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STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM YORK COUNTY
Court of General Sessions

John C. Hayes, III, Circuit Court Judge

Case No.: 93-GS-46-4296
93-GS-46-4299
93-GS-46-4301
93-GS-46-4303

State of South Carolina, Respondent,

v.

Mar-Reece Aldean Hughes, Appellant.

RECORD ON APPEAL

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ATTORNEYS FOR RESPONDENT

INDEX

Transcript of Record of General Sessions Court, September 11 - September 22, 1995	1
Motion to Suppress, Filed August 14, 1995	2989
Indictments of December 13, 1993	2990
Notice of Intent to Seek the Death Penalty, dated December 13, 1993	2996
Notice of Evidence in Aggravation, dated January 20, 1993	2997
Jury Verdict, dated September 18, 1995	2998
Jury Sentence,	3000
Sentence of Appellant, Dated September 20, 1995	3001
SLED Report of February 3, 1994	3003
Sentence of Eric Dwayne Forney, Case Number 93-GS-46-4297, dated March 10, 1994	3038
Written Communication from Jury to Trial Judge indicating deadlock as to the sentence of Appellant	3039
Written communication from Trial Judge to Jury	3040
Brady Motion, filed August 29, 1995	3041
Motion for Continuance, filed August 14, 1995	3043
Motion for List of Prosecution's Witnesses, filed August 29, 1995	3045
Motion for Production, filed August 29, 1995	3048
Motion to Require SLED to Provide All Reports, Analysis of Evidence, etc., dated August 28, 1995	3050

Documentation regarding Attorneys relieved from case	3051
Defendant's Brief in Support of Motion to Suppress Indictments Nos. 93-3845 and 93-3846	3070
Brief of the State in Support of the Admission of Testimony/Evidence of the Defendant's Character During the Penalty Phase of Trial, dated September 8, 1995	3084
Motion to Suppress Statements Absent Presence of Counsel, dated August 28, 1995	3096
Motion to Exclude Evidence, Filed August 29, 1995	3097
Letter dated August 28, 1995, from Solicitor Pope to Attorney Schusterman, Re: notice of Evidence in aggravation	3098
Motion to Continue, or in the Alternative to Prohibit the Introduction of Evidence, dated August 14, 1995	3100
Report of Finding Mental Capacity dated December 9, 1992 (Pre-trial hearing Exhibit S-26 dated 9/8/95; State's Exhibit #76 (ID) dated 9/17/95)	3103
Motion to Restrict the State from Trying the Defendant as Principal Actor dated August 4, 1994	3108
Motion to Require the State to Withdraw the Intent to Seek the Death Penalty, dated August 3, 1994	3109
Motion to Suppress Statement for a Suppression Hearing, dated August 3, 1994	3111
South Carolina Department of Corrections, Gilliam Psychiatric Hospital, Discharge Summary (Exhibit S-28 dated (9/8/95)	3112
South Carolina Department of Corrections, Gilliam Psychiatric Hospital, Intake Assessment (Exhibit S-27 date 9/8/95)	3114
Report of Finding Mental Capacity dated April 4, 1995 (Pre-trial Hearing Exhibit D-2 dated 9/8/95; Trial Exhibit D-9 dated 9/21/95	3116

Report of Finding Mental Capacity dated August 3, 1994 (Pre-trial
Hearing Exhibit S-29 dated 9/8/95; State's Exhibit No. 78 (ID)
dated 9/17/95)3122

Report of Finding Mental Capacity (Pre-trial Hearing State's
Exhibit S-25 dated 9/8/95; State's Exhibit No. 77 (ID) dated
9/17/95)3125

INDEX

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PRETRIAL MOTIONS and INCAMERA HEARINGS
 September 7-8, 1995 Pgs. 2469-2985 VOL. X - XI
 September 14, 1995 Pgs. 831, 863 VOL. IV

JURY SELECTION/AIKEN COUNTY
 September 11-13, 1995 Pgs. 3-830 VOL. I - III

TRIAL - PHASE I Pgs. 831-1853 VOL. IV - VII

TRIAL - PHASE II Pgs. 1854-2468 VOL. VII - IX

PRETRIAL MOTIONS and INCAMERA HEARINGS:
SEPTEMBER 7-8, 1995 - YORK COUNTY

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>REXCROSS</u>
Roberta Tepper				
Mr. Pope	2472			
Mr. Schusterman		2474		
Harold C. Duke				
Mr. Pope	2580		2603	
Mr. Schusterman		2591		2604
Leslie R. Herring				
Mr. Pope	2605			
Mr. Schusterman		2609		
Timothy Sanders				
Mr. Pope	2613		2671	
Ms. Brice		2631		
Broadus Lee Strain				
Mr. Brackett	2673		2685	
Mr. Schusterman		2679		
Randy Clinton				
Mr. Brackett	2687			
Mr. Schusterman		2697		
James Scott Rockholt				
Mr. Brackett	2705			
Ms. Brice		2708		

1 PRETRIAL MOTIONS and INCAMERA HEARINGS
 2 SEPTEMBER 7-8, 1995 - YORK COUNTY (CONTINUED)

3	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE CROSS</u>
4	Mary Henry Kitts				
5	Mr. Brackett 2711				
6	Mr. Schusterman		2714		
7	Larry P. Devinney				
8	Mr. Brackett 2715				
9	Ms. Brice		2725		
10	Michelle Ayers				
11	Mr. Pope 2752				
12	Mr. Schusterman		2758		
13	Crystal Ayers				
14	Mr. Pope 2760				
15	Mr. Schusterman		2769		
16	Dafferlin Barnard Dupree				
17	Ms. Brice 2777			2785	
18	Mr. Pope		2781		2785
19	Charles Cabaniss				
20	Mr. Brackett 2789				
21	Mr. Schusterman		2807		
22	Bruce Bryant				
23	Mr. Brackett 2822				
24	Mr. Schusterman		2829		
25	Dafferlin Barnard Dupree				
26	Ms. Brice 2832			2854	
27	Mr. Pope		2838		2857
28	Donald William Morgan				
29	Ms. Brice 2858			2883	
30	Mr. Pope		2870		2884
31	Renee S. Kohanski				
32	Ms. Brice 2885			2921	
33	Mr. Pope		2903		2924
34	Dafferlin Barnard Dupree				
35	Ms. Brice 2926			2943	
36	Mr. Pope		2935		2945
37	Jerry Bailey				
38	Mr. Brackett 2968			2977	
39	Ms. Brice		2974		

 PRETRIAL MOTION AND INCAMERA HEARINGS
 SEPTEMBER 14, 1995

	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE CROSS</u>
4	Beth Ann Jayne				
5	Mr. Pope	831		861	
5	Ms. Brice		844		
6	Sean McMillian				
7	Mr. Pope	863			
7	Ms. Brice		874		

 TRIAL - PHASE I

	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE CROSS</u>
11	Beth Ann Jayne				
11	Mr. Pope	917		947	
12	Ms. Brice		937		948
13	Sean McMillan				
13	Mr. Pope	954		974	
14	Ms. Brice		969		
15	Crystal Ayers				
15	Mr. Pope	975		998	
16	Mr. Schusterman		988		1000
17	Michelle Ayers				
17	Mr. Pope	1001		1007	
18	Mr. Schusterman		1005		
19	Steven Gibson				
19	Mr. Pope	1008		1019	
20	Mr. Schusterman		1017		
21	Lisa Simmons				
21	Mr. Pope	1020			
22	Sherrie Grimmit				
23	Mr. Brackett	1035			
23	Mr. Schusterman		1044		
24	Mary Grant				
24	Mr. Pope	1047		1072	
25	Mr. Schusterman		1062		1073

1 TRIAL - PHASE I (CONTINUED)

2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	Cathy Ann Pittman				
	Mr. Pope	1074			
4	Mr. Schusterman		1084		
5	Marvin Bohon				
	Mr. Brackett	1087		1109	
6	Mr. Schusterman		1101		
7	Jerry W. Waldrop				
	Mr. Brackett	1110			
8	Mr. Schusterman		1116		
9	Timothy Sanders				
	Mr. Pope	1118		1156	
10	Ms. Brice		1135		
11	Dan Ketchel				
	Mr. Pope	1158		1164	
12	Mr. Schusterman		1161		1164
13	Gregory Scott Maggart				
	Mr. Pope	1165			
14	Mr. Schusterman			1168	
15	James David Holcomb				
	Mr. Pope	1171			
16	Craig Alexander				
	Mr. Pope	1174		1195	
17	Mr. Schusterman		1184		1196
18	Randy Clinton				
	Mr. Brackett	1196		1223	
19	Mr. Schusterman		1215		
20	Larry R. Devinney				
	Mr. Bracektt	1224			
21	Mr. Schusterman			1236	
22	Gary Norman Streett				
	Mr. Brackett	1246			
23	Mr. Schusterman		1249		
24	James Scott Rockholt				
	Mr. Brackett	1250			
25	Mr. Schusterman		1252		

1 TRIAL - PHASE I (CONTINUED)

2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE CROSS</u>
3	Charles T. Cabaniss				
3	Mr. Brackett	1253		1294	
4	Mr. Schusterman		1275		1298
5	Leroy Perry				
5	Mr. Brackett	1304			
6	Ms. Brice		1312		
6	Kent Pruett				
7	Mr. Pope	1318		1328	
7	Mr. Schusterman		1324		1329
8	Michael Williams				
9	Mr. Pope	1330		1359	
9	Mr. Schusterman		1348		
10	Lawrence Eugene Gainey, Jr.				
11	Mr. Pope	1362			
11	Mr. Schusterman		1387		
12	David Black				
13	Mr. Pope	1398		1428	
13	Mr. Schusterman		1421		
14	Joseph D. Powell				
15	Mr. Pope	1431		1452	
15	Mr. Schusterman		1443		
16	David J. Collins				
17	Mr. Pope	1453		1473	
17	Mr. Schusterman		1469		1474
18	Chris Watts				
19	Mr. Brackett	1474;1485			
19	Mr. Schusterman		1480;1486		
20	Harry Jennings				
21	Mr. Brackett	1487;1492		1517	
21	Mr. Schusterman		1496;1512		1517
22	Broadus Strain				
23	Mr. Brackett	1518		1524	
23	Mr. Schusterman		1521		
24	Everett Earl Jenkins				
25	Mr. Pope	1526			
25	Mr. Schusterman		1535		

