty in that case?

8 A. I believe I could.

9 Q. Okay. And if you felt that the circumstances warranted
10 it, could you impose the sentence of life imprisonment
11 without the possibility of parole?

12 A. Yes, sir.

13 Q. Let me ask you whether if someone were found guilty of
14 a murder, would you always impose the death penalty?

15 A. I think it would depend on the circumstances.

16 Q. Okay. And so likewise, if you found the
17 circumstances --

18 Well, if someone were found guilty of murder, would you
19 always vote to impose life imprisonment without parole?

20 A. That would be the same thing, it would depend upon the
21 circumstances.

22 Q. Thank you, ma'am. Please answer any questions that the
23 solicitor may have.

24 MR. GOWDY: May it please the court?

25 THE COURT: Yes, sir.

1 VOIR DIRE EXAMINATION BY MR. GOWDY:

2 Q. Good morning, ma'am.

3 A. Good morning.

4 Q. The judge asked everything that I had thought to ask
5 you, but I can't resist asking at least a couple of
6 questions. So let me ask you this.

7 What are your general views on capital punishment and
8 from what sources do they evolve?

9 A. They are like -- definitely the punishment has to fit
10 the crime. So it depends on the circumstances, like I said,
11 you know, on whether it should be the death penalty or life
12 sentence. You know, it would definitely depend upon the
13 circumstances, and I just feel like -- I don't know, after
14 with life experience you realize that, you know.

15 Q. You will always -- under South Carolina law, it's not a
16 formulated thing where if A and B exists, you have to impose
17 death.

18 A. Right.

19 Q. You always have the option of life, for any reason, or
20 no reason.

21 Accepting that, that you always have the option of
22 life, do you still believe there are circumstances under
23 which you could impose the death sentence?

24 A. Yes.

25 Q. And if that were your verdict, would you be able to

1 sign your name to a verdict form that indicates that that
2 was your verdict?

3 A. Yes.

4 Q. Thank you for your time.

5 VOIR DIRE EXAMINATION BY MR. STARNES:

6 Q. Good morning, Ms. Lucas. How are you doing?

7 A. Good morning.

8 Q. My name is Norman Starnes and I'm the defendant in this
9 case.

10 If I heard you correctly, did you say the punishment
11 would fit the crime?

12 A. Correct.

13 Q. What kind of crime -- what kind of punishment would you
14 give an individual for murder?

15 A. It varies on the crime itself. To me, I feel like if
16 there was suffering involved. And like if it depends upon
17 the extent of the suffering, or if it was malice. The whole
18 circumstances, you know.

19 Q. So then what I'm hearing, you don't think that all
20 killings are murder?

21 A. Well, I don't know if I would describe it that way, but
22 I don't feel like every person should be punished the same
23 if they -- I don't know how to exactly word that correctly.

24 Q. Take your time.

25 A. Accidents happen. And, you know, some circumstances

1 are different than others. And you just have to weigh out
2 the circumstances. And, you know, it's just like having
3 children. You don't punish every child the same way for the
4 same thing, because they don't take that punishment the same
5 way.

6 Q. Can you tell me your personal feelings on self-defense?

7 A. I have never been put in that situation, and I have
8 thought about that before. I really -- I don't know how I
9 would handle it personally myself. I know I would want to
10 fight to live, but I just don't know. I don't think anybody
11 does until they are faced with that.

12 Q. Could you sit and hear evidence of self-defense in a
13 case?

14 A. Yes, sir.

15 Q. You could do that?

16 A. Yes, sir.

17 Q. Could you follow the law as the court instructs you on
18 self-defense?

19 A. Yes, sir.

20 Q. And if the trial court was to instruct you that the
21 State has the burden to disprove self-defense, you could
22 follow that law?

23 A. Yes, sir.

24 Q. Ms. Lucas, when I say disprove self-defense, what does
25 that mean to you?

1 A. It means that they would have to prove that it wasn't
2 in self-defense. Even if the circumstances -- and that
3 would depend a lot on the circumstances.

4 Q. Yes, ma'am.

5 And if the judge instructed you that you would have
6 to -- you would have to consider -- or the State would have
7 to disprove self-defense before you could consider malice
8 and murder and all of that, could you follow that
9 instruction?

10 A. Yes, sir.

11 Q. Okay. In the event that we do get into a penalty
12 phase -- and you understand that we do not have to get into
13 a penalty phase?

14 A. Correct.

15 Q. And that -- if the jury doesn't find the defendant
16 guilty of murder, then there is not that second part.

17 A. Correct.

18 Q. Ms. Lucas, in the event that we did get into that
19 penalty phase and eleven jurors felt that the defendant
20 deserved the death penalty, but you did not feel that way in
21 your own judgment, could you vote for life imprisonment?

22 A. Yes, I could.

23 Q. And if the judge instructed you that -- the trial court
24 instructed you that life imprisonment meant life without
25 parole, could you follow that instruction?

1 A. Yes, sir.

2 Q. Have you heard anything about this case or read
3 anything in the newspaper?

4 A. No, sir.

5 Q. Could you take all the testimony from the witness
6 stand, see all the evidence and give the State and the
7 defendant a fair trial?

8 A. Yes, sir.

9 Q. Ms. Lucas, that's all we can ask from you. Thank you
10 very much.

11 MR. GOWDY: No.

12 THE COURT: Thank you, ma'am. If you will wait
13 just outside the courtroom door for a minute. We will have
14 you back momentarily. Okay?

15 JUROR NUMBER 165: Thank you.

16 (Whereupon, Juror Number 165 left the courtroom)

17 THE COURT: Position of the State?

18 MR. GOWDY: She's qualified.

19 THE COURT: Position of the defense.

20 MR. STARNES: Qualified, Your Honor.

21 THE COURT: The court agrees she would be
22 qualified.

23 Please bring her back, sir.

24 (Whereupon, Juror Number 165 entered the
25 courtroom)

1 THE COURT: Please, ma'am, just stand right there.

2 Ms. Lucas, you have been found qualified as a
3 juror in this case. That doesn't mean that you are on the
4 jury, however. It means that you are qualified to be in the
5 jury pool from which the jury would be selected.

6 What I'm going to ask you to do is I'll excuse you
7 at this time and ask you to return tomorrow, that is to say
8 Wednesday at three p.m..

9 Now, should there be any change in that time to
10 report back, the message will be put on the voicemail, and
11 you should have that number on your card from the clerk's
12 office. If you call that number after six o'clock tonight,
13 if there any change in that, it would be in the voicemail.

14 Now, listen for a message for qualified jurors.
15 If there is more than one message, listen to the message for
16 qualified jurors, because you are now a qualified juror,
17 okay.

18 You also could contact the clerk's website. And
19 on it it will have a message -- it could have a message
20 tonight after six for qualified jurors. If there is a
21 change in the time, it would be reflected there as well.

22 But if you do not hear anything different, please
23 report back tomorrow at three p.m..

24 JUROR NUMBER 165: Okay.

25 THE COURT: Okay. Thank you.

1 JUROR NUMBER 165: Thank you.

2 (Whereupon, Juror Number 165 left the courtroom)

3 (Whereupon, Juror Number 255 entered the
4 courtroom)

5 VOIR DIRE EXAMINATION BY THE COURT:

6 Q. Good morning, ma'am.

7 You are Bernice Smith, juror number 255, is that
8 correct?

9 A. Yes, sir.

10 Q. Ms. Smith, I want to first of all just tell you to
11 relax. This is a very informal session. We will ask you
12 certain questions concerning your views as to certain
13 things. There are no right or wrong answers and nobody is
14 going to disagree with you answers. So what we want you to
15 do is just be open and honest and give the most honest
16 answers that you can to the questions, okay?

17 A. Okay.

18 Q. Now, do you remember that from yesterday that I placed
19 the entire jury panel under oath? You continue to be under
20 oath for the information that you are going to provide the
21 court at this time. Do you understand that?

22 A. Yes, sir.

23 Q. And did you -- you filled out a juror questionnaire
24 information form and sent it back to the clerk's office, is
25 that correct?

1 A. That's correct.

2 Q. Has anything happened since you filled it out and sent
3 it in that needs to be changed on that form, or that you
4 would change, any modification necessary?

5 A. The only thing I can think of, it asked me about
6 employment and I do have a job now. Other than that, there
7 wouldn't be anything.

8 Q. Thank you, ma'am.

9 Let me ask you whether you saw back in the jury room a
10 long list of names with numbers by them who are potential
11 witnesses in this case, if you recognized any of those names
12 on there? Did you have a chance to look at it?

13 A. Yes, sir.

14 Q. Of course, the list is there in front of you as well,
15 but if you recognized any of those names, I would like you
16 to give us, not the name itself, but the number beside the
17 name. Did you recognize any of those names on there? Did
18 you know any of those people?

19 A. Not as I know of, no.

20 Q. Ma'am, did you see back in the jury room a sheet with
21 three paragraphs on it that talked about three different
22 types of jurors?

23 A. Yes, sir.

24 Q. Did you have a chance to read that?

25 A. Yes, sir.

1 Q. And you realize that is not all inclusive, it doesn't
2 describe completely every juror, but did you identify
3 yourself as being more like any one of these three types of
4 jurors?

5 A. Probably number three.

6 Q. Probably number three.

7 Ma'am, so you would be the type of juror who would not
8 make up your mind in advance, but would want to hear the
9 testimony and evidence and the court's instruction on the
10 law that applies before you would form an opinion or
11 judgment about that, is that correct?

12 A. Yes, sir.

13 Q. And do you understand that the State is seeking the
14 death penalty in this case? And these cases are treated a
15 little bit different procedurally than other cases.

16 It could possibly be two phases to a trial, depending
17 upon what happens in the first phase.

18 In the first phase, that may be the only phase, but the
19 State is required to prove the defendant guilty beyond a
20 reasonable doubt of the charges. Do you understand that?

21 A. Yes, sir.

22 Q. And if the State fails to meet that burden of proof
23 beyond a reasonable doubt of the elements of the offenses to
24 which the defendant is charged, then that would be the end
25 of the matter and that would conclude the jury's service in

1 the case. Do you understand that?

2 A. Yes, sir.

3 Q. If, however, the jury found that the State had proven
4 the elements of the offense of murder beyond a reasonable
5 doubt, then we would go to the second phase of the trial.
6 For lack of a better description, it's called the penalty
7 phase. And in that the jury would be asked to determine the
8 appropriate punishment. Do you understand that, ma'am?

9 A. Yes, sir.

10 Q. And in that second phase, if we get to that phase, the
11 State would put up any aggravating factors that they wanted
12 the jury to consider on the issue of punishment. The
13 defense would put up any factor in -- mitigating factors
14 that they would like the jury to consider on the issue of
15 punishment, and the court would instruct you, the jury, on
16 the law that applies to those issues, and then the jury
17 would be asked to determine the appropriate punishment. And
18 the two possible punishments the jury would be asked to
19 consider is the death penalty or life imprisonment without
20 the possibility of parole. Do you understand that?

21 A. Yes, sir.

22 Q. Now, let me ask you, ma'am, whether you could listen --
23 if we reached that stage. We might not reach that stage in
24 that case, but if we reach that stage, could you listen to
25 all of that information that's provided during the penalty

1 phase, the court's instruction on the law, and render an
2 appropriate punishment in that case, in the case?

3 A. Yes, sir.

4 Q. So if the circumstances, all the information and
5 pursuant to law, if you felt that the appropriate punishment
6 under the circumstances was the death penalty, could you
7 vote for the death penalty, ma'am?

8 A. Yes, sir.

- 9 Q. If you heard all of the information provided to you,
10 including mitigating and all of the instructions by the
11 court that you are to consider, and you felt that the
12 sentence of life imprisonment without the possibility of
13 parole was the appropriate punishment, could you vote for
14 life imprisonment without the possibility of parole, ma'am?

15 A. Yes, sir.

16 Q. All right. Thank you. Please answer any questions
17 that the solicitor might have.

18 MR. GOWDY: May it please the court?

19 THE COURT: Yes, sir.

20 VOIR DIRE EXAMINATION BY MR. GOWDY:

21 Q. Good morning, ma'am.

22 A. Good morning.

23 Q. If my notes are right, you said that you just took a
24 new job?

25 A. Yes, sir.

1 Q. Where is that?

2 A. I work at Walgreen's.

3 Q. I also noticed -- and thank you on behalf of everybody
4 for filling out the questionnaire. It's a tremendous help
5 to everyone, and I know some of the questions sort of border
6 on being personal, so thank you for filling it out.

7 If I am reading this correctly, you previously served
8 on a civil jury?

9 A. I didn't really know how to answer that question.

10 Q. Right.

11 A. Years ago I served on an eminent domain case.

12 Q. Okay.

13 A. And I'm not from this state, so I don't really know
14 how -- the laws are different here than from where I'm from.

15 Q. Where are you from?

16 A. I'm from south Mississippi.

17 Q. You had it right, that's civil.

18 A. Okay.

19 Q. A condemnation case. You had it right.

20 What are your general views on capital punishment?

21 A. Well, everybody is always innocent until proven guilty.

22 Q. Agreed.

23 A. And we all have different views, but I would have to
24 hear what happened and give it thought before I made my
25 decision as to how I would feel about it.

1 Q. Are you convinced as you sit here today that there are
2 circumstances under which you could impose a death sentence?

3 A. Yes, sir.

4 Q. You will always have the choice between life and death.
5 There is no formula in South Carolina that says if A and B
6 are accomplished, it's automatically death. You always have
7 the choice.

8 Accepting that you will also have a choice of life
9 without parole and death, would you still be able to pick
10 that under certain circumstances?

11 A. I think so, considering the harsh fact of it, how bad
12 it was.

13 Q. So even though life without parole is always there as
14 an option, you still believe that you could impose the death
15 sentence?

16 A. Yes, sir, because some things are punishable by death,
17 in my opinion.

18 Q. Okay. You would be fair and open minded during the
19 guilt phase?

20 A. Repeat?

21 Q. You would be fair and open minded during the guilt
22 phase, when the State is -- the State has the burden of
23 proving that the defendant committed the crime.

24 A. Yes, sir, I would have to listen to everything. I
25 don't really understand your question.

1 Q. Well, you told the judge that you would be open minded
2 and fair, that you don't come into this case with any
3 preconceived notions.

4 A. No, you can't judge somebody before you know what
5 happened.

6 Q. Exactly.

7 And you are convinced -- it's the last time I'm going
8 to ask you. All right? I promise.

9 You are convinced, even with life without parole, you
10 could impose the death sentence?

11 A. Yes, sir, I think I could.

12 Q. Thank you.

13 MR. STARNES: If it please the court, Your Honor?

14 THE COURT: Mr. Starnes.

15 VOIR DIRE EXAMINATION BY MR. STARNES:

16 Q. Hi, Ms. Smith. How are you doing?

17 A. Hi. How are you?

18 Q. My name is Norman Starnes and I'm defendant in this
19 case.

20 I noticed when -- well, when he questioned you, you
21 said that you were probably a number three juror?

22 A. Yes, sir.

23 Q. Could you explain that to us, if you would, please,
24 ma'am?

25 A. Well, like I said before, you know, we -- we can't make

1 a decision about what we would think. We can't just say
2 that okay, this man deserves life or this lady deserves
3 life, or this lady deserves death or whatever, especially if
4 you don't know what happened.

5 Q. Okay.

6 A. You have to listen to the facts.

7 Q. Okay. Do you believe that all killings are murder?

8 A. No, sir, some things are self-defense.

9 Q. Some things are self-defense?

10 A. Yes.

11 Q. Tell me how you feel about that, if you would, please.

12 THE COURT: No, we are not going there. You can
13 rephrase it, if you want to. You can rephrase your
14 question, because I don't know what you are asking, and I'm
15 sure she doesn't either. Go ahead.

16 MR. STARNES: Your Honor, I was just going to ask
17 her how she felt about self-defense.

18 THE COURT: Well, that's a broad question. Ask
19 her a specific question, please, sir.

20 BY MR. STARNES:

21 Q. Could you consider self-defense if it was an issue in
22 this case?

23 A. I don't understand what you are saying, sir.

24 Q. If evidence comes into this case, evidence of
25 self-defense, could you consider that?

1 A. Yes, sir, we have to consider all the facts.

2 Q. You could take the testimony from the witness stand and
3 all the evidence in this case, and if self-defense was an
4 issue, you could consider that?

5 A. Yes, sir. I mean, you have to listen to all of the
6 facts.

7 Q. All right. If the trial court instructed you that the
8 State has the burden to disprove self-defense --

9 MR. GOWDY: Your Honor, I'm going to object to
10 this question. I have been extraordinarily patient. It's a
11 guilt phase question and it's a hypothetical, and I would
12 like to approach the bench to be heard --

13 THE COURT: Approach, please.

14 MR. GOWDY: -- in greater detail.

15 (Whereupon, the lawyers and the defendant
16 approached the bench for an off-the-record discussion)

17 THE COURT: Ms. Smith, I'm sorry, we are going to
18 have this discussion out of your presence, so I'm going to
19 ask you to step out just a minute. We will have you back in
20 in just a minute. Okay?

21 JUROR NUMBER 255: Yes, sir.

22 (Whereupon, Juror Number 255 left the courtroom)

23 THE COURT: All right. Let's go on the record.

24 The State, the solicitor has objected to the
25 myriad of questions about self-defense to jurors. It seems

1 like it's gotten to be more and more questions about
2 self-defense of the jurors, and the State has objected to
3 that. They have objected to it before. I have allowed some
4 leeway to Mr. Starnes because he's pro-se in this case. I
5 have allowed him a little leeway about asking about that,
6 but it just seems like the questions concerning self-defense
7 have become more and more with every single juror.

8 And, Mr. Starnes, you are not allowed to ask
9 hypothetical questions or profile a juror on -- or
10 unnecessarily overemphasize the issue of self-defense.
11 That's a matter for the trial itself and that sort of thing.

12 But it seems like to me that, even though really
13 the voir dire in this case is to determine the person's
14 views towards the death penalty or life imprisonment, what
15 they would do with that, I, nevertheless, have allowed you
16 some leeway in asking some questions about the penalty
17 phase, what they would do, and which I believe is -- I found
18 to be appropriate.

19 However, what you have done is expanded that on
20 the issue of self-defense. And the questions you are asking
21 now, several questions about self-defense tend to
22 overemphasize that, profile a juror and stake them out on
23 self-defense, and the burden of proof of self-defense and
24 that sort of thing, and I don't really think that's
25 appropriate for this voir dire.

1 I have allowed you some leeway, over objection of
2 the State, but you have taken advantage of that, and now you
3 are asking four or five questions about self-defense, which
4 overemphasizes that issue to the jury.

5 The purpose of this is not to ask the juror a
6 hypothetical questions, overemphasize an issue to them that
7 you plan to raise during the trial. That's not the purpose
8 of this voir dire, and you have taken advantage of that and
9 just asked more and more questions, and so we need to have
10 some limits on that.

11 And so -- I'm not prohibiting you from asking it.
12 Although I question whether it's really what should be done
13 in voir dire, I have not prohibited you from doing it, and
14 I'm not prohibiting you from doing it now, but I'm not going
15 to allow you to ask some hypothetical questions or stake out
16 a juror on how they feel about self-defense and the State's
17 burden of proof specifically on that issue and that kind of
18 thing, because that's not the purpose of this voir dire.

19 You can ask them if -- you previously have been
20 asking a number of potential jurors if they believe that all
21 killings are murder, and that's okay. You know, I'll allow
22 you to ask that.

23 You can ask them if they believe a person is
24 entitled to the defense of self-defense under certain
25 circumstances, you can ask them that; or if a person has a

1 right to defend themselves, I think you can ask that.
2 Although I don't think it's really the subject of this voir
3 dire, I'm going to allow you to ask that, but then you can't
4 just keep going on and on, okay?

5 I will allow you to ask them if they understand
6 that if the issue -- if they would consider the defense of
7 self-defense, if it was presented in the facts and evidence.
8 I think those are appropriate questions.

9 "If you could follow the court's instruction with
10 regard to the law of self-defense," but I think that's
11 enough on self-defense.

12 You are overemphasizing it now I think in this
13 voir dire, which that's not the purpose of it, but I'll
14 allow you to at least get a juror's answer to that, if they
15 believe in self-defense or follow instructions on
16 self-defense.

17 And if they believe all killings are murder, I'll
18 allow you to ask that, and you can lead into "do you believe
19 a person has a right to defend yourselves?" I think you can
20 say that, "would you follow the court's instruction on the
21 law with regard to self-defense," but I think that's as far
22 as you need to go with that. I don't think you need to get
23 into your individual case on that.

24 MR. STARNES: Yes, sir.

25 So I'm precluded from telling them "I will be

1 presenting evidence of self-defense"?

2 THE COURT: Yes.

3 "I'm going to present evidence on self-defense"?
4 That's not the purpose of voir dire. This is not an opening
5 statement to the jury, sir.

6 MR. STARNES: I'm just following what stand-by
7 counsel told me.

8 THE COURT: Well, this is not opening statement to
9 the jury. You can ask them "do you believe -- "do you
10 believe that a person has a right to defend themselves?"
11 Okay.

12 "Could you follow the court's instruction to you
13 with regard to the law of self-defense?"

14 Those are appropriate questions.

15 "Do you believe all murders are killing," and lead
16 in from there as to self-defense.

17 You know, whether you are going to raise the issue
18 of self-defense hasn't been determined yet. We haven't
19 gotten to the trial yet, and so -- and this is not an
20 opening statement saying we are going to introduce evidence.
21 That's not the purpose of this voir dire.

22 MR. STARNES: I understand that.

23 THE COURT: You will have a chance to do that
24 before the jury when they are selected, okay, but that's not
25 the purpose of this voir dire.

1 Let's understand, I'm not precluding from you
2 asking their views on self-defense. I'm not precluding you
3 from doing that. You can ask them if they believe all
4 murders are killings. You can lead in from there and "do
5 you believe that the person has a right to defend
6 themselves?"

7 "And if the court instructed you with regard to
8 self-defense in this case -- "you heard evidence as to
9 self-defense and the court instructed you on the law of
10 self-defense, could you follow that?" Okay?

11 MR. STARNES: Yes.

12 THE COURT: Those are appropriate questions.

13 Other than that, getting into hypotheticals and
14 things is beyond the scope of this voir dire.

15 MR. STARNES: Your Honor, can I ask them the
16 burden to disprove self-defense? Could they follow that,
17 and can we leave it at that?

18 THE COURT: That's not the purpose of voir dire,
19 to --

20 MR. GOWDY: Your Honor, imagine, imagine if I were
21 to ask a juror "do you agree or will you follow the court's
22 instruction that the defendant destruction of evidence is
23 consciousness of guilt," I would be under the jail if I
24 asked that question on voir dire.

25 It's enough to say "can you follow the court's

1 instruction on the law, regardless of whether or not that
2 you agree with it?"

3 But to start instructing the jury like it's a jury
4 charge at the end of the trial about who has the burden for
5 what, with respect to specific defenses, if this were a
6 non-capital murder case, none of these questions would be
7 being asked with respect to guilt.

8 So my question is in a capital case, why are they
9 being asked?

10 THE COURT: Well, they are not normally asked.
11 I'm -- like I say, I'm trying to allow him a little leeway,
12 but I think his -- he -- you have expanded your questions
13 with regard to self-defense. You have overemphasized that
14 issue with regards to the questions of the jurors. And you
15 just -- you know, and that's not the purpose of voir dire is
16 to allow you to profile a juror or implant things in their
17 mind or to educate them about the law.

18 The question is how do they feel about certain
19 things, and I think you can ask them -- as I said to you,
20 you can ask them if they believe a person has right to
21 defend themselves, and if they believe -- if there is
22 evidence of self-defense and the court instructs them
23 that -- the jury as to the law of self-defense, if they
24 would follow the instructions of the court to consider that
25 issue. I have no problems with that, as long as we don't

1 get into instructing them in the hypotheticals and that sort
2 of thing.

3 MR. STARNES: Yes, sir. Okay.

4 I can discuss -- I can ask them their views on
5 self-defense. I can ask them whether they believe that all
6 killings are murder.

7 THE COURT: Let me suggest this to you, Mr.
8 Starnes. I'm not trying to tell you what to do, but when
9 you ask the question "what are your views on self-defense,"
10 that's so wide open, the juror really has a difficult time
11 understanding what you mean. That's just being broad and
12 wide open question, I think.

13 MR. STARNES: Your Honor --

14 THE COURT: I think if you say "do you believe a
15 person has right to defend themselves, or has a right to
16 self-defense," if you asked them that way, it's something
17 that I think they can understand easier than saying "what's
18 your theory on self-defense?" I mean, how do you answer
19 that question? That's so broad, it's like written a ten
20 page essay instead of a one paragraph response to the
21 question, if you asked the juror something that broad.

22 I'm -- I'm trying to allow you some leeway, but
23 I'm not -- but you cannot -- but I'm not going to allow you
24 to profile a potential juror in this voir dire session.

25 You certainly can ask them about their views on

1 the death penalty and determine that. You certainly can ask
2 them about that. And you can ask them about if they believe
3 in self-defense; you know, a person has right to defend
4 themselves; and issues are raised concerning self-defense,
5 and could they listen to that and follow the court's
6 instruction with regard to the defense of self-defense,
7 would they consider that and -- you know, that's perfect,
8 okay.

9 MR. STARNES: So I'm precluded from asking them
10 their views on self-defense?

11 THE COURT: I'm not precluding from you doing
12 that. I'm just saying that to ask a wide open question is
13 like -- they are having a difficult time understanding what
14 you mean by "how do you feel about self-defense?" That's so
15 broad. Under what circumstances? Do you see what I'm
16 saying?

17 MR. STARNES: I understand.

18 THE COURT: It's so broad, they don't know how to
19 answer the question. You should have been able to see that
20 by now.

21 If you narrow the question down a little bit more,
22 it's easier to answer, "do you believe a person has a right
23 to defend themselves," or, "do you believe that in certain
24 cases self-defense is appropriate?"

25 MR. STARNES: Your Honor, if I asked them that

1 question, "do you believe a person has right to defend
2 themselves," and they say yes, can I ask them why?

3 MR. GOWDY: Judge --

4 MR. STARNES: Or can I ask them to explain.

5 MR. GOWDY: Judge, that question is not asked and
6 in any murder trial in South Carolina. It is not?

7 THE COURT: I agree with you. I agree with you.

8 MR. GOWDY: It's not a defense to death.

9 Self-defense is not a defense to the penalty phase. It's a
10 defense in the guilt phase. So why it's being asked -- I
11 understand I'm not asking the court to -- it's enough if you
12 ask "can you follow the judge's instruction on
13 self-defense?" That is enough. It's not asked in any other
14 murder case, and this one is no different.

15 MR. STARNES: It's apparent that Mr. Gowdy doesn't
16 like that word self-defense, because it's going to come into
17 play.

18 THE COURT: Well, no, Mr. Starnes, what you don't
19 understand is we are not trying the case. Okay? We are not
20 into the trial. We are into voir dire as to the jury's
21 views with regard to capital punishment. That's what we are
22 into.

23 MR. STARNES: I understand, Your Honor.

24 THE COURT: Okay. The State is not allowed to ask
25 jurors questions about, you know, "if you found this, would

1 you give the death penalty? If you found that he killed two
2 people without justification, could you give the death
3 penalty?" He can't ask those kind of questions.

4 He can ask you "can you follow the court's
5 instruction on the law and would you be listening to the
6 testimony and evidence and be fair?" That's all you should
7 be able to ask, if you going to ask anything about
8 self-defense. "Do you believe that a person has right to
9 defend himself? If self-defense is introduced into this
10 trial, would you listen to the testimony and evidence on
11 that issue and follow the judge's instruction on the law on
12 self-defense?" That's all you are entitled to ask them.
13 You are not even entitled to ask them that in this type of
14 voir dire regarding capital -- on a capital case, but I'm
15 going to allow you to ask that question, but not beyond
16 that. I think that covers it. You are not even allowed to
17 ask that. Normally it's not asked. Do you understand that?

18 MR. STARNES: No, sir, I don't, because I have
19 read various transcripts, Your Honor, in which they asked
20 about jurors feelings on guns, jurors feelings on drugs
21 being introduced in the case. I have read several
22 transcripts.

23 THE COURT: Well, okay. If that affects their
24 ability to determine the death penalty, yeah, I think it
25 would be appropriate in this case, but I'm not prohibiting

1 you from asking if they would consider self-defense and the
2 judge's instruction on the law of self-defense. I'm not
3 prohibiting you from doing that, Mr. Starnes. But it's
4 supposed to be how do they feel in regards to the death
5 penalty or life without parole and issues related to that.
6 That's our purpose in this voir dire. That's why we are
7 doing individual voir dire.

8 MR. STARNES: So it's my understanding I cannot
9 ask them their views on self-defense?

10 THE COURT: Mr. Starnes, you are so hung up on
11 that, I'm going to allow you to ask that question. You just
12 refuse to listen to the court and tell you that every time
13 that you have asked that question, the juror just sits there
14 and just sits there like they are trying to figure out what
15 the heck that you are talking about, and that has not --
16 apparently that's not dawned on you that that's such a broad
17 question, they don't know what you mean. And I have tried
18 to get you to narrow it down to about three questions on
19 self-defense, which I don't think you are allowed to ask
20 that question at all in this proceeding, but I have allowed
21 you to do it. But I think it ought to be narrowed down to
22 the appropriate question, which is "do you believe the
23 person has right to defend themselves," or, "do you believe
24 in self-defense? Do you believe in self-defense? If
25 self-defense becomes an issue in the trial, could you listen

1 to the testimony and evidence on that issue and the court's
2 instruction on the law that applies to that issue, could you
3 listen to that and consider that?" That's all at most you
4 are entitled to ask. Okay?

5 MR. STARNES: So it's my understanding that I
6 cannot ask them their views on self-defense?

7 THE COURT: You know, Mr. Starnes, I told you up
8 here at the bench if you start playing that game with me,
9 and I'm -- and, you know, I do not appreciate it. I do not
10 appreciate that. I have explained this to you about three
11 or four times about it and you still come back to the same
12 thing. And, you know, I don't know why you are taking this
13 tactic. I really don't.

14 MR. STARNES: Your Honor, I'm not being
15 hyper-technical. That means no?

16 THE COURT: Mr. Starnes, just let me think about
17 it for a minute, okay?

18 MR. STARNES: Okay.

19 THE COURT: I'm considering taking it all off the
20 table, because you are not entitled to ask them anyway,
21 unless it applies to their views on the death penalty or
22 life imprisonment.

23 And self-defense comes in the guilt phase. It
24 doesn't even come up in the sentencing phase, which is what
25 we are about in this voir dire. Somehow you just don't --

1 that won't register for you for some reason. You just don't
2 get it.

3 I'm not going to turn these voir dire sessions
4 into a referendum on self-defense, let that go to every
5 single juror that comes through here. It's not the purpose
6 and I'm not going to allow you to do that. Okay?

7 MR. STARNES: Just note our objection for the
8 record, Your Honor.

9 THE COURT: Well, I don't know what your objection
10 is, because I have allowed you quite a bit of leeway. I
11 have allowed you to do that. That still doesn't satisfy
12 you, and I don't know what you are asking me.

13 MR. STARNES: Well, Your Honor, if a juror can
14 vote for the death penalty, could they put -- could they
15 kill somebody in an act of self-defense? I mean, they can
16 sign their name to a death verdict to put someone -- to kill
17 someone, a defendant, then I think I have a right to explore
18 self-defense, because if they can write their name --

19 THE COURT: Mr. Starnes, that decision is made in
20 the guilt phase. We don't get to that point unless the jury
21 has already determined whether self-defense applies or
22 didn't apply. They decide that in the guilt phase, not in
23 the second phase. Okay? And they can consider all of that
24 when you get to the penalty phase. They can consider the
25 testimony, you know, as to what you have alleged -- any

1 allegations concerning self-defense, they can consider all
2 that, but it's not going to be a determination of innocence
3 or guilt, because that would have already been determined --

4 MR. STARNES: Yes, sir.

5 THE COURT: -- in the guilt phase of the trial
6 before you ever get to the sentencing phase of the trial.
7 That will already have been determined by the jury in the
8 guilt phase, whether self-defense applies or not.

9 MR. STARNES: Your Honor, would it be appropriate
10 to ask them do they feel that the death penalty is a
11 self-defense to society? I read a case on that and I could
12 probably find it on the Westlaw.

13 MR. GOWDY: You can find about anything on
14 Westlaw, judge. That -- I have never heard that question
15 asked in any capital case that I have ever been a part of.

16 THE COURT: I certainly think you can ask them on
17 their views on the death penalty and when they think that
18 penalty would be appropriate and that kind of thing, Mr.
19 Starnes. I certainly think that's appropriate for you to
20 ask a juror on voir dire -- I certainly think that you can
21 explore their views as to the death penalty and the
22 appropriateness of it. I'm not limiting you there.

23 I'm going to allow you to ask the questions on
24 self-defense, but what I'm asking you to do is not keep on
25 and on. It seems like you start spending more and more of

1 your time on voir dire on self-defense issues and raising
2 those, and I don't think that's appropriate. And I would
3 just ask you to tailor that down to whether they would
4 consider -- in a trial that they would consider any evidence
5 presented on self-defense, if they would consider that. And
6 I'm not going to tell you exactly what you can ask.

7 MR. STARNES: All right.

8 THE COURT: What I'm saying, though, is that you
9 have expanded it and expanded it and I want you to narrowly
10 ask the questions to the jurors to determine what their
11 views are, whether they can consider self-defense and that.