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TRIAL - PHASE I (CONTINUED)

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE CROSS</u>
Felix Wimborn				
Ms. Brice	1557		1567	
Mr. Pope		1560		1569
Donald William Morgan				
Ms. Brice	1571		1594	
Mr. Pope		1579		1595
Mar-Reece Aldean Hughes				
Mr. Schusterman 1642				
Mr. Pope		1663		
Bob Ormseth (In camera)				
Mr. Pope	1713			
James Elbert Mann				
Mr. Brackett	1722			
Mr. Schusterman		1724		
Bob Ormseth				
Mr. Pope	1725			

TRIAL - PHASE I

CLOSING ARGUMENTS:

Mr. Brackett	Page 1740
Mr. Pope	Page 1747
Mr. Schusterman	Page 1768

CHARGE TO THE JURY Page 1783

VERDICTS OF JURY Page 1838

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
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TRIAL - PHASE II

OPENING STATEMENTS:

Mr. Brackett
Ms. Brice

Page 1864
Page 1867

WITNESS DIRECT CROSS REDIRECT RECROSS

Donald Diamont

Mr. Pope 1870
Ms. Brice

1873

1875

Randy Weavil

Mr. Pope 1875
Ms. Brice

1881

Robert Reese

Mr. Brackett 1887
Ms. Brice

1901

Broadus Strain

Mr. Brackett 1903
Ms. Brice

1908

1911

1912

Richard Douglas Waldrop

Mr. Brackett 1914
Mr. Schusterman

1940

Christopher Gorth

Mr. Brackett 1963
Ms. Brice

1970

Stella Lingerfeldt

Mr. Brackett 1975

David Black

Mr. Brackett 1980

Everett Earl Jenkins

Mr. Pope 1998

Craig Alexander

Mr. Pope 2000

Kelly Carroll

Mr. Pope 2004

William Douglas Taylor

Mr. Pope 2007

1 TRIAL - PHASE II (CONTINUED)

2 WITNESS DIRECT CROSS REDIRECT RECROSS

3 Percy Jones

4 Mr. Brackett 2015

2029

5 Mr. Schusterman

2025

6 Sheila Mazyck

7 Mr. Brackett 2030

8 Mr. Schusterman

2032

9 Otis Speight

10 Mr. Pope 2035

11 Myra McCants

12 Mr. Pope 2043

13 Caroline Burry

14 Ms. Brice 2057;2062

2089

15 Mr. Pope

2061;2082

16 Alice Norwood

17 Ms. Brice 2091

2113

18 Mr. Pope

2103

19 Willie Cornelius Hughes

20 Ms. Brice 2117

21 Mr. Pope

2137

22 Melinda Hughes Gentry

23 Ms. Brice 2142

24 Mr. Pope

2151

25 Peter Skidmore (In camera)

Ms. Brice 2158

Mr. Pope

2161

Renee Kohanski (In camera)

Ms. Brice 2164

Mr. Pope

2167

Mary Hughes Wilson

Ms. Brice 2174

Mr. Brackett

2186

2183

Renee S. Kohanski

Ms. Brice 2188;2191

Mr. Pope

2248

2190;2217

2248

Donald William Morgan

Ms. Brice 2263

Mr. Pope

2291

2278

2294



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TRIAL - PHASE II (CONTINUED)

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Dafferlin Barnard-Dupree				
Ms. Brice	2296		2331	
Mr. Pope		2314		2334

TRIAL - PHASE II

CLOSING ARGUMENTS

Mr. Pope Page 2403
Ms. Brice Page 2418

CHARGE TO THE JURY Page 2428

ADDITIONAL CHARGE TO THE JURY Page 2455

VERDICT Page 2458

SENTENCE Page 2463

1 EXHIBITS

2 MOTIONS and INCAMERA HEARINGS
3 (September 7-8, 1995)
4 (September 14, 1995)

5 STATE'S EXHIBITS:

6	<u>NO.</u>		<u>ID</u>	<u>EVD</u>
7	1	Certified Copy/Indictments		2475
8	2	Order		2476
9	3	Affidavit		2476
10	4	Copy/Order and Transcript		2487
11	5	Affidavit of Service/Discovery		
12	6	Photograph		2581
13	7	Photograph		2581
14	8	Gray scale printout		2581
15	9	Gray scale printout		2581
16	10	Gray scale printout		2588
17	11	Gray scale printout		2588
18	12	Photo lineup (small)		2607
19	13	Line-up/gray scale		2607
20	14	Line-up/gray scale		2609
21	15	Diagram/Holiday Inn		
22	16	Diagram/Galleria		
23	17	Diagram/Overview		
24	18	Photograph		2627
25	19	Photograph		2627
26	20	Photograph		2627
27	21	Photograph		2627
28	22	SWAT/Reciprocal Agreement		2790
29	23	Statement/Hughes		2822
30	24	Rights Card		2822
31	25	Report		2844
32	26	Report 12/9/92 - Doctor Morgan		2844
33	27	Report		2847
34	28	Report		2847
35	29	Report		2847
36	30	Report		2848
37	31	Reports (5)		2871
38	32	Letter from Mr. Pope to Schusterman		2981
39	33	Photograph		833
40	34	Photograph		833
41	35	Photograph		833

42 DEFENDANT'S EXHIBITS:

43	1	Letter 12/23/92		2822
44	2	Report of Finding/Metal Capacity		2867
45	3	Physicians Notes		2945
46	4	Report		2945

1 TRIAL EXHIBITS

2 STATE'S EXHIBITS:

3	NO.	DESCRIPTION	ID	EVD
4	1	Photograph		920
	2	Photograph		920
5	3	Photograph		920
	4	Photo line-up (color)		931
6	5	Photo line-up		931
	6	Sketch		966
7	7	Photo line-up		966
	8	Photo line-up		986
8	9	Photo line-up		986
	10	Photo line-up		986
9	11	Transcript of 911	1026	
	12	Sketch		977
10	13	Printout/photo		1003
	14	Tape/911		1012
11	15	Photograph		1042
	16	Photograph		1060
12	17	Photograph		1060
	18	Photograph		1060
13	19	Sketch		1126
	20	Photograph		1096
14	21	Photograph		1096
	22	Photograph		1096
15	23	Photograph		1096
	24	Photograph		1096
16	25	Photograph		1096
	26	Photograph		1096
17	27	Photograph		1096
	28	Clothing/Bag		1091
18	29	Vest		1091
	30	Pistol and Bullets/McCants		1092
19	31	Belt/Sam Brown		1092
	32	Radio/Walkie-Talkie		1210
20	33	Radio Pouch/Clipholder		1334
	34	Photo line-up		1133
21	35	Photo		1133
	36	Line-up gray scale		1133
22	37	Photo		1133
	38	Photo		1133
23	39	Photo		1133
	40	Radio Inventory		1173
24	41	Photo		1179
	42	Clothes/Forney		1179
25	43	Weapon and bullets		1180
	44	Photo		1182
	45	Photo		1182
	46	Photo		1182

TRIAL EXHIBITS (Continued)

1	NO.	DESCRIPTION	ID	EVD
2	47	Coat/Hughes		1208
	48	Photo		1318
3	49	Photo		1318
	50	Photo		1213
4	51	Photo		1213
	52	Hat/woods		1332
5	53	Articles/clothing/personal-Hughes		1233
	54	Photo		1236
6	55	Shoes/Socks		1248
	56	Rights Card		1268
7	57	Statement/Hughes/Redacted		1268
	58	Measurements		1340
8	59	Measurements		1340
	60	Measurements		1340
9	61	Measurements		1340
	62	Measurements		1340
10	63	Photo/Clip		1347
	64	Photo/Clip		1347
11	65	Plastic bag/Cartridge Casing		1371
	66	Gear shift knob		1382
12	67	Gunshot Residue Kit		1385
	68	Bullets (2)		1386
13	69	Cigarette butts		1404
	70	Photo		1410
14	71	Print Chart		1421
	72	Gunshot Residue Kit/Forney		1420
15	73	Projectiles		1461
	74	Sketch		1543
16	75	Head		1543
	76	Evaluation 11/92		
17	77	Evaluation 12/14/94		
	78	Evaluation 8/1/94		
18	79	Video Tape Player		1726
	80	North Carolina Sentence		1870
19	81	Judgment and Commitment		1870
	82	North Carolina Infractions/Board		1889
20	83	Board/Behavior/York County	1907	
	84	Photograph	1985	
21	85	Knife		1990
	86	Final Summary/Maynard	1996	
22	87	Envelope w/badge, insignia, FOP pin; name tag, badge		1014
23	88	Photograph		2042
	89	Photograph		2042
24	90	Photograph		2042
	91	Photograph		2042
25	92	Photograph		2042
	93	Photograph		2042
	94	Photograph		2042
	95	Photograph		2042

TRIAL EXHIBITS (Continued)

EXHIBITS

DEFENDANTS EXHIBITS

1	1	Photograph	1654
2	2	Photograph	
3	3	Genogram	2259
4	4	Clipping	2102
5	5	Photograph	2102
6	6	Photograph	2102
7	7	Photograph	2102
8	8	Photograph	2102
9	9	Report/Kohanski 4/4/95	2028

COURT'S EXHIBITS

9	1	Note from Jury	
10	2	Stipulation	
11	3	Charge Request	
12	4	Charge Request	
13	5	Charge Request	
14	6	Charge Request	
15	7	Charge Request	
16	8	Charge Request	
17	9	Charge Request	
18	10	Charge Request	
19	11	Note from Jury	
20	12	Note from Jury	
21	13	SLED Report	
22	14	Photographs (8)	
23	15	Indictment	
24	16	Indictment	
25	17	Indictment	
26	18	Indictment	
27	19	Daily Population Count/York County	
28	20	Chart/Doctor Dupree	
29	21	Mitigating Circumstances	
30	22	Motion to Restrict Solicitor's Argument	
31	23	Defense Request No. 8	
32	24	Defense Request No. 3	
33	25	Defense Request No. 4	
34	26	State's Request No. 2	
35	27	State's Request No. 1	
36	28	State's Request No. 4	
37	29	Defense Request No. 6	
38	30	Defense Request No. 1	
39	31	Note to Jury (Dinner)	
40	32	Note from Jury	
41	33	Note from Jury	
42	34	Note to Jury	

THE STATE VS HUGHES

PROCEEDINGS

SEPTEMBER 11, 1995

AIKEN COUNTY, SOUTH CAROLINA

1
2
3
4 THE COURT: Good morning Members of the Jury Panel. I
5 am John Hayes and I am the Resident Judge of the Sixteenth
6 Judicial Circuit, that's York and Union Counties. Under
7 statutory provision, that is, a provision of our state
8 passed by the General Assembly, we are here today to draw
9 a jury in a case that is pending in York County.

10 Those of you that are drawn, as you probably already
11 know, will travel with us later this week to York County
12 where you will be sequestered and that is not as bad a
13 word as it sounds from what we have been seeing on tv and
14 all for a period not to exceed ten or so days. It will
15 not be an exceedingly long time. We are aware of the
16 inconveniences that poses for you, but we must do the
17 court's business and under certain circumstances we must
18 do it this way. So I appreciate your cooperation with us
19 and with me and with the Clerk's Office.

20 What we are going to do first the drawing of a jury in
21 a case such as this, this is a murder case wherein the
22 death penalty is sought, is different and a little more
23 extensive than the way juries are drawn in other cases.
24 What I am going to do first is call on the -- well, let me
25 introduce to you, we have here with us our Solicitor, Tom

THE STATE VS HUGHES

1 Pope, of York County and Kevin Brackett, his Deputy, and
2 the defendant is represented by Mr. Steve Schusterman and
3 Ms. Christina Brice, both of the York County Bar.

4 The defendant is Mar-Reece Aldean Hughes. Mr. Hughes,
5 I am going to ask you just to stand. He is the defendant.

6 At this time before we go further I am going to ask
7 the Solicitor do you want to call the case at this time?

8 MR. POPE: Yes, sir, Your Honor. If it please the
9 court? Indictment 93GS46-4296 The State vs. Mar-Reece
10 Aldean Hughes, Indictment for murder. Indictment
11 93GS46-4305 The State vs. Mar-Reece Aldean Hughes, Count
12 one, armed robbery, count two, possession of firearm
13 during the commission of or attempt to commit a violent
14 crime. 93GS46-4303 The State vs. Mar-Reece Aldean Hughes,
15 Indictment for possession of a stolen vehicle. 93GS46-4304
16 The State vs. Dwayne Eric Forney and Mar-Reece Aldean
17 Hughes, Indictment for conspiracy.

18 If it please the court, Your Honor, all four of these
19 have been true billed by the York County Grand Jury and as
20 the court has noted The State is seeking the death penalty
21 and has noticed the defendant on the murder charge.

22 Mr. Schusterman, it is my understanding the defendant
23 has entered pleas of not guilty to each indictment?

24 MR. SCHUSTERMAN: Your Honor, we have; we have entered
25 a plea of not guilty to all four indictments.

THE STATE VS HUGHES

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THE COURT: All right, thank you.

What we are going to, first, even though we have your questionnaires and I appreciate y'all taking the time to fill those out. They are very helpful and they will save us some time in the long run and even though we have that and even though The Clerk, I believe, has most of the information they need, what I am going to do is ask the Clerk to call the roll so that we can make sure everyone is here who is supposed to be and, also, this gives me and counsel sort of an informal, long distance way to meet you so we can actually see what you look like; we have seen you on paper since we have your questionnaire answers, so we can see you, hear your voice and kind of just get to know you even though it's not face to face and shaking your hand.

I ask that throughout these procedures when you respond, please do so in a loud voice because I need to hear you and I am a pretty good distance away from you, the Clerk needs to hear you and counsel who are involved in the trial of this need to hear you. So, please, give us a good strong, loud response and at this time I am going to ask the Clerk to call the Roll.

THE CLERK: Do have any particular questions you want me to ask?

THE COURT: No, mainly just the usual questions, the

THE STATE VS HUGHES

1 name -- just give us your name, your occupation and,
2 again, that sounds strange since you put this on paper for
3 us, but this gives us a chance to meet you, your name,
4 your occupation, your spouse's name and your spouse's
5 occupation if they are and if he or she is employed and if
6 you are retired, just tell us what you used to do, what
7 you did when you didn't have the luxury of being retired.

8 THE CLERK: Ladies and Gentlemen of the Petit Jury,
9 also as I ask your occupation and you tell me you work at
10 Palmetto Federal, tell me what you do there, are you a
11 bank teller, are you a loan officer or are you a
12 secretary. If you are a teacher, you teach first grade or
13 if you teach -- coach or high school, something more about
14 what you do at your job, please. And when I call your
15 name, just please stand where you are and then answer the
16 questions, okay?

17 Judge, would you like me to call out those that have
18 been excused also and transferred so the counsel will know
19 if there has been any changes or not?

20 THE COURT: Yes, I think that would be good, yes.

21 (Whereupon, The Clerk called the roll of the 250 petit
22 jurors.)

23 Members of the jury panel, I am going to ask you now
24 to give me your attention. What we are going to do first
25 is in just a moment I am going to ask all of you to stand

THE STATE VS HUGHES

1 and raise your right hand. The Clerk is going to
2 administer an oath to you and she will ask if you swear or
3 affirm, because I know some people prefer not to swear,
4 but rather give an affirmation, so if all of you will
5 stand at this time and raise your right hand, the Clerk
6 will administer an oath.

7 (Jurors complied.)

8 THE CLERK: You shall true answer make to all such
9 questions that shall be propounded to you by this court or
10 on order thereof; you shall speak the truth, the whole
11 truth, and nothing but the truth so help you God. Please
12 be seated.

13 THE COURT: I am going to ask you some general
14 qualification questions. The response to some of these
15 would be personal in some instances and so what I am going
16 to ask you to do if you feel that one of these categories
17 -- if you fall in one of these categories, just stand and
18 give us your name and number. After a little while, I am
19 going to excuse the jury panel back to the jury assembly
20 room and those of you who need to discuss one of those
21 things with me we'll send for you one at a time because we
22 have to keep a record of all of this, but we don't
23 necessarily want everyone to know what your situation is.

24 First, are any of you present today who do not fall
25 into one of these categories either a valid South Carolina

THE STATE VS HUGHES

1 driver, that is, have a valid South Carolina driver's
2 license or have a valid Department of Transportation
3 identification card or a qualified elector, that is, a
4 registered voter? Are any of you, you don't have to have
5 any evidence of this one you, but do any of you not fall
6 into one of those categories? If so, please stand.

7 All right, your name?

8 JUROR: Cliff Norwood.

9 THE COURT: Okay, do you know your number?

10 THE CLERK: Juror 169.

11 THE COURT: All right, you may be seated. We will call
12 you back later.

13 JUROR: Brian Besson. I think it's 22.

14 THE CLERK: 22.

15 JUROR: I can't understand.

16 THE COURT: All right, we'll let you come up here just
17 a minute. Mr. Donelow.

18 All right, I am going to ask Mr. Schusterman and Mr.
19 Pope. Do I have his letter?

20 (Letter reviewed by Messrs. Schusterman and Pope.)

21 Let the record reflect that neither the Solicitor nor
22 Mr. Schusterman have any objection to Mr. Donelow being
23 excused.

24 All right, we are going to excuse you, you may go.

25 MR. DONELOW: Thank you, Your Honor.

THE STATE VS HUGHES

1 Mr. Donelow who we have a medical report indicating he
2 does, in fact, as we have observed has difficulty hearing
3 and so he has been excused by the court.

4 THE CLERK: Mr. Donelow, if you will come forward, we
5 will give you a check for coming today, okay?

6 MR. DONELOW: That's what now?

7 THE CLERK: We will give you a check for coming today
8 and you can leave.

9 MR. DONELOW: Okay.

10 THE COURT: Okay, your number?

11 JUROR: 32.

12 THE COURT: All right.

13 JUROR: 165.

14 THE COURT: All right, you'll be -- yes, sir, your
15 number?

16 JUROR: I don't know my number, but my name is Michael
17 Graham.

18 THE COURT: Graham?

19 JUROR: Graham.

20 THE CLERK: 90.

21 THE COURT: All right, have a seat, we'll send for
22 you.

23 Yes, sir?

24 JUROR: 47 Sean Carter.

25 THE CLERK: 47, Sean Carter.

THE STATE VS HUGHES

1 THE COURT: Wait, wait, wait, wait, stand back up.
2 THE CLERK: Your name, please?
3 THE COURT: Stand back up.
4 JUROR: 93.
5 THE CLERK: 93.
6 JUROR: Willie Battles.
7 THE CLERK: Juror 16.
8 JUROR: Timothy Wright.
9 THE CLERK: Juror 248.
10 THE COURT: Now I see a lot of people standing and I
11 hope everybody falls into this category. All I was asking
12 was if you had one of those three things, a driver's
13 license, a voter registration or an ID card. That's really
14 all I want to know at that time, but I assume that's why
15 all of you stood and we will take these up at a later time
16 as I've said.
17 JUROR: That's fine. I thought you said if we didn't
18 have.
19 THE CLERK: I have to have one at a time, please.
20 Please stand and give me your name again. 32?
21 JUROR: 32.
22 THE CLERK: Anyone else? Your name, please.
23 JUROR: Ernestine Gregg, 93.
24 THE CLERK: Thank you. Your name? Your number is 15?
25 JUROR: Yes.