12 I'm not going to prohibit you from asking that
13 altogether. Even though I don't think it's really
14 appropriate for this stage, I'm going to allow you to ask
15 it. I'm just asking you not to ask hypotheticals or get
16 beyond whether they would consider it.

17 MR. STARNES: Yes, sir.

18 THE COURT: What -- you know, if they consider
19 self-defense, they would consider that, if they believe in
20 self-defense. I think you can -- I will allow you to ask
21 those questions. If they would follow the law as instructed
22 by the court; if they would consider self-defense, if it was
23 raised; and the court's instruction on the law, follow the
24 law on self-defense. You have asked those questions. I
25 have allowed those.

1 MR. STARNES: Yes.

2 THE COURT: But then you just keep adding to them,
3 and I'm saying that there is a limit to the questions that
4 you need to be able to ask them.

5 MR. STARNES: I believe we can agree on that, Your
6 Honor.

7 THE COURT: Sir?

8 MR. STARNES: I believe we can agree on that.

9 THE COURT: All right. Just be reasonable with
10 that. That's all I ask of you. I'm not trying to prohibit
11 you from asking it. I just think that -- when you ask a
12 very broad question like that with a juror, they really
13 don't know how to answer it, but I'm going to leave that up
14 to you.

15 All right. Let's proceed. Please bring the juror
16 back.

17 (Whereupon, Juror Number 255 entered the
18 courtroom)

19 THE COURT: Ms. Smith, I apologize for the
20 interruption. We just needed to clear up a matter of law
21 and we have done that and we are ready to proceed with the
22 asking you some questions, please, ma'am.

23 Please proceed.

24 BY MR. STARNES:

25 Q. I'm sorry for the delay.

1 Okay. Do you believe that the defendant is entitled to
2 self-defense?

3 A. Yes, sir, I do.

4 Q. And you can consider that evidence if it was introduced
5 at trial?

6 A. I have to consider everything that's introduced.

7 Q. Okay. Is there anything about this case that would --
8 your personal feelings or anything that would prevent you
9 from being a juror?

10 A. Not as I know of, sir. I don't know anything about
11 this case until I hear it.

12 Q. In the event that eleven jurors -- we get to that
13 penalty phase and eleven jurors wanted to vote for the death
14 penalty, but you felt that life imprisonment without the
15 possibility of parole was the appropriate punishment, could
16 you vote for life imprisonment?

17 A. Yes, sir.

18 Q. Thank you, ma'am. That's all we can ask.

19 THE COURT: All right. Thank you, ma'am. I'll
20 let you please just wait just outside the courtroom door and
21 we will have you back in in just one minute, okay?

22 A. Okay.

23 THE COURT: Thank you.

24 (Whereupon, Juror Number 255 left the courtroom)

25 THE COURT: Position of the State?

1 MR. GOWDY: She's qualified.

2 THE COURT: Position of defense?

3 MR. STARNES: Qualified, Your Honor.

4 THE COURT: Thank you.

5 I agree she's qualified.

6 We have been at it quite a while. If anybody
7 needs a break, we are running a little bit behind, but,
8 nevertheless, if somebody really needs a break, we can take
9 one. Does anybody need one? Let's press on.

10 (Whereupon, Juror Number 255 entered the
11 courtroom)

12 THE COURT: You have been found qualified. So
13 which means -- it doesn't mean that you are on the jury, but
14 it means that you are in the pool of jurors from which the
15 jury would be chosen. Okay. And we are still going on with
16 that process determining getting the pool of jurors. So
17 what I'm going to ask you to do is return back to court
18 tomorrow, that is to say Wednesday at three p.m.. Tomorrow
19 at three p.m..

20 Now, in the event something happened that we
21 changed that time, you can call into the voicemail number
22 that you have on the card from the clerk's office after six
23 o'clock tonight. And if there is a change in the time, it
24 would be in the voicemail message to you. That voicemail
25 message would be to qualified jurors. You now a qualified

1 juror, so you will listen to the message for qualified
2 jurors. And if it should change the time, just follow that
3 instruction.

4 The clerk also has the website, if you have access
5 to that to a computer, you can check the website. And on it
6 it will have the message for qualified jurors. And it could
7 change the time to report back. But, again, that would be
8 tonight after six o'clock.

9 If you don't receive any other information from
10 any of those sources, please report back tomorrow at three
11 o'clock.

12 JUROR NUMBER 255: Where do I report at, sir?

13 THE COURT: Right back out front here.

14 JUROR NUMBER 255: Yes.

15 THE COURT: Right back out front. Thank you,
16 ma'am.

17 (Whereupon, Juror Number 255 left the courtroom)

18 (Whereupon, Juror Number 112 entered the
19 courtroom)

20 VOIR DIRE EXAMINATION BY THE COURT:

21 Q. Good morning, sir.

22 You are Steven Hanes, juror number 112, is that
23 correct?

24 A. That's correct.

25 Q. Mr. Hanes, the first thing I'm going to get you to do

1 is just kind of relax, okay?

2 A. Okay.

3 Q. This is very -- don't be too tense. This is very
4 informal session. We are going to ask you some questions to
5 determine your views as to certain things.

6 There are no right or wrong answers and no one can
7 disagree with you or argue with you about your answers. We
8 just need to know your open and honest answers, so please be
9 as honest as you can, but be relaxed about it, if you will.

10 Now, do you remember that I placed the entire jury
11 panel under oath yesterday, and you continue to be under
12 oath for the purposes of giving information today. Do you
13 understand that?

14 A. Yes, sir.

15 Q. Sir, you sent in a juror information sheet to the
16 clerk's office when you received a juror summons, is that
17 correct?

18 A. Yes.

19 Q. Now, is there anything with regard to that information
20 that's changed that you need to update the court on? Has
21 there been any changes in that information?

22 A. No, sir.

23 Q. All right. Now, did you see back in the jury room a
24 long list of potential witnesses in this case? There was a
25 number of names with numbers beside them. Did you see that?

1 A. Same ones here?

2 Q. Yes, sir, the same ones that you have there in front of
3 you.

4 A. Right.

5 Q. Let me ask you, sir, I want to ask you if you recognize
6 any of those names? Please, if you did, please do not give
7 us the names, but just give us the number beside the name.
8 Do you recognize any of those names or do you know any of
9 those persons?

10 A. No, sir.

11 Q. You did not recognize any?

12 A. None.

13 Q. Sir, did you see back in the jury room a sheet with
14 three paragraphs on it that talked about three different
15 types of jurors? Did you see that?

16 A. Yes, sir.

17 Q. Did you have a chance to read through that, sir?

18 A. Yes, sir.

19 Q. This is not all inclusive. Of course, it won't
20 describe any -- one of them completely describe a juror, but
21 did you identify yourself as more like being one of those
22 three type jurors?

23 A. Yes.

24 Q. Which one, sir?

25 A. Number three.

1 Q. So number three, you are the type of juror who would
2 not make up your mind in advance, but you would have to hear
3 the testimony and evidence presented and the court's
4 instruction on the law before you would decide a matter, is
5 that correct?

6 A. That's correct.

7 Q. And do you understand that in this case the State is
8 seeking the death penalty, which procedurally is a little
9 bit different than other criminal trials, in that we have
10 what we call a guilt phase of the trial. And in the guilt
11 phase of the trial, the State is required to prove the
12 defendant guilty of the charges against him beyond a
13 reasonable doubt.

14 And if the State failed to meet that burden of proof,
15 by proving those elements of those offenses beyond a
16 reasonable doubt, and the jury so found, then that would be
17 the end of the matter, just like any other trial. Do you
18 understand that?

19 A. Yes, sir.

20 Q. Okay. In the event, though, that the jury found that
21 the State had proven the elements of the offense of murder
22 beyond a reasonable doubt and found the defendant guilty of
23 that charge, then we would move to a second phase of the
24 trial.

25 And in the second phase of the trial, for lack of a

1 better description, it's just described as the penalty
2 phase. And in the penalty phase what would happen is that
3 the State would present any aggravating factors by way of
4 testimony and evidence that they wanted the jury to
5 consider. The defense would present any mitigating factors
6 by testimony and evidence, if they wanted the jury to
7 consider in mitigation, and then with all that information
8 the court's instruction to the jury as to the law that
9 applies and how that information should be received and
10 generally the law in that area. Then the jury would be
11 asked to determine the appropriate punishment. And the two
12 choices of punishment would be the death penalty or life
13 imprisonment without the possibility of parole. Do you
14 understand that, sir?

15 A. Yes.

16 Q. Now, let me ask you, sir, whether if -- we may not
17 reach the second phase. It may end after the first phase of
18 the trial. But if we should reach the second phase of the
19 trial, do you believe that you could listen to the testimony
20 and evidence and any information presented in the way of
21 aggravating factors and mitigating factors and the court's
22 instruction on the law and render an appropriate punishment
23 in the case?

24 A. Yes, sir.

25 Q. And if you believed that the appropriate punishment was

1 the death penalty, could you vote for the death penalty,
2 sir?

3 A. Yes, sir.

4 Q. If you believed that the appropriate punishment is life
5 in prison without the possibility of parole, could you vote
6 for life imprisonment without the possibility of parole,
7 sir?

8 A. Yes, sir.

9 Q. All right. Thank you.

10 Please answer any questions that the solicitor may have
11 for you.

12 MR. GOWDY: May it please the court, Your Honor.

13 THE COURT: Yes.

14 VOIR DIRE EXAMINATION BY MR. GOWDY:

15 Q. Good afternoon, sir.

16 A. Good afternoon.

17 Q. I noticed after you went to the Ohio State University,
18 you did graduate work at Wright State?

19 A. That's correct.

20 Q. What did you study in graduate school?

21 A. It was continuing education towards a Masters Degree,
22 but I never -- I went half-way and quit.

23 Q. You taught school for a period of time?

24 A. 30 years. 25 years. I retired near 30.

25 Q. What subject matters did you teach?

1 A. Industrial technology. I coached football, basketball.

2 Q. One more personal question and then I'm not going to
3 ask you any more. I noticed that you had Marine Corps
4 sticker and a West Point sticker you said that you displayed
5 at some point. Did you have family members that --

6 A. My son graduated from West Point in 1997, and is
7 currently stationed at West Point as an admissions officer
8 for the athletic department. He's a major, and I was in the
9 Marine Corps. I served in Viet Nam.

10 Q. The judge asked you every question that I had in mind
11 to ask you with respect to the death penalty. You would
12 listen to the evidence. You would be fair in the guilt
13 phase. And if we got to the sentencing phase, you would
14 listen. And if the circumstances warranted death, you would
15 vote for death; if it warranted life, you vote for life?

16 A. Yes, sir.

17 Q. Thank you, sir. Thank you for your service.

18 VOIR DIRE EXAMINATION BY MR. STARNES:

19 Q. How are you doing, sir?

20 A. Good.

21 Q. My name is Norman Starnes. I'm the defendant in this
22 case.

23 You say that you served in Viet Nam?

24 A. Yes, sir.

25 Q. Do you believe that all killings are murder?

1 A. No, sir.

2 Q. Do you believe that someone is entitled to kill in
3 self-defense?

4 A. Yes.

5 Q. And would you consider evidence of self-defense in this
6 case, if it would become an issue?

7 A. Yes.

8 Q. If the court instructed you regarding the law on
9 self-defense, would you be able to follow that law?

10 A. Yes.

11 Q. And you would follow the law as the court instructed
12 you; in other words, not what you believed the law should
13 be, but what the court would instruct you?

14 A. That's correct.

15 Q. In the event we did get into the penalty phase -- and
16 you understand if a murder verdict is not rendered, that we
17 don't enter that second part?

18 A. (Shaking head yes)

19 Q. In the event we did get into the penalty phase and
20 eleven jurors felt that the defendant deserved the death
21 penalty, but you felt that life imprisonment was the
22 appropriate punishment, could you vote for life
23 imprisonment?

24 A. I would vote my -- to what I felt was right. So if
25 that's the decision that I had made, then that's what I

1 would vote.

2 Q. That would be your independent -- your own decision?

3 A. Yes, sir.

4 Q. Thank you very much. That's all we can ask from you.

5 A. Thank you.

6 THE COURT: Thank you, sir. If you will wait just
7 outside the courtroom door for just a minute. We will have
8 you right back in, sir.

9 (Whereupon, Juror Number 112 left the courtroom)

10 THE COURT: Position of the State?

11 MR. GOWDY: He's qualified.

12 THE COURT: Position of defense?

13 MR. STARNES: He's qualified, Your Honor.

14 THE COURT: The court agrees that he's qualified.

15 Thank you.

16 Let's bring him back in, please, sir.

17 (Whereupon, Juror Number 112 entered the
18 courtroom)

19 THE COURT: And if you would just stand right
20 there, please.

21 The court has found you qualified as a juror.
22 What that means is that it doesn't mean that you are on the
23 jury in this case. What it means is that you are in the
24 jury pool from which the jury would be selected. And we go
25 through this process. We have a little ways to go in that

1 yet, but what I'm going to ask you to do is to return back
2 to court here on Wednesday, at three p.m.. That's tomorrow,
3 Wednesday, at three p.m..

4 Now, in the event the reporting times should
5 change, there would be a message on the voicemail number
6 that you have. Probably on that card that you have from the
7 clerk's office. You call that number, listen -- you call
8 tonight after six o'clock. After six o'clock tonight. If
9 it's changed, it would be a voicemail on there. It's for
10 qualified jurors. You are now a qualified juror. If that
11 message would be as to qualified jurors as to when to
12 report, and they could change that time. Do you understand?

13 JUROR NUMBER 112: Yes. If it doesn't change, it
14 would be three.

15 THE COURT: Three, yes, sir.

16 And there is also, if you have access to the
17 computer, they have a website. And tonight after six, if
18 there is a change, they will have it on the website for
19 qualified jurors. They will tell you to report at a
20 different time. But if you don't get any other information,
21 please report back tomorrow at three o'clock.

22 JUROR NUMBER 112: All right.

23 THE COURT: Thank you, sir. You are free to go.
24 Thank you.

25 (Whereupon, Juror Number 112 left the courtroom)

1 THE COURT: Wait just a minute before we bring
2 them in.

3 Mr. Starnes, even though I don't think
4 self-defense is an issue in voir dire for the second phase,
5 even though I don't think it's really relevant to this, your
6 questions are very appropriate and I think that covered what
7 you needed to know.

8 MR. STARNES: Yes, sir.

9 THE COURT: They are very appropriate questions,
10 so I have no problems with those.

11 MR. STARNES: Thank you, Your Honor.

12 THE COURT: It answers your question. They will
13 consider the self-defense, and they believe in self-defense,
14 okay?

15 MR. STARNES: Yes, sir.

16 THE COURT: Let's move on. Let's at least get
17 this last one in this panel and then we will take a short
18 break after that.

19 (Whereupon, Juror Number 260 entered the
20 courtroom)

21 VOIR DIRE EXAMINATION BY THE COURT:

22 Q. Good morning, sir.

23 You are Byron Sonner, juror number 260, is that
24 correct?

25 A. Yes, sir, that's correct.

1 Q. Mr. Sonner, the first thing I'm going to get you to do
2 is just relax. This is a very informal session. And we are
3 going to ask you a few questions concerning your views as to
4 certain things. Please be as open and honest as you can.
5 There are no right or wrong answers. Nobody is going to
6 disagree with you or argue about your answers or anything
7 like that. All we want to do is find out how you feel about
8 certain issues. So if you will please be as open and honest
9 in your answers as you can, okay? But just be relaxed. No
10 third degree here. Okay?

11 A. Okay.

12 Q. Mr. Sonner, do you remember that when the full jury
13 panel was here, that I placed the whole panel under oath,
14 and you continue to be under oath for the information that
15 you are going to provide the court today. Okay?

16 A. I understand.

17 Q. Now, you filed a juror information sheet with the
18 clerk's office, is that correct, when you were summonsed as
19 a juror?

20 A. Yes, I did.

21 Q. Has anything changed since you sent that in that we
22 need to be aware of or any modifications, changes need to be
23 made to that information?

24 A. I don't believe so.

25 Q. All right. And did you see back in the jury room,

1 there was a list, a long list, of potential witnesses in
2 this case that had names and were numbered? Did you see
3 those back there?

4 A. I did see that.

5 Q. And you should have a sheet like that in front of you,
6 but let me ask you if you knew any of those persons who were
7 listed on there -- let me say that all of those witnesses
8 will not be called in this case, but some of them certainly
9 would be called.

10 Do you -- if you recognized any names on the list or
11 you know of any of them, what I would like for you to do is
12 give me their numbers, but not their names. So the number
13 beside them, if you will give me those. Did you recognize
14 any of them?

15 A. I don't believe I know any of them.

16 Q. You don't believe that you know any of those people.

17 Okay. Did you see back in the jury room a sheet which
18 had three paragraphs on it which talked about three
19 different types of jurors?

20 A. Yes.

21 Q. Did you have an opportunity to review that, sir?

22 A. Yes, I did.

23 Q. Let me -- I understand this is -- this is not all
24 inclusive. It does not describe everything about a juror,
25 but did you identify yourself as being more like one of

1 those three jurors, sir?

2 A. I believe I did.

3 Q. Okay. Which one, sir?

4 A. The second type.

5 Q. Juror number two.

6 All right. And the second type of juror is one that if
7 the guilt of the defendant has been determined, under no
8 circumstances could you give the death penalty?

9 A. Yes.

10 Q. Is that correct?

11 A. Yes.

12 Q. All right, sir. So regardless of what the
13 circumstances might show in the case, you do not believe
14 that you could give the death penalty under any
15 circumstances?

16 A. No, I don't believe I could.

17 Q. Okay. Would you be willing to listen to the testimony
18 and evidence and instruction on the law and consider that,
19 the death penalty, sir?

20 A. I don't believe that I could live with that decision.

21 Q. All right. Thank you. Answer any questions, please,
22 that the solicitor may have.

23 MR. GOWDY: No questions, Your Honor.

24 THE COURT: Mr. Starnes?

25 MR. STARNES: May it please the court, Your Honor?

1 THE COURT: Yes, sir.

2 VOIR DIRE EXAMINATION BY MR. STARNES:

3 Q. Hi, Mr. Sonner. How are you doing?

4 A. Fine.

5 Q. My name is Norman Starnes. I'm the defendant in this
6 case.

7 The judge asked you could you hear the evidence and
8 listen to all testimony as it comes from the witness stand?

9 A. I could listen to the evidence.

10 Q. You could listen to the evidence.

11 Your views about capital punishment and the death
12 penalty, is that just something that you -- from your
13 upbringing or religious views?

14 A. Just religious views.

15 Q. Religious views?

16 A. Yes.

17 Q. And in no case whatsoever you could vote to impose the
18 death penalty?

19 A. Could you repeat that? I'm sorry. No case could I
20 impose the death penalty?

21 Q. Right. In other words, what I'm asking is in no case
22 whatsoever could you ever impose the death penalty?

23 A. I don't see how I could live with that decision.

24 Afraid not.

25 Q. You could not do that. Thank you, Mr. Sonner.

1 THE COURT: Thank you, sir. If you would wait
2 just outside the courtroom door for just a minute. We will
3 have you back in in just a minute.

4 (Whereupon, Juror Number 260 left the courtroom)

5 THE COURT: Position of the State?

6 MR. GOWDY: Not qualified.

7 THE COURT: Defense?

8 MR. STARNES: Not qualified, Your Honor.

9 THE COURT: All right. Please bring him back.

10 (Whereupon, Juror Number 260 entered the
11 courtroom)

12 THE COURT: Mr. Sonner, we appreciate your honesty
13 and information you provided. We appreciate you being here
14 this week. We are going to go ahead and excuse you from the
15 case. This will conclude your service for the week,
16 conclude your service. The clerk will place in the mail a
17 check for your services this week. You are free to go and
18 this would end and complete your service. Thank you for
19 participating and being here. Thank you.

20 (Whereupon, Juror Number 260 left the courtroom)

21 THE COURT: It's now eleven o'clock. We going to
22 be running a little bit behind, of course, but let's go
23 ahead and take about five minutes or so break.

24 (Whereupon, proceedings were recessed)

25 (Whereupon, proceedings were reconvened)

1 THE COURT: We have everybody present. We are
2 ready to proceed on now.

3 Please, sir, if you would bring in the next juror.

4 (Whereupon, Juror Number 263 entered the
5 courtroom)

6 VOIR DIRE EXAMINATION BY THE COURT:

7 Q. Good morning, ma'am.

8 You are Marti Sox, juror number 263, is that correct?

9 A. Yes, sir.

10 Q. Okay. Ms. Sox, the first thing I'm going to do is ask
11 you please to just relax and be at ease. This is a very
12 informal session and we are just going to ask you certain
13 questions to determine your views regarding certain things.
14 There are no right or wrong answers. Nobody is going to
15 disagree with you, or argue with you, or anything like that.
16 All we want you to do is just give us your open and honest
17 responses to the questions we want to ask concerning certain
18 views. Do you understand that?

19 A. Yes, sir.

20 Q. Now, do you remember yesterday I placed the entire jury
21 panel under oath? Do you remember that?

22 A. Yes, sir.

23 Q. And you continue to be under oath for the purpose of
24 giving information to the court today, okay?

25 A. Yes, sir.

1 Q. Now, you filled out a jury questionnaire form, certain
2 information in that form and sent back to the clerk's
3 office, is that correct?

4 A. Yes, sir.

5 Q. Ma'am, has there been any changes since you sent that
6 in, any updates, changes that need to be made to it since
7 you sent it in?

8 A. Just regarding our address, or --

9 Q. Okay. All right. A change of address maybe?

10 A. Yes, sir.

11 Q. You still live in Lexington County?

12 A. Yes, sir.

13 Q. Ma'am, let me ask you, did you see back in the jury
14 room a list of potential witnesses? There was a list back
15 there with numbers beside the names. Did you see those back
16 in the jury room?

17 A. Yes, sir.

18 Q. And there should be a copy there on the desk in front
19 of you. Ma'am, those are potential witnesses in the case.
20 All of them will probably not be called, but certainly some
21 of them will be called. What I'm going to ask you if you
22 recognize any of those names or know any of those persons, I
23 would like for you to give me only their number, not their
24 name, but just their number.

25 Did you recognize any of those names or do you know any

1 of those persons?

2 A. Yes, sir.

3 Q. Give us their number only, please, ma'am.

4 A. Number 12.

5 Q. Okay.

6 A. And number 4.

7 Q. Number 4. Okay.

8 Any others?

9 A. No, sir, I don't recall any of the others.

10 Q. Okay. Ma'am, let me ask you if either or both of these
11 potential witnesses would be called to testify in the trial
12 on either side, would that interfere in any way with your
13 ability to be fair and impartial as to both sides of the
14 case?

15 A. No, sir.

16 Q. Now, ma'am, did you see back in the jury room a sheet
17 in which there are three paragraphs which talk about three
18 different types of jurors? Did you have a chance to go over
19 that?

20 A. Yes, sir.

21 Q. Of course, this is not an all-conclusive list, because
22 it clearly doesn't describe any potential juror, but did you
23 identify yourself as being more like one of the other of
24 these three jurors?

25 A. Yes, sir.

1 Q. Which one, please, ma'am?

2 A. I'm the third type.

3 Q. Third type.

4 So you are the type of juror who would not make up your
5 mind in advance, but rather you would need to wait and hear
6 all the testimony and evidence in the case and instructions
7 from the court as to the law that applies before you form an
8 opinion in the case, is that correct?

9 A. Yes, sir.

10 Q. And do you understand that this is a case in which the
11 State is seeking the death penalty? And the procedures are
12 a little bit different, in that there is a first phase of
13 the trial, which may be the only phase. Depending upon what
14 happens in the first phase, it could be a second phase of
15 the trial. Do you understand that?

16 A. Yes.

17 Q. Now, the first phase the State is what we call -- well,
18 in the first phase the State is required to prove the
19 charges against the defendant beyond a reasonable doubt.

20 If the State were to fail to meet their burden of proof
21 and was not able to prove beyond a reasonable doubt the
22 offense of murder, then that would be the end of the matter
23 and it would not go on to the second phase of the trial. Do
24 you understand that that would be the end of the matter, as
25 far as the jury is's? Do you understand that?

1 A. Yes, sir.

2 Q. Now, if the State were able to prove to the jury beyond
3 a reasonable doubt the elements of the offense of murder and
4 the jury so found, then we would go to the second phase of
5 the trial.

6 And in the second phase of the trial the State would be
7 allowed to put up any aggravating factors that they wish the
8 jury to consider. The defense would be able to put up any
9 mitigating factors that they wish the jury to consider by
10 way of testimony and evidence. And the court then would
11 instruct you on how to receive that information and what to
12 consider in that second phase of the trial. And then with
13 all that information, the jury would be asked to make a
14 determination as to the appropriate punishment. And the
15 possible punishments would either be the death penalty or
16 life in prison without the possibility of parole.

17 Do you believe that you could listen to all of that --
18 if we reach the second phase of this trial, if we reach the
19 second phase, and after listening to all of the aggravating
20 and mitigating factors and the law that applies and what you
21 are required to consider by the court, if you done all that,
22 do you believe that you could reach a decision as to the
23 appropriate punishment, either the death penalty or life
24 imprisonment without the possibility of parole?

25 A. Yes, sir.

1 Q. Okay. And do you believe if the circumstances
2 warranted it, that you could render a verdict of the death
3 penalty?

4 A. Yes, sir.

5 Q. If you believed the circumstances warranted it, could
6 you vote for a sentence of life imprisonment without the
7 possibility of parole?

8 A. Yes, sir.

9 Q. So you would have decided that -- you would be able to
10 decide the appropriate punishment based on what you heard,
11 is that correct?

12 A. Yes, sir, I believe I could.

13 Q. Okay. Thank you. Please answer any questions that the
14 solicitor may have.

15 MR. COLER: Thank you, Your Honor. May it please
16 the court?

17 THE COURT: Yes, sir.

18 VOIR DIRE EXAMINATION BY MR. COLER:

19 Q. Good morning, Ms. Sox.

20 A. Good morning.

21 Q. Thank you for being here.

22 What do you do for a living?

23 A. I'm an office manager.

24 Q. If I came into your office, I would be lost and
25 overwhelmed. I'm sure coming in here, it's probably a

1 little overcoming. So I want to get an idea of -- what the
2 judge just told you, I want to try to understand what you
3 understood.

4 The judge was talking about the two phases of this
5 trial. Did you understand him to say that there is a phase
6 one, that being the guilt phase; and phase two would be the
7 penalty or the sentencing phase?

8 A. Yes, sir.

9 Q. And did you understand him when he -- in phase one, the
10 jurors would decide whether the defendant was guilty or not
11 guilty?

12 A. Right.

13 Q. And then if y'all found that he was guilty, we would go
14 to phase two.

15 A. Correct.

16 Q. And then did you understand the judge to say
17 essentially you have two choices in phase two. The jurors
18 could impose a life without parole, sentence the defendant
19 to life in prison without parole; or sentence him to the
20 ultimate punishment, which was death?

21 A. That's correct.

22 Q. And the judge asked you a couple of things about
23 mitigating and aggravating circumstances. Did you
24 understand what he was talking about?

25 A. Mitigating mean everybody that's talked about the case

1 or involved in the case?

2 Q. What he was -- I think what he was trying to tell
3 you -- you may have understood a little differently. At the
4 sentencing phase you hear what's called aggravating
5 circumstances. Those might be bad things about the case,
6 really aggravating, real bad stuff. And you might hear
7 mitigating circumstances. Those are good things about the
8 case, about the defendant. You may hear all that and weigh
9 that. And the judge asked you if you were to listen to all
10 of that, could you make a decision about the sentence based
11 on that?

12 A. Yes, sir.

13 Q. And did you understand him when he said that if you
14 decided after hearing all the good things and all the bad
15 things, the appropriate sentence was life imprisonment
16 without parole, you could impose that?

17 A. Yes, sir.

18 Q. But he also told you that now that you heard all the
19 bad things and all the good things and you decided
20 ultimately that death was the appropriate sentence, based on
21 what you heard, you could sentence the defendant to death?

22 A. Right.

23 Q. And is that what you were telling the judge?

24 A. Yes, sir.

25 Q. Okay. And would you be able to sign a form, a verdict

1 form with your name on it, saying I have imposed life
2 without parole or I have imposed the death sentence?

3 A. Yes, sir.

4 Q. Okay. Just a couple of other questions.

5 I know that you probably don't give much thought to the
6 death penalty before coming in here in a case like this.
7 Have you ever thought about it, talked about it with your
8 friends?

9 A. No.

10 Q. Okay. And this is an open-ended question. It's
11 probably hard for you to answer. Can you tell us a little
12 bit about what your view of the death penalty is, what your
13 thoughts on it are?

14 A. I think that if someone does, you know, kill someone
15 else, innocent, aggravated nature, to where they knew what
16 they were doing, that they had all those thoughts in before
17 that, committing those murders or whatever, it's according
18 to how aggravated or how bad it is.

19 Q. And after hearing all that, do you think that you could
20 ultimately impose either life without parole or the death
21 sentence?

22 A. Yes, sir.

23 Q. Okay. Do you know or can you tell us where your views
24 comes from, or have you ever had any thought about that?
25 Background, religious beliefs, family?

1 A. I think a lot of it is the religious beliefs.

2 Q. Okay.

3 A. You know, the person is not mentally capable, you know,
4 and really don't know what they have done, you know, I don't
5 think that it should be a death penalty.

6 Q. Okay.

7 A. But if they knew exactly what they did and the nature
8 that they did it in, then it would be.

9 Q. Okay. Fair enough.

10 One other question. I was looking over the
11 questionnaire of you that you filled out, and I appreciate
12 you doing that for us, one of the notations on there is a
13 family member worked for the Richland County sheriff's
14 office?

15 A. She used to.

16 Q. Who was that?

17 A. My little sister.

18 Q. Your sister.

19 What did she did?

20 A. She was a sheriff's deputy.

21 Q. Okay. She is no longer with them?

22 A. No, sir.

23 Q. Thank you.

24 A. Uh-huh.

25 MR. STARNES: If it please the court, Your Honor?

1 THE COURT: Yes, sir.

2 VOIR DIRE EXAMINATION BY MR. STARNES:

3 Q. Hi, Ms. Sox, how are you doing?

4 A. I'm fine. How are you?

5 Q. I'm fine.

6 My name is Norman Starnes. I'm the defendant in this
7 case.

8 Mr. Coler, the solicitor, he just asked you about
9 things dealing with the penalty phase. Do you understand we
10 may not get into that second part?

11 A. Yes, sir.

12 Q. And that a -- in other words, if the jury doesn't
13 render a verdict on murder, then we wouldn't get to that
14 second part.

15 A. Right.

16 Q. Okay. In the event we did get to that second part, Ms.
17 Sox, and eleven jurors felt that the appropriate punishment
18 in this case would be the death penalty, but after hearing
19 all the evidence in this case that you felt that life
20 without the possibility of parole is the appropriate
21 punishment, could you vote for a life sentence?

22 A. Yes, sir, because I believe what I believe.

23 Q. So you are pretty firm on your beliefs?

24 A. Yes, sir.

25 Q. Do you believe that -- do you believe all killings are

1 murder?

2 A. I mean, I believe that you -- you know, that that's
3 something that's happened, yeah, I believe that they did
4 murder somebody, I mean, I think that, you know, in their
5 mind they may not think it was murder.

6 Q. In their mind -- I'm sorry, I didn't mean to interrupt
7 you.

8 A. To me I believe that if you kill somebody, it's murder.

9 Q. Do you believe that an individual is entitled to kill
10 in self-defense?

11 A. Yes, I do.

12 Q. So --

13 A. It's still a type of murder to me.

14 Q. I'm sorry?

15 A. I think it's still a type of murder.

16 Q. Do you believe that --

17 A. Even though you killed in self-defense.

18 Q. You still believe it's a type of murder?

19 A. Uh-huh.

20 Q. Could you follow the law -- if evidence of self-defense
21 come in this case, could you follow the law on self-defense,
22 as the trial court instructed you, regarding the law of
23 self-defense? Could you follow that law?

24 A. Yes, sir.

25 Q. Even though you may not personally believe that that's

1 what the law should be, you would follow the law?

2 A. Yes, sir.

3 Q. What the judge instructed you?

4 A. Yes, sir.

5 Q. Have you heard anything about this case?

6 A. No, sir.

7 Q. Discussed it with anybody else?

8 A. Uh-uh.

9 Q. Okay. Thank you, Ms. Sox.

10 A. You are welcome.

11 MR. COLER: Just briefly, Your Honor.

12 RE-VOIR DIRE EXAMINATION BY MR. COLER:

13 Q. Ms. Sox, followup on a little bit of what Mr. Starnes
14 just asked you. You would agree with me that not all
15 homicides are murders? There is different kind of
16 homicides, correct?

17 A. Yeah.

18 Q. If someone is killed on the battlefield in a war, that
19 wouldn't be a murder?

20 A. Right.

21 Q. That's a different kind of killing?

22 A. Right, a different type.

23 Q. In that case?

24 A. Same with self-defense, it's a different type.

25 Q. Would you be able to listen to Judge Alford as he

1 instructed you on the law?

2 A. Yes, sir.

3 Q. And if he told you what self-defense was or what
4 different types of homicides were, would you be able to
5 listen to that?