THE STATE VS HUGHES

1 THE CLERK: Thank you.

2 JUROR: 22.

3 THE CLERK: 22.

4 Anyone else?

5 THE COURT: All right, so we still have some -

6 JUROR: I have a question. Did you say ---

7 THE COURT: I'll be glad; why don't we just start
8 over. We had some confusion and that's why I ask you to
9 please listen very carefully and I try to structure these
10 questions very carefully because you all aren't the only
11 ones. For some reason we have trouble with this question
12 every time we draw a jury, but this is what the question
13 is.

14 THE CLERK: We have one more juror that just showed
15 up, Your Honor.

16 THE COURT: All right, what name?

17 THE CLERK: Bright. 33, Your Honor.

18 THE COURT: Mr. Bright. Where is Mr. Bright?

19 THE CLERK: They are bringing him in.

20 THE COURT: Okay. Mr. Bright, before you sit down,
21 your name is what?

22 JUROR: Herbert Bright.

23 THE COURT: Are you married?

24 JUROR: Single.

25 THE COURT: Do you work?

THE STATE VS HUGHES

1 JUROR: Yes.

2 THE COURT: What do you do?

3 JUROR: Make candy rolls.

4 THE COURT: Okay, all right, you will be seated then.
5 First, before you do, raise your right hand and the Clerk
6 will administer an oath to you.

7 THE CLERK: You shall true answer make to all such
8 questions that shall be propounded to you by this court or
9 an order thereof; you shall speak the truth, the whole
10 truth and nothing but the truth so help you God.

11 JUROR: Yes.

12 THE CLERK: Have a seat.

13 THE COURT: Mr. Bright, we have gone over some
14 categories of people to determine whether they are
15 qualified or not first. If you fall into one of these
16 categories, I am going to ask you to just stand and let us
17 know.

18 Now the people that I want to hear from those of you
19 who do not have one of these are the only ones I need to
20 talk to. If you have one of these three things, you don't
21 have to have all three, just one, you don't have to have
22 it in your pocket or pocket book; you just have to be one
23 of these, you have to be a registered voter, if you are a
24 qualified voter or qualified elector, then you are
25 qualified to serve as a juror. If you hold a valid South

THE STATE VS HUGHES

1 Carolina driver's license, you are qualified to serve as a
2 juror. If you are not in either one of those categories,
3 but if you have an ID card issued by the Department of
4 Transportation of South Carolina, you are qualified. Now
5 the ones I want to stand at this time are only those who
6 do not have at least one of those three things. Any of you
7 that do not have at least one of those three things please
8 stand.

9 All right.

10 JUROR: Cliff Norwood, 169.

11 THE COURT: Okay.

12 Next, if any of you reside in a county other than
13 Aiken or if any of you are not a United States citizen,
14 please stand at this time.

15 JUROR: Dawn Coffey.

16 THE CLERK: 56, Your Honor.

17 THE COURT: Now, listen closely to this one also. If
18 any of you have been convicted or pled guilty in a state
19 or federal court to a crime which carried a potential
20 punishment of greater than one year and if your civil
21 rights have not been restored by pardon or amnesty, I ask
22 you to stand up. Now let me tell you this includes people
23 who have been convicted or pled guilty of criminal
24 offenses which carry a potential penalty of more than one
25 year. It does not have anything to do with the sentence

THE STATE VS HUGHES

1 one may have received. Now if any of you fall into that
2 category, please stand and give us your number.

3 JUROR: Martin Johnson, 125.

4 THE COURT: Okay. No one else stands.

5 If any of you are unable to read, write, speak or
6 understand the English language, please stand.

7 No one stands.

8 If any of you have less than a sixth grade education
9 or its equivalent, please stand.

10 No one stands.

11 If any of you have any physical or mental infirmity,
12 any physical or mental infirmity that would cause you to
13 be unable to render efficient jury service, please stand.

14 JUROR: I have back trouble.

15 THE COURT: All right, just give us your number right
16 now.

17 JUROR: Number 94.

18 THE COURT: Okay.

19 JUROR: My name is William Baker, I don't recall my
20 number; I have a letter.

21 THE COURT: Okay, we will take care of that later.
22 Right now I want to know your name or number.

23 JUROR: William Baker.

24 THE CLERK: Juror number 13.

25 JUROR: Thomas Boatwright.

THE STATE VS HUGHES

1 THE CLERK: T. J. Boatwright?

2 JUROR: Yes.

3 THE CLERK: 26.

4 JUROR: Sally Deuse.

5 THE CLERK: Jury 68.

6 JUROR: Number 2, Marcia Allen.

7 THE CLERK: Yes, ma'am.

8 JUROR: Jessie Milhouse; I don't know my number.

9 THE CLERK: 154.

10 JUROR: James Youngblood.

11 THE CLERK: Youngblood, juror 249.

12 JUROR: Number 93.

13 THE CLERK: Thank you, ma'am.

14 Are any of you on the jury panel a clerk of court,
15 deputy clerk of court, constable, sheriff, probate judge,
16 county commissioner, magistrate, or hold any elected
17 county office or work in this courthouse, please stand.

18 No one stands.

19 Do any of you hold a law enforcement commission either
20 with or without pay, if so, please stand?

21 JUROR: Terry Davidson 65.

22 JUROR: Clay Frazier.

23 THE CLERK: 77.

24 JUROR: Your Honor, did you ask if anybody had worked
25 in the courthouse?

THE STATE VS HUGHES

1 THE COURT: Now, no, work now.

2 Any of you on the jury panel the primary care giver
3 for a child under the age of seven and has the duty of
4 care of that child and do not work outside the home, if
5 so, please stand.

6 JUROR: Dawn Hawkins.

7 CLERK: 66.

8 JUROR: Valerie Calloway, I think it's 44.

9 THE CLERK: Yes, ma'am.

10 JUROR: Patricia Smith 208.

11 THE CLERK: 208, thank you.

12 THE COURT: If any of you are 65 or older, that is,
13 over the age of 65, you have what is called an exemption.
14 That means you can serve if you wish or you can be excused
15 if you wish. If any of you fall into that category,
16 please stand.

17 JUROR: Sally Deuse.

18 THE CLERK: 68.

19 JUROR: Walter Suber 216.

20 THE CLERK: Thank you.

21 THE COURT: Now, do any of you have any reason that I
22 have not covered why you feel you cannot serve as a juror
23 as you are called at this time. Just please stand and we
24 will get your name and number also.

25 All right we will start here. Let's just start with

THE STATE VS HUGHES

1 this gentleman.

2 JUROR: 245 Allen Winkler.

3 THE CLERK: 245.

4 JUROR: Julie Cauthen.

5 COURT REPORTER: I'm sorry, what was her name?

6 THE CLERK: Cauthen, 48.

7 JUROR: 178 Charles Plenge.

8 JUROR: Richard Jeffords; I don't remember the number.

9 THE CLERK: 121.

10 JUROR: Linda Perry.

11 THE CLERK: 176.

12 JUROR: 242.

13 THE CLERK: 242? Beverly Williams.

14 JUROR: Ernestine Gregg.

15 THE CLERK: 93.

16 JUROR: Eileen Hartman.

17 THE CLERK: 106.

18 JUROR: Mary Breland.

19 THE CLERK: 32.

20 JUROR: Alan Clingan 55.

21 THE CLERK: 55? Allen Clingan?

22 JUROR: Yes, ma'am.

23 THE CLERK: Thank you.

24 JUROR: Linda Neely 165.

25 THE CLERK: Thank you.

THE STATE VS HUGHES

1 JUROR: Marvin Harrison 105.
2 THE CLERK: Thank you.
3 JUROR: Carol Wagner 233.
4 THE CLERK: Thank you.
5 JUROR: Brian Besson 22.
6 THE CLERK: Thank you.
7 JUROR: Eugene Bing 24.
8 THE CLERK: Thank you.
9 JUROR: Michael Melton, I'm not sure.
10 THE CLERK: 152.
11 JUROR: Michael Graham. I don't know my number.
12 THE CLERK: 90.
13 JUROR: 36 Kedar Brown.
14 JUROR: Hugh Murphy.
15 THE CLERK: Juror 162.
16 JUROR: Herlinda Nadal.
17 THE CLERK: Juror 164.
18 JUROR: 147. I have a question.
19 THE CLERK: Anyone else?
20 THE COURT: All right, we will go back over those with
21 you individually in just a little bit.
22 Now before we move forward, does The State feel that
23 the general qualifications have been covered?
24 MR. POPE: Yes, sir, Your Honor.
25 THE COURT: The defense?

THE STATE VS HUGHES

1 MR. SCHUSTERMAN: Yes, sir, Your Honor.

2 THE COURT: Now, did any of you not receive a
3 questionnaire in the mail? If so, please stand.

4 No one stands.

5 Did any of you not return a questionnaire, if so,
6 please stand.

7 All right, yes, sir.

8 JUROR: Anthony Boyd 29.

9 JUROR: I mailed mine on Thursday; I was out of town.
10 I got it Tuesday. (Mary Breland 32.)

11 THE COURT: We will ask the two of you then when we
12 break in just a few minutes that while you are in the jury
13 assembly room to fill in the questionnaire. We want to
14 make sure each of you gives one.

15 Now is there anyone who did turn in a questionnaire
16 feel they need to modify or change or correct or is there
17 any inadequency or any things that are not accurate within
18 your questionnaire, if so, please stand.

19 JUROR: Warren Safter (197).

20 THE COURT: All right, we will give you a chance to do
21 that during the break.

22 All right, now I have introduced to you a moment ago
23 the parties and the defendant. Now the defendant you have
24 heard the charges so you would be better aware of the
25 essence of the charges they involve an incident that

THE STATE VS HUGHES

1 occurred in York County, South Carolina on or about
2 September 25, 1992 wherein one James Brent McCants who was
3 at that time employed in law enforcement was killed while
4 on duty. Mr. Hughes is charged in that offense. Are any
5 of you on the jury panel related by blood or marriage or
6 have any close personal friendship or acquaintance with
7 the decedent, Brent McCants, or his family or the
8 defendant, Mar-Reece Aldean Hughes, or a man by the name
9 of Eric Dwayne Forney? If so, please stand. No one
10 stands.

11 Are any of you related by blood or marriage to any of
12 the attorneys involved in this case who I earlier
13 introduced to you? If so, please stand. No one stands.

14 Have any of you on this jury panel been represented by
15 any of the attorneys I have represented -- introduced to
16 you earlier, Mrs. Brice, Mr. Schusterman, Mr. Brackett,
17 and Mr. Pope? If so, please stand. No one stands.

18 Have any of you heard anything about this case from
19 any source whatsoever, read about it, heard anything on
20 the street about it, heard anything from the news, any
21 news accounts of this case? If so, please stand. No one
22 stands.

23 Does anyone have any bias or prejudice or interest in
24 this case, any bias or prejudice or interest that would
25 affect your being fair and impartial to The State and the

THE STATE VS HUGHES

1 defendant in the trial of this case? If so, please stand.

2 Yes, sir, just give us your name.

3 JUROR: Warren Safter.

4 THE CLERK: 197.

5 THE COURT: Have any of you formed or expressed any
6 opinion about any matter or issue involved in this case?
7 If so, please stand. No one stands.

8 Were any of you members of the grand jury which passed
9 on this indictment at an earlier time or these
10 indictments, since there are four, if so, please stand.

11 All right, one question I did not ask in the general
12 qualifications that I overlooked, but I think we have
13 already covered it is have any of you served on a circuit
14 court jury within the last three calendar years, if so,
15 please stand.

16 The following are a list of possible witnesses. It is
17 lengthy I'll tell you in advance and I don't know that all
18 of these witnesses will be called and I'm going to ask as
19 I go through these list of names if any of -- does the
20 defense have one?

21 MR. SCHUSTERMAN: Yes, Your Honor.

22 THE CLERK: To present to the court.

23 MR. SCHUSTERMAN: No, we do not, Your Honor.

24 THE COURT: If any of you are related by blood or
25 marriage or know any of these individuals, please just

THE STATE VS HUGHES

1 stand when I call their names. Craig Alexander, David
2 Allen, some of these names are fairly prevalent names, so
3 if you think you may know someone of this name, please
4 stand and we will try to give you some more identifying
5 information. Craig Alexander, David Allen, Joseph Allen,
6 Harry Anthony, Crystal Ayers, that's A-y-e-r-s, Michelle
7 Ayers, Jerry Bailey, Pauline Bailey, Charles Barnes, Rod
8 Benfield, Harry Benson, David Black, Steve Blair, Marvin
9 Bohan, Ann Boyce, Allen Brandon, Bruce Bryant, Michael
10 Buckaloo, Charles Cabaniss, Zackery Calhoun, Kelly
11 Carroll, Jim Chapman, Randy Clinton, David Collins, Edward
12 Conner, Frances Cox, Larry Crooks, Larry DeVinney, Harold
13 Duke, Gene Ervin, Corey Fewell, Paula Forrest, Larry
14 Gainey, James Gaithers, Steve Gibson, Christopher Goforth
15 -- Christopher Gorth G-o-r-t-h, Mary Grant, Sherrie
16 Grimmett, Chuck Guyton, Karen Hendrickson, Les Herring,
17 David Holcomb, Russell Holley, Ernie Hope, Robbie Hudgins,
18 Beth Ann Jayne, Ira Jeffcoat, Dr. Earl Jenkins, Harry C.
19 Jennings, Dr. Leon Johnson, Korey Kaelin, Dan Ketchel,
20 Raymond -- Dr. Raymond Kimball, Michael Kimbrell, Marc
21 Kitts, Leonard LaRue, Robin Lewis, Stella Lingerfeldt,
22 Jody Long, Joseph Lowery, Sam Lowery, Priscilla Mack, Greg
23 Maggart, James Mann, Doug Manning, Dr. Jim Maynard, Myra
24 McCants, Bill McCants, Sean McMillan, Geri Mirro, Alan
25 Morgan, Dr. Donald Morgan, John Ortuno, Armand Parker,

THE STATE VS HUGHES

1 Tommy Parnell, John Patton, Leroy Perry, Cathy Ann
2 Pittman, Freddie Powell, Joseph Powell, Kent Pruett,
3 Michael Quinn, Robert Reese, Scott Rockholt, James Rogers,
4 Gary Rollins, Tim Sanders, Dr. C. Schroeder, Robert Sears,
5 Lisa Simmons, Shawn Sloan, Michael Smith, Dr. Otis
6 Speight, Mark Spratt, George Stanley, Michael Stitts,
7 Sandra Stowe, Broadus Strain, Gary Street, Willie Stroud,
8 Doug Taylor, John Thickens, S. L. Thomasson, Richard
9 Waldrop, Jerry Waldrop, John Walker, Derek Williams, H. S.
10 Williams, Mike williams, Felix Wimborn, Joe Vahle -
11 V-a-h-l-e, Vera Youngblood, Dr. D. DeWitt, Audie Hudson,
12 George Reeder, Billy Washington, Sgt. Norman Brice, Lt.
13 Meyers, Sgt. Mobley, Antonio Lee, Lt. Mazyck -
14 M-a-z-y-c-k, Sgt. Perry Jones, Kevin Greg Kimmer, Jack
15 Ferner, Sarah Lewis, Sally Berg, Gerald Reaves, Cpl. Steve
16 Holland, Officer Richard Harvey, and Nelson Avila. If so,
17 please stand. No one stands.

18 Okay, we do have one. Yes, sir?

19 JUROR: Juror Number 115. Alan Morgan and Doug Taylor
20 I've heard before.

21 THE COURT: I'm sorry.

22 JUROR: The names Alan Morgan and Doug Taylor. I have
23 heard that name before.

24 THE COURT: All right. We will note that and get with
25 you in just a few minutes.

THE STATE VS HUGHES

1 MR. SCHUSTERMAN: Your Honor, there would be only one
2 name at this point that the defense would like to submit
3 to the jury panel, Doctor Renee Kohanski I believe is now
4 practicing forensic psychiatry here or in Augusta,
5 Georgia.

6 THE COURT: Doctor Renee Kohanski. Does anyone know
7 that individual or is related by blood or marriage?

8 All right.

9 MR. POPE: If it please the court? The purpose as I
10 understand it if there other doctors, of course, The State
11 is aware of some already during previous hearings, that
12 the jury should be made of aware of, I would request the
13 defense to do so, if there are other witnesses.

14 THE COURT: Would you stand, Mrs. Brice, or one of
15 you, and -- are there any other medical personnel?

16 MR. SCHUSTERMAN: At this point the only potential
17 witnesses right now, medical personnel, would be Doctor
18 Donald Morgan, I believe you called out on The State's
19 list, Doctor Renee Kohanski, Doctor Dafferlin
20 Barnard-Dupree of Columbia, South Carolina; she is present
21 in the courtroom today. Your Honor, at this time that
22 would be the only medical testimony and the only definite
23 witnesses.

24 THE COURT: I ask that question about Doctor
25 Barnard-Dupree. Does anyone know her or related by blood

THE STATE VS HUGHES

1 or marriage? All right, no one stands.

2 Does any member of the jury panel know of any reason
3 whatsoever why they could not serve and why they should
4 not serve as a fair and impartial juror in the trial of
5 this particular case? If so, please stand. No one
6 stands.

7 Any further questions by The State?

8 MR. POPE: No, sir, Your Honor.

9 THE COURT: By the defense?

10 MR. SCHUSTERMAN: None by the defense, Your Honor.

11 THE COURT: We have been in here a good while and what
12 I want to do now is let you in just a moment go back to
13 the jury assembly room. Those of you who are on our list
14 of issues so to speak we are going to call you back up one
15 at a time so we can take care of those before we draw the
16 jurors that we are going to have come back for a more
17 in-depth examination. What we are going to do is we are
18 going to draw panels of ten each and set times for you to
19 come back so all of you do not have to sit around, that
20 is, we will have ten come back as an example we planned at
21 2:00 - we might be running a little later than that - and
22 then two hours later we will have another ten. In the
23 morning at 9:00 we will have ten come in and on through.

24 THE CLERK: Your Honor, we also have an answering
25 machine if you would like to make it available. We can

THE STATE VS HUGHES

1 hand out the numbers.

2 THE COURT: All right. We also will utilize a call
3 service here. We will tell you a little more about that.
4 You will have a number so that you can call in if we are
5 running late and have to move a group. You will be grouped
6 in groups of ten, group A, group, B, group C and we will
7 assign a time for you to come back and, of course, we will
8 tell you also to call in to see if those times change. But
9 first we have to find out who all is going to be qualified
10 to serve and then from that we will draw our list from
11 which we will have the panels made up.