6 A. Yes, sir.

7 Q. Keep an open mind?

8 A. Yes, sir.

9 Q. Be fair?

10 A. Yes, sir.

11 Q. And render your verdict based on that?

12 A. Yes, sir.

13 MR. COLER: Beg the court's indulgence?

14 (Off the record)

15 (Back on the record)

16 MR. COLER: That's all I have, Your Honor.

17 THE COURT: Anything else?

18 MR. STARNES: Nothing further, Your Honor.

19 THE COURT: All right. Thank you, ma'am. If you
20 would wait just outside for a minute, we will have you back
21 in in just a minute. Okay?

22 JUROR NUMBER 263: Okay.

23 (Whereupon, Juror Number 263 left the courtroom)

24 THE COURT: Position of the State?

25 MR. COLER: Qualified, Your Honor.

1 THE COURT: Defense?

2 MR. STARNES: Qualified, Your Honor.

3 THE COURT: Thank you, sir. Please bring her back
4 in.

5 (Whereupon, Juror Number 263 entered the
6 courtroom)

7 THE COURT: Ms. Sox, if you would just stand right
8 there, please, ma'am.

9 You have been qualified to serve on the jury panel
10 in this case.

11 Let me explain to you what that means. It's not
12 that you are on the jury in this case. We are in the
13 process of selecting a jury panel from which the jury would
14 be drawn. Do you understand that?

15 JUROR NUMBER 263: Yes.

16 THE COURT: We are still going on with that
17 process.

18 JUROR NUMBER 263: Yes.

19 THE COURT: You have been qualified to be in that
20 panel.

21 What I'm going to ask you to do is to return back
22 to court Wednesday, that's tomorrow, at three p.m.. And if
23 for any reason we had to change that time, or going to
24 change that time, you could call in to find that out. You
25 could call into the voicemail number that you have on the

1 card that the clerk's office gave you. Call after seven
2 o'clock tonight. And if there is a change, it would be on
3 that voicemail. Now, the voicemail message would be to
4 qualified jurors. You are now a qualified juror, so you
5 would listen to that message, qualified jurors. At the time
6 has changed, it would be on there.

7 Also the clerk has a website and you can --
8 tonight after seven o'clock you can check the website. And
9 if there was a change on there, it would be reflected on the
10 website. Again, the message would be for qualified jurors.

11 If you don't hear anything different with regard
12 to the change of the time, please report back to the
13 courthouse tomorrow at three o'clock. Wednesday at three.
14 You are free to go until then. Okay?

15 JUROR NUMBER 263: Thank you.

16 THE COURT: Thank you, ma'am.

17 (Whereupon, Juror Number 263 left the courtroom)

18 (Whereupon, Juror Number 40 entered the courtroom)

19 VOIR DIRE EXAMINATION BY THE COURT:

20 Q. Good morning, sir. You are David Butz, juror number
21 40, is that correct?

22 A. Yes, Your Honor.

23 Q. Mr. Butz, the first thing I'm going to do is get you
24 just to relax. You look pretty relaxed anyway, but just
25 relax.

1 A. I have actually been down tis road a couple of times in
2 my life.

3 Q. Oh, is that right?

4 A. I'm not from here, as you could probably tell. I'm
5 from New York.

6 Q. Okay. And you know then our purpose today is to really
7 just ask you some questions regarding your views as to
8 certain things.

9 There are no right or wrong answers. Nobody, of
10 course, will disagree with you in any way. All we need to
11 know is your views on certain things. I would ask you,
12 please, just to be as honest and open as you can with your
13 answers. And, again, there are no right or wrong answers,
14 and whatever your answer is okay.

15 A. Yes, Your Honor.

16 Q. Okay. Now, do you remember that I swore the entire
17 jury panel yesterday, and you continue to be under oath for
18 the information that you are going to provide the court
19 today, okay?

20 A. Yes, sir.

21 Q. Did you send in a jury questionnaire that you -- did
22 you send that back with certain information in it, sir?

23 A. It was several months ago, but, yes, sir.

24 Q. Okay. Has anything happened since then that you need
25 to update it or make any changes to it in the meantime?

1 A. I'm still retired.

2 Q. Still retired?

3 A. Yes.

4 Q. Anything else?

5 A. Not really, no.

6 Q. Okay. Let me ask you, sir, did you see back in the
7 jury room there was a list, a long -- a rather long list of
8 potential witnesses in this case? All of them probably will
9 not be called, but some of them certainly would be called.
10 Did you see that list? And there is a list there in front
11 of you with the same information. What I'm going to ask you
12 is if you recognize any of those names --

13 A. No.

14 Q. -- if you would identify them only by their numbers and
15 not by their names. Did you recognize any, sir?

16 A. I went through the list, Your Honor, and I didn't see
17 anybody here that I know, because, like I said, I'm not from
18 here.

19 Q. All right, sir. Thank you.

20 Did you see in the jury room there was a sheet there
21 with three paragraphs which talked about three different
22 types of jurors? Of course, this is not all inclusive.
23 They can't describe every single juror, but did you identify
24 yourself as being more like one of these three different
25 types of jurors?

1 A. I read all three of them. I would believe that I'm
2 probably the third type of juror. I -- you know, it's
3 between life imprisonment and the death penalty. Showing
4 the cause and the aggravation of the situation, mitigation
5 it says here, it's possibility that I could agree with the
6 jury on the death penalty.

7 Q. Let me ask you. As to the third type of juror, that is
8 the type of juror who would not make up his mind in advance,
9 but would rather need to hear the testimony and evidence and
10 court's instruction on the law before deciding an issue. Is
11 that correct, sir?

12 A. I believe that would be a fair answer, Your Honor.

13 Q. And do you understand that in this case the State is
14 seeking the death penalty and it's treated a little bit
15 differently than some other cases. The first -- and may or
16 may not be treated differently. Let me say that.

17 What happens in the case is there is what -- the first
18 phase of the trial, which may be the only phase of the
19 trial, in which the State is required to prove the elements
20 of the offenses to which the defendant is charged beyond a
21 reasonable doubt.

22 If the State failed to meet that burden of proof and
23 the jury did not find the defendant guilty of the murder
24 charge, then that would be the end of the matter and the
25 jury -- that would end the jury's role in the matter. Do

1 you understand that?

2 A. Yes, Your Honor.

3 Q. Now, if the jury should found that the State had proved
4 the elements of the offense of murder beyond a reasonable
5 doubt, then we would go to a second phase of the trial, in
6 which the State would present aggravating circumstances; the
7 defense would present mitigating circumstances or factors
8 for the jury's consideration; the court would instruct you
9 as to how to receive that and also other matters of law with
10 regarding to the appropriate punishment or possible
11 punishment; and then the jury would be asked to decide on
12 the appropriate punishment, and that being either the death
13 penalty or life imprisonment without the possibility of
14 parole. Do you understand that, sir?

15 A. Yes, Your Honor.

16 Q. Now, let me ask you whether you could listen -- if we
17 reached that stage -- we may not reach that stage, but if we
18 reached that stage in the second phase, could you listen to
19 all the evidence that's provided by means of aggravation and
20 mitigation on behalf of the defendant, the court's
21 instruction on how to receive all that information and other
22 law matters and render a decision with the appropriate
23 punishment, you feel is the appropriate punishment, based on
24 all that information?

25 A. Yes, Your Honor, I agree, yeah.

1 Q. And if you feel that -- with all that information you
2 feel that the death penalty was warranted, could you vote
3 for the death penalty?

4 A. I -- given all the information and, like you said, in
5 mitigation, yes.

6 Q. If you thought it was appropriate?

7 A. Yeah -- if appropriate, yes, Your Honor.

8 Q. Let me ask you, if you -- after hearing all that
9 information, if you felt that life imprisonment without the
10 possibility of parole was the appropriate sentence, could
11 you vote for life imprisonment without the possibility of
12 parole?

13 A. Either/or, yes, Your Honor.

14 Q. Okay. Thank you. Please answer any questions that the
15 solicitor may have.

16 MR. COLER: Just briefly, Your Honor. May it
17 please the court?

18 THE COURT: Yes, sir.

19 VOIR DIRE EXAMINATION BY MR. COLER:

20 Q. Good morning, Mr. Butz. Thank you for being here.

21 A couple of questions. You are from Rochester?

22 A. Yes, I am, sir.

23 Q. That's about an hour and a half east of Buffalo?

24 A. You are very close.

25 Q. About two hours west of Albany?

1 A. Actually about two and a half, but, yes, you are -- you
2 must know the area pretty well.

3 Q. About 30 miles north of Greenfield State University?

4 A. Very good. Are you from Rochester?

5 Q. Yes, sir.

6 You have been down this road a couple of times before,
7 so I'll be brief. The judge asked you if you understood at
8 the sentencing phase the second part of this trial. If you
9 heard all the mitigating and the aggravating circumstances
10 and found it appropriate, you could impose life without
11 parole?

12 A. That's correct.

13 Q. But by the same token, if after hearing all the
14 mitigation and all the aggravation, if appropriate, you
15 could impose the ultimate sentence?

16 A. I think that that would be appropriate, if I had all
17 the information, and all the other jurors were unanimous in
18 agreement of it, yes.

19 Q. And you could sign a verdict form with your name on it
20 indicating that was your decision?

21 A. I could do that.

22 Q. And you would listen to the case with an open mind?

23 A. What I have done before, yes.

24 Q. And you would base the decision based on what your
25 feelings and your determinations were?

1 A. That's correct.

2 Q. You would, of course, deliberate with your fellow
3 jurors, but it would ultimately be your decision at both
4 phases, the guilt phase and at the punishment?

5 A. That's correct.

6 Q. Okay.

7 MR. COLER: Beg the court's patience one moment.

8 (Off the record)

9 (Back on the record)

10 BY MR. COLER:

11 Q. That's all I have, Mr. Butts. If you would answer any
12 questions Mr. Starnes may have.

13 MR. STARNES: If it please the court?

14 THE COURT: Mr. Starnes.

15 VOIR DIRE EXAMINATION BY MR. STARNES:

16 Q. Hi, Mr. Butz, how are you doing today?

17 A. I'm well. And you?

18 Q. Fine. Thank you.

19 My name is Norman Starnes and I'm the defendant in this
20 case.

21 Mr. Butz, I was noticing on your jury questionnaire
22 that you sent in, you stated that you had previously served
23 in a criminal or civil case before?

24 A. No, it was criminal, back in 1987. It was a murder
25 trial in Rochester.

1 Q. It was a murder trial in Rochester?

2 A. Yes, sir.

3 Q. Was it a death penalty case?

4 A. At that point in time it was a second degree murder
5 charge and it was life imprisonment, but we, as jurors,
6 because there were a lot of mitigating circumstances that we
7 acquitted him.

8 Q. Found him not guilty?

9 A. Her not guilty. It was a spousal abuse situation. The
10 woman had been beaten repeatedly for years and years and
11 years. Her husband was an alcoholic, or she was as well,
12 but he forced her in such a situation, she was caught where
13 the gun was and in the moment of personal fear for her own
14 safety she killed him. It was kind of a bizarre case, but
15 all the jurors agreed that we thought it was self-defense
16 and that's how we ruled it.

17 Q. Okay. If self-defense was an issue in this case, and
18 there was evidence of self-defense, would you follow the
19 court's trial instruction, in other words, what he charged
20 you what the law was in South Carolina regarding
21 self-defense, I'm sure you could follow that law, correct?

22 A. That's correct.

23 I remember in the case I sat on in New York there was
24 some question as to what the law said about self-defense
25 versus second degree murder, or criminal negligent homicide,

1 or manslaughter. And when the judge sent it back to the
2 jury box -- to the jury room and -- we were being
3 sequestered. It basically came down to we felt that she was
4 in fear for her life, and it was a personal -- a personal
5 injury or death in her mind's eye. Her husband had been
6 beating her. She was very, very stressed by the point, and
7 she took -- took the gun and shot him, unfortunately.

8 Q. In the event that we do get to the penalty phase, Mr.
9 Butz -- do you understand we don't have to get to the
10 penalty phase? You are not compelled to.

11 A. That's -- that's what -- Your Honor said that, yes.

12 Q. Yes, sir.

13 In the event we get into the penalty phase and eleven
14 jurors wanted to vote for the death penalty, but you felt,
15 after hearing all the evidence, all the mitigation and all
16 the aggravation, that you felt that life imprisonment
17 without the possibility of parole was the appropriate
18 punishment?

19 A. Well, that's a hard question for anybody, because when
20 you are looking at the situation, you need to get all the
21 information and understand what's going on and realize the
22 situation at that point in time. And if I'm that one person
23 that I really don't think the death penalty is going to be
24 the answer, then I may have to say I would prefer to see
25 life in prison without parole. I mean, that -- I think that

1 the -- that's pretty, you know, logical assumption. I mean
2 maybe I'm wrong, but -- I mean, if eleven other people
3 saying. But, there again, I need to hear all the
4 information. I need to be informed as a juror. If I have
5 to understand the case and what the law says. And there is
6 where the judge comes into play. That if we don't
7 understand exactly how the law is written and what it means,
8 it goes back to the jury, and he sends it into the jury box,
9 or in the jury sequestered room, and we go from there.

10 But to answer your question, I would have to have all
11 the information before I can actually say that person lives
12 or dies.

13 Q. Yes, sir.

14 A. That would be me.

15 Q. I guess I'm asking it would be your own independent
16 decision?

17 A. I think so. I think every juror that's in the jury box
18 that is listening to all the information, they understand
19 it. They know what the law is.

20 And the big thing is if you are not sure of the law,
21 that's when you ask the court to please explain, which we
22 did in New York. And when we had it explained, then it made
23 sense.

24 Q. Yes, sir. You haven't read anything in the newspaper
25 or seen anything on TV about this case?

1 A. As I said to Your Honor, I have only lived here a
2 couple, three years. I don't know anything about South
3 Carolina, other than the fact that you got great weather and
4 great people, and I don't live in New York anymore, but it
5 is really --

6 No, I have no idea what this case is.

7 My understanding yesterday, the judge had mentioned it,
8 it was 1996, I was still working. I was still up in New
9 York playing in the snow. So I know nothing about you or
10 anybody in this room. I'm just a retired citizen that moved
11 here to enjoy your weather.

12 Q. One more question, Mr. Butz. Do you know of any reason
13 why you could not sit on this jury and give the State and
14 the defendant a fair trial?

15 A. Fair and unbiased is the name of our law, and I totally
16 agree with it. I'm excited in the way I got called to jury
17 duty, but I'm trying to assimilate in the culture in South
18 Carolina. It's a great place to live and this is my civic
19 duty, just like anybody in this room's civic duty to serve
20 on a jury, and I have actually no problem with having to do
21 that.

22 Q. That's all we can ask of you, Mr. Butz. Thank you.

23 A. : I thank you very much.

24 THE COURT: Thank you, sir. If you would wait
25 just outside the courtroom door, we will have you back

1 momentarily.

2 (Whereupon, Juror Number 40 left the courtroom)

3 THE COURT: Position of the State?

4 MR. COLER: He's qualified, Your Honor.

5 THE COURT: Defense?

6 MR. STARNES: He's qualified, Your Honor.

7 THE COURT: All right. The court agrees he will
8 be qualified.

9 Please bring him back in, sir.

10 (Whereupon, Juror Number 40 entered the courtroom)

11 THE COURT: Mr. Butz, if you will stand right
12 there, please.

13 The court has found you qualified to serve on the
14 jury panel in this case. What that means is it's not that
15 you have been selected on the jury itself, but on the panel
16 from which the jury will be selected. This is an ongoing
17 process and we need to get the pool selected before we
18 select the jury.

19 What I'm going to ask you to do is to report back
20 to the court Wednesday, that's tomorrow, at three p.m..

21 JUROR NUMBER 40: Yes, sir.

22 THE COURT: Now, if anything should change, we
23 have to change reporting time, that would be on the
24 voicemail number that you have on the card given to you by
25 the clerk's office. There is a voicemail number. When you

1 call and you get a message, listen for a message for
2 qualified jurors, because you are now a qualified juror.
3 And if that time has changed, it would be on that voicemail.
4 Call after seven o'clock tonight. Okay.

5 There is also a website. The clerk has a website
6 and she will post it on there after seven tonight, if there
7 is any change in the reporting time.

8 If you don't hear anything differently, please
9 report back at three o'clock tomorrow, Wednesday.

10 JUROR NUMBER 40: Yes, Your Honor.

11 THE COURT: Thank you, sir.

12 JUROR NUMBER 40: Thank you very much.

13 (Whereupon, Juror Number 40 left the courtroom)

14 (Whereupon, Juror Number 325 entered the
15 courtroom)

16 VOIR DIRE EXAMINATION BY THE COURT:

17 Q. Good morning, sir. You are Thomas Zobel, juror number
18 325, is that correct?

19 A. Yes, sir.

20 Q. Mr. Zobel, the first thing I'm going to do is ask you
21 just to relax. This is not -- this is just a very informal
22 session in which we are going to ask you certain questions
23 regarding your views as to certain things.

24 There are no right or wrong answers. Nobody is going
25 to disagree with you in any way. We just need to know what

1 your views are as to certain things. Okay. You will be
2 asked about those. Just be as open and honest as you can in
3 responding to those questions.

4 Do you remember that yesterday that I placed the entire
5 jury panel under oath?

6 A. Yes, sir.

7 Q. And you continue to be under oath for the purpose of
8 providing information to the court today, sir.

9 A. All right.

10 Q. Do you understand that?

11 A. Yes, sir.

12 Q. And you filled out a juror questionnaire information
13 sheet that you sent back to the clerk's office. Do you
14 recall that?

15 A. Yes, sir.

16 Q. Has anything changed since you sent that back in that
17 you need to update us about, sir?

18 A. No, sir.

19 Q. Did you see a list of potential witnesses in this case,
20 a list of names and numbers on them, the same list as there?
21 And if you recognized any of those names or you know any of
22 those persons, I don't want you to identify them by name,
23 but only by number. Did you recognize anybody or did you
24 know any of them?

25 A. Yes, sir.

1 Q. By number, which ones, sir?

2 A. 73.

3 Q. Okay. Any others?

4 A. That's all.

5 Q. Okay. Let me ask you if that potential witness were to
6 be called by either side in this case, would that interfere
7 in any way with your ability to give both sides a fair and
8 impartial trial in this case?

9 A. No, sir.

10 Q. Now, sir, did you see back in the jury room a sheet
11 with three paragraphs on it which talked about three
12 different types of jurors?

13 A. Yes.

14 Q. Did you have a chance to read through that, sir?

15 A. Yes, sir.

16 Q. And, of course, this is not all inclusive. It won't
17 describe the juror completely, but did you identify yourself
18 as being more like one of these three different types of
19 jurors?

20 A. Yes, sir.

21 Q. Which one, sir?

22 A. The third.

23 Q. All right. So you would be the type of juror who would
24 not make up his mind in advance, but rather you would need
25 to hear the testimony and evidence and the court's

1 instruction on the law as it applies to the issues in this
2 case before you would render a decision in it?

3 A. Right.

4 Q. Or make up your mind, is that right?

5 A. Yes, sir.

6 Q. Now, do you understand that this is a death penalty
7 case, which -- when I say death penalty, the State is
8 seeking the death penalty in this case, and it's treated a
9 little bit different procedurally. We have what's called
10 the first phase of the trial, which may be the only phase.
11 In that phase of the trial, the State would be required to
12 prove the defendant guilty of the charges against him beyond
13 a reasonable doubt.

14 If the State failed to meet that burden of proof and
15 did not prove to the jury's satisfaction that the defendant
16 was guilty of the offense of murder beyond a reasonable
17 doubt, that would be the end of the matter, just like any
18 other trial in criminal court. Do you understand that?

19 A. Yes, sir.

20 Q. Okay. But if the jury found that the State had proven
21 beyond a reasonable doubt the elements of the offense of
22 murder and found the defendant guilty of murder, then we
23 would proceed on to the second phase of the trial, which,
24 for lack of a better word, is described as the penalty
25 phase, in which the jury would be asked to determine the

1 appropriate punishment in the case. Do you understand that,
2 sir?

3 A. Yes, sir.

4 Q. Now, if we reach that stage of the trial -- we may not
5 reach that stage, but if we reached that stage of the trial,
6 then the State would present any aggravating circumstances
7 that they wished the jury to consider. The defense would
8 put up any mitigating circumstances that they wished the
9 jury to consider. The court would instruct you, the jury,
10 on the law that applies and how to receive information and
11 everything else that ought to be considered in determining
12 the appropriate punishment. And then the jury would be
13 asked to decide on the appropriate punishment, which would
14 be two choices: Either the death penalty or life
15 imprisonment without the possibility of parole. Do you
16 understand that?

17 A. Yes, sir.

18 Q. Now, let me ask you, sir, whether you could listen to
19 all of that information, the court's instruction as to how
20 to receive that and considerations, the things that you
21 should consider, could you listen to all that and render a
22 decision as to appropriate punishment?

23 A. Yes, sir.

24 Q. Okay. And if you felt the circumstances warranted it,
25 could you vote for the death penalty?

1 A. Yes, sir.

2 Q. If you felt the circumstances warranted it, could you
3 vote for the sentence of life imprisonment without the
4 possibility of parole?

5 A. Yes, sir.

6 Q. So you would vote -- you could vote either way,
7 depending upon what you find to be the facts and
8 circumstances --

9 A. Right.

10 Q. -- and to follow the law as instructed by the court, is
11 that correct?

12 A. Right.

13 Q. Thank you. Answer any questions that the solicitor may
14 have.

15 MR. COLER: Thank you, Your Honor. May it please
16 court?

17 THE COURT: Yes, sir.

18 VOIR DIRE EXAMINATION BY MR. COLER:

19 Q. Good morning, Mr. Zobel.

20 A. Good morning.

21 Q. I just have a couple of questions.

22 The judge just talked to you about the two phases of
23 the trial - the guilt phase, first phase, and then possibly
24 the second phase, the penalty or sentencing phase.

25 A. Right.

1 Q. I just want to ask you a couple of questions about that
2 phase.

3 The judge asked you if after hearing the mitigating and
4 aggravating circumstances. Did you understand what he meant
5 when he was talking about the aggravating and mitigating
6 circumstances?

7 A. Not exactly, but I have an idea.

8 Q. After the guilt phase, in which the jury decides guilty
9 or not guilty, we move to the penalty phase, the sentencing
10 phase.

11 A. Right.

12 Q. In that phase you might hear a lot of aggravating
13 circumstances. That's things that are really bad about the
14 case, that aggravate the murder. And then you might hear
15 some mitigating circumstances. Those are things that
16 lessens the crime. That's what he was talking about.

17 A. Okay.

18 Q. When he asked you about that, he asked you if after
19 hearing all that, you could, with an open mind, decide
20 whether the appropriate sentence, the appropriate punishment
21 for the defendant was life imprisonment without parole, and
22 you answered yes, is that correct?

23 A. Right.

24 Q. He also asked you if after hearing all the really bad
25 things and the mitigating, the good things, if ultimately

1 you decided the appropriate sentence was the death sentence,
2 you could impose that?

3 A. Right.

4 Q. Is that true?

5 A. True.

6 Q. Thank you. And you could sign a verdict form with your
7 name indicating that was your decision?

8 A. Yes.

9 Q. Okay.

10 MR. COLER: Beg the court's indulgence.

11 (Off the record)

12 (Back on the record)

13 MR. COLER: That's all the questions that I have.
14 Thank you, sir.

15 MR. STARNES: If it please the court, Your Honor?

16 THE COURT: Mr. Starnes, yes, sir.

17 VOIR DIRE EXAMINATION BY MR. STARNES:

18 Q. Hi, Mr. Zobel. How are you doing today?

19 A. Fine. How are you?

20 Q. My name is Norman Starnes and I'm the defendant in the
21 case.

22 Mr. Zobel, have you ever sat on a jury panel before?

23 A. No, sir.

24 Q. Okay. Do you believe that all killings are murder?

25 A. No.

1 Q. Do you believe that an individual is entitled to kill
2 in self-defense?

3 A. Yes.

4 Q. Would you consider self-defense evidence, if it was
5 raised in this case?

6 A. I could.

7 Q. Could you follow the instructions from the trial court
8 if he instructed you on self-defense?

9 A. Probably so. I think I can.

10 Q. You think you could?

11 A. I think I could.

12 Q. You mentioned you could possibly give the death penalty
13 or life without parole. Could you find the defendant not
14 guilty, if you felt he was not guilty?

15 A. Yes.

16 Q. In the event that we get into the penalty phase and
17 eleven jurors felt that the death penalty was appropriate,
18 but your independent decision was that life without parole
19 would be the appropriate punishment, could you vote for life
20 without parole?

21 A. Yes.

22 Q. And you could do that on your own independent decision?

23 A. Yes.

24 Q. Have you heard anything about the case or read anything
25 in the newspaper?

1 A. No.

2 Q. Thank you very much, Mr. Zobel.

3 THE COURT: All right. Thank you, sir.

4 If you would wait just outside the courtroom door
5 for a moment, we will have you back in momentarily, okay?

6 (Whereupon, Juror Number 325 left the courtroom)

7 THE COURT: Position of the State?

8 MR. COLER: He's qualified, Your Honor.

9 THE COURT: Defense?

10 MR. STARNES: Qualified, Your Honor.

11 THE COURT: The court agrees that he will be
12 qualified.

13 Please bring him back in.

14 (Whereupon, Juror Number 325 entered the
15 courtroom)

16 THE COURT: Mr. Zobel, if you will stand right
17 there, please.

18 The court has found you qualified to serve in the
19 jury pool on this case. What that means is that you haven't
20 actually been selected on the jury in this case, but you
21 will be in the pool from which the jury will be selected.
22 And this is an ongoing process of completing the pool.

23 And what I would ask you to do is report back to
24 court on Wednesday, that's tomorrow, at three p.m.. In the
25 meantime you are free to do anything that you would like.

1 Just report back then.

2 Now, if for any reason we should change the
3 reporting time, that will be put in a message to you that
4 you can reach by voicemail. The card that you have has a
5 number on it. If you will call that. Listen for a message
6 for qualified jurors. You are now a qualified juror. And
7 the message -- if the time has changed, it would be in that
8 message. It will not be on there until after seven o'clock
9 tonight. So if you call after seven tonight, get a message.
10 If it's been changed, it would be on there.

11 Also the clerk has a website and it will be on
12 there after seven o'clock tonight if the time has been
13 changed to report.

14 If you don't hear anything else, please report
15 back Wednesday, that's tomorrow, at three p.m..

16 JUROR NUMBER 325: Okay.

17 THE COURT: Okay?

18 JUROR NUMBER 325: Okay.

19 THE COURT: Thank you, sir.

20 (Whereupon, Juror Number 325 left the courtroom)

21 (Whereupon, Juror Number 134 entered the
22 courtroom)

23 VOIR DIRE EXAMINATION BY THE COURT:

24 Q. Good morning, sir.

25 You are Murray Jeffers, juror number 134, is that

1 correct?

2 A. That's correct.

3 Q. Sir, the first thing I'm going to do is, like Madam
4 Clerk, I'm going to ask you please just to relax. This is a
5 very informal session, and we are going to ask you certain
6 questions concerning your views about certain things.

7 There are no right or wrong answers, and nobody is
8 going to disagree with you in any way. We just need to know
9 your honest and complete answers to those questions.

10 Now, let me ask you, sir, if you remember that you were
11 placed under oath? The full jury panel was placed under
12 oath yesterday. Do you recall that?

13 A. Yes.

14 Q. And you continue to be under oath for the purposes of
15 the information that you are going to provide the court
16 today. Do you understand that, sir?

17 Now, did you fill out a jury questionnaire and send it
18 back to the clerk with certain information on it, is that
19 correct?

20 A. Yes, sir.

21 Q. Has anything changed since you sent it in --

22 A. No.

23 Q. -- that needs to be modified?

24 A. No, sir.

25 Q. Did you see a list of potential witnesses in this case?

1 There's a rather long list with a number beside the names
2 back in the jury room?

3 A. Yes, sir, I did.

4 Q. Sir, if you recognized any of those names, I don't want
5 you to give me the names, but please give me the number
6 beside the name. Did you recognize any of those people or
7 do you know any of them? Just the numbers now. Not the
8 names. That sheet is in front of you too.

9 A. Okay. I was fixing to say my memory isn't that good.
10 Let's see. Well --

11 Q. Just the number, please, sir.

12 A. Number 7.

13 Q. Okay.

14 A. Let's see. Number 12. Number 38. 69.

15 Q. Any others?

16 A. No, sir.

17 Q. Let me ask you -- of course, all of these witnesses are
18 not going to be called, but some of them certainly will be
19 called. What I'm going to ask you is, if any, or all of
20 these witnesses, for that matter, would be called as a
21 witness by either side in this case, would the fact that
22 they are being called as a witness interfere in any way with
23 your ability to give both sides a fair and impartial trial
24 in this case?

25 A. No, sir, it wouldn't.

1 Q. All right, sir.

2 Now, did you see back in the jury room, there was a
3 sheet back there with three paragraphs that talked about
4 three different types of jurors?

5 A. Yes, sir.

6 Q. Did you see that?

7 A. Yes.

8 Q. And, of course, this is not an all-inclusive list,
9 because it can't completely describe the juror, but did you
10 identify yourself as being more like one of these three
11 types of jurors?

12 A. Yes, sir.

13 Q. Which one, sir?

14 A. The last one.

15 Q. The third type?

16 A. Yes, sir.

17 Q. So you would be the kind of juror who would not make up
18 his mind in advance, but rather you would need to hear the
19 testimony and evidence in the case and the law as instructed
20 by the court on the issues in the case before you would make
21 a decision, sir?

22 A. Yes, sir.

23 Q. Or render judgment?

24 A. Correct.

25 Q. All right. And you understand that this is a case in

1 which the State is seeking the death penalty, which is
2 treated a little bit different than any other criminal cases
3 in that --

4 A. Yes.

5 Q. -- the first part of it, which may be the only part,
6 for that matter, of the case is in which the State is
7 required to prove the defendant guilty beyond a reasonable
8 doubt of the charges against him.

9 If the State failed to meet that burden, failed to
10 prove the defendant and the elements of those offense, they
11 failed to prove that the defendant was guilty beyond a
12 reasonable doubt of the offense of murder, if the jury found
13 that the State didn't meet its burden, that would be the end
14 of the matter, and the jury's participation would be over at
15 that point. That would be the end of it. Do you
16 understand, sir?

17 A. Yes, sir.

18 Q. But if the jury found that the State had proven the
19 elements of the offense of murder beyond a reasonable doubt,
20 then we would move to a second phase of the trial, in which
21 we would -- the State would present, by way of testimony and
22 evidence, all aggravating circumstances that they wish the
23 jury to consider with regard to the matter; the defense
24 would present all mitigating circumstances that they wished
25 the jury to consider on the issue; and the court would

1 instruct you as to how to receive that information and also
2 what to consider in your determination, what you could
3 consider, and what all you should consider with regard to
4 appropriate punishment in that case; and then the jury would
5 be asked to find the appropriate punishment. Do you
6 understand that?

7 A. Yes, sir.

8 Q. And the possible punishments, if we reach that stage,
9 would be the death penalty or life in prison without the
10 possibility of parole. Do you understand that?

11 A. Yes, sir.

12 Q. Now, sir, could you listen to all of the information
13 that would be provided at the -- if we reached the second
14 phase of the trial, could you listen to all the information
15 to be provided there and the court's instruction on the law
16 and render a decision as to the appropriate punishment?

17 A. Yes, sir, I could.

18 Q. And if you believed that under all the circumstances
19 and information that you had then that the death penalty was
20 the appropriate punishment, could you vote for the death
21 penalty, sir?

22 A. Yes, sir, I could.

23 Q. If you believe with all the information that you had
24 and the court's instruction on the law that the appropriate
25 penalty would be life imprisonment without the possibility

1 of parole, could you vote for life imprisonment without
2 possibility of parole, sir?

3 A. Yes, sir.

4 Q. Thank you. Please answer any questions that the
5 solicitor may have.

6 MR. COLER: Thank you, Your Honor. May it please
7 the court?

8 THE COURT: Yes, sir.

9 VOIR DIRE EXAMINATION BY MR. COLER:

10 Q. Good afternoon, Mr. Jeffers.

11 A. Hi.

12 Q. Thank you for being here.

13 Judge Alford just talked to you about the two phases of
14 this trial.

15 A. Yes.

16 Q. And I want to talk to you about the second phase.

17 Did you understand him when he was talking about the
18 two phases?

19 A. Yes, sir.

20 Q. And you understood him talking about the first phase,
21 where the jurors would decide whether the defendant is
22 guilty or not guilty?

23 A. Yes, sir.

24 Q. And then if y'all decided guilty, we would move to the
25 second phase?

1 A. Yes.

2 Q. You understood him when he was talking about the
3 aggravating and mitigating circumstances in that phase?

4 A. Yes.

5 Q. What did you understand? What -- can you describe
6 what --

7 A. Well, you know, I don't know exactly how -- how to put
8 this, but, you know, if it's -- if the evidence proved, you
9 know, I mean -- he was talking about aggravating?

10 Q. Yes, sir.

11 A. You know.

12 Q. Well, aggravating, you understood that to mean really
13 bad stuff?

14 A. Yeah.

15 Q. Things that aggravated the murder?

16 A. Uh-huh.

17 Q. And you understood the mitigating circumstances, things
18 that mitigated or lessened it?

19 A. Yes, sir.

20 Q. Now, understanding that as the juror you always have
21 the option to sentence the defendant to life without parole?