12 Now when you go to the jury assembly room, I am going
13 to ask that you not discuss this case, that you do not
14 discuss the issues we have gone over, that you don't
15 discuss matters about how you may feel personally about
16 this type of situation and these charges because you will
17 have those of you who will serve on the jury will have
18 ample time to do that at a later point in the trial. You
19 will be deliberating and you can discuss these matters.
20 But we are going to be asking each of you individually
21 some questions and then, if you serve on the jury, you
22 don't know enough at this point - you don't know anything
23 really other than names and the incident about the matter
24 to start talking about it. So while you are in the jury
25 assembly room, don't discuss the case, don't discuss the

THE STATE VS HUGHES

1 attorneys or the other people in the courtroom, just don't
2 occupy yourselves with this case and if you end up serving
3 on it, then you will have, like I say, ample time to do
4 that.

5 Now I will remind you I think again I hope you
6 remember, but while it is on my mind I am going to tell
7 you at this time. Those of you who are to come back once
8 you are assigned to a panel don't allow anyone to discuss
9 this case with you in the jury room, outside the
10 courtroom, at home, at work, anywhere whatsoever. Do not
11 let anyone discuss this case with you. And do not read
12 about it if it's in the paper, I don't know that it would
13 be, do not watch anything about it on tv, if there is.
14 Again, I don't know that there would be. And don't listen
15 to anything on the radio, if there is. That is, if you
16 hear something to the effect that even sounds like it
17 might have something to do with this case, turn it off,
18 don't read it, because you cannot be influenced by
19 anything regarding this matter outside the confines of
20 this courtroom.

21 Now anything else from the solicitor before I let them
22 go back to the jury assembly room and go over with the
23 individuals with certain problems?

24 MR. POPE: No, sir, Your Honor.

25 THE COURT: Anything from the defense?

THE STATE VS HUGHES

1 MR. SCHUSTERMAN: Nothing by the defense, Your Honor.
2 THE COURT: All right, I'll ask you to go back to the
3 jury assembly room and we will be having you come back one
4 at a time in just a few minutes to go over these
5 particular individual problems. Thank you.

6 All right, counsel, we will take about a five minute
7 break while everybody is clearing out.

8 (Recess.)

9 MR. POPE: If it please the court, Your Honor, as to
10 the jurors that the law enforcement is attempting to
11 locate ---

12 MR. SCHUSTERMAN: That was my exact question.

13 MR. POPE: --- you know, I just was curious if the
14 court had made a determination possibly of having a cut
15 off point.

16 THE COURT: Well, I have not made a cut off point and
17 what I told the Clerk was to get them in as quick as they
18 can and as many as we can and then we'll see where we are.
19 Ideally, that would happen before we draw anyone's name.
20 If it happens later, I'll just have to deal with it.
21 That's all I can say at this point.

22 Now, a couple of things for counsel. We have a
23 Margaret Richardson, who is a member of the jury panel,
24 that has a 1:30 doctor's appointment in Augusta. This is
25 with a cardiologist; we understand she has congenital

THE STATE VS HUGHES

1 heart problems. I'm going to release her to go to that
2 appointment with the understanding that she will bring
3 back to us, if he will so do, a doctor's statement saying
4 she cannot serve.

5 MR. SCHUSTERMAN: Without objection.

6 MR. POPE: No objection.

7 THE COURT: Well, again, the problem is we would go
8 ahead and draw her, she's number 188, do we draw her or
9 just leave her out of the pool and if she comes back, --

10 MR. SCHUSTERMAN: Your Honor, my first question being
11 if juror number 188 has -- has juror 188 asked to be
12 released or is it just the ---

13 THE COURT: Was she ---

14 MR. SCHUSTERMAN: --- no, Your Honor, what I am saying
15 is that I understand she has an appointment today, but
16 beyond the appointment has she asked to be taken off the
17 jury panel.

18 THE CLERK: No, Your Honor.

19 THE COURT: Well, I don't know if she's asked, but the
20 thing from a doc -- it's written LPN -- well, no it's not,
21 it's from Doctor C. Flannigan. It says "Please excuse Mrs.
22 Richardson from jury duty. She is currently under our care
23 as well as Doctor Sue-Ling." So I don't---

24 THE CLERK: She's not on the list where she stood
25 earlier when you asked questions. I think that is what Mr.

THE STATE VS HUGHES

1 Schusterman is asking. She didn't ask.

2 THE COURT: Why don't we get her in here first in just
3 a minute.

4 Now, one final thing, I think, oh, the three juror
5 type list which we will put in the jury assembly room when
6 the panels come back, any exceptions or objections by The
7 State?

8 MR. POPE: No, sir, Your Honor.

9 THE COURT: By the defense?

10 MR. SCHUSTERMAN: None by the defense, Your Honor.

11 THE COURT: Let the record show each has had over the
12 weekend to review it.

13 Now, one other thing Mr. Schusterman called to my
14 attention, Madam Clerk, we understand there was someone
15 who signed and sent in a blank questionnaire, that is,
16 they didn't fill in the questionnaire, they just signed it
17 and sent it in.

18 MR. SCHUSTERMAN: Been excused?

19 THE CLERK: Uh-huh.

20 MR. SCHUSTERMAN: It was one of the excused jurors.

21 THE COURT: Oh, okay.

22 MR. SCHUSTERMAN: We confirmed that, Your Honor.

23 THE COURT: That's fine.

24 MR. SCHUSTERMAN: Your Honor, one more jury matter if
25 I may?

THE STATE VS HUGHES

1 THE COURT: Certainly.

2 MR. SCHUSTERMAN: Juror number 132, an Ann Keller,
3 filled out her questionnaire, but did not sign it and I
4 think that's something that the court may want to take up.

5 THE COURT: If she remains, we will ask her to sign it
6 before she starts answering the questions on an individual
7 basis.

8 MR. SCHUSTERMAN: Thank you.

9 THE COURT: Anything from The State before we start
10 getting these individual jurors in?

11 MR. POPE: No, sir, Your Honor.

12 THE COURT: From the defense?

13 MR. SCHUSTERMAN: Nothing further, Your Honor.

14 THE COURT: Keep in mind this is just to go over the
15 requests to be excused. It is not at this point to voir
16 dire them and I want to suggest in the interest of time -
17 does that microphone work right there? Does anybody know?

18 THE CLERK: It should.

19 (Microphone checked out)

20 THE COURT: If that won't work, I think their voices
21 will carry enough. I'll just ask them to come and stand at
22 this podium then. I just didn't want them to take the
23 extra time.

24 (Microphone continues to be checked out.)

25 THE COURT: All right, let's just scrap that; we need

THE STATE VS HUGHES

1 to move on. We'll just have them come stand up here at the
2 podium. All right? I think all of you all can hear.

3 Madam Bailiff, why don't you just stand right there
4 and I'm going to just direct them to come stand by you
5 right there.

6 All right, now before we do that, Mr. Hughes, ---

7 MR. HUGHES: Yes, sir.

8 THE COURT: --- can you hear me?

9 MR. HUGHES: Yes, sir.

10 THE COURT: All right. You know, last week I granted
11 your counsel's right to -- your right to counsel's motion
12 to let you appear as co-counsel and we discussed certain
13 things. Do you recall that?

14 MR. HUGHES: Yes, I do.

15 THE COURT: Do you want me to go over anything on that
16 again or are you ready to go forward?

17 MR. HUGHES: Yes, I'm ready to go forward.

18 THE COURT: Do you have any questions about that?

19 MR. HUGHES: No, sir.

20 THE COURT: Okay, you may be seated. I would like the
21 record to show that I have examined -- I granted a motion
22 last week to allow Mr. Hughes to appear as co-counsel. I
23 explained to him the possible downsides of that and I have
24 now gone over that briefly with him again and he has
25 indicated he does not wish any further dialogue on it. I

THE STATE VS HUGHES

1 find that Mr. Hughes has freely, voluntarily, knowingly
2 and intelligently and with full understanding of his
3 possible problems and/or downsides of appearing as one's
4 own counsel, even as co-counsel, and with full
5 understanding he is waiving -- he's not waiving his right
6 to counsel -- but that he is agreeing to with full
7 understanding knowingly and intelligently engaging as
8 co-counsel with Mr. Schusterman and Mrs. Brice.

9 MR. POPE: If it please the court, Your Honor, we had
10 previously indicated there was an issue on one of the
11 motions that I could not recall the specific issue. I
12 recall that as of Friday when the court made a finding of
13 competency after the mental testimony that very well may
14 have been taken care of.

15 THE COURT: I thought I did. If I did not, I intended
16 to and I will reiterate that I felt like I did, but my
17 intentions were and I find that and, in fact, if I recall
18 correctly, I went through sort of the language concerning
19 that he is able to participate in his own defense and
20 understand the proceedings and assist counsel and I so
21 find again or confirm my finding.

22 All right, let's bring in juror 188 first. Number
23 188.

24 THE CLERK: Margaret Richardson.

25 THE COURT: Come forward to where the bailiff is

THE STATE VS HUGHES

1 standing. Now I have here a doctor's excuse of where you
2 have a 1:30 appointment in Augusta. Are you asking to be
3 excused from jury duty?

4 JUROR RICHARDSON: Yes, sir, I am having to take some
5 tests because I have congestive heart failure.

6 THE COURT: All right, what I am going to do is
7 release you now to go to that doctor's appointment, ---

8 JUROR RICHARDSON: Okay.

9 THE COURT: --- but I am not going to release you from
10 serving yet.

11 JUROR RICHARDSON: Okay.

12 THE COURT: The odds are that you probably will be
13 released, but what I am going to require is that you have
14 your doctor, Doctor Sue-Ling, just ask her to give a
15 statement for you to bring back to the Clerk indicating
16 that because of your congestive heart situation that you
17 cannot serve as a juror. If you have that, I'll excuse
18 you. If she tells you that, no, the situation is not that
19 bad and you can serve, then we will take care of that and
20 you will serve, but I'm going to let you go to your
21 appointment. Just tell her or him ---

22 JUROR RICHARDSON: It's a him.

23 THE COURT: It's a him, Sue-Ling, okay, that you need
24 a statement to take to the court regarding your inability
25 if he says you are unable to serve.