22 A. Yeah.

23 Q. If the really bad stuff convinces you over the
24 mitigating stuff --

25 A. Yeah.

1 Q. -- could you then impose the ultimate sentence, the
2 death sentence?

3 A. Yes, sir, I could.

4 Q. And could you sign a verdict form to indicate that was
5 your verdict?

6 A. Yes, sir.

7 MR. COLER: Beg the court's indulgence.

8 (Off the record)

9 (Back on the record)

10 BY MR. COLER:

11 Q. That's all I have, Mr. Jeffers. Thank you.

12 A. Thank you.

13 MR. STARNES: If it please the court, Your Honor?

14 THE COURT: Mr. Starnes, yes, sir.

15 VOIR DIRE EXAMINATION BY MR. STARNES:

16 Q. Hi, Mr. Jeffers. How are you doing today?

17 A. I'm doing fine.

18 Q. I'm Mr. Norman Starnes. I'm the defendant in this
19 case.

20 If you could, tell us a little bit about your views on
21 the death penalty.

22 A. Well, this is my first situation like this, but -- but
23 if the crime -- I'm trying to -- how to put this.

24 I mean, without a shadow of a doubt a person is guilty,
25 I mean, I don't have any problems, you know, rendering a

1 death penalty, you know, without a shadow of a doubt, if the
2 evidence is there. You know, that's the way -- that's the
3 way I feel about it.

4 Q. There is no right or wrong answers. We understand
5 that.

6 A. I know.

7 Q. How about life without parole?

8 A. Well, if it's -- if the circumstances -- if the
9 evidence fits that, I could -- I could present that too.

10 Q. Do you believe that all killings are murder?

11 A. Not necessarily -- no. No, not all killings are
12 murder.

13 Q. Okay. Do you believe someone is entitled to kill in
14 self-defense?

15 A. Well, if the circumstances arise, it could result in
16 that.

17 Q. If self-defense was an issue in this case, would you
18 follow the law as the trial court instructed you regarding
19 self-defense?

20 A. As I said awhile ago, if the evidence proved that, I
21 could.

22 Q. In the event that we do get to the penalty phase -- do
23 you understand if you don't -- if the jury doesn't convict
24 of murder, we don't enter that penalty phase. Do you
25 understand that?

1 A. Yeah.

2 Q. In the event that we do get to the penalty phase and
3 eleven jurors wanted to give the death penalty, but you felt
4 that the appropriate punishment was life without the
5 possibility of parole, could you vote for life without
6 parole?

7 A. Yes, I could, if I felt that way.

8 Q. If you felt that way. And that would be your own
9 independent decision?

10 A. That's right.

11 Q. Okay. Thank you, Mr. Jeffers. That's all we can ask
12 of you.

13 A. All right.

14 THE COURT: Thank you, sir. If you will wait just
15 outside the courtroom door for a minute, we will have you
16 back momentarily. Okay?

17 JUROR NUMBER 134: Thank you.

18 (Whereupon, Juror Number 134 left the courtroom)

19 THE COURT: Position of the State?

20 MR. COLER: He's qualified, Your Honor.

21 THE COURT: Defense?

22 MR. STARNES: Qualified, Your Honor.

23 THE COURT: The court agrees he's qualified.
24 Please bring him back, sir.

25 (Whereupon, Juror Number 134 entered the

1 courtroom)

2 THE COURT: Sir, you can stand right there, if you
3 will.

4 Mr. Jeffers, the court finds you qualified to
5 serve on the jury panel in this case. Let me explain what
6 that means. It doesn't mean that you are on the jury in the
7 case.

8 JUROR NUMBER 134: Yes.

9 THE COURT: You would be on the panel from which
10 the jury will be selected, and we are going to be going
11 through that process for a little while longer.

12 What I'm going to ask you to do is report back to
13 court tomorrow, Wednesday, at three p.m.. You can do
14 anything you would like to do in the meantime. Just please
15 report back there.

16 Now, there could be a change in the reporting
17 time. If so, there you have a voicemail on the card that
18 the clerk gave you.

19 JUROR NUMBER 134: Yes, sir.

20 THE COURT: And if you will call that number, you
21 can get a voicemail. Listen for a message for qualified
22 jurors. You are now a qualified juror. And if it says that
23 the time has been changed for qualified jurors to report,
24 then you go by that new time. Now, that message would not
25 be on until after seven o'clock tonight.

1 JUROR NUMBER 134: Yes.

2 THE COURT: You can call at anytime after seven
3 o'clock tonight and get that message.

4 She also has a website. If you have a computer
5 and access to that, you can go on the website, and there
6 would be a message after seven o'clock tonight, if it's
7 going to be changed for qualified jurors, to report at a new
8 time.

9 JUROR NUMBER 134: Yes.

10 THE COURT: If you don't get any information to
11 the contrary, please report back tomorrow at three o'clock.
12 Wednesday, at three o'clock. Okay?

13 JUROR NUMBER 134: Yes.

14 THE COURT: Thank you, sir.

15 (Whereupon, Juror Number 134 left the courtroom)

16 (Whereupon, Juror Number 44 entered the courtroom)

17 VOIR DIRE EXAMINATION BY THE COURT:

18 Q. Good afternoon. We just crossed over the noontime. We
19 are running a little bit behind.

20 Ma'am, let me -- there is something written in our --
21 have you gotten married since you first reported?

22 A. Yes.

23 Q. Are you now a Gamble?

24 A. Yes.

25 Q. That's what it looks like.

1 So you are Kellydawn Canaday Gamble, is that correct?

2 A. Yes.

3 Q. And, ma'am, you are juror number 44, is that correct?

4 A. Yes, sir.

5 Q. The first thing I'm going to do is ask you just to
6 relax. This is a very informal session. Nobody is going to
7 give you this third degree, or anything like that. Our sole
8 purpose is just to determine your views with regard to
9 certain things.

10 There are no right or wrong answers. Nobody is going
11 to disagree with you, or argue with you, or anything like
12 that. We just need your open and honest answers as to how
13 you feel about certain things that you would be asked.
14 Okay?

15 A. Okay.

16 Q. Now, a couple other things, preliminary things. Do you
17 remember that I placed the full jury panel under oath
18 yesterday morning?

19 A. Yes.

20 Q. And you continue to be under oath for purposes of the
21 information that you are going to provide the court today.

22 A. (Shaking head yes).

23 Q. You filled out a jury information form and sent back to
24 the clerk's office, is that correct, ma'am?

25 A. Yes.

1 Q. Has anything happened -- I realize you may have gotten
2 married since then. I don't know when that occurred, but,
3 in any event, is there any changes, any updates that you
4 need to make to that form since you sent it in?

5 A. No, sir.

6 Q. Did you see a rather long list of potential witnesses
7 with names and numbers by them back in the jury room?

8 A. Yes, sir.

9 Q. Did you have a chance to look over those, ma'am?

10 A. Yes.

11 Q. I'm going to ask you if you know or recognize any of
12 those names or know any of those persons, not to give us
13 their names, but if you could just give us their numbers
14 beside the name, and that sheet should be in front of you
15 there. Did you recognize or know any of those persons
16 listed?

17 A. No, sir.

18 Q. Did you see back in the jury room a sheet which had
19 three paragraphs on it which described three different types
20 of jurors?

21 A. Yes.

22 Q. And this is not all inclusive list, obviously, because
23 it can't accurately describe every juror, but did you
24 identify yourself as being more like any one of those three
25 types of jurors?

1 A. The third type.

2 Q. Okay. The third type.

3 A. Yes.

4 Q. Ma'am, that means that you are the type of juror who
5 would not make up your mind in advance, that you would want
6 to listen to the testimony and evidence and the court's
7 instruction on the law that applies to the issues in the
8 case before you would make judgment or enter a decision in
9 the case, is that correct?

10 A. Yes, sir.

11 Q. And you understand that this is a case in which the
12 State is seeking the death penalty?

13 A. (Shaking head yes)

14 Q. And I want to get you to answer verbally so we can get
15 your responses.

16 And do you understand the procedures may be a little
17 different in this case, in these type cases in -- there is
18 possibly two phases of the trial, depending on what happens
19 in the first phase.

20 In the first phase the State is required to prove the
21 defendant guilty beyond a reasonable doubt with the offenses
22 for which he's charged. Do you understand that?

23 A. Yes, sir.

24 Q. And if the jury did not find that the State had proven
25 the elements of those offenses beyond a reasonable doubt and

1 found the defendant not guilty, or, in any event, found that
2 they didn't prove the elements of those offenses beyond a
3 reasonable doubt, that would be end of it. Insofar as the
4 jury's participation in the case, that would be the end of
5 it. Do you understand that?

6 A. Yes, sir.

7 Q. But in the event that the jury found that the State had
8 proven the elements of the offense of murder beyond a
9 reasonable doubt, then we would go to a second phase of the
10 trial, which, for want a better description, is described as
11 the penalty phase of the trial, in which the jury would be
12 asked to determine the appropriate punishment. Do you
13 understand that?

14 A. Yes, sir.

15 Q. Now, in the second phase, if we reach the second phase,
16 a second phase, the State would present any aggravating
17 circumstances that they wish the jury to consider; the
18 defense would present any mitigating circumstances that they
19 wanted the jury to consider in determining the appropriate
20 punishment; and the court would instruct you, the jury, on
21 the law that must be applied and all the factors that the
22 jury must consider in deciding what would be the appropriate
23 punishment. Do you understand that?

24 A. Yes, sir.

25 Q. Now, do you believe that you could listen to all of the

1 testimony and evidence regarding aggravation and mitigation
2 and the court's instruction on the law of what you must
3 consider in the case and render a verdict as to the
4 appropriate punishment in the case?

5 A. Yes, sir.

6 Q. Okay. And the two choices of appropriate punishment
7 would either be for the death penalty or for life
8 imprisonment without the possibility of parole. Do you
9 understand that?

10 A. Yes, sir.

11 Q. And, ma'am, if you listened to all the -- if we reached
12 the second phase of the trial, and after listening to all of
13 the testimony and evidence concerning aggravation and
14 mitigation, instruction by the court, if you felt with all
15 that information that the appropriate penalty was the death
16 penalty, could you vote for the death penalty?

17 A. Yes, sir.

18 Q. If you found after listening to all that, with all that
19 information, that the appropriate sentence was life
20 imprisonment without the possibility of parole, could you
21 vote for that sentence?

22 A. Yes, sir.

23 Q. Thank you, ma'am. Please answer any questions that the
24 solicitor may have.

25 MR. COLER: Thank you, Your Honor.

1 May it please the court.

2 THE COURT: Yes, sir.

3 VOIR DIRE EXAMINATION BY MR. COLER:

4 Q. Good afternoon, Ms. Gamble.

5 A. Yes.

6 Q. Thank you for being here. I just have a couple of
7 questions and I promise they are going to get easier as they
8 go.

9 The first thing I want you to do is, if you can, have
10 you ever had an opportunity to think about your position or
11 your thoughts on the death penalty?

12 A. Yes.

13 Q. Can you just tell us briefly what your view or your
14 thoughts are?

15 A. I'm not for or against it.

16 Q. Okay.

17 A. It depends on the circumstances.

18 Q. Okay. Can you tell us your background, family,
19 religion, upbringing, and what of that has contributed to
20 your thoughts or views, or do you even know?

21 A. I don't know my family has influenced me any. I have a
22 degree in sociology, in criminal justice, so that's where I
23 learned most of my -- or formed most of my opinions.

24 Q. When you say you are not for or against it, can you
25 explain that a little bit more to me so I understand or make

1 sure that I understand what you are saying?

2 A. I guess if without a shadow of a doubt the person is
3 guilty, then I'm for it.

4 If there is any kind of circumstance, you know, ain't a
5 question, I think life in prison would be better.

6 Q. Okay. When the judge was talking to you, did you
7 understand that when he was talking to you about the two
8 phases of this trial, that it's basically split in two
9 phases?

10 A. Yes, sir.

11 Q. And did you understand him when he was talking about
12 the first phase, that's the guilt phase?

13 A. Yes, sir.

14 Q. And you understood when he was talking about that
15 phase, the jurors would decide, first, if the defendant is
16 guilty or not guilty?

17 A. Right.

18 Q. And then you understood what would happen if a jury
19 decided the defendant was guilty?

20 A. Yes.

21 Q. What's your understanding of what would happen?

22 A. Either the death penalty or life imprisonment.

23 Q. Okay. When the judge was talking to you, did you --
24 and I know they gave you a lot of information. In that
25 second phase you would hear some more information.

1 A. Right.

2 Q. And he talked to you about aggravating and mitigating
3 circumstances. Did you follow or did you understand what he
4 was talking about?

5 A. Yes.

6 Q. If -- and this is understanding that in that phase the
7 jury always has the option to impose life in prison without
8 parole. Knowing that, if you decided as a juror that the
9 aggravating circumstances outweighed more than the
10 mitigating circumstances, you could -- I think you told the
11 judge you could impose the ultimate punishment?

12 A. Yes.

13 Q. You could do that?

14 A. Yes.

15 Q. And could you sign a verdict form with your name
16 indicating that?

17 A. Yes.

18 MR. COLER: I beg the court's patience one moment.

19 (Off the record)

20 (Back on the record)

21 BY MR. COLER:

22 Q. One of the things that you mentioned, Ms. Gamble, when
23 we started this was you talked about beyond a shadow of a
24 doubt?

25 A. Yes.

1 Q. Did I -- I'm not sure. I may have understood that.

2 A. Yes.

3 Q. If the judge were to instruct you that the State's
4 burden is beyond a reasonable doubt, something different
5 than beyond a shadow of a doubt, would you be able to listen
6 to the judge and abide by applying his instructions?

7 A. Yes, sir.

8 Q. The difference between a shadow of a doubt and
9 reasonable doubt, can you -- just so I understand what I
10 think your understanding is, can you describe that for me?

11 I'm not trying to put you on the spot, I promise you.
12 Just so I understand it, or I have an understanding of
13 what's in your mind.

14 A. I guess it's within a reasonable doubt.

15 Q. Okay. Fair enough.

16 Thank you, Ms. Gamble.

17 MR. STARNES: If it please the court, Your Honor?

18 THE COURT: Yes, sir, Mr. Starnes.

19 VOIR DIRE EXAMINATION BY MR. STARNES:

20 Q. Hi, Ms. Gamble, how are you doing today?

21 A. Good.

22 Q. My name is Norman Starnes and I'm the defendant in this
23 case. I believe that you said that you had a sociology
24 degree?

25 A. Yes.

1 Q. In criminal justice?

2 A. It's with an emphasis on criminal justice. It's not
3 solely.

4 Q. Did you ever have an opportunity to study the capital
5 punishment?

6 A. Just in class.

7 Q. Just in class?

8 A. Yes.

9 Q. Under certain circumstances you could vote for life
10 imprisonment or the death penalty, is that what I understood
11 you to say?

12 A. Yes, sir.

13 Q. Could you find the defendant not guilty? In other
14 words, if we are not in the second part. In the first part
15 of this trial, if you felt the facts and circumstances,
16 according with the instruction from the trial court,
17 warranted a verdict of not guilty, could you render a
18 verdict of not guilty?

19 A. Yes, sir, if all the circumstances were met.

20 Q. Do you believe that all killings are murder?

21 A. Yes.

22 Q. Do you believe that all killings are murder?

23 A. I guess it depends.

24 Q. How about self-defense?

25 A. Murder is murder.

1 Q. So you believe that killing in self-defense is still
2 murder, taking of a human life?

3 A. Yes.

4 Q. Could you consider self-defense evidence if it was
5 introduced into this case?

6 A. Yes.

7 Q. Could you follow the judge's instruction regarding
8 self-defense in this case, if it was instructive?

9 A. Yes.

10 Q. In the event that we did get to that penalty phase
11 where the determination was made as to the death penalty or
12 life imprisonment without the possibility of parole, if
13 eleven jurors wanted to vote for the death penalty, but you
14 felt the appropriate punishment was life without the
15 possibility of parole, could you vote for life without
16 parole?

17 A. I don't know.

18 Q. You don't know.

19 I noticed that you were kind of hesitant there. So you
20 believe a killing in self-defense is murder, period?

21 A. I would have to say so, yes.

22 Q. You would have to say so. Okay..

23 So then if it's proved by the State beyond a reasonable
24 doubt that a defendant was guilty of murder, do you feel
25 that the death penalty is the only appropriate punishment?

1 A. No. No.

2 Q. You could still vote for life without the possibility
3 of parole?

4 A. Yes.

5 Q. And could you find the defendant not guilty in that
6 first part? Not in the second part. In the first part,
7 could you find the defendant not guilty?

8 A. Yes.

9 Q. But if you felt it was not -- if you felt that the
10 killing was in self-defense, you would still have to vote
11 guilty, is that what I'm hearing?

12 A. Can you repeat that?

13 Q. In other words, if self-defense was an issue in this
14 case and you felt -- or it was discovered that the defendant
15 killed in self-defense, could you find him not guilty?

16 A. Yes.

17 Q. You could to that?

18 A. Yes.

19 Q. That's all we can ask from you. Thank you.

20 MR. COLER: Just a couple briefly, Your Honor.

21 RE-VOIR DIRE EXAMINATION BY MR. COLER:

22 Q. Ms. Gamble, and I'm not trying to confuse you any more.
23 I know we are throwing a lot of information at you. Let me
24 ask you a couple of things about what you told Mr. Starnes a
25 minute ago.

1 Would you agree with me that there are different types
2 of homicide, if homicide is defined as one human being
3 killing another?

4 A. Yes.

5 Q. And not all of those would be murder. For example, if
6 a police officer were to shoot somebody who was threatening
7 their wife, child, that would not be a murder by that police
8 officer, would you agree with me?

9 A. Yes.

10 Q. Because the officer would be justified in doing so and
11 he had to do it?

12 A. Right.

13 Q. So when Mr. Starnes asked you if all killings were
14 murders, and if I misunderstood you, I apologize, but I
15 think you said yes, but reflecting on what we just talked
16 about, would you agree with me that not every killing is a
17 murder?

18 A. Yes.

19 Q. Okay. And, again, if I misunderstood you, I apologize,
20 but I just want to make sure in my mind I knew what you were
21 saying.

22 Now, the judge, if you were a juror, would give you
23 instructions, and would you sit and listen to the case with
24 an open mind?

25 A. Yes.

1 Q. And you would use your judgment as a human being and
2 instructions that the judge gave you and the information
3 that you received to make your decision?

4 A. Yes.

5 Q. And when the time came ultimately to render your
6 decision, it would be your decision?

7 A. Correct.

8 Q. And even if after deliberating with your fellow jurors,
9 your decision, after listening with an open mind, using your
10 judgment as a person it's your decision, you would stick
11 with your decision, wouldn't you?

12 A. Yes, sir.

13 MR. COLER: Beg the court's patience.

14 (Off the record)

15 (Back on the record)

16 MR. COLER: That's all I have, Ms. Gamble. Thank
17 you.

18 THE COURT: Any followup?

19 MR. STARNES: Yes. One quick followup.

20 THE COURT: Briefly.

21 RE-VOIR DIRE EXAMINATION BY MR. STARNES:

22 Q. Ms. Gamble, if you felt -- in other words, let me ask
23 you this question another way. Would you follow the law as
24 the judge instructed you, or would you go by what you
25 thought the law should be?

1 A. Follow the law as instructed.

2 Q. You could follow the law as instructed by the trial
3 court?

4 A. (Shaking head yes)

5 Q. Consider all the evidence and hear all the testimony?

6 A. Yes.

7 Q. Thank you.

8 THE COURT: All right. Thank you, ma'am.

9 If you would please wait just outside the
10 courtroom door. We will have you back in momentarily, okay?

11 (Whereupon, Juror Number 44 left the courtroom)

12 THE COURT: Position of the State?

13 MR. COLER: She's qualified, Your Honor.

14 THE COURT: Defense?

15 MR. STARNES: Your Honor, she's qualified.

16 I do have one matter.

17 I noticed when Mr. Coler was examining this juror,
18 he give an example of a police officer shooting somebody.
19 Is that appropriate?

20 THE COURT: It is, simply because it has nothing
21 to do with the facts of this case. If it had anything to do
22 with the facts of this case, if there's anything like that
23 in this case, it would not be inappropriate. But I think
24 what he was trying to do there is to point out to her where
25 that might -- it were a killing, it might be a justified

1 killing; in other words, in the defense of others, basically
2 is what it amounts to, but it does -- if it had anything to
3 do with the facts of this case, it was a hypothetical that
4 had anything to do with the facts of this case, it would not
5 be appropriate, but it was an example that had nothing to do
6 with this case. So I don't think it's inappropriate, given
7 the fact that the witness questioned her -- her responses
8 were not absolutely clear, and I think he was trying to
9 clarify that. So I don't think it's inappropriate to ask
10 that, after all of this had come up. Do you understand, we
11 are in the position trying to determine whether she believed
12 that any killing -- that all killings would be murder in
13 response to your question?

14 MR. STARNES: Yes, sir. Would it be
15 appropriate -- I mean, if we have another juror like that,
16 could I ask them the same questions that Mr. Coler asked
17 her?

18 THE COURT: If there is a -- if there would be a
19 conflict in her -- in what the juror is saying wasn't clear.
20 I think that was meant to clarify her position. And so if
21 it's not clear, then an example may be appropriate, as long
22 as it is not something connected to the facts of this case.
23 Okay?

24 MR. STARNES: I understand.

25 THE COURT: So if it was necessary to try to

1 clarify the juror's position, it may be appropriate, as long
2 as it's not connected with the facts of this case. You
3 can't ask a hypothetical that might have anything to do with
4 this, similar to the facts of this case. That would be
5 inappropriate.

6 MR. STARNES: Thank you, Your Honor.

7 THE COURT: All right, sir.

8 MR. STARNES: I'm sorry, Your Honor?

9 THE COURT: And the court agrees she's qualified.
10 Note that her last name is Gamble. I guess you
11 got that on the record.

12 Please have her come back in, sir.

13 (Whereupon, Juror Number 44 entered the courtroom)

14 THE COURT: Ms. Gamble, please stand right there,
15 if you will.

16 The court has found you qualified to serve on the
17 jury panel in this case, but let me explain to you that that
18 does not mean that you are on the jury, actually, on this
19 case yet. What we are trying to do is get a pool of jurors
20 from which we will draw -- actually draw the jury, but you
21 have been qualified to be a member of that jury pool from
22 which the jury will be drawn.

23 Now, we are going to be going on through that
24 process, and so what I'm going to ask you to do is to -- you
25 are free to do anything that you would like to do in the

1 meantime, but please report back tomorrow, Wednesday, at
2 three p.m..

3 Now, that time could change, and if you will call
4 the voicemail number that you have for the clerk's office on
5 the card that you have and listen for a message on there,
6 but call tonight after seven o'clock. It won't be on there
7 until after seven o'clock. Call that number and listen for
8 a message for qualified jurors. You are now a qualified
9 juror, and follow the instructions. It may change, the
10 reporting time.

11 Also the clerk has a website, and you can check
12 the website. And if the time has changed, reporting time,
13 it would be reflected in there as a message to qualified
14 jurors changing the time. But if you don't hear anything to
15 the contrary changing the time, please report back tomorrow,
16 Wednesday, at three o'clock. Thank you, ma'am.

17 (Whereupon, Juror Number 44 left the courtroom)

18 (Whereupon, Juror Number 42 entered the courtroom)

19 VOIR DIRE EXAMINATION BY THE COURT:

20 Q. Good afternoon, sir. You are William Camlin, juror
21 number 42, is that correct?

22 A. That's correct.

23 Q. Okay. Mr. Camlin, I'm going to ask you -- like the
24 clerk, I'm going to ask you to please be relaxed. This is a
25 very informal session. We are going to ask you some

1 questions to determine your views on certain things. There
2 are no right or wrong answers. Nobody is going to disagree
3 with you, take opposition to your answers. We are simply
4 trying to determine your views. And, again, there are no
5 right or wrong answers. Just be as open and honest as you
6 can and respond.

7 A. Yes, sir.

8 Q. First, let's get a little housekeeping out of the way.
9 Do you remember that you were placed under oath as part of
10 the jury panel yesterday, and you continue to be under oath
11 for purposes of giving your information today. All right,
12 sir?

13 A. Yes, sir.

14 Q. And do you remember sending in a juror information
15 on your summons for jury duty. You sent that back to the
16 clerk's office, is that correct?

17 A. Yes, sir.

18 Q. Has there been any changes that you need to make the
19 court aware since you sent that in?

20 A. I don't believe so.

21 Q. Did you see a rather long list of potential witnesses
22 in this case and numbers by them back in the jury room?

23 A. Yes.

24 Q. If you recognized any of them, I don't want you to
25 identify them by name, but only by number, and that sheet is

1 also in front of you there, but did you recognize any of
2 those names or know any of those persons listed?

3 A. I recognized two names.

4 Q. All right. Just give me the numbers of those names,
5 please, sir.

6 A. 23, 38, 73. . And I recognize the last name of 83.

7 Q. All right. What I want to ask you, sir, is let's
8 assume for the moment that the names are who you think they
9 might be. Because you recognize the name, let's assume that
10 they are.

11 A. Okay, sir.

12 Q. If any of them, or all of them, or any of them, for
13 that matter, were to be called as witnesses in this case by
14 either side, would that interfere in any way with your
15 ability to give both sides a fair and impartial trial in
16 this case?

17 A. No, it would not.

18 Q. Now, sir, did you see a sheet back in the jury room
19 which has three paragraphs on the it that talks about three
20 different kind of jurors?

21 A. Yes, sir.

22 Q. We know this is not all inclusive as to describe the
23 jurors, but would you identify yourself as being more like
24 one of those three jurors, sir?

25 A. I would identify myself as being more like number

1 three.

2 Q. Okay. So you are the type of juror who would not make
3 up your mind in advance, but rather you would have to hear
4 the testimony and evidence and instruction by the court as
5 to the law that applies to the issues in this case before
6 you would make up your mind or render a verdict?

7 A. Yes, sir.

8 Q. Okay. And do you understand that this is a case in
9 which the State is seeking the death penalty, which is
10 treated a little bit different in one sense, and that is
11 that we would go through a regular trial. But if the
12 State -- and in that regular trial the State would have to
13 prove the defendant guilty beyond a reasonable doubt of the
14 charges against him. And if the State failed to meet its
15 burden of proving the elements of those offenses beyond a
16 reasonable doubt, then, of course, that would be the end of
17 the matter and the jury role would be completed. Do you
18 understand that?

19 A. Yes, sir.

20 Q. But if the jury should find that the State had proven
21 the elements of the offense of murder beyond a reasonable
22 doubt, then we would move to a second phase of the trial.
23 And for want of a better word, that's described as a penalty
24 phase, in which the jury would be asked to determine the
25 appropriate punishment.

1 And in that phase, if we get to that phase in this
2 case, in that phase the State would put up any aggravating
3 circumstances by way of testimony and evidence that they
4 want the jury to consider. The defense would put up all
5 mitigating circumstances that they wished the jury to
6 consider. The court would instruct you on the law as to how
7 to receive that information and all other things that you
8 need to consider in deciding what appropriate punishment
9 would be. And then the jury would be asked to decide the
10 appropriate punishment, that being either the death penalty
11 or life imprisonment without the possibility of parole. Do
12 you understand that?

13 A. Yes, sir.

14 Q. Now, let me ask you, sir, whether you could -- if we
15 reached that stage, a second phase of the trial, if we
16 reached that phase, could you listen to all of the
17 aggravating factors and mitigating -- excuse me, the
18 aggravating circumstances, the mitigating circumstances, and
19 the court's instruction as to what you must consider in that
20 phase and render a decision as to the appropriate punishment
21 in the case?

22 A. Yes, sir.

23 Q. And if the circumstances -- if you believed the
24 circumstances warranted it, with all that information, it
25 warranted the death penalty, could you vote for the death

1 penalty, sir?

2 A. I could.

3 Q. If you believe that all the information that you have
4 that under the circumstances that life imprisonment without
5 the possibility of parole would be the appropriate
6 punishment, could you vote for that sentence, sir?

7 A. I could.

8 Q. Thank you. Please answer any questions that the
9 solicitor may have.

10 MR. COLER: Just briefly, Your Honor.

11 VOIR DIRE EXAMINATION BY MR. COLER:

12 Q. Good afternoon. Mr. Camlin, right?

13 A. Yes, sir.

14 Q. Thank you for being here. I just have a couple of
15 brief questions.

16 The judge talked to you about the second phase of the
17 trial, if we get to that point. And you told him, if
18 appropriate -- understanding you always have the opportunity
19 to sentence the defendant to life without parole, if
20 appropriate, after hearing all the aggravating and
21 mitigating circumstances, you could sentence him to the
22 death sentence?

23 A. That's correct.

24 Q. And sign your name on a verdict form?

25 A. Yes.

1 MR. COLER: I believe that's all, Your Honor.

2 Thank you, Mr. Camlin.

3 MR. STARNES: If it please the court, Your Honor.

4 THE COURT: Yes, sir, Mr. Starnes.

5 VOIR DIRE EXAMINATION BY MR. STARNES:

6 Q. Hi, Mr. Camlin. How are you doing today?

7 A. Fine. You?

8 Q. Fine.

9 My name is Norman Starnes. I'm the defendant in this
10 case.

11 Mr. Camlin, I noticed on your jury questionnaire that
12 you filled out that you retired from the South Carolina
13 Department of Corrections?

14 A. That's correct.

15 Q. Can you tell us a little bit about that?

16 A. I was with the department for almost seven years. I
17 worked at Broad River Correctional Institution. I was
18 involved in an inmate assault and was injured. A worker's
19 compensation claim is in the process. When the doctors
20 refused to allow me to go back to work in security, the
21 Department of Corrections terminated me. And so I'm in the
22 process of working out a lot of details. I have not
23 officially retired yet, but have years of service to retire.

24 Q. Yes, sir.

25 You wasn't involved in the Chapman Program or anything

1 out there, were you?

2 A. No, I was the security supervisor.

3 Q. You were security supervisor.

4 Okay. Mr. Camlin, do you believe that all killings are
5 murder?

6 A. Yes.

7 Q. You believe that if someone killed another individual,
8 it's murder?

9 A. With the exception of war.

10 Q. I'm sorry?

11 A. With the exception of wartime.

12 Q. With the exception of wartime?

13 A. Yes.

14 Q. How about self-defense?

15 A. Okay, self-defense also.

16 Q. Okay. So, in other words, I have to ask you. Do you
17 believe an individual is entitled to self-defense under
18 certain circumstances?

19 A. Under certain circumstances, yes.

20 Q. And if self-defense was an issue in this case and there
21 was evidence presented regarding self-defense, would you, as
22 a juror, be able to consider that evidence?

23 A. Yes.

24 Q. And you would be able to hear all the testimony and you
25 would look at all the evidence and consider self-defense,

1 along with all of the other evidence in this case?

2 A. I would consider all the evidence.

3 Q. Okay. And could you follow the law as the trial court
4 instructed you what the law is?

5 A. Yes.

6 Q. Tell me a little bit about what you think about the
7 death penalty, your views on the death penalty.

8 A. There are crimes, in this case, I'm sure murders, that
9 are of such a grievous nature, that that seems to be the
10 appropriate sentence, so I support it, but I don't say that
11 it's the only option for those people that are convicted of
12 murder.

13 Q. So, in other words, what I'm understanding is in
14 certain cases you feel that the death penalty is warranted
15 and in some cases you could vote for life without the
16 possibility of parole?

17 A. If the evidence indicated such.

18 Q. And in doing so, you could hear all the evidence of
19 mitigation, in other words, evidence that the defendant's
20 background, character of the defendant; in addition, hear
21 all the evidence of aggravation that the State would put up,
22 things that would make the crime be worse? You could hear
23 all that evidence?

24 A. Yes.

25 Q. And after hearing all that evidence, you could vote for

1 the death penalty, or you could vote for life without the
2 possibility of parole, depending on how you felt?

3 A. On how I believed the evidence to be presented to me.

4 Q. Okay. Yes, sir.

5 And you would make that decision -- that would be your
6 own independent decision?

7 A. Yes.

8 Q. One more question. If eleven jurors wanted to give
9 life without the possibility of parole, and you felt that
10 the death penalty was the appropriate punishment, could you
11 vote for -- still vote for the death penalty?

12 A. I could until convinced otherwise. You know there is
13 always, I suppose, additional evidence that could be
14 reviewed and looked at again and perhaps a different
15 decision may be made.

16 Q. Okay. Have you ever served on a jury before, Mr.
17 Camlin?

18 A. Yes.

19 Q. Was it a criminal or a civil case?

20 A. It was a civil case.

21 Q. Thank you, Mr. Camlin. We appreciate your time.

22 MR. COLER: Nothing further, Your Honor.

23 THE COURT: Thank you, sir.

24 If you would please wait just outside the
25 courtroom door for just a minute. We will have you back in

1 momentarily.

2 JUROR NUMBER 42: Okay.

3 (Whereupon, Juror Number 42 left the courtroom)

4 THE COURT: Position of the State?

5 MR. COLER: He's qualified, Your Honor.

6 THE COURT: Position of the defendant?

7 MR. STARNES: Your Honor, he's qualified.

8 THE COURT: Thank you. The court believes he's
9 qualified.

10 Please bring him back in.

11 (Whereupon, Juror Number 42 entered the courtroom)

12 THE COURT: Mr. Camlin, please stand right there,
13 if you will.

14 The court has found you qualified to serve on the
15 jury panel in this case.

16 Let me explain that that does not mean that you
17 are on the jury, actual jury. What we are trying to do is
18 get selected a pool of jurors from which the jury would be
19 drawn, qualified jurors, and you are found to be qualified.

20 What I'm going to ask you to do is -- we are going
21 to continue this process a while longer, but what I'm going
22 to ask you to do is excuse you at this time for you to do
23 anything you would like to do between now and then, and
24 please report back to court tomorrow, that is Wednesday at
25 three p.m.. There is a possibility we could change that

1 reporting time. If so, that will be placed on the voicemail
2 tonight after seven o'clock. You have your voicemail number
3 on the card that you were given from the clerk's office.

4 JUROR NUMBER 42: Yes, sir.

5 THE COURT: If you call that number, listen -- it
6 would have to be after seven tonight. There would be a
7 message for qualified jurors. You are now a qualified
8 juror.

9 JUROR NUMBER 42: Okay.

10 THE COURT: And if it changes the reporting time,
11 then you would follow that.

12 Also the clerk has a website which would have the
13 information on there for qualified jurors after seven
14 tonight. If the time has changed, the reporting time, it
15 would be on there, if you have access to the computer. If
16 you don't see any to the contrary or hear anything to the
17 contrary, please report back tomorrow, Wednesday, at three
18 p.m..

19 JUROR NUMBER 42: Yes, sir.

20 THE COURT: Thank you very much.

21 JUROR NUMBER 42: Thank you.

22 (Whereupon, Juror Number 42 left the courtroom)

23 THE COURT: I know we are running behind. I need
24 to take a short break. Let's take a five minute break.

25 (Whereupon, proceedings were recessed)

1 (Whereupon, proceedings were reconvened)

2 MR. BULSA: Your Honor, may we approach on one of
3 the jurors in the next panel?

4 (Whereupon, the lawyers and the defendant
5 approached the bench for an off-the-record discussion)

6 MR. COLER: May we approach on one other matter?

7 THE COURT: Yes, sir.

8 (Whereupon, the lawyers and the defendant
9 approached the bench for an off-the-record discussion)

10 (Whereupon, Juror Number 182 entered the
11 courtroom)

12 VOIR DIRE EXAMINATION BY THE COURT:

13 Q. Good afternoon, sir.

14 You are Charles McKinney, juror number 182, is that
15 correct?

16 A. That's correct.

17 Q. Mr. McKinney, I'm going to echo what Madam Clerk said
18 and that is ask you just to relax. This is a very informal
19 proceeding in which we are going to ask you some questions
20 to determine your views towards other things, and all we ask
21 could you to do is give open and honest answers to these
22 questions.

23 There are no right or wrongs answers to the questions
24 and nobody is going to disagree with you about anything.
25 It's simply the purpose is to determine your views on

1 certain things. Do you understand that?

2 A. Yes, sir, I do.

3 Q. If you just relax and answer those honestly.

4 There are a couple housekeeping matters first, though.
5 I need to remind that you were placed under oath with regard
6 to the full jury panel yesterday, and you continue to be
7 under oath for the information that you are going to provide
8 the court today. Do you understand that, sir?

9 A. Yes, sir, I do.

10 Q. And you filled out a jury information sheet that you
11 sent back to the clerk's office originally when you were
12 summonsed for jury duty. Do you recall that?

13 A. Yes.

14 Q. Has there been any changes made that's happened that
15 you need to reflect that that would make any changes on
16 there?

17 A. I can't recall. I can't remember the questions, but I
18 doubt it.

19 Q. You don't know of any changes?

20 A. I don't know of any changes, no.

21 Q. Let me ask you, sir. There was back in the jury room a
22 rather long list of potential witnesses in this case. They
23 were listed by name and number. Did you have an opportunity
24 to look over that list? That's the same list that you have
25 there now.

1 A. Yes, I did.

2 Q. All right, sir. I'm going to ask you if you recognized
3 any of those names or know any of those potential witnesses,
4 not to identify them by name, but only by number.

5 So did you recognize any of those potential witnesses,
6 sir?

7 A. No, I do not.

8 Q. Okay. And we don't -- all of these witnesses probably
9 are not going to be called, but some of them will be called,
10 and that's the reason we are asking that.

11 Now, let me ask you, there was also a sheet back in the
12 jury room with three paragraphs on it which talk about three
13 different types of jurors. Of course, this is not all
14 inclusive to describe any juror, but did you identify
15 yourself as being more like one of these three types of
16 jurors?

17 A. Yes, sir.

18 Q. Which one sir?

19 A. The last one.

20 Q. Number three, the third type?

21 A. Yes.

22 Q. That means that you would be the type of juror who
23 would not make up your mind in advance and you would need to
24 hear the testimony and evidence and the court's instruction
25 to you with regard to the law that applies to the issues in

1 this case before you made any decision, is that correct,
2 sir?

3 A. Yes, sir.

4 Q. All right. And you understand that this is a case in
5 which the State is seeking the death penalty and it's
6 treated a little bit different than most cases. It may or
7 may not be treated differently. Let me explain to you that.

8 What happens is that if a jury selected and we start a
9 trial, and in that trial the State has to prove the
10 defendant guilty of the charges against him beyond a
11 reasonable doubt.

12 If the jury were -- if the State failed to meet that
13 burden of proof, then that would end the jurors role, once
14 they made that determination in the case, and that would be
15 the end of the jury's participation and the end the case,
16 for that matter. Do you understand that?

17 A. I understand that.

18 Q. Okay. Now, in the event that the jury were to find the
19 State had proven beyond a reasonable doubt the elements of
20 the offense of murder, and so found, then we would move to a
21 second phase of the trial, and, for lack of a better word,
22 described as the penalty phase.

23 And in that phase of the trial the State would be able
24 to offer any aggravating circumstances that they wish the
25 jury to consider in punishment, and the defense would be

1 able to offer all mitigating circumstances that they believe
2 the jury should consider in determination of the appropriate
3 sentence. And then the court would then instruct the jury
4 on how to receive that information and also other factors
5 that they ought to consider in making determination as to an
6 appropriate sentence. Do you understand that, sir?

7 A. I understand that, sir.

8 Q. And then with that information then the jury would be
9 asked to determine the appropriate punishment, that being
10 either the death penalty or life imprisonment without the
11 possibility of parole. Do you understand that?

12 A. I understand that.

13 Q. Now, I want to ask you, sir, if you could, if we
14 reached the second phase of the trial -- and, again, we may
15 not reach the second phase, but if we were to reach the
16 second phase, could you listen to the aggravating factors --
17 aggravating circumstances, mitigating circumstances, the
18 court's instruction on the law that you must consider in
19 making that determination and reach a decision as to the
20 appropriate punishment in the case?

21 A. Yes, sir, I could.

22 Q. And if you believed the circumstances warranted it,
23 could you vote for the death penalty in the case?

24 A. Yes, sir.

25 Q. If you felt the circumstances warranted it, could you

1 vote for life imprisonment without the possibility of parole
2 in the case?

3 A. Yes, sir.

4 Q. Thank you, sir. Please answer any questions that the
5 solicitor may have for you.

6 MR. BULSA: Thank you, Your Honor.

7 VOIR DIRE EXAMINATION BY MR. BULSA:

8 Q. Mr. McKinney, what branch of the service were you in?

9 A. United States Navy, sir.

10 Q. How long?

11 A. Six years.

12 Q. Was your -- were your parents in the military also?

13 A. My dad was in the Navy during World War II.

14 Q. Okay. Sir, I noticed on your questionnaire that you
15 listed you attend a Catholic church?

16 A. Yes.

17 Q. Does that -- does your religion impact your view of the
18 death penalty?

19 A. No, sir, it does not.

20 Q. Not at all?

21 A. No. I --

22 Q. Most Catholics --

23 A. I originally was Baptist and changed to a Catholic.

24 Q. Okay. All right.

25 Just a couple of questions on the death sentence. You

1 know that you are never forced to vote for the death
2 penalty?

3 A. Yes, sir.

4 Q. You always have the opportunity to vote for life.
5 Okay. And with that in mind, could you vote for the death
6 penalty?

7 A. Yes, I think it depends upon the circumstances of the
8 case.

9 Q. Okay. And would you have a problem signing your name
10 to a verdict form where death was imposed?

11 A. I wouldn't enjoy it, but I could.

12 Q. Thank you, sir.

13 MR. STARNES: If it please the court, Your Honor?

14 THE COURT: Yes, sir.

15 VOIR DIRE EXAMINATION BY MR. STARNES:

16 Q. Hi, Mr. McKinney, how are doing today?

17 A. Just fine.

18 Q. My name is Norman Starnes. I'm the defendant in this
19 case.

20 Mr. McKinney, the solicitor was asking you some
21 questions regarding the death penalty.

22 In voting for life without the possibility of parole,
23 could you -- could your -- would your vote be your own
24 independent decision?

25 A. It would be my decision based upon the facts, yes, you

1 know.

2 Q. And in the event that we get into that penalty phase --
3 and you understand we don't have to get into that penalty
4 phase?

5 A. Right.

6 Q. But in the event that we do get into the penalty phase
7 and eleven jurors wanted to give me life without the
8 possibility of parole, but you felt the death penalty was
9 appropriate, would you vote for the death penalty on your
10 own independent decision?

11 A. I think as a juror it would be my job, I guess, to view
12 things based upon my belief in the facts and stand by my
13 decision on that.

14 Q. Yes, sir.

15 Mr. McKinney, do you believe that all killings are
16 murder?

17 A. No, sir.

18 Q. Do you believe that someone is entitled to kill in
19 self-defense?

20 A. I believe that those situations may arise sometimes,
21 yes.

22 Q. Such as a police officer having to shoot in
23 self-defense?

24 A. I believe that, yes, sir.

25 Q. For protection?

1 A. Of course.

2 Q. If self-defense was raised in this case, in other
3 words, there was evidence of self-defense, could you
4 consider that defense?

5 A. Of course.

6 Q. And you could listen to all the testimony as it comes
7 from the witness stand, see all the evidence to make a
8 decision?

9 A. Yes.

10 Q. And you could vote for life without parole or the death
11 penalty?

12 A. Depending on the case and what was presented and
13 reviewed by the jury, yes.

14 Q. Okay. Could you find a defendant not guilty?

15 A. Of course, if the circumstances arose like that.

16 Q. Have you ever been on jury duty before, Mr. McKinney?

17 A. I made to it where I was selected one time. The plea
18 was changed at the last minute, so we really never got
19 seated.

20 Q. What type of case was it?

21 A. It was a civil case, I believe.

22 Q. Civil case.

23 You never been called for a death penalty?

24 A. No, sir.

25 Q. Thank you, Mr. McKinney.

1 MR. BULSA: Nothing further, Your Honor.

2 THE COURT: Thank you, sir.

3 Would you please wait just outside the courtroom
4 door for a minute. We will have you back in momentarily,
5 okay.

6 JUROR NUMBER 182: Okay.

7 (Whereupon, Juror Number 182 left the courtroom)

8 THE COURT: Position of the State?

9 MR. BULSA: He's qualified, Your Honor.

10 THE COURT: Position of the defendant?

11 MR. STARNES: Qualified, Your Honor.

12 THE COURT: Court agrees he will be qualified.

13 Please bring him back in, sir.

14 (Whereupon, Juror Number 182 entered the
15 courtroom)

16 THE COURT: Just stand right there, if you would,
17 please, sir.

18 Mr. McKinney, the court has found you qualified to
19 serve on the jury panel in this case.

20 Let me explain to you that doesn't mean that you
21 are on the jury itself. We haven't gotten to that point
22 yet. What we are doing is qualifying jurors for a pool from
23 which the jury would be drawn, and you have been found
24 qualified to be included in that pool.

25 What I'm going to ask you to do is I'm going to

1 excuse you now and you are free to do anything that you
2 would like to do until three o'clock p.m. tomorrow,
3 Wednesday. I'll ask you to return back to court tomorrow,
4 Wednesday, at three okay.

5 Now, there's a possibility we could change that
6 reporting time. If we do, you can get that information on
7 the voicemail you have on the card given to you by the
8 clerk's office. And on that card, if you would call in
9 anytime after seven o'clock tonight. It's wouldn't be on
10 before seven. Anytime after seven. And if the time is
11 being changed, there would be a voicemail for qualified
12 jurors. Listen to that message, because you are now a
13 qualified juror. And if the time changes, you will be
14 instructed about the change.

15 The clerk has a website and you get the same
16 information tonight after seven o'clock. If there is a
17 change in the reporting time, it will be shown on there as
18 well for qualified jurors. Okay. If you don't hear
19 anything different, please report back tomorrow, Wednesday,
20 at three p.m..

21 JUROR NUMBER 182: In this courtroom?

22 THE COURT: Yes, sir, just come right back to the
23 court and the bailiff will receive you there.

24 Thank you, sir.

25 JUROR NUMBER 182: Thank you.

1 (Whereupon, Juror Number 182 left the courtroom)

2 (Whereupon, Juror Number 87 entered the courtroom)

3 VOIR DIRE EXAMINATION BY THE COURT:

4 Q. Good afternoon, sir. You are James Farrell, juror
5 number 87?

6 A. Yes, sir, I am.

7 Q. Mr. Farrell, first I'm just going to get you to relax.
8 This is a very informal session. We are going to ask you
9 your views with regard to certain things. There are no
10 right or wrong answers. Nobody is going to disagree with
11 you or anything like that. The only thing we need to know
12 is your views on certain things, so I would just encourage
13 you to be open and honest with your answers. And, as I
14 said, there are no right or wrong answers.

15 A couple of housekeeping things. First, I need to
16 remind you that I placed the whole jury panel under oath
17 yesterday, and you continue to be under oath for purposes of
18 the information that you are providing the court today.

19 Do you recall that you filled out a jury information
20 form and sent it back to the clerk's office when you
21 received your summons?

22 A. Yes.

23 Q. Has anything happened in the meantime that would cause
24 you -- that you would need to change on that, any
25 information change that we need to know about?

1 A. No, sir.

2 Q. Did you see back in the jury room a rather long list of
3 potential witnesses in this case, the names and numbers by
4 them?

5 A. Yes, sir, I did.

6 Q. Did you have a chance to look at those? That same list
7 that's in front of you, of course.

8 A. Yes.

9 Q. And what I'm going to ask you to do is if you recognize
10 any names on that list or know any of those persons, please
11 do not identify them by name, but only by their number.

12 A. Yes.

13 Q. Did you recognize any of them on there?

14 A. Yes, sir, I do.

15 Q. If you would please give me those numbers.

16 A. Number 28.

17 Q. Okay.

18 A. And number 73.

19 Q. Sir, let me ask you if either one of those, or both of
20 those witnesses, for that matter, were to be called as
21 witnesses in this case, would that interfere in any way with
22 your ability to give both sides a fair and impartial trial
23 in this case, if they were testifying for either side?

24 A. It would not affect at all. I know these people very
25 superficially.

1 Q. Sir, did you see back in the jury room a sheet with
2 three paragraphs on it which talks about three different
3 types of jurors?

4 A. Yes, sir, I did.

5 Q. Did you have a chance to read through those, sir?

6 A. Twice.

7 Q. And, of course, it's not all inclusive to describe any
8 person, but did you identify more with one of these three
9 types of jurors?

10 A. I did, sir.

11 Q. Which one, sir?

12 A. The one that would I guess you could say would be
13 number three.

14 Q. Okay.

15 A. Impartially give judgment for life imprisonment or the
16 death penalty.

17 Q. Let me ask you this in that regard then. You would be
18 the type of juror who would have to listen to the testimony
19 and evidence and the court's instruction on the law before
20 making a decision in the case, is that correct, sir?

21 A. Yes, sir.

22 Q. In this case the State is seeking the death penalty,
23 and it may or may not be a little bit different than normal
24 case. I say the normal case. Any other criminal case. Not
25 a normal case, but any other criminal case, because it may

1 or may have be two phases to the trial.

2 What happens is once the jury is selected, then we will
3 go into a trial, and the State is required to prove the
4 elements of the offenses to which the defendant is charged
5 beyond a reasonable doubt. If the State fails to meet that
6 burden, and the jury so finds, then that would conclude the
7 jury's function in the case. That would end that trial. Do
8 you understand that --

9 A. Yes.

10 Q. -- would be the end of the matter?

11 A. Yes, I do understand that.

12 Q. Okay. If the jury were to find, however, that the
13 State had proven the elements of the offense of murder
14 beyond a reasonable doubt, then we would about go to a
15 second phase of the trial.

16 And in the second phase of the trial, the State would
17 present any aggravating circumstances that they wish the
18 jury to consider on the issue of punishment, and the
19 defendant would present any issues of mitigation -- any
20 mitigation circumstances that they wish the jury to consider
21 with regard to the issue of punishment. The court would
22 instruct you on how to receive that information and also
23 instruct you on other matters that you need to consider in
24 determining what the appropriate punishment would be. Do
25 you understand that, sir?

1 A. Yes, perfectly.

2 Q. Now, could you, if we reach the second phase of the
3 trial, and again, we may or may not reach it, but if we were
4 to reach the second phase of the trial, could you listen to
5 the testimony and evidence regarding aggravating
6 circumstances, mitigating circumstances, and the court's
7 instruction on how you were to receive that information and
8 other matters for you to consider in determining the
9 appropriate punishment? Could you do that and then
10 determine what you believe to be the appropriate punishment
11 in the case?

12 A. I believe so, yes.

13 Q. And the two possibilities of punishment in that case
14 would be the death penalty or life imprisonment without the
15 possibility of parole. Do you understand that?

16 A. Yes, sir, I do.

17 Q. If you felt the circumstances were appropriate, sir,
18 could you vote for the death penalty in the case?

19 A. Yes, sir, I could.

20 Q. If you found the circumstances were appropriate for a
21 life imprisonment without the possibility of parole
22 sentence, could you vote for that sentence, sir?

23 A. Yes, sir, I could.

24 Q. Thank you, sir. Please answer any questions that the
25 solicitor may have.

1 VOIR DIRE EXAMINATION BY MR. BULSA:

2 Q. Good afternoon, Mr. Farrell.

3 A. Good afternoon, sir.

4 Q. How are you?

5 A. Fine.

6 Q. Mr. Farrell, I noticed that you were in the military?

7 A. Yes, sir.

8 Q. What branch?

9 A. Army, Navy.

10 Q. Both Army and Navy. Congratulations.

11 Did you serve in any conflict?

12 A. No, sir, I did not. I was Army Reserve.

13 Q. Okay. Did you also grow up in a military family?

14 A. My father was an Air Force officer, yes, sir.

15 Q. What type of job do you do, sir?

16 A. I own Biz Industries, and we have several divisions in
17 our company, which goes from real estate to commercial
18 plumbing and architectural metal work.

19 Q. Is that a company that you founded?

20 A. Yes, sir.

21 Q. I notice that your former wife was a deputy solicitor
22 for Richland County?

23 A. That is correct.

24 Q. Did she ever handle any death penalty cases?

25 A. She was a defendant for Larry Gene Bell.

1 Q. Did you discuss those type of cases with her?

2 A. Yes, sir. At the time, being it's her first case out
3 of law school, so we did discuss that at the time, yes.
4 1985, I guess.

5 Q. How do you think that experience went would affect your
6 ability to serve on this case? Do you think it would?

7 A. I don't know. I don't feel that -- I mean, it's 20
8 some odd years ago, and relatively speaking we were kids
9 then, but I don't think it would have any effect me.

10 Q. Okay. I noticed -- I made a note during the
11 preliminary questions the court was asking the jury pool, I
12 believe you were responded that you knew one of the
13 attorneys, Mr. Delgado?

14 A. Yes, Mr. John Delgado. I met Mr. Delgado through my --
15 at the time my wife, she was a defense attorney for Dick
16 Harpootlian and Jack Swerling.

17 Q. She worked for Mr. Harpootlian?

18 A. At that time she did.

19 Q. Okay. How well do you know Mr. Delgado?

20 A. Mr. Delgado probably doesn't remember meeting me, but I
21 remember meeting him, just because my wife was very
22 impressed with him.

23 Q. Okay. Everybody is impressed with Mr. Delgado.

24 How would those impressions impact your ability to
25 serve on this case?

1 A. I really don't feel it would have any impact at all,
2 sir.

3 Q. And you could give the State and both the defense a
4 fair --

5 A. Absolutely, without question.

6 Q. Okay. Thank you, sir.

7 A. Yes, sir. Thank you.

8 MR. STARNES: If it please the court, Your Honor.

9 THE COURT: Yes, sir, Mr. Starnes.

10 VOIR DIRE EXAMINATION BY MR. STARNES:

11 Q. How are you doing today, Mr. Farrell?

12 A. Good. How about you?

13 Q. Good.

14 My name is Norman Starnes and I'm the defendant in this
15 case.

16 Could you give us your views on the death penalty, on
17 capital punishment, how you feel about that?

18 A. I think that's -- I think that's an issue that
19 challenges our entire society these days. As I was
20 answering the judge, it would not be something that I would
21 have a hard time delegating, if I felt the circumstances
22 warranted it.

23 If there was mitigating circumstances, I could, you
24 know, go with the life imprisonment as well.

25 I don't have any sort of religious issues that deal

1 with me and the death penalty, and I don't feel like I have
2 any emotional issues that deal with me and the death
3 penalty. I really feel I'm pretty well balanced about the
4 matter.

5 Q. So you could vote for life without the possibility of
6 parole?

7 A. Yes, sir, I can.

8 Q. Or you could vote for the death penalty?

9 A. Yes, sir, I can.

10 Q. Depending upon what you see and what you hear in the
11 courtroom?

12 A. I feel that I could do that based on the evidence
13 presented to me, yes, sir.

14 Q. Okay. Could you acquit somebody and find them not
15 guilty, if the evidence so proved it?

16 A. It would be my pleasure.

17 Q. Do you believe that all killings are murder? In other
18 words, just because a homicide has been committed, do you
19 believe that all killings are murder?

20 A. No, and I thought that was an interesting point. In
21 this piece of paper here, that seemed to point that out and
22 that had never occurred to me, to look at it that way.

23 Q. Do you believe that someone is entitled to act in
24 self-defense?

25 A. Absolutely.

1 Q. So you believe in self-défense?

2 A. I absolutely do.

3 Q. Have you ever been a victim of any crime?

4 A. I was a victim of crime when I was a freshman at the
5 University of South Carolina in 1970. I was a little
6 fellow, about 110 pounds wet. That changed obviously since
7 then, and -- three -- three individuals jumped me one
8 evening.

9 Q. Three individuals?

10 A. Uh-huh.

11 Q. Jumped you?

12 A. Yes, and they stole my watch. I didn't mean to get off
13 on that. I apologize. They stole my watch and tried to get
14 the ring off my hand, which they were unsuccessful at.
15 Someone came to my rescue, so I felt that was a crime there
16 on a personal basis.

17 And I had my home broken into and I have had my cars
18 broken into. Those are my extent of criminal involvement.

19 Q. Okay. Regarding the assault, did the case go to trial?
20 Was anybody arrested?

21 A. No, nobody -- nobody did anything. I didn't even
22 want -- you know, I was embarrassed by it. You know how you
23 are when you are a kid and I was embarrassed by it, and I --
24 basically broke my watch, my Sako watch. It was nothing
25 more than that.

1 Q. Have you ever observed a death penalty trial, Mr.
2 Farrell?

3 A. No, I have not.

4 Q. Never sat through one and observed one?

5 A. No, sir.

6 Q. If self-defense was an issue in this case, could you
7 follow the law as the judge instructed you regarding
8 self-defense?

9 A. Absolutely.

10 Q. Have you ever served on jury duty before?

11 A. I have.

12 Q. Was it a criminal or civil case?

13 A. Civil case. A couple Magistrate's Court and basically
14 things like collections and speeding tickets and things like
15 that, but other than that, I have never been in General
16 Sessions.

17 Q. Have you read or heard anything about this case?

18 A. I don't know anything about this case at all, other
19 than what the judge said yesterday.

20 Q. Yes, sir.

21 In the event that we get into the penalty phase and --
22 that the jury has decided it was murder, and we get into the
23 penalty phase. In the event that eleven jurors wanted to
24 vote for life without parole, but you thought the
25 appropriate punishment was the death penalty, you could vote

1 for the death penalty? In other words, what I'm asking is
2 would it be your own independent decision, if you felt -- if
3 you felt that the death penalty in this case was warranted,
4 could you base that decision on your own independent
5 decision?

6 A. Yes, I think I can, and I think I would.

7 Q. Okay. And if eleven -- if eleven jurors wanted to give
8 the death penalty, but you felt, after listening to all the
9 evidence, hearing all the testimony, the evidence of
10 aggravation and the evidence of mitigation, do you feel like
11 that you could give life without the possibility of parole,
12 if the other eleven wanted to give death?

13 A. Based on my last comment, yes, I feel I can,
14 absolutely.

15 Q. That's all we can ask of you. Thank you, Mr. Farrell.

16 A. Thank you, sir.

17 MR. BULSA: If I may, briefly in reply?

18 THE COURT: Yes, sir.

19 RE-VOIR DIRE EXAMINATION BY MR. BULSA:

20 Q. Mr. Farrell, you mentioned a few instances where you
21 were a victim of a crime?

22 A. Yes, sir.

23 Q. And you said that nobody did anything. Did you report
24 those?

25 A. No, and I probably -- I probably just thirty some odd

1 years, I probably just didn't state it correctly. Nobody
2 did anything because I didn't do anything.

3 Q. So --

4 A. Picked me off the concrete, and dusted me off and
5 carried me back to the dorm.

6 Q. So you don't hold any ill feelings with the law
7 enforcement?

8 A. Oh, no. No.

9 Q. And one last question. You mentioned your religious
10 beliefs. I noticed that you listed your religion as
11 Catholic?

12 A. Yes, sir, I am.

13 Q. And the Catholic Church is in opposition to the death
14 penalty. How do you feel about that?

15 A. The Catholic Church and I have a lot of disagreements,
16 sir.

17 Q. Okay. Okay. Fair enough. Thank you.

18 A. Yes, sir.

19 THE COURT: Any followup?

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

22 THE COURT: Thank you, sir.

23 If you would please wait just outside the
24 courtroom door for just a minute and we will have you back
25 momentarily.

1 JUROR NUMBER 87: Thank y'all very much.

2 THE COURT: Thank you.

3 (Whereupon, Juror Number 87 left the courtroom)

4 THE COURT: Position of the State?

5 MR. BULSA: He's qualified, Your Honor.

6 THE COURT: Defense?

7 MR. STARNES: Qualified, Your Honor.

8 THE COURT: Court agrees. He will be qualified.

9 Please bring him back in.

10 (Whereupon, Juror Number 87 entered the courtroom)

11 THE COURT: Mr. Farrell, you can just stand right
12 there, if you will, please, sir.

13 You have been found qualified to serve on the jury
14 pool, which means that you are not selected on the jury
15 itself. We are qualifying the pool of jurors from which the
16 jury will be selected, and you have been found qualified to
17 participate in that pool or be part of that pool.

18 What I'm going to ask you to do is I'm going to
19 excuse you at this time and ask you, if you will, to report
20 back here tomorrow, that is, Wednesday, at three o'clock.
21 In the meantime you are free to do anything that you would
22 like to do, but just please report back.

23 Now, should there be a change in the reporting
24 time, that will be put on the voicemail and you can reach
25 that at the number that you have on the card that you have

1 and if -- the message will not be on there until after seven
2 o'clock tonight.

3 JUROR NUMBER 87: All right.

4 THE COURT: But if you want to call that number
5 tonight after seven o'clock and listen for a message for
6 qualified jurors. You now a qualified juror. Listen for
7 that message. If there is a change in the reporting time,
8 it would be reflected there.

9 Also the clerk has a website and you can check
10 that website tonight after seven o'clock. If there is a
11 change of reporting time, it would be reflected there for
12 qualified jurors again.

13 If you do not get any information to the contrary,
14 please report back tomorrow, Wednesday, at three p.m..
15 Thank you.

16 JUROR NUMBER 87: At the glass doors?

17 THE COURT: Yes, sir, just right out there and
18 bailiffs will receive you there.

19 JUROR NUMBER 87: Thank you, gentlemen. Thank
20 you, Your Honor.

21 THE COURT: Thank you very much.

22 (Whereupon, Juror Number 87 left the courtroom)

23 THE COURT: The next juror is the one we had a
24 question about. My clerk is still trying to get some
25 information and she hasn't been able to get it.

1 MR. BULSA: Move onto the next one?

2 THE COURT: Well, the only problem with that is
3 they are going in sequence and they all have to be in the
4 room a little bit so --

5 MR. STARNES: Your Honor, if I may, could I
6 inquire from the court any idea when we are going to take
7 lunch?

8 THE COURT: Well, probably about five this
9 afternoon. No, I'm kidding.

10 Pretty quick. I was just trying to move some of
11 the people. We are going to take some lunch. Maybe we
12 ought to just go ahead and do that now. The only thing
13 about it is I'm just concerned that some of these jurors,
14 they were reporting at twelve, so some of them may not have
15 had lunch. That's the only thing.

16 THE CLERK: There are three back there. As you
17 know, we have got a new panel coming in at two o'clock.

18 THE COURT: Hopefully them coming in at two will
19 already have had lunch, but I'm concerned that these will
20 not have had lunch. They reporting at twelve. That's my
21 only concern about it, unless we can go ahead and send them
22 out and bring them back.

23 THE CLERK: I feel certain that everyone else's
24 lunch is here.

25 THE COURT: All right. I will tell you what to

1 do. We need to check on this one juror. Why don't we take
2 a break for lunch now. I think lunch has been ordered.
3 It's just sandwiches. Can we just take about 20 minutes, or
4 so, and return back? Is that okay with everybody?

5 MR. GOWDY: Yes, sir.

6 THE COURT: 20 minutes.

7 MR. STARNES: I have a -- can we approach?

8 THE COURT: Yes, sir.

9 (Whereupon, the lawyers and the defendant
10 approached the bench for an off-the-record discussion)

11 THE COURT: All right. Let's go ahead and take
12 about 20 minutes for lunch. Everybody that has a sandwich
13 here can eat your lunch.

14 We don't have food here for these jurors that
15 are --

16 THE CLERK: No, sir.

17 THE COURT: All right.

18 THE CLERK: They have snacks back there.

19 THE COURT: Pardon me?

20 THE CLERK: They have crackers, chips, snacks,
21 cookies, stuff like that in the back.

22 THE COURT: All right. Tell them -- please tell
23 the jury that we are going to go ahead and take about a 20
24 minute break for lunch. That we got sandwiches here, that
25 we are going to take about 20 minutes for lunch we are

1 running behind. And if they would like to run and grab a
2 sandwich, then they are welcome to do that. Probably start
3 back in about 20 minutes or so and see if they want to do
4 that, or there is some crackers and things here that y'all
5 have furnished them. But if they would to go get a
6 sandwich, they are welcome to do that.

7 THE CLERK: All right, sir.

8 THE COURT: All right. We'll be adjourned for
9 about 20 minutes then.

10 (Whereupon, proceedings were recessed)

11 (Whereupon, proceedings were reconvened)

12 THE COURT: Let me get you to approach for just a
13 minute and we will put something on the record to put a
14 couple of things on the record.

15 (Whereupon, the lawyers and the defendant
16 approached the bench for an off-the-record discussion)

17 THE COURT: All right. Are we ready to proceed?
18 State ready to proceed?

19 MR. COLER: Yes, sir.

20 MR. GOWDY: Yes, sir.

21 THE COURT: Okay. Mr. Starnes, are you ready to
22 proceed?

23 MR. STARNES: Defense is ready, Your Honor.

24 THE COURT: All right. Let me -- let's -- we are
25 going to bring Mr. Shumpert in and ask him some questions

1 right down here, so you are welcome to come up here when we
2 can talk to him. And we will -- do I have that? You still
3 got it? Bring up the record, if you will, and we'll ask him
4 about it.

5 Please bring Mr. Shumpert in.

6 (Whereupon, Juror Number 251 entered the
7 courtroom)

8 (Whereupon, the following was an on-the-record
9 bench conference, in the presence of all counsel and the
10 defendant)

11 THE COURT: Mr. Shumpert, please come right here
12 please, sir?

13 JUROR NUMBER 251: Yes, sir.

14 THE COURT: We wanted to ask you a question about
15 something. We don't want to embarrass you here.

16 Did you ever get pick up any drug charges in North
17 Carolina?

18 JUROR NUMBER 251: Yes, sir.

19 THE COURT: You did?

20 JUROR NUMBER 251: Yes.

21 THE COURT: All right. Do you remember what they
22 were?

23 JUROR NUMBER 251: It was simple possession of --

24 THE COURT: Do you know what the maximum penalty
25 you were facing on the charge? I understand that you

1 probably got a year --

2 JUROR NUMBER 251: It was simple possession. They
3 charged me \$55 and gave me a year probation.

4 THE COURT: A year of probation.

5 All right. That's what we needed to know. We
6 just weren't sure that was you. If it wasn't you, we didn't
7 want to -- that's fine.

8 If you will then come on over and have a seat
9 right there, please, sir.

10 (Whereupon, the bench conference was concluded)

11 VOIR DIRE EXAMINATION BY THE COURT:

12 Q. Sir, you are Thomas Shumpert, is that correct?

13 A. That's correct.

14 Q. Mr. Shumpert, you are juror number 251, correct?

15 A. Yes, sir.

16 Q. I apologize for the long delay. We just got behind and
17 at some point in time we had to take a break, eat a quick
18 sandwich, so we could keep going, and that's the reason for
19 the long delay, and I apologize for that. I appreciate your
20 patience in that regard.