THE STATE VS HUGHES

1 JUROR RICHARDSON: Okay.

2 THE COURT: All right, thank you. I hope you feel
3 okay.

4 JUROR RICHARDSON: Thank you. Do I report tomorrow
5 morning?

6 THE COURT: No, bring that this afternoon when you get
7 back. Will it be early enough?

8 JUROR RICHARDSON: I don't know; I never did the tests
9 before.

10 THE COURT: Okay; if it's not this afternoon, then
11 bring it first thing in the morning by around 8:30. Will
12 somebody be in the office then?

13 THE CLERK: We will be in.

14 JUROR RICHARDSON: All right, thank you.

15 THE COURT: All right, bring in Number 169. 169.

16 THE CLERK: Cliff Norwood.

17 THE COURT: All right, please come around up here and
18 stand at the podium.

19 What's his name?

20 THE CLERK: Cliff Norwood, Number 169.

21 THE COURT: Mr. Norwood, you don't have a driver's
22 license?

23 JUROR: No, sir, I found out Friday that they had
24 expired.

25 THE COURT: It's expired?

THE STATE VS HUGHES

1 JUROR: Yes, sir.

2 THE COURT: When are you going to get it unexpired?

3 JUROR: Just as soon as I'm out of here.

4 THE COURT: All right, well, is there any other reason
5 you can't serve?

6 JUROR: We do have some upcoming court dates in
7 Atlanta that I am going to have to be on.

8 THE COURT: When are those?

9 JUROR: I have a letter here, sir.

10 THE COURT: All right. This Angela Norwood, is that
11 your wife?

12 JUROR: That's my daughter.

13 THE COURT: That's your daughter? How old is she?

14 JUROR: She just turned 16 and also there are four
15 other children involved in that -- I'm sorry, three other.

16 THE COURT: State versus John Van Encevoet. What is
17 Mr. Van Encevoet charged with if you know?

18 JUROR: Do I have to say that out loud?

19 THE COURT: Well, yes, if you don't mind; it's not
20 going any further than this courtroom.

21 JUROR: Child molestation.

22 THE COURT: All right, I am going to ask you if you
23 would to step out the door just one minute.

24 From The State and the defense what I want to know I
25 would require him since he is going to get his license I

THE STATE VS HUGHES

1 would find that he was while technically not qualified
2 this morning that he could get himself qualified and
3 probably would and probably should; however, I do have in
4 my hand a Summons for his minor daughter, Angela Norwood,
5 wherein he is summoned to be in court a week from today --
6 two weeks starting next Monday -- I certainly feel that he
7 is obviously going to have to comply and at her age she
8 most probably would need her parent with her. But what
9 says The State regarding his request to be excused?

10 MR. POPE: Your Honor, the only concern I have kind of
11 falls back into the matters we previously discussed on the
12 length of the list, of people with other problems. While
13 on the front end it doesn't seem like a problem I guess at
14 some point there has got to be a balancing by the court if
15 we run into numerous situations like that.

16 THE COURT: What does the defense say?

17 MR. SCHUSTERMAN: We have no objection to him being
18 excused.

19 THE COURT: What do we have, a 102?

20 THE CLERK: Yes, sir.

21 THE COURT: All right, I am going to ask him to -- the
22 reason I'm hesitating is, of course, apparently DeKalb
23 County operates much as do we and there's a possibility
24 the defendant in that case could enter a plea of guilt, a
25 possibility that she would not be called as a witness

THE STATE VS HUGHES

1 until the 25th. What I am going to do is I am going to
2 ask him to go ahead and if he's going to get his license
3 to go ahead and do that and I'm going to have Mr. White
4 call Sheila Connors and tell her what our situation is and
5 ask that if she can verify for us that he would not --
6 that Angela Norwood would not be called before the 25th of
7 September, that ought to give us time to complete this
8 trial.

9 Does The State have a problem with that?

10 MR. POPE: No, sir, Your Honor.

11 THE COURT: The defense?

12 MR. SCHUSTERMAN: No, sir.

13 THE COURT: Bring Mr. Norwood back in.

14 Mr. Norwood, what we are going to do is I am going
15 to let you go ahead and go today and get your license and
16 we are going to check with the District Attorney over
17 there to find out whether or not this case may not be
18 called until the 25th, which is one of the dates on there,
19 and then make a determination as to whether to excuse you
20 or not. But you are going to get your license today?

21 JUROR: Most definitely.

22 THE COURT: Okay. All right, you go ahead and do that
23 and what I am going to ask you to do is -- we don't want
24 him to call the machine ---

25 THE CLERK: We have an office number too, Your Honor.

THE STATE VS HUGHES

1 THE COURT: I am going to ask you to call this office
2 number say around two o'clock. Would that be too soon?

3 JUROR: That will be okay.

4 THE COURT: All right, around two o'clock and we will
5 tell you what we have found out.

6 JUROR: All right.

7 THE COURT: Okay, thank you. We need a copy of this.
8 Can we get a copy?

9 THE CLERK: Yes, sir.

10 THE COURT: We'll get you a copy and you can just step
11 out this back way and then you can when you get your copy,
12 they'll show you how to exit. Just give us a call at this
13 number at two o'clock.

14 Here's his envelope in case he wants that.

15 May we have Number 56. I don't have the names.

16 THE CLERK: Dawn Coffey; Dawn Coffey (W/F)

17 THE COURT: All right, you say you are not a citizen
18 or not a resident?

19 JUROR: I am not longer a resident of Aiken County;
20 moved to Barnwell County.

21 THE COURT: When did you move?

22 JUROR: The first of June.

23 THE COURT: So you now reside in Barnwell. Have you
24 changed your address?

25 JUROR: Yes, sir.

THE STATE VS HUGHES

1 THE COURT: Have you done things like changed your
2 social security number?

3 JUROR: No, sir.

4 THE COURT: Driver's license. But you have moved
5 though?

6 JUROR: Yes, sir.

7 THE COURT: You may be excused then, thank you.

8 JUROR: Thank you.

9 THE COURT: The next is Number 125.

10 THE CLERK: Martin Johnson (W/M).

11 THE COURT: You stood regarding a possible criminal
12 offense?

13 JUROR: Yes, sir.

14 THE COURT: What is your situation?

15 JUROR: I pled guilty in Federal Court in July of 1989
16 of I believe two counts of refilling a prescription
17 without proper authorization.

18 THE COURT: And what kind of penalty did that carry? I
19 don't know under Federal law.

20 JUROR: I was charged with numerous counts and each
21 count carried a possible if I recall correctly five years.

22 THE COURT: If you say it carries a potential of five
23 years, then you would be disqualified, so we will excuse
24 you. Thank you.

25 All right next I believe is .94.

THE STATE VS HUGHES

1 THE CLERK: Wilbert Griffin (W/M)

2 Wilbert Griffin, Juror 94.

3 THE COURT: Beside the bailiff in the white jacket.

4 JUROR: All right.

5 THE COURT: His name again, I'm sorry.

6 THE CLERK: Wilbert Griffin, 94.

7 THE COURT: Mr. Griffin, you say you have some
8 physical or mental problem?

9 JUROR: Yes, sir, I do.

10 THE COURT: What is that?

11 JUROR: I have an esophagus reflux that causes a lot
12 of gas. It is embarrassing in public. I have had two back
13 operations and my left leg is kind of numb if I sit over
14 twenty minutes. My back bothers me real bad. I have to
15 take pills for it.

16 THE COURT: I am going to ask you to step out this
17 back door just one minute with the bailiff.

18 We have a doctor's excuse from Doctor Stincer
19 S-t-i-n-c-e-r, is that how you pronounce that, Stincer.

20 What says The State?

21 MR. POPE: Your Honor, does the doctor's excuse say he
22 is unable to serve?

23 THE COURT: Yes. It says that he is unable to serve on
24 jury duty and it is dated September 8th.

25 MR. POPE: Again, Your Honor, my position would be the

THE STATE VS HUGHES

1 same for about everyone in that regards. My concern is the
2 diminishing jury pool. I know we have had some that
3 couldn't sit for a long time and the judge told them they
4 could stand up in the jury box if that would help.

5 THE COURT: And I usually do that, of course, we take
6 an awful lot of breaks, but I think he has more than one
7 problem.

8 MR. SCHUSTERMAN: Your Honor, this is not going to be
9 a half day or a one day trial. I think there are certain
10 steps that a court can take for a short term trial. I
11 think if the man can only sit for twenty minutes at a time
12 and is going to be uncomfortable - we are talking about a
13 trial that is going to last ten to fourteen days. I think
14 that would be an unreasonable request to make him sit that
15 long.

16 THE COURT: I am going to excuse him. Bring him in.
17 I am going to excuse you from serving. If you will
18 just come around, they will give you a check. I
19 appreciate your coming.

20 JUROR: I'm sorry.

21 THE COURT: That's all right. I hope you will feel
22 better.

23 Number 13.

24 THE CLERK: William Baker (W/M).

25 THE COURT: Doctor Cundby indicates you had a heart

THE STATE VS HUGHES

1 procedure and he feels you cannot serve. Do you concur in
2 that?

3 JUROR: Yes, sir, I do and I indicated that on the
4 questionnaire that I filled out that I didn't feel I could
5 serve on this type jury at this time.

6 THE COURT: I am going to let you step out there just
7 one minute.

8 Is The State's position the same?

9 MR. POPE: Yes, sir.

10 THE COURT: The defense?

11 MR. SCHUSTERMAN: Same, Your Honor.

12 THE COURT: He has a doctor's excuse. I am going to
13 excuse him.

14 Bring him in.

15 You can be excused. If you will step up here, they
16 will give you a check.

17 THE CLERK: T. J. Boatwright (W/M), 26.

18 THE COURT: You indicated you had a physical or mental
19 problem to keep you from serving?

20 JUROR: Well, I have a physical problem; I had open
21 heart surgery in October and I'm having some problems with
22 it and about three weeks ago they think I threw a clot as
23 they call it and also Wednesday of last week I severely
24 sprained my back at work and I'm under the doctor's care
25 for that also.