21 Let me ask you just to speak directly into the mike.
22 You might want to slide up closer to it a little bit or move
23 it to you. That's fine, because everybody needs to hear
24 responses and the court reporter needs to hear it.

25 First let me ask you just to relax. Okay. Just be

1 relaxed. This is a very informal proceeding in which we are
2 simply going to ask you some of your views on certain -- on
3 some questions. There are no right or wrong answers.
4 Nobody is going to disagree with you in any way. There is
5 not going to be any third degree or anything like that.
6 It's not like that. We just need to ask you some questions
7 regarding your views, and I would ask you, please, just to
8 be open and honest with your answers and that's all that
9 matters, okay?

10 A. Yes, sir.

11 Q. A couple preliminary matters.

12 First of all, do you remember that I swore the whole
13 jury panel yesterday, and you continue to be under oath for
14 the purposes of providing information to the court during
15 that.

16 A. Yes, sir.

17 Q. Do you remember you filled out a jury questionnaire and
18 you sent that back in when you got a jury summons to the
19 clerk's office?

20 A. Yes, sir.

21 Q. Has anything happened since then that would make a
22 difference on there?

23 A. No.

24 Q. That you would change on that?

25 A. No.

1 Q. Did you see back in the jury room a list of rather long
2 list of potential witnesses in this case and names and
3 numbers beside them?

4 A. I didn't know. I figured it was potential witness. I
5 saw the list, yes, sir. I didn't know.

6 Q. You got a copy it there, too, on the desk in front of
7 you.

8 Let me ask you if you did you recognize anybody on that
9 list, please do not give us their name, but please just give
10 us the number. Did you know anybody on there or recognize
11 anybody, their name?

12 A. No, sir, I didn't.

13 Q. All right, sir. Did you see back in the jury room a
14 sheet back there with three paragraphs on it which describes
15 three different types of jurors?

16 A. Correct, yes, sir.

17 Q. And did you review those?

18 A. I did.

19 Q. Okay. Let me ask you -- of course, this is not all
20 inclusive. It won't describe any juror totally, but did you
21 identify yourself as being more like one of these type of
22 three jurors?

23 A. Third.

24 Q. The third, sir.

25 So you are the type of juror would who listen to the

1 testimony, wouldn't form -- wouldn't make up his mind before
2 he came to court, and you would wait until you had heard all
3 the testimony and evidence in the case and the court's
4 instruction on the law before you would make a decision on
5 any issue in the case, is that correct?

6 A. Yes, sir.

7 Q. Does that describe you?

8 A. Yes.

9 Q. Sir, do you understand that in this case the State is
10 seeking the death penalty in the case. And it's a little
11 bit different in one regard, and I will explain that to you
12 in just a moment, but in the trial itself the State would be
13 required to prove the defendant guilty beyond a reasonable
14 doubt of the offenses for which he's charged. Do you
15 understand that?

16 A. Yes, sir.

17 Q. And if the jury did not find that that State had proved
18 the elements of the offenses beyond a reasonable doubt, that
19 would be the end of the matter. They would conclude at that
20 point. The jury pool would be finished. Do you understand
21 that?

22 A. Yes, sir.

23 Q. If, though, the jury were to find that the State had
24 proven the elements of the offense of murder beyond a
25 reasonable doubt, then you would go to a second phase of the

1 trial, which, for lack of a better definition, is described
2 as the penalty phase in which the jury would be asked to
3 determine the appropriate punishment in the case. Do you
4 understand that?

5 A. Yes, sir.

6 Q. Now, during that phase of the trial the State would put
7 up any aggravating circumstances that they wish the jury to
8 consider on the issue of punishment, and the defense would
9 present any mitigation issues or mitigation factors that
10 they wished the jury to consider in making the determination
11 as to the appropriate punishment. Do you understand that?

12 A. Yes, sir.

13 Q. And also the court then would instruct you on how to
14 receive that testimony and evidence on aggravating and
15 mitigating factors or circumstances and instruct you on how
16 to receive that and also give you instructions otherwise on
17 what to consider in making your decision as to the
18 appropriate punishment. Do you understand that?

19 A. Yes, sir.

20 Q. Now, I ask you, sir, whether you could -- if we got to
21 the second phase of the trial, which we may not get to the
22 second phase, but if we got to the second phase of the
23 trial, I ask you whether you could listen to all the
24 testimony and evidence concerning aggravating and mitigating
25 circumstances, the court's instruction on the law that

1 applies and render a decision with regard to the appropriate
2 punishment in the case?

3 A. Yes, sir.

4 Q. Do you understand that the possible punishments would
5 be either the death penalty or life imprisonment without the
6 possibility of parole?

7 A. I do.

8 Q. And if the circumstances warranted it -- if you had all
9 that information and circumstances warranted it, could you
10 vote to impose the death penalty, sir?

11 A. Yes, sir.

12 Q. If the circumstances warranted it, with all the
13 information that you had at that time, if the circumstances
14 warranted it, life imprisonment without parole, would you be
15 able to enter that verdict, sir?

16 A. Yes, sir.

17 Q. Enter that verdict.

18 Thank you. Please answer any questions that the
19 solicitor may have. Answer any questions that he may have?

20 MR. BULSA: Thank you, Your Honor.

21 VOIR DIRE EXAMINATION BY MR. BULSA:

22 Q. Good afternoon Mr. Shumpert. Are you doing okay?

23 A. Doing fine.

24 Q. Are you related to the Shumperts that live near Pelion?

25 A. My grandfather lives in Edmond, six or seven miles from

1 Pelion.

2 Q. Does he own property out that way?

3 A. Yes, sir, he owned a farm.

4 Q. A farm.

5 Did he own property on Forts Pond Road?

6 A. No, sir -- well, I'm not sure of the road, but it's
7 been 30 or 40 years since I have been out there.

8 Q. Okay. How close is Gilbert to Pelion?

9 A. 20 miles or so.

10 Q. Okay. And you live -- you own a telecommunications
11 company?

12 A. Yes, sir.

13 Q. Did you start that business?

14 A. Yes, I did.

15 Q. Mr. Shumpert, do you understand that you are never
16 forced to vote for the death penalty?

17 A. I understand.

18 Q. Nobody can tell you to do that.

19 A. Yes.

20 Q. With that in mind, given the choice between death and
21 life, would that affect the way that you would vote?

22 A. No, not that I know of.

23 Q. So knowing that you don't have to vote for death, would
24 you still vote for it, if you thought it appropriate to
25 choose that?

1 A. If it warranted it, yes, sir.

2 Q. Okay. And, Mr. Shumpert, would you be able to sign a
3 verdict form stating that you could impose the death
4 sentence?

5 A. Yes.

6 MR. BULSA: Thank you, sir.

7 MR. STARNES: May it please the court, Your Honor?

8 THE COURT: Yes, sir.

9 VOIR DIRE EXAMINATION BY MR. STARNES:

10 Q. Hi. How are you doing today, Mr. Shumpert?

11 A. Doing fine.

12 Q. My name is Norman Starnes. I'm the defendant in this
13 case.

14 By any chance are you related to D.F. or Frank
15 Shumpert?

16 A. No, I'm not. If it is, it's very distant.

17 Q. I understand.

18 Mr. Shumpert, do you believe that all killings are
19 murder?

20 A. No.

21 Q. Do you believe that an individual is entitled to kill
22 in self-defense?

23 A. Yes, I do.

24 Q. If evidence of self-defense was presented in this case,
25 along with all the other evidence, would you consider that

1 evidence?

2 A. Yes, I would.

3 Q. And could you follow the law as the trial court
4 instructed you regarding the law of self-defense?

5 A. Yes, sir, I could.

6 Q. In the event that we get into the penalty phase -- Mr.
7 Shumpert, do you understand if a verdict of murder is not
8 rendered, we don't enter that second part?

9 A. Right, right.

10 Q. Okay. But in the event that we enter that second part,
11 you could -- you could vote for the death penalty or you
12 could vote for life without the possibility of parole, is
13 that correct?

14 A. That's correct.

15 Q. Life without the possibility of parole, do you
16 understand that means until the death of the offender?

17 A. Yes.

18 Q. That an individual would never be released from prison?

19 A. That's my understanding, yes.

20 Q. That's your understanding.

21 And if the judge instructed you that that was the law,
22 you would follow that law, Mr. Shumpert?

23 A. Yes, I would.

24 Q. Have you ever served on jury duty before?

25 A. No, I have not.

1 Q. Tell me -- tell the court and everyone your views on
2 the death penalty. How do you feel about capital
3 punishment, Mr. Shumpert?

4 A. I feel in some cases it's warranted. In some cases
5 it's probably a lot of gray area, and penalty phase of it
6 would -- yes, I do believe in the death penalty.

7 Q. Now, sir, as far as the gray area, what could you --
8 could you give us a little understanding of what you are
9 talking about?

10 A. The circumstances. I mean, what happened, actually
11 happened, to cause this, yes.

12 Q. Now, you could vote for the death penalty or you could
13 vote for life without the possibility of parole.

14 Could you find someone not guilty?

15 A. Yes, I could.

16 Q. You could do that.

17 And that would be your own independent decision?

18 A. What's the question?

19 Q. In other words -- let me rephrase it.

20 If we were into the penalty phase, we had reached the
21 penalty phase of this trial, and eleven jurors wanted to
22 give the defendant life without the possibility of parole,
23 but you felt that the facts and circumstances warranted the
24 death penalty, could you still vote for the death penalty?

25 A. I would not fall under pressure.

1 Q. So you could make that your own independent decision?

2 A. Yes, sir.

3 Q. Have you heard anything about this case or read
4 anything in the newspaper?

5 A. No, I have not.

6 Q. Seen anything on the internet about it?

7 A. No, sir.

8 Q. Have you ever served on the jury before, Mr. Shumpert?

9 A. No, I have not.

10 Q. Never been on jury duty?

11 A. I was called one time, but I wasn't chosen.

12 Q. What type of case was it?

13 A. It was a hit and run. I think some automobile thing.

14 Q. Do you know of any reason, Mr. Shumpert, why you could
15 not give the defendant and the State a fair trial in this
16 case?

17 A. No, I do not.

18 Q. No reason. That's all we can ask for. Thank you, Mr.
19 Shumpert.

20 THE COURT: Keep your seat, please, sir.

21 Any followup?

22 MR. BULSA: No, sir.

23 RE-VOIR DIRE EXAMINATION BY THE COURT:

24 Q. Mr. Shumpert, I want to ask you just one additional
25 question. There was some question about perhaps some of

1 your relatives live near the area of Pelion. Let me ask
2 you, have you discussed this case at all with any of your
3 relatives or anything, or had any discussion about it at
4 all?

5 A. No, sir, I'm not close to any of the people on my
6 father's side.

7 Q. Okay. All right, sir.

8 And so you have had no knowledge about this case from
9 any source, regardless of the source?

10 A. No, sir, I have never heard a word about this case, as
11 far as I know.

12 THE COURT: All right. Thank you, sir.

13 Any followup? I always allow followup on my
14 questions, if you have any. Do you have any?

15 MR. BULSA: No.

16 THE COURT: Do you have any, Mr. Starnes?

17 MR. STARNES: No, sir, nothing from the defense.

18 THE COURT: Thank you, Mr. Shumpert. If you will
19 please wait just outside the courtroom door, we will have
20 you back in in just a moment.

21 (Whereupon, Juror Number 251 left the courtroom)

22 THE COURT: Position of the State?

23 MR. BULSA: He's qualified, Your Honor.

24 THE COURT: Defense?

25 MR. STARNES: Qualified, Your Honor.

1 THE COURT: Thank you. The court finds he's
2 qualified.

3 Please bring him back, sir.

4 (Whereupon, Juror Number 251 entered the
5 courtroom)

6 THE COURT: Mr. Shumpert, you can stand right
7 there.

8 The court has found you qualified to serve on the
9 jury pool in this case.

10 Let me explain what that means. You had not been
11 picked to serve on the jury actually. You had been
12 qualified to serve in the jury pool from which the jury will
13 be drawn and we will do that just a little bit later in the
14 week. So this is an ongoing process of selecting the pool
15 of qualified jurors, so I'm going to release you at this
16 time. You can do anything that you would like to do between
17 now and then, but I'm going to ask you to return back to
18 court tomorrow, that is to say Wednesday at three p.m.

19 JUROR NUMBER 251: Three p.m.?

20 THE COURT: Yes.

21 Now, in the event something should happen that we
22 change the report time, that will be put on voicemail. You
23 have the number or card with the number on there?

24 JUROR NUMBER 251: Yes.

25 THE COURT: And if you call that number tonight

1 after seven o'clock, if there is any change, there will be a
2 message on there about the change in reporting time. The
3 message will be as to qualified jurors. You now a qualified
4 juror, so you will listen to a message to qualified jurors.
5 If it changes the report time, you can change that.

6 Now, I would tell you the clerk also has a
7 website. If you have access to the computer, you can check
8 the website.

9 JUROR NUMBER 251: Yes, sir.

10 THE COURT: And on it after seven o'clock tonight,
11 if there is a change in the reporting time for qualified
12 jurors, she will put that on there as well. But if you
13 don't hear anything changing the report time, please report
14 at three o'clock tomorrow, Wednesday.

15 JUROR NUMBER 251: Thank you, sir.

16 THE COURT: Thank you.

17 JUROR NUMBER 251: Thank you.

18 (Whereupon, Juror Number 251 left the courtroom)

19 (Whereupon, Juror Number 158 entered the
20 courtroom)

21 VOIR DIRE EXAMINATION BY THE COURT:

22 Q. Ma'am, you are Peggy Leaphart, juror number 158, is
23 that correct?

24 A. Yes, sir.

25 Q. I'm going to ask you, please, ma'am, if you will talk

1 directly into the mike. You can pull it up closer to you,
2 the mike closer to you, if you would like.

3 But, at any rate, the first thing I will tell you just
4 to relax. This is a very informal proceeding.

5 You are going to be asked certain questions concerning
6 your feelings about certain things, how you feel about
7 certain things. There are no right answers, no wrong
8 answers. Nobody is going to disagree with you about your
9 answers in any way. No third degree type stuff. The only
10 thing we are going to do is ask you your views on certain
11 things, and we ask that you be open and honest and just give
12 us as honest answers as you can. Again, there is no right
13 or wrong answers to the questions.

14 Now, as a housekeeping matter, I need to remind you
15 that yesterday the full jury panel was placed under oath,
16 and you remain under oath for the information that you are
17 going to give the court today. Do you understand that?

18 A. Yes, sir.

19 Q. If you will speak up loud enough for everybody to hear
20 you. The court reporter has to record what you are saying,
21 okay?

22 A. Yes, I understand.

23 Q. Now, ma'am, you filled out a juror questionnaire and
24 sent it back in with certain information to the clerk's
25 office when you got your jury summons?

1 A. Yes.

2 Q. Has anything changed since you sent it in that you need
3 to make a change on there or modify in any way?

4 A. No, sir.

5 Q. Did you see back in the jury room a rather long list of
6 potential witnesses in this case with names and also numbers
7 beside them? You remember seeing that? You got one there
8 in front of you as well, but do you remember seeing that?

9 A. Yes, sir.

10 Q. Did you have a chance to go over it, ma'am?

11 A. I thumbed through it, yes.

12 Q. And, ma'am, of course, all of these witnesses are not
13 going to be called, but some of them are going to be called.
14 And what I'm going to ask you is if you recognize any names
15 on there, you know of any of those persons, we would like
16 you to identify them by number, not name. So if you know
17 any of them, would you please give us their numbers?

18 A. Only one.

19 Q. Okay.

20 A. If it's the same person, and that's number 38.

21 Q. Okay. Ma'am, let's assume for the moment that it is
22 the person that you think it is. If that person were to be
23 called as a witness by either side in this case, would that
24 fact interfere in any way with your ability to give both
25 sides a fair and impartial trial in the case?

1 A. Absolutely not.

2 Q. Now, did you see back in the jury room a page with
3 three paragraphs on it which talks about three different
4 types of jurors?

5 A. Yes, sir.

6 Q. And, of course, they are not all inclusive as to any
7 particular juror, but did you identify yourself as more like
8 one of these three types of jurors?

9 A. Possibly.

10 Q. Possibly?

11 Can you -- that form is there in front of you. Could
12 you look at that and tell me if you identify yourself more
13 like one out of the three?

14 A. Probably the third type.

15 Q. Probably the third type.

16 All right. You would be the type of juror then that
17 wouldn't make up your mind in advance, but rather you would
18 want to hear the testimony and evidence in the case and the
19 court's instruction on the law before you would make a
20 decision in the case, is that correct?

21 A. Absolutely.

22 Q. Okay. Now, ma'am, do you understand that this is a
23 death penalty case in which the State is seeking the death
24 penalty against a defendant? And do you understand that
25 it's a little bit differently, in that we will have a

1 regular trial in this case. And in that regular trial the
2 State would be required to prove the charges against this
3 defendant by evidence that satisfies you beyond a reasonable
4 doubt before you could return a verdict of guilty against
5 the defendant. Do you understand that?

6 A. Yes, sir.

7 Q. Now, if the State failed to meet that burden of proof,
8 of guilty beyond a reasonable doubt, that would be the end
9 of the matter and that would complete the jury's roll in the
10 trial? Do you understand that that would end the trial? Do
11 you understand that?

12 A. Yes, sir.

13 Q. However, if the jury found that the State had proved
14 the elements of the offense of the murder charge against the
15 defendant beyond a reasonable doubt, then we would go to a
16 second phase of the trial, which, for want of a better word,
17 is called the penalty phase of the trial in which the jury
18 would be asked to return with the appropriate punishment.

19 In this phase of the trial the State would present, by
20 way of testimony and evidence, any aggravating circumstances
21 that they want the jury to consider on the issue of
22 punishment.

23 The defense would present any mitigation issues by way
24 of testimony and evidence that they wished the jury to
25 consider on the issue of punishment.

1 And then the court would instruct you as to how to
2 receive that evidence and also on everything else that you
3 should consider in making a determination as to the
4 appropriate punishment. Do you understand that?

5 A. Yes.

6 Q. And once that has been done, the jury would be asked to
7 decide the appropriate punishment, and that would be as
8 to -- the two possibilities would be the death penalty and
9 life imprisonment without the possibility of parole. Do you
10 understand that?

11 A. Yes, sir.

12 Q. And, ma'am, if we got to the second phase, and we may
13 not get to the second phase in this case, but if we do get
14 to the second phase, do you believe that you could listen to
15 the aggravating circumstances, the mitigating circumstances,
16 the court's instruction on the law that applies and render a
17 verdict for the appropriate punishment in this case?

18 A. Yes, sir.

19 Q. All right. And if you found that the circumstances
20 warranted it, could you vote for the death penalty?

21 A. Yes, sir.

22 Q. If you found that the circumstances warranted it, could
23 you vote for life imprisonment without the possibility of
24 parole?

25 A. Yes, sir.

1 Q. Thank you, ma'am. Answer any questions that the
2 solicitor may have.

3 MR. BULSA: Thank you, Your Honor.

4 VOIR DIRE EXAMINATION BY MR. BULSA:

5 Q. Good afternoon, ma'am.

6 A. Hello.

7 Q. How do you pronounce your last name?

8 A. Leaphart.

9 Q. Leaphart?

10 A. Yes.

11 Q. I notice that you were born in Spartanburg?

12 A. Yes.

13 Q. And moved to Colorado, apparently?

14 A. No.

15 Q. Well, it must be the initials for Columbia.

16 You went to high school here in Columbia?

17 A. Yes.

18 Q. Okay. I thought it was Colorado.

19 And you are a retired nurse?

20 A. Yes, sir.

21 Q. Would your life's call as a nurse impact your ability
22 to sentence someone to death?

23 A. I hope not.

24 Q. Well, what do you mean by that?

25 A. I was a hospice nurse.

1 Q. Hospice?

2 A. Yes.

3 Q. All right. I noticed that you also worked for the
4 Department of Corrections at one point?

5 A. Yes.

6 Q. How long ago was that?

7 A. 10, 15 years ago.

8 Q. Okay. And just give a little clarification on your
9 questionnaire, you served on a criminal jury before?

10 A. It's been a long time ago.

11 Q. Okay. But you also noted that you had been a witness
12 in a criminal case. You marked something out --

13 A. That's when I was a child.

14 Q. Okay. Were you a victim or something?

15 A. Yes.

16 Q. And, lastly, regarding your questionnaire, it seemed
17 like an odd question probably to you, but there was a
18 question about whether you displayed a bumper sticker, and
19 you put "W-I-C-C-A, WICCA. Can't explain I guess. I was
20 working in the secret." What did you mean by that? Right
21 here.

22 A. Yes. I don't think I can explain it.

23 Q. Okay.

24 A. I was -- oh, that's a subject that I shouldn't have put
25 it down there.

1 Q. How long ago is that?

2 A. 10, 15 years ago.

3 Q. Okay.

4 A. Probably too many years ago.

5 Q. Okay. But what does Wicca stand for?

6 A. It's witchcraft.

7 Q. All right. Now, understanding that you would never be
8 forced to vote for the death penalty, life will always be an
9 option, with that in mind, could you still find yourself
10 voting for the death penalty, if you found it appropriate?

11 A. Yes, sir, if it's appropriate.

12 Q. After listening to the facts and circumstances and the
13 judge's charge?

14 A. Yes, sir.

15 Q. And could you also find yourself signing your name to a
16 verdict form listing death as the sentence?

17 A. Yes, sir.

18 Q. Thank you, ma'am.

19 MR. STARNES: If it please the court, Your Honor?

20 THE COURT: Mr. Starnes.

21 MR. STARNES: Thank you.

22 VOIR DIRE EXAMINATION BY MR. STARNES:

23 Q. Hi, Ms. Leaphart. How we doing today?

24 A. Fine. Thank you.

25 Q. My name is Norman Starnes. I'm the defendant in this

1 case, Ms. Leaphart.

2 I noticed in your questionnaire that you filled out you
3 worked at Episcopal home?

4 A. Yes.

5 Q. Who was your supervisor there?

6 A. I forgot.

7 Q. You forgot.

8 Was that around maybe '85, or '87?

9 A. Somewhere in that area.

10 Q. Somewhere around there?

11 A. Yes.

12 Q. Ms. Dorothy Davis, does that sound familiar?

13 A. No.

14 Q. Janice Dubay?

15 A. No.

16 Q. And you were a nurse in the Department of Corrections?

17 A. Yes.

18 Q. What institution did you work at in the Department of
19 Corrections?

20 A. I worked in the Gilliam Center at Kirkland and R & E.

21 Q. The R & E Center?

22 A. Yes.

23 Q. Ms. Leaphart, could you give us your views and how you
24 feel about capital punishment?

25 A. Only in extreme circumstances.

1 Q. Only in extreme circumstances?

2 A. Yes, sir.

3 Q. So you could vote for the death penalty, depending on
4 what you see and what you hear in the courtroom? And you
5 could always -- or excuse me, you could also vote for life
6 imprisonment without the possibility of parole?

7 A. Of course.

8 Q. And if the court instructed you that life without the
9 possibility of parole meant until the death of the offender,
10 would you accept that law as the trial court instructed you?

11 A. Yes, sir.

12 Q. Ms. Leaphart, do you believe that all killings are
13 murder?

14 A. No, sir.

15 Q. Do you believe that someone is entitled to kill in
16 self-defense?

17 A. Yes.

18 Q. And you could consider evidence of self-defense, if
19 that was an issue in this case, along with all of the other
20 evidence in this case?

21 A. Yes.

22 Q. Could you find someone not guilty?

23 A. Yes.

24 Q. In the event that we reached that penalty phase -- do
25 you understand that unless the defendant is found guilty of

1 murder, that we wouldn't reach that penalty phase. But in
2 the event that we did get into that penalty phase and eleven
3 jurors wanted to vote for life without the possibility of
4 parole, but you felt the appropriate punishment was death,
5 could you make that vote on your independent decision?

6 A. Yes.

7 Q. And if it was the other way, if eleven jurors wanted to
8 sentence the defendant to death, but you felt that the
9 appropriate punishment was life without the possibility of
10 parole, you could vote for life without the possibility of
11 parole?

12 A. True.

13 Q. Have you heard anything about this case, Ms. Leaphart,
14 or read anything in the paper about it?

15 A. Not really, no.

16 Q. Do you know of anything that would prevent you from
17 serving on this jury?

18 A. No.

19 Q. I noticed on the questionnaire, on question 30, Mr.
20 Solicitor asked you about Wicca.

21 If evidence of Wicca come in in the penalty phase,
22 would that affect your ability to make a just decision?

23 A. No.

24 Q. It would not?

25 A. No.

1 Q. That's all we can ask of you, Ms. Leaphart.

2 A. Thank you.

3 MR. BULSA: Just briefly from the last thing, Your
4 Honor.

5 THE COURT: Yes.

6 RE-VOIR DIRE EXAMINATION BY MR. BULSA:

7 Q. Ms. Leaphart, Mr. Starnes was asking you about your
8 views on the death penalty?

9 A. Yes.

10 Q. You made a comment only in extreme circumstances?

11 A. Yes.

12 Q. What kind of circumstances could you foresee yourself
13 giving the death sentence?

14 A. It depends upon the circumstance of the offense that
15 took place. I meant premeditated is pretty extreme, in my
16 opinion.

17 Q. This is society's ultimate punishment.

18 A. Yes.

19 Q. And that's your understanding?

20 A. Yes.

21 Q. We just want to make sure that you are clear on your
22 viewpoint, okay?

23 A. Okay.

24 Q. You would have no trouble if you felt those
25 circumstances were great enough to warrant the death

1 sentence?

2 A. Absolutely.

3 Q. Okay. But given the fact that you always have the
4 opportunity to vote life --

5 A. Yes.

6 Q. -- would you always tend towards life, or would you
7 still accept death?

8 A. It depends upon the circumstances.

9 Q. Okay. Thank you, ma'am.

10 RE-VOIR DIRE EXAMINATION BY MR. STARNES:

11 Q. Ms. Leaphart --

12 A. Yes.

13 Q. -- if the trial court instructed you that you could
14 give life without the possibility of parole for any reason
15 whatsoever, could you follow that law?

16 A. I don't understand that.

17 THE COURT: Counsel approach just a minute.

18 (Whereupon, the lawyers and the defendant
19 approached the bench for an off-the-record discussion)

20 BY MR. STARNES:

21 Q. Ms. Leaphart, in the event that we were to get in the
22 penalty phase, could you follow the trial court's
23 instruction as he instructs you regarding the penalty phase
24 in this case?

25 A. Yes, sir.

1 Q. You could do that?

2 A. Yes, sir.

3 Q. That's all we can ask, Ms. Leaphart. Thank you.

4 THE COURT: Thank you, ma'am.

5 If you will please wait just outside the courtroom
6 door for a minute, we will have you back in momentarily.

7 JUROR NUMBER 158: Thank you.

8 (Whereupon, Juror Number 158 left the courtroom)

9 THE COURT: Position of the State?

10 MR. BULSA: She would be qualified, Your Honor.

11 THE COURT: Defense?

12 MR. STARNES: She's qualified, Your Honor.

13 THE COURT: The court agrees that she would be
14 qualified.

15 Please ask her to come back in.

16 (Whereupon, Juror Number 158 entered the
17 courtroom)

18 THE COURT: Ma'am, you can just stand right there,
19 if you will.

20 I want to tell you that you have been found
21 qualified to serve on the jury pool. What, that means is
22 that you are not serving on the jury yet. We are in the
23 process of selecting a pool from which the jury would be
24 picked. Do you understand that?

25 JUROR NUMBER 158: Yes, sir.

1 THE COURT: And so at this time I'm going to free
2 you up and you can do anything that you would like to do
3 between now and then, but I would like you to report back --
4 you are required to report back to court tomorrow, that is
5 Wednesday, at three p.m.. Okay?

6 Now, in the event that we were going to change the
7 report time, that would be placed on a voicemail message and
8 you have that number on the card. Do you have that card?

9 JUROR NUMBER 158: Yes.

10 THE COURT: And that would be on that card. And
11 you call that voicemail number after seven o'clock tonight.
12 And if the report time has changed -- you listen for a
13 message for a qualified juror. You are now a qualified
14 juror. And if it gives you a different report time, you
15 would follow that.

16 She also -- Madam Clerk also has a website, and it
17 would be posted on there after seven o'clock tonight if
18 there is a change in the report time for qualified jurors.
19 If you would look for that.

20 In any event, if you don't find out anything
21 different, please report back here at three o'clock
22 tomorrow, that is Wednesday, okay.

23 JUROR NUMBER 158: Yes.

24 THE COURT: Thank you.

25 (Whereupon, Juror Number 158 left the courtroom)

1 (Whereupon, Juror Number 291 entered the
2 courtroom)

3 VOIR DIRE EXAMINATION BY THE COURT:

4 Q. Sir, you are Frank Tyler, juror number 291, that
5 correct?

6 A. That's correct, sir.

7 Q. Sir, I apologize for the long delay. We just got
8 behind and it just couldn't be helped, but I appreciate your
9 patience.

10 I want to just ask you, first of all, to be relaxed.
11 This is a very informal proceeding.

12 You are going to be asked your views on certain issues.
13 There are no right or wrong answers. Nobody is going to
14 disagree with you. This is not going to be a third degree
15 type thing. All we ask you to do is just answer openly and
16 honestly as you can to the questions that you are asked.
17 And, again, no right or wrong answers.

18 As a housekeeping matter, do you remember that the
19 entire jury panel was placed under oath yesterday and you
20 continue to be under oath for purposes of giving information
21 to the court today. Do you understand that?

22 A. Yes, sir, I do.

23 Q. And you filled out a juror information form and sent it
24 back to the clerk's office originally. Do you recall that?

25 A. Yes, sir, I do.

1 Q. Has anything happened since then that you need to
2 modify in any way or change in any way that we need to know
3 about?

4 A. No, sir, there hasn't been.

5 Q. Sir, back in the jury room there was a right long list
6 of potential witnesses in this case that had the names and
7 numbers, and one copy of that is on the desk there in front
8 of you. If you recognize any of those names or are familiar
9 with any of them, I would ask that you let me know by
10 number, not by their name, just by their number. Did you
11 recognize anybody on that list?

12 A. Yes, sir, I do.

13 Q. Please just give me the numbers of the people that you
14 recognize only.

15 A. Number 7.

16 Q. Any others, sir?

17 A. No, sir.

18 Q. Let me ask you, sir, whether if that witness would be
19 called in the case as a witness by either side, would that
20 interfere in any way with your ability to give both sides a
21 fair and impartial trial in this matter?

22 A. No, sir.

23 Q. Now, back in the jury room did you see a sheet back
24 there with three paragraphs on it that talked about three
25 different kind of jurors?

1 A. Yes, sir.

2 Q. And you understand this is not all inclusive to
3 describe any particular juror, but did you identify yourself
4 as being more like one of these three types of jurors?

5 A. If I had to select one of the three, it would be the
6 third one.

7 Q. Okay. All right, sir. Let me ask you, sir, then. The
8 third type of juror is described as one who would not make
9 up their mind in advance, but rather they need to hear the
10 testimony and evidence and instruction by the court on the
11 law that applies before they make a decision in the case.
12 Does that describe you, sir?

13 A. Yes, sir, it does.

14 Q. Do you understand this is a case in which the State is
15 seeking the death penalty? And in the death penalty case we
16 begin that case, just as we do any other case, in which the
17 State would be required to prove the elements of the
18 offenses which the defendant is charged beyond a reasonable
19 doubt. Do you understand that?

20 A. Yes, sir, I do.

21 Q. And if the State fails to meet that burden of proof,
22 then that would be the end of the matter and the jury's
23 involvement would be over in the kind. Do you understand
24 the case would be over? Do you understand that?

25 A. Yes, sir.

1 Q. Now, in the event that the jury were to find that the
2 State had proven beyond a reasonable doubt the elements of
3 the offense of murder, then we would move to a second phase
4 of the trial.

5 And in the second phase of the trial, the State would
6 put up any aggravating circumstances they thought were
7 important for the jury to hear on the issue of punishment.
8 The defense would put up any mitigation issues that they
9 think were important for the jury to hear on the issue of
10 sentence, appropriate sentence. And then the court would
11 instruct the jury as to how to receive that information, but
12 also any other information that the jury should consider in
13 determining the appropriate punishment. Do you understand
14 that?

15 A. Yes, sir, I do.

16 Q. All right. Then based on that, the jury would be asked
17 to determine the appropriate punishment, which would either
18 be the death penalty or life without the possibility of
19 parole. Do you understand that, sir?

20 A. Yes, sir, I do.

21 Q. Now, let me ask you whether, sir, you could listen --
22 if we reached the second phase of the trial, could you
23 listen to the aggravating circumstances, mitigating
24 circumstances, law as instructed by the court, and render
25 the appropriate punishment in that case?

1 A. Yes, sir, I could.

2 Q. And if you thought the circumstances were appropriate,
3 could you vote to a verdict of the death penalty, sir?

4 A. Yes, sir, I could.

5 Q. If you found that circumstances warranted a verdict of
6 life in prison without the possibility of parole, could you
7 vote for the verdict of life imprisonment without the
8 possibility of parole, sir?

9 A. Yes, sir, I could.

10 Q. All right. Thank you. Please answer any questions
11 that the solicitor may have.

12 MR. BULSA: Thank you, Your Honor.

13 VOIR DIRE EXAMINATION BY MR. BULSA:

14 Q. Good afternoon, Mr. Tyler.

15 A. Good afternoon.

16 Q. Doing okay?

17 A. Yes, sir.

18 Q. I notice that you were born in Anchorage, Alaska?

19 A. That's correct.

20 Q. How long did you live in Alaska?

21 A. I don't remember. My father was in the military and we
22 moved around quite a bit. I was very young at that time.

23 Q. Okay. So you didn't stay there that long?

24 A. No, sir.

25 Q. Did you ever get back there?

1 A. Unfortunately not.

2 Q. I see that you are also a graduate of the Citadel?

3 A. Yes, sir, I am.

4 Q. I tell you where I went to. Wofford College, big
5 adversaries now.

6 Your occupation before your currently employment was
7 United Labs?

8 A. That's correct.

9 Q. What kind of laboratory is that?

10 A. It's basically a laboratory that sells industrial type
11 chemicals to industrial accounts.

12 Q. Okay. So were you in sales?

13 A. Yes, sir, I am. I kind of was there too.

14 Q. Okay. Now, I understand you feel that you could
15 sentence him to death if the circumstances warranted it,
16 correct?

17 A. That's correct.

18 Q. And you could also choose life, if the circumstances
19 warranted life?

20 A. That's correct.

21 Q. With the understanding that you cannot be forced to
22 vote for death the sentence, life is always an option, would
23 that change your viewpoint? Would you tend to vote more
24 towards life?

25 A. Knowing that it's an option, I would be willing to

1 listen to whatever the circumstances were. And I felt that,
2 you know, life was the appropriate option, I would vote for
3 life.

4 Q. Okay. So you would keep an open mind and still
5 consider both options?

6 A. That's correct.

7 Q. Mr. Tyler, is there anything -- are you a supporter of
8 any law enforcement agencies or support groups, like MADD,
9 or SADD, or anything like that, highway patrol?

10 A. I have contributed to the highway patrol in the past.
11 I have contributed to the local firemen's fund. Different
12 things like that, yes.

13 Q. Was there anything in your past that would cause you to
14 be biased one way, either for or against law enforcement?

15 A. No.

16 Q. Okay. Thank you, sir.

17 MR. STARNES: If it please the court, Your Honor.

18 THE COURT: Yes, sir.

19 VOIR DIRE EXAMINATION BY MR. STARNES:

20 Q. Hi, Mr. Tyler, how are you doing?

21 A. I'm doing fine.

22 Q. I believe I have contributed to the highway patrol,
23 too, by the way of traffic tickets.

24 You said that your father was in the military. What
25 branch was he in?

1 A. He was in the Air Force for 15 years and he got
2 commissioned into the Army as a warrant officer for the last
3 five.

4 Q. I noticed on your questionnaire, Mr. Tyler, you
5 indicated that you have served on a civil case. Could you
6 tell us a little bit about that?

7 A. The last time that I was selected, it was actually in
8 Judge Westbrook's courtroom across the street. I believe it
9 was like either the State versus Haywood, or Hayward versus
10 Tillman, or something to that effect, but basically this
11 gentleman was charged with five different counts. I don't
12 remember exactly what all they were, but it was something to
13 the effect of two counts of rape, one strong armed robbery,
14 and the other one of kidnapping, where he basically attacked
15 Elizabeth Tillman, who is a deaf mute woman, and forcibly
16 raped her, and, you know, held her against her will and
17 robbed her.

18 Q. That case went to a complete jury trial?

19 A. That's correct. It lasted five days.

20 Q. Thank you. Five days.

21 You were a juror in that case?

22 A. I was the foreman of the jury.

23 Q. Okay. Could you tell us what the verdict was?

24 A. Guilty on all five counts.

25 Q. Okay. That was a criminal case.

1 Have you ever served, Mr. Tyler, in a civil case,
2 dealing with car wrecks and things of that nature?

3 A. Yes, I have.

4 Q. Could you tell us a little bit about that, please?

5 A. One was where this lady had charged -- basically she
6 was suing an electrical company because they were towing a
7 generator behind a pickup truck. She had been out quite
8 late the night before and was driving back from Charleston.
9 It was about 6:30 in the morning. Traffic was stopped on
10 I-26. She said that this particular electrical company was
11 weaving in and out of traffic, causing her to change lanes
12 abruptly and she ran into the back of a tractor-trailer
13 truck. And she was basically suing the electrical company
14 for erratic driving and stuff, which caused her pain and
15 suffering and various injuries.

16 Q. Okay. The solicitor asked you some questions regarding
17 the death penalty and life without the possibility of
18 parole. Do you understand that the life without the
19 possibility of parole means until death of the offender?

20 A. That's correct.

21 Q. Mr. Tyler, do you believe that all killings are murder?

22 A. No, I do not.

23 Q. Do you believe a defendant is entitled to kill in
24 self-defense?

25 A. Yes, I do.

1 Q. Pretty strong about that?

2 A. Very strong about that.

3 Q. Do you, by any chance, belong to any organizations,
4 such as the National Rifle Association, any gun clubs, or
5 anything like that?

6 A. In the past I have belonged to the National Rifle
7 Association. However, I'm not a current member, nor have I
8 been for the last five years.

9 Q. Okay. Have you got a concealed weapons permit or
10 anything like that?

11 A. I do have a concealed weapons permit. However, it has
12 expired at the current time.

13 Q. That's for South Carolina?

14 A. That's from South Carolina.

15 Q. Okay. In the event that evidence of self-defense may
16 become an issue in this case, could you consider that
17 evidence with all the other evidence in the case?

18 A. Definitely.

19 Q. Could you follow the law as the judge instructed you?

20 A. Yes, I can.

21 Q. Could you find someone not guilty?

22 A. Certainly.

23 Q. Tell me a little bit -- tell the court a little bit
24 about your views on capital punishment.

25 A. First and foremost I'm a Christian. I believe in Jesus

1 Christ, my Lord and savior. And with that I also believe
2 that there is a time to do right and a time to do wrong and
3 there is a time for punishment for it too.

4 If a person is found to be guilty of a certain crime
5 and the punishment would warrant death, I would not feel the
6 least bit hesitant in ruling death.

7 And, likewise, if they believed in life, then I
8 wouldn't feel compelled, you know, or one bit, you know, to
9 say life either.

10 Q. So you could vote for either of them?

11 A. Either one.

12 Q. Life or death, just depends?

13 A. Based upon the circumstances of the situation and the
14 evidence.

15 Q. In the event we get to the penalty phase -- and do you
16 understand that unless a murder verdict is rendered in this
17 case, we don't get into the penalty phase.

18 But in the event we get into that penalty phase and
19 eleven jurors wanted to give me life without the possibility
20 of parole --

21 THE COURT: Sir, please avoid personal reference.

22 MR. STARNES: I'm sorry.

23 BY MR. STARNES:

24 Q. Wanted to give the defendant life without the
25 possibility of parole, but you thought the case warranted

1 the death penalty, would you base that on your own
2 independent decision?

3 A. Yes, I would.

4 Q. And if the coin was on the other side and eleven wanted
5 to give the death penalty and one wanted to give life
6 without parole; in other words, if you wanted to give life
7 without parole, would you make that your independent
8 decision?

9 A. Yes, I would.

10 Q. Okay. Do you know of any reason why you couldn't serve
11 as a juror on this case and give the defendant and the State
12 a fair trial?

13 A. No, I don't.

14 Q. Have you heard anything about the case?

15 A. No, I didn't watch the news last night or this morning.

16 Q. Did you see anything on the Internet or anything like
17 that?

18 A. No.

19 Q. Thank you, Mr. Tyler.

20 A. You are welcome.

21 MR. BULSA: Nothing further.

22 THE COURT: Thank you, sir.

23 If you will please wait outside the courtroom door
24 for just a minute. We will have you back in momentarily.
25 Thank you, sir.

1 (Whereupon, Juror Number 291 left the courtroom)

2 THE COURT: Position of the State?

3 MR. BULSA: He's qualified, Your Honor.

4 THE COURT: Position of the defense?

5 MR. STARNES: Qualified, Your Honor.

6 THE COURT: Thank you. The court agrees that he
7 is qualified.

8 Please bring him back in, sir.

9 (Whereupon, Juror Number 291 entered the
10 courtroom)

11 THE COURT: Just stand right there, if you will,
12 please.

13 You have been found qualified to serve on the jury
14 panel of this case. I'll explain what that means. That
15 doesn't mean that you are on the jury, but you are in the
16 pool from which the jury will be drawn.

17 And what I'm going to ask you to do, you are free
18 to go at this time, do anything that you would like to do
19 between now and then, but please report back to court at
20 three p.m. tomorrow, that is to say Wednesday. Okay?

21 JUROR NUMBER 291: Yes, sir.

22 THE COURT: And if for any reason we should change
23 the report time, there would be a message put on the
24 voicemail that you could reach at the number that you have
25 on the card given to you by the clerk's office. And the

1 voicemail, you would listen for a message as to a qualified
2 juror. You are now a qualified juror. And if we are going
3 to change the report time, we would put it on that
4 voicemail, the message. The message will not be on there
5 until after seven o'clock tonight. So you can call anytime
6 after seven o'clock tonight. If there has been any change
7 in the report time for tomorrow, it will be on there.

8 The clerk also has a website. And on that website
9 if the report time has changed, there will be a message on
10 there for qualified jurors as to the report time.

11 But if you do not hear anything differently than
12 what I'm telling you now, please report back tomorrow,
13 Wednesday, at three p.m..

14 JUROR NUMBER 291: Yes, sir.

15 THE COURT: Okay. Thank you, sir.

16 JUROR NUMBER 291: Thank you.

17 THE COURT: Thank you very much.

18 (Whereupon, Juror Number 291 left the courtroom)

19 (Whereupon, Juror Number 14 entered the
20 courtroom)

21 VOIR DIRE EXAMINATION BY THE COURT:

22 Q. Good afternoon, sir. You are Bennie Bass, juror number
23 14, is that correct?

24 A. That's correct, sir.

25 Q. Now, Mr. Bass, the first thing I'm going to do is get

1 you just to relax, because this is a very informal
2 proceeding. The only thing we are going to do is ask you
3 some questions to determine your views as to certain
4 matters.

5 There are no right or wrong answers. Nobody is going
6 to disagree with you. Nobody will give you the third degree
7 or anything like that. It's not like that at all, so just
8 be relaxed. What I would ask you to do is just give open
9 and honest answers to the questions that you are asked.

10 There are a couple of housekeeping matters. First of
11 all do you remember that the jury was sworn, the full jury
12 panel was sworn yesterday, and you remain sworn and under
13 oath for the information that you are going to provide the
14 court at this time. Do you understand that?

15 A. Yes, sir.

16 Q. And do you remember that you filled out a juror
17 questionnaire form and sent that back to the clerk's office?

18 A. Right, I did, yes, sir.

19 Q. Has anything -- have there been any changes that you
20 need to reflect, insofar as information on that form? Has
21 there been any changes that you need to make the court aware
22 of?

23 A. No, sir.

24 Q. Okay. Now, did you see -- back in the jury room did
25 you see a rather long list of potential witnesses in this

1 case that had names and numbers by them?

2 A. Yes.

3 Q. Do you recall that?

4 A. Yes, sir.

5 Q. And you will have a copy of that in front of you there.

6 If you recognize any of the names on there or know any
7 of those folks, I would like for you to identify them for
8 the court not by name, but by number instead, just the
9 number.

10 Did you recognize anyone on that list?

11 A. No, sir, I sure didn't.

12 Q. Okay. Did you see back in the jury room a sheet with
13 three paragraphs on it which talked about three different
14 types of jurors? Did you see that, sir?

15 A. Yes, sir.

16 Q. Did you have an opportunity to read through that?

17 A. I did.

18 Q. And, of course, this is not an all-inclusive list
19 because none of them are going to totally describe a juror,
20 but did you identify yourself as being more like one of
21 these three jurors, types of jurors?

22 A. The third type.

23 Q. Third type.

24 So you are the type of juror who would not make up his
25 mind in advance, but would want to listen to the testimony

1 and evidence in the case and the court's instruction on the
2 laws that applies before you would form a decision about the
3 matter in a case, is that right?

4 A. Yes, sir.

5 Q. Do you understand that this is a case in which the
6 State is seeking the death penalty?

7 And in a death penalty case, the first thing happens is
8 the jury is impaneled, of course. And then the State is
9 required to prove the defendant guilty of the charges
10 against him beyond a reasonable doubt.

11 If the State failed to meet that burden, then that
12 would be the end of the matter. That could conclude the
13 trial and the jurors function would be over. Do you
14 understand that?

15 A. Yes, sir.

16 Q. However, if the jury should find that the State had
17 proven the elements of the offense of murder against the
18 defendant, then we would proceed on with the second phase of
19 the trial, which is, for lack of a better word, described as
20 penalty phase. And in it the jurors would be asked to
21 determine what the appropriate punishment would be.

22 Now, in that phase of the trial the State presents
23 aggravating circumstances that they want the jury to
24 consider on the issue of punishment. The defense introduces
25 evidence of mitigating circumstances which they want the

1 jury to consider on the issue of punishment. The court
2 instructs the jury on the law that applies how to receive
3 that evidence and what other matters they should consider or
4 must consider in reaching an appropriate punishment, and
5 then the jury is asked to render a verdict in the case as to
6 punishment, that being either the death penalty or life
7 imprisonment without the possibility of parole. Do you
8 understand that?

9 A. Yes, sir.

10 Q. Now, if you had all that information before you in a
11 sentencing phase -- excuse me, penalty phase, could you
12 then -- if you found the circumstances warranted it, could
13 you vote for a verdict of death penalty?

14 A. I could.

15 Q. And if you found the circumstances warranted it, could
16 you vote for life imprisonment without the possibility of
17 parole?

18 A. Yes, sir.

19 Q. Thank you. Answer any questions that the State may
20 have.

21 Solicitor?

22 MR. GOWDY: May it please the court?

23 THE COURT: Yes, sir.

24 VOIR DIRE EXAMINATION BY MR. GOWDY:

25 Q. Good afternoon, sir?

1 A. Good afternoon.

2 Q. Could you tell us your thoughts and views, prospective
3 on capital punishment?

4 A. Well, I find like if the circumstances would warrant it
5 and the laws, if I understand the law correctly -- if I
6 understand the judge correctly, I could vote either way on
7 it.

8 Q. You understand, I'm sure that you do, that under South
9 Carolina law you are never required to impose the death
10 sentence? It's not a formulated thing where if the State
11 proves this and proves that, you have to check death?

12 A. Right.

13 Q. You always have a choice?

14 A. Okay.

15 Q. No matter what. No matter how heinous the crime, no
16 matter how aggravated the crime, you always will have a
17 choice of life without parole.

18 Are you telling me that even if you always have that
19 choice, and you don't have to explain it to anyone, that
20 there is still circumstances that you would pick death?

21 A. Yes.

22 Q. Okay. Have you thought about capital punishment in the
23 past, either as a debating society or studied it in school?

24 A. I have not.

25 Q. What is the basis of your -- without trying to pry too

1 much into your personal life, what is the basis of your
2 belief as it is constituted today?

3 A. It would be -- every circumstance would be different.
4 I mean, I wouldn't lean one way or the other without knowing
5 the facts.

6 Q. All right. Is there any reason that you could not be
7 fair to the State, which -- when I mean the State, I mean
8 prosecutors, law enforcement, everyone under the penumbra of
9 the State, is there any reason you could not be fair to the
10 State?

11 A. There is not any reason I could not be fair.

12 Q. Any reason you couldn't be fair to the defendant?

13 A. There is not any reason I wouldn't be fair to the
14 defendant.

15 Q. Thank you for your time.

16 MR. STARNES: If it please the court, Your Honor?

17 THE COURT: Yes, sir.

18 VOIR DIRE EXAMINATION BY MR. STARNES:

19 Q. Hi, Mr. Bass, how are you doing?

20 A. Good. How are you?

21 Q. I'm doing okay.

22 Mr. Bass, I noticed on your questionnaire that you are
23 in the asphalt paving business. How long have you been
24 doing that occupation?

25 A. Almost 20 years.

1 Q. 20 years?

2 A. Yes.

3 Q. Mr. Bass, do you believe that all killings are murder?

4 A. No.

5 Q. Do you believe that someone is entitled to kill in
6 self-defense?

7 A. In certain circumstances.

8 Q. Under certain circumstances?

9 A. Yes.

10 Q. Could you consider the evidence of self-defense if it
11 was in this case, introduced, along with all the other
12 evidence?

13 A. Yes.

14 Q. Could you follow the law as the judge instructed you?

15 A. Absolutely.

16 Q. The solicitor was asking you about life without the
17 possibility of parole and the death penalty.

18 Mr. Bass, do you understand that life without the
19 possibility of parole means until the death of the
20 defendant?

21 A. Yes.

22 Q. In the event that we get into the penalty phase of this
23 case and a murder verdict is rendered and eleven jurors
24 wanted to give the death penalty, but you felt under the
25 circumstances that life without parole would be the

1 appropriate punishment, could you still vote for life?

2 A. Yes.

3 Q. And that would be your own independent decision?

4 A. Yes.

5 Q. Mr. Bass, do you know of any reason whatsoever why you
6 couldn't sit as a juror on this case?

7 A. No, sir.

8 Q. Thank you Mr. Bass.

9 A. Thank you.

10 THE COURT: Thank you, sir.

11 If you will wait just outside the courtroom door
12 here, I will have you back in in just a moment.

13 JUROR NUMBER 14: Thank you.

14 (Whereupon, Juror Number 14 left the courtroom)

15 THE COURT: Position of the State?

16 MR. GOWDY: He's qualified, Your Honor.

17 THE COURT: Defense?

18 MR. STARNES: Qualified, Your Honor.

19 THE COURT: The court agrees he will be qualified.
20 Please bring him back in.

21 (Whereupon, Juror Number 14 entered the courtroom)

22 THE COURT: Mr. Bass, the court has found you
23 qualified to serve on the jury panel in this case. What
24 that means is that you haven't been selected to serve on the
25 jury. You have been selected to be part of the panel from

1 which the jury will be selected. Do you understand that?

2 JUROR NUMBER 14: Yes.

3 THE COURT: And at this time I'm going to excuse
4 you at this time and ask you, if you will -- you are free to
5 do anything you would like to do in the meantime, but please
6 report back to court tomorrow, that is Wednesday at three
7 p.m..

8 JUROR NUMBER 14: Three p.m. tomorrow?

9 THE COURT: Yes, sir.

10 Let me explain this to you as well. In the event
11 we should change the reporting time, that would be placed on
12 the voicemail. It would be placed on there after seven
13 o'clock tonight. You got a voicemail number.

14 JUROR NUMBER 14: That is on the pink card on the
15 back? Yes, sir, I have that.

16 THE COURT: And if you call that number tonight
17 after seven o'clock, if they change it -- if the time is
18 going to be changed, it will be on there and it will be a
19 message for qualified juror. You are now a qualified juror,
20 so you listen for a message for that. If there is any
21 change, it would be on there.

22 Madam Clerk also has a website. And if there is
23 going to be a change in the report time for qualified
24 jurors, she will have that on the website as well, but it
25 won't be on there, again, until after seven tonight.

1 If you don't receive any information at the time
2 it's been changed, please report back tomorrow at three
3 o'clock.

4 JUROR NUMBER 14: Three o'clock?

5 THE COURT: Yes, sir.

6 Thank you very much.

7 (Whereupon, Juror Number 14 left the courtroom)

8 (Whereupon, Juror Number 184 entered the
9 courtroom)

10 VOIR DIRE EXAMINATION BY THE COURT:

11 Q. Good afternoon, sir.

12 You are Earl McPherson, juror number 184, is that
13 correct?

14 A. Yes, sir.

15 Q. Sir, I apologize for the delay. We have been running
16 behind. We have been doing all we can to keep up, but we
17 appreciate your patience.

18 A. Yes.

19 Q. A couple housekeeping matters. Do you remember that
20 you were sworn yesterday as part of the general jury pool?
21 You continue to be under oath for purposes of the
22 information that you are giving the court today.

23 Also you filled out a juror questionnaire that you sent
24 back into the clerk's office, is that correct? Do you
25 recall that?

1 A. Yes, sir.

2 Q. Is there anything -- any changes that have been made in
3 your life that you need to reflect now that would be a
4 change on that form?

5 A. No, sir.

6 Q. Again, I'm going to ask you just to be relaxed. I'm
7 going to ask you some questions to determine your views on
8 certain things. There are no right or wrong answers.
9 Nobody is going to quibble with you or disagree with you.
10 We just need to get an idea of how you feel about certain
11 things. You do need to be as open and honest as you can
12 with your answers, please, sir.

13 Now, did you see back in the jury room a rather long
14 list of potential witnesses in this case with names and
15 numbers by them?

16 A. Yes, sir.

17 Q. Okay. And, sir, if you recognize any of those names or
18 know any of those people I do not want you to give me their
19 names, but only their numbers beside their names. Did you
20 know any of them?

21 A. No, sir.

22 Q. All right, sir. Did you see back in the jury room a
23 form with three paragraphs on it which talk about three
24 different types of jurors?

25 A. Yes.

1 Q. Sir, did you -- it's not all inclusive, of course, but
2 did you identify yourself as being more like one of these
3 three types of jurors?

4 A. Yes, sir.

5 Q. Which one, sir?

6 A. The first one.

7 Q. The first one?

8 A. Yes, sir.

9 Q. And in this one you are the type of juror that once the
10 crime of murder has been proved by the State, the jury is
11 considering the punishment, you feel that you are required
12 to give the death penalty in each and every case?

13 A. Yes, sir.

14 Q. And it wouldn't matter what the circumstances were, you
15 still --

16 A. Not if it's murder.

17 Q. Okay. Thank you. Answer any questions that the State
18 may have.

19 MR. GOWDY: May it please the court?

20 THE COURT: Yes, sir.

21 VOIR DIRE EXAMINATION BY MR. GOWDY:

22 Q. Good afternoon, sir.

23 I notice that you served in the military?

24 A. Yes, sir.

25 Q. How long did you serve?

1 A. Three years active and nine years reserve.

2 Q. As His Honor told you, and I will reiterate, there are
3 no right, wrong, or frankly indifferent answers?

4 A. Sure.

5 Q. They are your answers.

6 A. Sure.

7 Q. And I don't want you to take anything that I ask you as
8 a -- whatever your belief structure is it is. I just simply
9 want to understand what it is.

10 So would you agree with me that not all homicides are
11 the same?

12 A. Yes.

13 Q. So you would agree that there are certain circumstances
14 where a killing or a homicide could be justified?

15 A. Probably, yes. Yes.

16 Q. On the battlefield?

17 A. Vehicle, probably, yeah.

18 Q. Police officer defending themselves?

19 A. Yes.

20 Q. I mean that's homicide. It's one person killing
21 another, but it's not murder.

22 A. Yes.

23 Q. What is your definition of murder?

24 A. Someone kills someone for no reason, basically, or just
25 a passion just killing. Someone not -- you know, if you are

1 a military person and there is a reason behind it and most
2 they are there for that reason to kill.

3 But if you are just doing it out of either spite, or
4 just passion, or something happens and I'm going out and I'm
5 killing somebody, or whatever, I think that should be --
6 that's murder, as far as I'm concerned.

7 Q. And you would punish all of those -- all of that
8 category the same?

9 A. Yes, sir.

10 Q. No chance that you would consider life without parole?

11 A. No, I don't believe in that. I don't believe in that.

12 Q. Thank you.

13 THE COURT: Questions?

14 MR. STARNES: No.

15 THE COURT: All right. Thank you, sir. If you
16 will wait outside just for the moment, we will have you back
17 in momentarily.

18 (Whereupon, Juror Number 184 left the courtroom)

19 THE COURT: Position of the State?

20 MR. GOWDY: It's close, but I think he's
21 unqualified.

22 THE COURT: I don't think he wants it to be close
23 to tell you the truth.

24 Mr. Starnes?

25 MR. STARNES: Not qualified, Your Honor.

1 THE COURT: The court will agree, based on his
2 responses he wouldn't be qualified.

3 Please bring him back in, sir.

4 (Whereupon, Juror Number 184 entered the
5 courtroom)

6 THE COURT: Mr. McPherson, the court will not
7 require you to serve on this particular case and we are
8 going to go ahead and excuse you at this time. This will
9 conclude your service for the week. You are free to go and
10 not come back, because this will conclude your service. The
11 clerk will put a check in the mail for your service this
12 week. Thank you for your patience and your service.

13 JUROR NUMBER 184: Thank you.

14 THE COURT: You may be excused.

15 (Whereupon, Juror Number 184 left the courtroom)

16 (Whereupon, Juror Number 216 entered the
17 courtroom)

18 VOIR DIRE EXAMINATION BY THE COURT:

19 Q. Sir, you are Eugene Petrey, Jr., juror number 216, is
20 that correct?

21 A. Yes, sir.

22 Q. All right. Mr. Petrey, we appreciate your patience
23 this afternoon. We are running behind a little bit, but we
24 appreciate your patience.

25 I would, as Madam Clerk encouraged you, just to be

1 relaxed. We are going to ask you a few questions just to
2 determine what your views are as to certain matters. There
3 are no right or wrong answers. Nobody is going to disagree
4 with you, give you the third degree, or anything like that.
5 It's not like that. We just need your open and honest
6 answers as to the question that you might be asked.

7 A couple housekeeping matters. Do you remember that
8 you were sworn as part of the regular jury panel yesterday?

9 A. Yes, sir.

10 Q. You continue to be under oath for purposes of the
11 information that you are going to provide the court today.
12 Do you understand that?

13 A. Yes, sir.

14 Q. And you filled out a jury questionnaire with
15 information and sent it back to the clerk's office when you
16 were summonsed for jury duty?

17 A. Yes.

18 Q. Has anything happened in your life that would be --
19 that you would need to notify or change what's on that
20 information form since you sent it in?

21 A. No, sir.

22 Q. Back in the jury room did you see a rather long list of
23 potential witnesses in this case with names and numbers
24 beside them? There is a copy of it there in front of you as
25 well. Did you see that back there?

1 A. Yes, sir.

2 Q. Did you have a chance to go over it?

3 A. Yes, sir.

4 Q. All right. Let me ask you, sir if you recognized any
5 names on there or know any of those persons listed, I would
6 like for you to tell the court the number, but not the name,
7 but just the number on there. Did you recognize any of
8 them?

9 A. Well, could I look at it again?

10 Q. Yes, sir, absolutely. Just take your time and look
11 over it. And if you recognize them, just give me the number
12 of them, please, sir.

13 A. As I go down the list?

14 Q. Yes, sir, that would be fine. Just the number, please.

15 A. Possibly number 3.

16 Q. Okay.

17 A. And number 7. Do I have to know them personally, or --

18 Q. If you just --

19 A. If I just recognize the name.

20 Q. If you recognize the name of somebody that you know.

21 A. 38. 73. 75. That's -- to my recollection that's all.

22 Q. Okay. Sir, let's assume that those names that you
23 think that you recognized on there, they are the person that
24 you think that they are, let me ask you, sir, if they were
25 these -- if any of these persons, or all of them, for that

1 matter, were to be called as witnesses in this case by
2 either side of the case, would that fact interfere in any
3 way with your ability to give both sides a fair and
4 impartial trial?

5 A. No, sir.

6 Q. Sir, did you see back in the jury room a sheet with
7 three paragraphs on it talking about three different kinds
8 of jurors?

9 A. Yes, sir.

10 Q. Of course, this is not all inclusive as to any of
11 individual juror, but did you identify yourself as more like
12 any one of these three different types of jurors?

13 A. Well, I would say the third type.

14 Q. All right, sir.

15 And the third type of juror is one who would not make
16 up his mind in advance, but would you want to listen to the
17 testimony and evidence in the case and instruction by the
18 court on the law that applies before he would make a
19 decision in a case, is that correct, sir?

20 A. Yes, sir.

21 Q. Sir, do you understand in this case this is a case in
22 which the State is seeking the death penalty?

23 And in this case how we would proceed in this case
24 would be that the jury would be impaneled and then we would
25 go to trial and the State would be required to prove the

1 defendant guilty beyond a reasonable doubt of the charges
2 against him in this case. Do you understand that?

3 A. Yes, sir.

4 Q. Now, if the State failed to meet that burden of proof
5 and prove the defendant guilty, then that would be the end
6 of the case and the jury would have -- that would end the
7 jury's role in the case and that would end the case. Do you
8 understand that?

9 In other words, if the jury were to find the defendant
10 not guilty, because the State hadn't proved the case against
11 him, then that would be the end of the matter. The case
12 would end at that point. Do you understand that?

13 A. Yes, sir.

14 Q. All right. I'm sorry if I didn't explain it very well.

15 But if the -- if the jury were to find that the State
16 had proved the elements of the offense of murder beyond a
17 reasonable doubt, then we would go to a second phase of the
18 trial, in which the State would present any aggravating
19 circumstances they wished the jury to consider on the issue
20 of punishment. The defense would present any mitigating
21 issues that they wished the jury to consider on the issue of
22 appropriate sentence. And then the court would instruct the
23 jury on the law that applies to the issues and how they
24 would receive that information, and also what other
25 information the jury should consider in making its

1 determination as to the appropriate sentence. Do you
2 understand that?

3 A. Yes, sir.

4 Q. Let me ask you, sir, whether you could -- and, of
5 course, the possible sentences would either be the death
6 penalty or life imprisonment without the possibility of
7 parole. Do you understand that?

8 A. Yes, sir.

9 Q. All right. Now, do you think that you -- if we reached
10 the second phase of the trial, and we may not reach that,
11 but if we were to reach it and you were on the jury, could
12 you listen to the aggravating circumstances, mitigating
13 circumstances, the court's instruction on the law as to what
14 you must consider as to punishment and render a verdict with
15 the appropriate punishment in the case?

16 A. Yes, sir.

17 Q. And if you felt that, based on all of the
18 circumstances, that the appropriate sentence was the death
19 penalty, could you vote for a verdict of the death penalty?

20 A. Yes, sir.

21 Q. And if you felt it was appropriate, based on all of the
22 circumstances and information that you had, that the
23 appropriate sentence was life imprisonment without the
24 possibility of parole, could you vote for that verdict, life
25 imprisonment without the possibility of parole?

1 A. Yes, sir.

2 Q. Okay. Thank you. Please answer any questions that the
3 State solicitor may have.

4 MR. GOWDY: May it please the court, Your Honor?

5 THE COURT: Yes, sir.

6 VOIR DIRE EXAMINATION BY MR. GOWDY:

7 Q. Good afternoon, sir.

8 Good afternoon?

9 A. Yes, sir.

10 Q. I notice that you served in the military?

11 A. Yes, sir.

12 Q. Which branch?

13 A. Army.

14 Q. For how long?

15 A. Two and a half years. I mean, I got credit for three
16 years, because I was in Viet Nam and I came back six months
17 early and they let me go.

18 Q. They should have.

19 A. Yeah.

20 Q. Thank you for your service.

21 A. Yes.

22 Q. As Judge Alford said, there are no right answers.

23 There are no wrong answers. They are simply your answers,
24 and nobody is going to challenge them. We just simply have
25 to understand what your belief structure is.

1 When someone asks you what your opinion or perspective
2 on capital punishment is, how would you respond?

3 A. Well, I would be -- I mean, I've always been in favor
4 of capital punishment in certain circumstances.

5 Q. Yes, sir.

6 South Carolina law never requires you to impose a death
7 sentence. You always have the option of life.

8 Accepting that, do you still believe that there are
9 fact patterns or circumstances or scenarios under which you
10 would vote for death?

11 A. Instead of life?

12 Q. Yes, sir.

13 A. Under certain circumstances, I would say yes.

14 Q. Okay. Yesterday seems like a lot longer ago than
15 yesterday, but if I remember correctly, you may have come
16 forward on the issue of prior knowledge of the case?

17 A. Yes, sir, because I do remember when it happened in
18 1996, that I read the article in the paper. I'm familiar
19 with Mr. Starnes' name, because I did -- because -- like I
20 say, I'm from Swansea, and Pelion is only 10 miles so, and I
21 know a lot of Starnes around Pelion and Wagner and places
22 like that.

23 Q. Did you know --

24 A. I don't know that he's any relation to any of the
25 Starnes that I know of but --

1 Q. If he were, would that impact your ability you think to
2 be fair, or would it put you in an untenable position as a
3 juror in this case?

4 A. No, sir.

5 Q. Do you have any prior personal knowledge of the
6 defendant himself from the early to mid 1990's?

7 A. No, sir.

8 Q. It's going to get me in trouble for saying this, but
9 I'm going to ask it anyway. Are you willing to make
10 allowances for the possibility of what you read in the paper
11 may not be true?

12 A. Well, sometimes you can't believe everything that you
13 read or hear, so --

14 Q. That's kind of my -- that was kind of my point.

15 Are you willing to start with a blank slate and only go
16 by what you hear in the courtroom?

17 A. Yes, sir.

18 Q. Do you feel like you could -- do you feel like you
19 could do that? It's hard to disabuse your mind of what you
20 heard in the past. You tell me that you are could do that,
21 I'm going to take your word for it. Do you think that you
22 could do that?

23 A. Well, if I, you know, hear all the evidence, I guess --
24 I suppose so, yes, sir.

25 Q. Okay. Thank you.

1 MR. STARNES: May it please the court, Your Honor?

2 THE COURT: Yes, sir.

3 VOIR DIRE EXAMINATION BY MR. STARNES:

4 Q. How are you doing today, Mr. Petrey?

5 A. Fine. How are you doing?

6 Q. Did I say that right?

7 A. Petrey.

8 Q. Petrey.

9 I notice on your questionnaire that you -- also you
10 stated that you were from around Swansea?

11 A. Yes, sir. I have been -- yeah.

12 Q. I didn't mean to cut you off.

13 A. Yeah, I have been in Swansea for going on 62 years.

14 Q. 62 years?

15 A. Yes.

16 Q. So you pretty much have been there all your life?

17 A. Not yet.

18 Q. Did you happen to know anybody at the Gaston Airport or
19 ever visit the Gaston Airport?

20 A. Oh, oh, Gaston Airport? Oh, yeah. On 321, right?

21 Q. Yes, sir, that's correct.

22 A. Well, I knew Tommy Moore that -- the Moores that live
23 there where the airport was.

24 Q. Yes, sir.

25 How well did you know Tommy Moore?

1 A. Well, I graduated with him from high school.

2 Q. Okay. If Mr. Moore was a witness in this case, would
3 it impact your ability? In other words, could you be fair
4 to the defense and the State?

5 A. Yes, sir.

6 Q. Do you believe that all killings are murder?

7 A. No, sir.

8 Q. Do you believe someone is entitled to kill and take a
9 life in self-defense?

10 A. Yes, sir.

11 Q. Mr. Solicitor was just asking you about the death
12 penalty. You could vote the death penalty or you could vote
13 for life without the possibility of parole?

14 A. Yes, sir.

15 Q. Is that correct?

16 A. Yes, sir.

17 Q. And would you agree that life without the possibility
18 of parole means until the death of the offender; in other
19 words, never come out of prison?

20 A. Well, yes, sir, sometimes it might not mean -- I would
21 hope sometimes probably -- I guess in certain cases there
22 might be a possibility of parole.

23 Q. Okay. Could you follow the law as the trial court
24 instructed you regarding life without the possibility of
25 parole?

1 A. Yes, sir.

2 Q. In other words, if the trial court instructed you that
3 life without parole meant until the death of the offender,
4 could you follow that law?

5 A. Yes, sir, I could.

6 Q. In the event that we get to that penalty phase -- do
7 you understand that in order to reach the penalty phase that
8 the jury has to find the defendant guilty beyond a
9 reasonable doubt?

10 A. Yes.

11 Q. And in the event that we get to the penalty phase and
12 eleven jurors wanted to vote for life without the
13 possibility of parole and your vote was for the death
14 penalty, could you make that your own independent decision?

15 A. Could you repeat that again?

16 Q. Yes, I'm sorry.

17 If eleven jurors wanted to vote for a life sentence.
18 You felt after hearing all the evidence that death was the
19 appropriate punishment, could you vote for the death
20 penalty?

21 A. Yes.

22 Q. Do you know of any reason why you couldn't serve as a
23 juror on this case?

24 A. Well, not really, but, I mean, I'm just -- I would have
25 prior knowledge, you know, in the sense that it happened,

1 you know, back in '96.

2 Q. Could you tell us a little bit about that, what prior
3 knowledge?

4 A. Well, I just read it, you know, when it happened in the
5 paper, and I remember, you know, the names, right.

6 Q. Yes, sir.

7 What do you remember reading about the paper back then?

8 A. Faintly that it happened -- I might be wrong, but it
9 might -- I thought it happened off Forts Pond Road somewhere
10 around Pelion. That's just what -- you know, that might not
11 be true, but that's my recollection that's what I read.

12 Q. Yes, sir.

13 Have you read anything recently in the newspaper --

14 A. Not recently.

15 Q. -- about it.

16 Have you seen anything on the Internet or anything?

17 A. No, sir.

18 Q. By seeing that in the newspaper back in 1996, would it
19 cause you not to give the defense or the State a fair trial;
20 in other words, from what you read?

21 A. From what I read --

22 Q. Could you still be fair?

23 A. Yes.

24 Q. That's all we can ask. Thank you, Mr. Petrey.

25 THE COURT: Let me -- just to be sure, let me ask

1 you this question, please, sir.

2 I understand that when the incident out of which
3 these charges arose it was some publicity about it way back
4 then, let me ask you sir, whether you could put anything
5 that you might have seen or did read in the newspaper back
6 then, could you put that aside and not consider it all in
7 this case and base your decision solely on the sworn
8 testimony and evidence that comes in through the trial and
9 instruction by the court on the law that applies and base
10 your decision solely on that and forget about anything else
11 and not consider anything you might have read about it years
12 ago in the paper? Can you do that?

13 JUROR NUMBER 184: Yes.

14 THE COURT: Any question about that?

15 JUROR NUMBER 184: No, sir.

16 THE COURT: Any followup questions to the question
17 I asked?

18 MR. GOWDY: Not from the State, Your Honor.

19 MR. STARNES: Nothing from the defense, Your
20 Honor.

21 THE COURT: All right. Thank you, sir.

22 If you will please wait outside this courtroom
23 door for a moment, we will have you right back in in just a
24 minute, okay?

25 (Whereupon, Juror Number 216 left the courtroom)

1 THE COURT: Position of the State?

2 MR. GOWDY: The State believes he's qualified.

3 THE COURT: Defense?

4 MR. STARNES: Qualified, Your Honor.

5 THE COURT: All right. The court finds he would
6 be qualified as well.

7 Mr. Starnes, I think it would be time to try to
8 get this conference call through, if we can, because -- did
9 anybody get in touch with your witness and he's available?

10 MR. BULSA: Yes, sir, he's available.

11 THE COURT: Counsel, let's go back in my chambers
12 and see if we can get this conference call through, if we
13 can.

14 Have you got the number for him?

15 MR. STARNES: I do.

16 THE COURT: Madam Clerk, are we going to be able
17 to make the call to somebody in North Carolina in my
18 chambers?

19 THE CLERK: I hope so.

20 THE COURT: And hear it on the speaker phone?

21 THE CLERK: I hope that we're going to be able to
22 do that. We're just going to need a speaker phone, right,
23 or are we actually going to conference in a --

24 THE COURT: I beg your pardon. I forgot to tell
25 this juror. Okay. Wait just one minute.

1 Please bring him back in. Thank you for reminding
2 me.

3 (Whereupon, Juror Number 216 entered the
4 courtroom)

5 THE COURT: Mr. Petrey, if you will stand right
6 there, please, sir.

7 The court has found you qualified to serve on the
8 jury pool in this case. What that means is that you haven't
9 actually been selected on the jury, but you are in the pool
10 from which the jury will be selected, hopefully tomorrow.

11 What I'm going to ask you to do is -- we are still
12 in the process of getting the pool, so what I'm going to ask
13 you to do is, you can do anything you would like to do in
14 the meantime, but please report back to the court tomorrow,
15 that is Wednesday at three p.m.. Okay.

16 JUROR NUMBER 184: Three p.m. tomorrow?

17 THE COURT: Yes, sir.

18 If there should be any change of that, and I don't
19 know if it would be -- probably will not be changed, but if
20 we should change the reporting time, it would be on the
21 voicemail. You have that card from the clerk's office with
22 the number on there, and it has a voicemail number on it.
23 You call there and listen. If they are going to change the
24 report time, it would be on there after seven o'clock
25 tonight. You shouldn't call until after seven and check it.

1 You will listen for a message for qualified jurors. You are
2 now a qualified juror. And if there is a message on there,
3 it would be for qualified jurors and they are going to
4 change the report time.

5 The clerk has a website also that you can check
6 the website after seven o'clock tonight. And if they are
7 going to change the report time, that would be reflected for
8 qualified jurors to report at whatever time.

9 If you don't see anything or hear anything
10 different, please report back here at the courtroom tomorrow
11 at three o'clock. Thank you, sir.

12 (Whereupon, Juror Number 216 left the courtroom)

13 THE COURT: All right. We will take a few minutes
14 break and go back and make this conference call, please.

15 (Whereupon, proceedings were recessed)

16 (Whereupon, proceedings were reconvened)

17 (Whereupon, the following was an in-chambers
18 hearing involving a conference call with Dr. Andrew Mason)

19 MR. STARNES: Hi, Dr. Mason. This is Norman
20 Starnes. How are you doing?

21 DR. MASON: I'm fine, sir.

22 MR. STARNES: Can you hold on just one second? We
23 are having some problems with the telephone?

24 DR. MASON: Fine.

25 MR. STARNES: Can you hear me okay?

1 DR. MASON: I can.

2 MR. STARNES: Dr. Mason, we are on a conference
3 call. We are in the judge's chambers. Judge Alford is with
4 us, and Mr. Coler from the solicitor's office is with us
5 also.

6 The judge wanted to take up the matter about the
7 toxicology testing. And I kind of explained to Mr. Coler
8 and Judge Alford about the testing and having the blood
9 sample put in under your account so that you could direct
10 the testing and have some input on that.

11 Would you kind of explain that to Judge Alford and
12 Mr. Coler while we are all here on the conference call?

13 DR. MASON: Of course I will.

14 There seems to be a procedural issue with respect
15 to getting testing done with respect to medical services. I
16 can neither order the tests or can't make payment for tests
17 for specimens that are logged in under someone else's
18 account, and I'll be (undecipherable) wanting that to occur,
19 because that might be (undecipherable) to dictate what
20 occurs with the specific specimens that are not authorized
21 to --

22 MR. STARNES: Dr. Mason, can you hold on just a
23 second? We are having problems with this telephone. We may
24 have to call you back. You still there?

25 DR. MASON: Yeah.

1 MR. STARNES: Hold on just one second.

2 Judge, do you want to call them back?

3 THE COURT: Yeah, we may have to do that.

4 MR. STARNES: Dr. Mason, we are going to call you
5 back. We have got to get this telephone situation
6 straightened out. Then we are going to call you right back,
7 okay?

8 DR. MASON: I will wait for the call.

9 MR. STARNES: Thank you.

10 MR. GOWDY: Judge, this is the toxicologist
11 wants --

12 THE COURT: What tests they are wanting and what
13 tests they can run. We are going to try on this blackberry
14 and see what --

15 DR. MASON: Good afternoon. This is Dr. Mason.
16 Can I help you?

17 MR. STARNES: Hi, Dr. Mason, can you hear us a
18 little bit better?

19 DR. MASON: I can.

20 MR. STARNES: Okay. Dr. Mason, I'm here with
21 Judge Alford and Mr. Coler from the solicitor's office and I
22 want you, if you could, to explain to them the reasons why
23 you needed the blood sample under your account and the
24 testing -- directing the testing and things of this nature
25 that we have discussed and exchanged in e-mails. So if you

1 could, could you explain that to them, please?

2 DR. MASON: I can -- first good afternoon to both
3 you gentlemen. It's a pleasure to have an opportunity to
4 speak with you.

5 There is a procedural issue with respect to the
6 laboratory that will not allow me to order tests or to pay
7 for tests completed where the specimen is under the account
8 of another individual. Obviously per their policy they
9 would not want to allow that type of situation. So my
10 understanding is that tests specifically for amphetamines
11 and methamphetamines were to be completed on dried blood
12 specimen. And my understanding was that there was at least
13 an inquiry whether I would be willing to go ahead and pay
14 for that out of funds allocated for that purpose. And, of
15 course, I said I would. But when I approached the
16 laboratory, obviously this issue came up. So at present
17 while I'm willing to go ahead and have that testing proceed,
18 I cannot do so, because I don't have access to the specimens
19 because they are not under my account.

20 There was another issue with respect to the hair
21 test, hair specimens. There was a letter that I received
22 from - if you will hold for just a second - Agent Dustin
23 Smith that indicates for those two specimens -- pardon me,
24 for all of the specimens that I was supposed to have full
25 access to the submissions, but a similar situation exists.

1 We had contemplated performing additional testing on those
2 hair specimens. They are not under my account. I cannot
3 order additional tests.

4 Again, it's not clear what that means, full access
5 to these submissions. So my capability to discuss matters
6 relating to testing for those materials that are under
7 someone else's account may have similar concerns associated
8 with it. So that's kind of the situation at the moment.

9 THE COURT: Doctor, this is Judge Alford.

10 Let me ask you, we have had a conference call
11 previously with the SLED agent, Mr. Smith, and he indicated
12 that he would write a letter to the lab folks and instruct
13 them to discuss this with you with regard to testing and
14 what have you. They were willing to -- SLED was willing to
15 pay for the tests and that, but he had indicated that he
16 would write to them and tell them to discuss that with you,
17 the testing and that with you. Are you still not able to do
18 that?

19 DR. MASON: No, sir, because the laboratories
20 again, the materials are under another party's account, or
21 under SLED's account. And while it says here I am to have
22 full access to these submissions, that language is
23 sufficiently imprecise such that, quite frankly, nobody
24 knows what that means. Nobody knows whether, in fact, I'm
25 authorized to discuss the way the testing was performed or

1 to what degree I'm allowed to do that, sir.

2 THE COURT: Well, are these tests that they have
3 the ability to run? I understood there was some question
4 about that.

5 DR. MASON: Well, my understanding is that the
6 laboratory is willing, of course, to perform the testing
7 that was requested, which would be on the dried blood
8 specimen for amphetamine and methamphetamine.

9 Now, obviously they make no guarantee that -- they
10 make no guarantee with respect to what the results are.
11 Technically they have capability to perform the tests.

12 THE COURT: Well, are they saying they will not
13 run the tests? I thought SLED asked them to run the test,
14 but --

15 DR. MASON: No, they will run the test.

16 THE COURT: What is the problem then?

17 DR. MASON: They obviously can't or won't
18 guarantee the results, but they will perform the necessary
19 analysis.

20 THE COURT: Well, okay, but you can't expect them
21 to guarantee the results if they don't have the ability to
22 do it. So what is the problem --

23 DR. MASON: Okay. Yes, sir, they have the ability
24 to do it.

25 THE COURT: To guarantee the results?

1 DR. MASON: No, no, no. They have the capability
2 to run the tests.

3 THE COURT: All right. Well, if they have the
4 capability of running it and they are willing to run it and
5 give the results, what's wrong with that? What's wrong with
6 that?

7 DR. MASON: Absolutely nothing at all.

8 THE COURT: All right. Well, what's the problem
9 then, as long as they are authorized to run the tests that
10 you won't run?

11 DR. MASON: Are we speaking about the blood, sir?

12 THE COURT: Yes, sir.

13 DR. MASON: There is no problem with that
14 whatsoever. It's just that I can't order the tests or pay
15 for it. I was asked to do so by SLED --

16 THE COURT: Well, SLED --

17 DR. MASON: -- discussed that with me in
18 particular, and I was willing to go ahead and approach the
19 laboratory to do that, but I can't do it because it's not
20 under my account.

21 THE COURT: All right. Let me ask you -- I'm
22 sorry for interrupting you while you were talking, because I
23 thought that you were through, but SLED is willing to order
24 whatever tests. As I understand it, they were willing to
25 order the tests and get the results and a copy sent to you

1 and let you have some input in that. They were willing to
2 do that. And so if they are willing to order the tests,
3 that you want run, or they are willing to go ahead and run
4 the tests, is there still a problem?

5 DR. MASON: No, sir, that would be fine, as far as
6 I'm concerned.

7 THE COURT: Okay. So if SLED were to contact the
8 lab and ask them to run the tests on the blood for the
9 methamphetamine, that would be sufficient, and send copies
10 of their results to you? Is that --

11 DR. MASON: That would be fine, sir.

12 The reason that they asked me to go ahead and
13 approach the laboratory to do that was because of time
14 constraints. My understanding was that they would have to
15 get a purchase order to do that, whereas, of course, I have
16 an account there and I have money in the account and can
17 order it immediately. So that's the reason they asked me to
18 go ahead and proceed on that basis. And, of course, I was
19 willing to do so.

20 THE COURT: All right. Well, let me --

21 All right. We would have to check it out then to
22 see what we can do to get that done.

23 I'm not sure where we go from here, but I'm sure
24 that you will be informed probably by Mr. Starnes as to
25 where we go from here. We appreciate your participation.

1 Thank you, sir.

2 DR. MASON: Sir? Your Honor?

3 THE COURT: Yes, sir, go ahead.

4 DR. MASON: There was another question about the
5 hair specimen -- hair specimens, or I had a question about
6 those as well.

7 THE COURT: Yes, sir.

8 DR. MASON: We had contemplated performing
9 additional tests on those as well. How can that be a
10 arranged?

11 THE COURT: Isn't it too late to do that with the
12 hair test now?

13 DR. MASON: No, sir, I don't believe so.

14 THE COURT: I understood there was some question
15 about whether it could be done when it was actually sent to
16 them, and we are much later in the game than that now, but
17 you think it could be done?

18 DR. MASON: Yes, sir, absolutely. I mean, I can't
19 guarantee how quickly they can proceed with it, but knowing
20 that if we never -- if the tests are never ordered, then
21 they will never get done, sir.

22 THE COURT: Well, you understand that the tests
23 have been run and they have gotten the results back already
24 on that?

25 DR. MASON: That's correct.

1 If you would like me to explain it. If you want
2 me to explain it you?

3 THE COURT: Please do.

4 DR. MASON: Okay. The tests were performed on the
5 hair specimens were for amphetamines and phetamine class
6 materials. They were performed on the whole hair segments;
7 that is, the whole -- a portion of the length of the head
8 hair of 7.75 grams. Now, the length on that hair is not
9 indicated.

10 Specifically my concern here was to have testing
11 performed on segments of that material that are located
12 proximate to the head. That would be the most recent hair
13 that would be grown. I have to find out, obviously, how
14 long these hairs are, but obviously I can't do that because
15 I can't discuss these materials with them. I have not been
16 able to do so.

17 So particularly with respect to two sets of
18 agents, again amphetamine and methamphetamine, and also
19 cocaine and related materials, my original intention was to
20 ask for testing from a much more narrow time frame located
21 proximate, more approximately to the time of the incident in
22 question here. That would be the time of the date of death.

23 THE COURT: Have you gotten a copy of the test
24 results?

25 DR. MASON: I do.

1 THE COURT: Do they indicate what part of the hair
2 they tested?

3 DR. MASON: They do not, which indicates to me per
4 their practice that this hair was not segmented. The entire
5 length of the hair was tested. It was not tested for a
6 region proximate to the time of the critical incident, sir.

7 THE COURT: Well, you don't think they would have
8 run it on the whole hair or the --

9 DR. MASON: Well, that's the point. The normal
10 practice would be, absent a request for segmentation, that
11 is for narrower time frame, they would run it on the entire
12 hair specimen.

13 THE COURT: Well, if they didn't find anything on
14 the whole hair specimen, why do you think they would find
15 something on one end of it and not the other?

16 DR. MASON: Because the concentration in the hair
17 itself is close to do administrative cutoff for the test.
18 And in looking at a shorter segment may find it, whereas a
19 longer segment may not. The whole point is, though, that
20 segments of hair without drug in them, sir, as a dilution
21 factor for the hair itself.

22 Obviously I can't guarantee that re-testing for a
23 shorter time is going to change the results, but
24 obviously -- if we are interested more in a result related
25 more toward the time of the critical incident in question, I

1 felt it was a valuable technique that could be applied.

2 THE COURT: Well, with all due respect, if they
3 tested the hair and they didn't find any, I don't know why
4 testing a portion of the hair instead of the whole hair is
5 going to make any difference.

6 I realize that -- I realize that if you are going
7 to try to get closer to the incident, you will get the hair
8 closest to the head that's most recently grown out. I
9 understand that, but if --

10 DR. MASON: That's true, and the answer is -- the
11 answer is because these tests never have a level of
12 sensitivity of zero. There is only the cutoff. Okay?

13 In other words, when you get an undetected on a
14 report like this, it doesn't mean that there is none there.
15 It means that at a given level there is none there. There
16 might be some there below that level, but if it's less than
17 a certain level per their report, they don't report it.

18 THE COURT: All right. I didn't see any. I
19 thought it was zero, is what I saw there.

20 DR. MASON: No, sir, it says literally none
21 detected. It gives units and then gives a reporting limit.

22 THE COURT: All right.

23 DR. MASON: So administratively, even if the drug
24 is there, but it's less than a reporting limit, they will
25 not report it as positive.

1 THE COURT: All right. Thank you, sir. We will
2 discuss it and I'm sure Mr. Starnes will be getting back to
3 you.

4 DR. MASON: Thank you, sir.

5 THE COURT: Time is of the essence, so we will do
6 what we can.

7 DR. MASON: I understand, sir. Thank you very
8 much, sir. Good-bye.

9 (Whereupon, the phone conference was concluded)

10 THE COURT: Of course, this is proverbial swatting
11 at elephants, or something, to me, okay. But be that as it
12 may, you got the test results. They sent it off. SLED ran
13 their own tests. They sent it off and they had it tested by
14 a lab of Mr. Starnes' choice. They didn't find any. Now
15 his expert says well, if they test a little bit differently
16 in one portion of it, they might find it, where they don't
17 find it in the test.

18 You know, to me that's sounds like swatting at
19 flies with a baseball bat, but, you know --

20 MR. GOWDY: It's all defense for us, judge. The
21 sole reason we are doing this is because there were
22 questions during the last trial --

23 THE COURT: Yes.

24 MR. GOWDY: -- by his counsel about drug use by
25 these two victims, and there is not a scintilla of evidence

1 to support it, so we are playing defense. That's the sole
2 reason we wanted these tests.

3 THE COURT: I understand.

4 The other thing is about the blood sample. They
5 won't run that. There's a hang-up about that.

6 And, you know, I'm getting a little put out about
7 that, because something should be done to get it done. I
8 let the SLED agent go on vacation and all that kind of
9 stuff, and I want the test run. Now I find out the test
10 still hasn't been run. And I think it's kind of doubtful
11 they are going to find anything on this dried blood anyway,
12 but regardless of what I may think, if we get the test
13 run -- whatever we need to do to get the test run, let's get
14 it run.

15 MR. GOWDY: Do you want me to call Chief Stewart?

16 THE COURT: That's the only thing I know to do.
17 And if they need to change it over to his account, as long
18 as we can assure that it gets run and the results and any
19 hair that's -- I mean any blood sample or anything that's
20 left over and not used up would be sent directly back to
21 SLED, if they can do that, I don't have a problem with it.

22 MR. GOWDY: Will Dustin change it over to his
23 account, to Mason's account?

24 THE COURT: They didn't want to do that. I know
25 that.

1 MR. COLER: They didn't want to, and I don't know
2 the procedure. It may have to come back here and go back
3 there.

4 MR. GOWDY: Why don't I call Chief Stewart to ask
5 them to bypass the purchase order. I'll pay them. I'll
6 reimburse them.

7 THE COURT: We can get the money from indigent
8 defense that we need to get to reimburse you, if you need to
9 do that, but I just -- we need to go ahead and get the blood
10 sample run up there.

11 MR. GOWDY: Will you give me a chance to call
12 Chief Stewart?

13 THE COURT: I would like his expert to have an
14 opportunity to converse with them about the tests, whether
15 he wants to see them run and what they are going to use to
16 run it.

17 MR. COLER: That's been arranged.

18 THE COURT: So there is no question about that..
19 And then on the hair sample, if there is any hair left over
20 that he can run his test on, if we can try to facilitate
21 that. I mean, you know, this is about the end of the line
22 on that anyway. I don't even know if there is enough left
23 to test. I understood there is not much. But let's see if
24 we can accommodate it. We don't have much time to get it
25 done.

1 MR. GOWDY: Can that doctor not tell us what test
2 he thinks they should have run, but didn't, and us get SLED
3 to run that test?

4 MR. COLER: According to our -- on the blood or on
5 the hair?

6 MR. GOWDY: The hair.

7 MR. COLER: SLED doesn't have the ability to do
8 the hair test.

9 MR. GOWDY: No, no, no. But SLED sent it to Mr.
10 Starnes' lab.

11 MR. STARNES: No, SLED's lab. That's who SLED
12 uses. That's who -- that's who --

13 MR. GOWDY: It's your lab too. And doctor -- what
14 Dr. Mason is saying he would have had them run a different
15 test.

16 MR. COLER: Right.

17 MR. GOWDY: Well, tell them to tell SLED what test
18 he wants run and let SLED request that one.

19 MR. COLER: Yeah.

20 MR. GOWDY: If it's logged in under SLED.

21 THE COURT: Here is the problem.

22 MR. COLER: No other tests exists.

23 THE COURT: Here is the problem. Here is the
24 problem. Time-wise he's saying there is a problem with
25 getting them to run any test because they aren't getting

1 authorized to run the test. And he is saying he doesn't
2 have the ability to order the test, because it's not in his
3 account. Okay. But we need to do whatever we need to do to
4 get the test run. That's the -- that's my point. He needs
5 to have some input into it. And Agent Smith agreed to write
6 a letter telling them that his expert could have some input
7 into the test that it must run.

8 If we need to transfer it over to his account,
9 then see if you can get in touch with Chief Stewart and see
10 if he can override something and see if we can get it put
11 into the expert's name. I don't know their policies and
12 procedures. Maybe that can't be done, but let's see if we
13 can get it done, so we can get the test run. I mean, you
14 know time is just growing short. I would like to see the
15 test run.

16 As far as the hair sample is concerned, I would
17 like to do what we can also to get that -- the availability
18 to run that test, but I don't know who is going to run it.
19 I don't know who -- you know, is he going to ask -- is your
20 expert going to ask the lab up there to run?

21 MR. STARNES: Yes, sir, he's got an account with
22 them. He doesn't go into the lab.

23 THE COURT: And the hair too?

24 MR. STARNES: I'm sorry?

25 THE WITNESS: The hair too?

1 MR. STARNES: Yes, sir.

2 MR. GOWDY: I guess that's my point, judge, is if
3 his expert has a certain hair test he wants run, and it's
4 under SLED's account, and we are willing to pay for it, why
5 won't he just tell SLED -- ask for this test instead of the
6 one that you asked for? Clearly the hair test we did
7 doesn't satisfy them. There is another test out there that
8 needs to be run. What's the name of it and we will pay for
9 it and have that one run.

10 I don't think SLED is going to agree to transfer
11 evidence to anybody's name. They probably will agree to
12 have another test, if we can figure out what the name of
13 that test is. We have already done one hair test. I need
14 to know what -- what's the other talismanic test that they
15 haven't done that needs to be done.

16 MR. STARNES: Your Honor, this is the same thing
17 dealing with the clothing, the same method. Now, there was
18 an order, and that order that we did for the DNA testing for
19 the clothing was mirrored identical. The only difference is
20 my mother changed the lab from Lab Corp to NMS. The same
21 order, same process. They released the evidence to the
22 defense's expert -- or the lab. I don't touch it. I don't
23 get involved. There is a chain of custody documents that
24 follow to allow this laboratory to do it. It's no different
25 than the DNA testing on the clothing, Your Honor.

1 THE COURT: Now, what's the problem? Where does
2 the breakdown come in?

3 MR. STARNES: SLED releasing it to us -- or not
4 actually to us. SLED releasing custody so Dr. Mason can
5 direct the type of testing that he wants directed and have
6 input, as far as how it's going to be done, where they are
7 going to test the hair sample at, and so forth.

8 THE COURT: What happens to the clothing that was
9 tested after it was tested?

10 MR. STARNES: We have haven't gotten the results,
11 but it's negative.

12 THE COURT: But what happened to the clothing that
13 was tested?

14 MR. COLER: We never got it. I don't think
15 Lexington County ever got it back. That's part of the
16 problem. Once it leaves the possession of any state agency,
17 how do we know where it goes and what's going to happen to
18 it? I mean, if Dr. Mason wants to fly to Pennsylvania and
19 take those hair samples back to Boone, North Carolina, then
20 that -- how can we ever trust the chain on all that? That's
21 the problem, I think, judge.

22 MR. STARNES: He doesn't do that. He will not
23 handle evidence. He does not go into a laboratory. He's in
24 Boone, North Carolina. NMS labs --

25 MR. GOWDY: Who at SLED has the authority to

1 transfer evidence from their account to Dr. Mason's account
2 so he can ask for whatever test he wants to be done? Does
3 Dustin, or --

4 MR. COLER: I would imagine Lieutenant Eagerton,
5 THE head of the toxicology department can do that, transfer
6 it. We can get them on the phone now.

7 MR. GOWDY: It always makes a huge difference if
8 there is a judge in the room.

9 THE COURT: Yeah, call them and let's see what we
10 can do.

11 MR. STARNES: I thought the order that Your Honor
12 had signed was sufficient enough to do that. And I sent
13 that to Dr.. Mason and --

14 MR. COLER: You know, I think SLED has told me
15 that the only tests that they are aware of on the hair is
16 the test that was done. They are just not aware of another
17 test.

18 (Whereupon, the following was a conference call
19 with SLED Agent Dustin Smith)

20 MR. COLER: Hey, this is Bob Coler from the
21 solicitor's office in Spartanburg.

22 UNKNOWN TELEPHONE OPERATOR: Yes, sir.

23 THE COURT: Can I speak to Lieutenant Eagerton or
24 Dustin Smith.

25 UNKNOWN TELEPHONE OPERATOR: Dustin, I just

1 transferred phone call to him, and Lieutenant Eagerton is
2 not in at the moment.

3 Would you like to hold, or could I have Dustin
4 return your call?

5 MR. GOWDY: Would you let Dustin know that we have
6 a judge that's a part of our group and we would like to talk
7 to him just as soon as he concludes that other call?

8 UNKNOWN TELEPHONE OPERATOR: So you want to
9 call -- what's your number.

10 MR. GOWDY: Well, we will hold, because we have
11 got a judge that's part of -- that's in the room with us now
12 and the matter is fairly sensitive, so we will hold, if
13 that's okay.

14 UNKNOWN TELEPHONE OPERATOR: Okay. Hold on. I'll
15 check back with you, okay?

16 MR. COLER: Thank you.

17 MR. GOWDY: Okay.

18 (Off the record)

19 (Back on the record)

20 MR. GOWDY: Judge, I'm going to get Chief
21 Stewart's number.

22 THE COURT: Okay, sure.

23 (Whereupon, Mr. Gowdy left the judge's chambers)

24 UNKNOWN TELEPHONE OPERATOR: Mr. Coler?

25 MR. COLER: Yes, sir.

1 UNKNOWN TELEPHONE OPERATOR: I'm going to transfer
2 you now, okay?

3 MR. COLER: Thank you.

4 SLED AGENT DUSTIN SMITH: Hello.

5 MR. COLER: Dustin, this is Bob Coler.

6 SLED AGENT DUSTIN SMITH: Hi, Bob, how are you
7 doing?

8 MR. COLER: Good. I have got you on speaker
9 phone. I have you -- we are in Judge Alford's chambers and
10 Mr. Starnes is with us.

11 SLED AGENT DUSTIN SMITH: Okay.

12 MR. COLER: We just got off the phone with Dr.
13 Mason in North Carolina.

14 SLED AGENT DUSTIN SMITH: Okay.

15 MR. COLER: There were a couple of issues that
16 came up and we wanted to see if you could help us solve
17 these.

18 SLED AGENT DUSTIN SMITH: Okay.

19 MR. COLER: The blood, as far as I understand it,
20 is in Pennsylvania waiting to be tested.

21 SLED AGENT DUSTIN SMITH: That's correct.

22 MR. COLER: Dr. Mason tells us that he can't pay
23 for that because it's not in his account.

24 SLED AGENT DUSTIN SMITH: I don't believe that to
25 be true. When I spoke to the people at NMS on Thursday,

1 they said that it could remain in our account and that
2 pretty much anyone could pay for it.

3 We did not look at the details of that, but it was
4 my understanding, whenever I left -- after I talked to them
5 Thursday, that it would not be a problem for the blood to
6 remain underneath SLED's account and have an outside party
7 pay for it.

8 MR. COLER: Do you remember who you spoke to at
9 NMS?

10 SLED AGENT DUSTIN SMITH: Yes, I spoke to Maria
11 Ryan, who is -- who Dr. Mason advised that he would like for
12 me to deal with there.

13 MR. COLER: Okay.

14 (Whereupon, Mr. Gowdy returned to the judge's
15 chambers)

16 MR. COLER: Well, Dr. Mason just told us he can't
17 pay for it because it's not under his account. I'm not sure
18 if there is some other reason he wants it put in his account
19 or not.

20 SLED AGENT DUSTIN SMITH: My understanding,
21 whenever I spoke to him the other day, is that one reason he
22 would like to have both the blood and the hair under his
23 account is because he possibly wished to do additional
24 testing on one or both samples.

25 MR. COLER: Okay.

1 SLED AGENT DUSTIN SMITH: And that was whenever I
2 spoke to you and I let you know about that. And so that's
3 kind of where I stand right now.

4 MR. COLER: Okay. My understanding is there is
5 only one test that you are aware of that could be performed
6 on the blood?

7 SLED AGENT DUSTIN SMITH: In regards to
8 methamphetamine and amphetamine, that's correct?

9 MR. COLER: And NMS, as far as you know, is
10 capable of doing that?

11 SLED AGENT DUSTIN SMITH: They are, yes.

12 MR. COLER: And they don't care really who pays
13 for it? They are just ready to do it once they get paid?

14 SLED AGENT DUSTIN SMITH: That was my
15 understanding, yes.

16 MR. COLER: And the hair, Dr. Mason just told us
17 that because he saw none detected on the report, he thinks
18 that the hair was tested as a whole and that they detected
19 none. He wants to segment the hair and test portions of it
20 and he thinks he may possibly get a different result. Have
21 you ever heard of anything like that?

22 SLED AGENT DUSTIN SMITH: You can certainly get
23 different results from different areas within the hair,
24 since the drug is deposited on the hair as it grows and as
25 it's used.