THE STATE VS HUGHES

1 THE COURT: Do you have a doctor's excuse?

2 JUROR: No, sir, I didn't even think about bringing
3 one. All I've got is a little bit or pack of medication
4 the doctor gave me for it.

5 THE COURT: Would the back problem make it
6 uncomfortable for you to sit and those sort of things?

7 JUROR: Yes. Well, I can make ---

8 THE COURT: We'll take a lot of -- not a lot of
9 breaks, but we will take breaks and, generally, when
10 someone has a back or leg problem that's not debilitating
11 I tell them they can sit on the back row and stand if they
12 need to, but we can take care of that, but your heart that
13 wouldn't prevent any problems would it other than the fact
14 ---

15 JUROR: I haven't had any reoccurrence yet, so I don't
16 know; you go day to day with that.

17 THE COURT: Well, I am going to let you remain with
18 us, but I appreciate -- and if you end up on the jury,
19 again, please make sure that you have your medication. I
20 tell my juries when they are serving if they need a break
21 let me know and if you sit on the back row, you can stand
22 when your back bothers you.

23 JUROR: All right, thank you.

24 THE COURT: Just step back.

25 JUROR: Thank you.

THE STATE VS HUGHES

1 THE COURT: Next is number 68.

2 THE CLERK: Sally Deuse (W/F) 68.

3 THE COURT: Ms. Deuse, you can stand right there. How
4 old are you?

5 JUROR: 65.

6 THE COURT: Do you want to serve or not?

7 JUROR: No.

8 THE COURT: All right, we'll let you go.

9 JUROR: I'm a busy lady.

10 THE COURT: Well, we all are busy, but we all have to
11 do certain things, but we will excuse you.

12 All right, bring in number 2, Marcia Allen.

13 THE CLERK: Marcia Allen (W/F) number 2.

14 THE COURT: Are you Marcia Allen?

15 JUROR: Yes, sir.

16 THE COURT: I have a note here from Edgefield Medical
17 Clinic indicating they wanted to have you excused from
18 jury duty due to an accident?

19 JUROR: Yes, sir, I fell down a flight of steps last
20 Sunday and hurt my hip.

21 THE COURT: Are you under their continued care for it?

22 JUROR: The doctor has me under medications and the
23 main problem is I had an x-ray Thursday to make sure I
24 didn't break anything and I had no bones broken, but I
25 have some internal bleeding and some major bruising in my

THE STATE VS HUGHES

1 left hip and she said she was concerned about me sitting
2 for long periods of time with my legs hanging down, that I
3 was to sit with my legs up and to get up and walk around
4 frequently.

5 THE COURT: If we made arrangements for you to have
6 your legs propped up, which you could do, and give you
7 some opportunity to stretch every now and then, do you
8 think that would be all right?

9 JUROR: Yes, sir, that would be just fine.

10 THE COURT: What about you have also got a request
11 from your employer about a software purchase.

12 JUROR: Yes, sir, I am involved in a million and a
13 quarter dollar information systems implementation at the
14 National Wild Turkey Federation and I am the only person
15 that they have and we've been working on this - I went to
16 work for the Turkey Federation in August of last year and
17 we've been working very extensively trying to get together
18 and we had our summer board meeting the second or third
19 week in August and they finally approved some money for us
20 to move forward and so we are trying to move forward. It
21 involves a lot of purchase of equipment and software and
22 the installation of the equipment and software and the
23 thing I am mostly involved in right now is the \$130,000
24 purchase of an integrated software package that I am
25 trying to implement, so I'm the only one they have.

THE STATE VS HUGHES

1 THE COURT: Well, I understand that, but I guess part
2 of my concern is is the letter dated in January where Gary
3 West kind of said you couldn't serve back then for the
4 same reason.

5 JUROR: Yes, sir, I've been working on this since
6 actually I did some volunteer work for the Turkey
7 Federation for a year and a half prior to my employment,
8 so I've actually been working on this project for almost
9 two years. It's an ongoing process.

10 THE COURT: All right, well, hopefully, this will not
11 take too long out of your schedule. I'll let you serve
12 with us.

13 JUROR: Okay.

14 THE COURT: You remain with us.

15 JUROR: Do I need to just go back?

16 THE COURT: Yes, just hang around.

17 JUROR: I'll do that.

18 THE COURT: Okay. Now 154.

19 THE CLERK: Jessie Milhouse (B/F) 154.

20 THE COURT: Are you Jessie Milhouse?

21 JUROR: Yes, sir.

22 THE COURT: And you have got a medical problem?

23 JUROR: Yes, sir.

24 THE COURT: What is it?

25 JUROR: Well, I didn't go no further than the seventh

THE STATE VS HUGHES

1 grade in school and I had got sick one time and I had to
2 go to a mental institution in Columbia.

3 THE COURT: But you're okay now, you are working,
4 aren't you?

5 JUROR: Yeah, I'm working.

6 THE COURT: Are you raising children?

7 JUROR: No, sir.

8 THE COURT: You didn't have any children?

9 JUROR: I had one son.

10 THE COURT: Did you raise him?

11 JUROR: Me and my mother.

12 THE COURT: Okay. But you work?

13 JUROR: Yes.

14 THE COURT: Can you read at all?

15 JUROR: I can read some.

16 THE COURT: Well, I am going to let you stay with us.
17 I think you are smart enough to understand. The fact that
18 you may have had a problem at one time; I think you will
19 be fine with us. I am going to let you stay with us. All
20 right, just step back out.

21 249.

22 THE CLERK: James Youngblood (W/M) 249.

23 THE COURT: All right, sir, you have a note here from
24 Carolina Orthopedics. You have some back problems?

25 JUROR: Yes, sir.

THE STATE VS HUGHES

1 THE COURT: You work as a brick mason?

2 JUROR: Yes, sir.

3 THE COURT: Are you working?

4 JUROR: Yes, sir. The only trouble I have is when I
5 sit a lot.

6 THE COURT: All right, we can make arrangements for
7 that. We take breaks about every hour and a half and I
8 tell my jurors if you will raise your hand we will take a
9 break at any time and I'll let you sit on the back row and
10 you can stand at any time you want, but we can take care
11 of that.

12 JUROR: Okay, well, I can stand.

13 THE COURT: Okay. Well, I figured if you could lay
14 bricks, you can be on the jury.

15 JUROR: As long as I am moving around or standing up
16 I'm all right.

17 THE COURT: We can kind of accommodate you, so we will
18 let you stay with us then.

19 JUROR: Okay.

20 THE COURT: Thank you.

21 JUROR: All right.

22 THE CLERK: Ernestine Greg (W/F) 93.

23 THE COURT: Come around and stand beside the bailiff,
24 Ms. Greg.

25 You indicated you had some sort of physical or mental

THE STATE VS HUGHES

1 problem where you couldn't serve?

2 JUROR: Nodded.

3 THE COURT: You have got to answer with words.

4 JUROR: I am on medication for depression and my
5 nerves.

6 THE COURT: What is the medication?

7 JUROR: Libetrol.

8 THE COURT: Do you work?

9 JUROR: Huh-uh; I have a mild mentally retarded son at
10 home I have to stay at home with.

11 THE COURT: How old is your son?

12 JUROR: 19.

13 THE COURT: How often do you have to take your
14 medicine?

15 JUROR: Once in the morning and once at night.

16 THE COURT: We can take care of that; you can take the
17 medicine while you are serving on the jury. Would you be
18 able to be stable or anything - you wouldn't have any
19 problems serving as a juror.

20 JUROR: It just makes me a little sleepy.

21 THE COURT: Well, if we let you get some sleep at
22 night, you wouldn't have a tv, you won't have a newspaper,
23 so you might get plenty of sleep.

24 How about your son? Is there somebody else around?
25 You say that he is mildly retarded. Does he go to school?

THE STATE VS HUGHES

1 JUROR: Huh-uh.

2 THE COURT: Does he work?

3 JUROR: Huh-uh, no, he's disabled.

4 THE COURT: Is there somebody else there that can ---

5 JUROR: My neighbor.

6 THE COURT: --- take care of him over night? Could
7 they take care of him at night, could he spend the night
8 there? What would he do if you weren't there at night?

9 JUROR: I've never been away from him.

10 THE COURT: Do you have any family here that could
11 help with him?

12 JUROR: Probably.

13 THE COURT: Do you think they could?

14 JUROR: I'm not sure.

15 THE COURT: Okay. We don't like to create a hardship
16 on people, but then again we have to have people serve.
17 I'll let you step out for just one minute. Just step right
18 out.

19 JUROR: All right.

20 THE COURT: What says The State?

21 MR. POPE: In addition to my standard, I don't have a
22 the record, but I think she stated what her husband did,
23 so I think - she indicated family members that could take
24 care of that situation.

25 THE COURT: What says the defense?

THE STATE VS HUGHES

1 MR. SCHUSTERMAN: Your Honor, it would appear that
2 certainly there's not a medication problem the court
3 didn't find that out, but I think it would create a
4 hardship if she is solely responsible for a mildly
5 retarded son.

6 THE COURT: Let me see her questionnaire.

7 Have her come back in. She indicated --
8 Okay, who is James Greg?

9 JUROR: My husband.

10 THE COURT: Does he live there with you?

11 JUROR: Uh-huh.

12 THE COURT: He could watch for your son every night
13 while you are gone?

14 JUROR: He works third shift from eight in the evening
15 until eight in the morning.

16 THE COURT: And do you have any relatives here?

17 JUROR: Sir?

18 THE COURT: Any relatives or anybody who could stay
19 with him overnight or neighbors or friends?

20 JUROR: Not near, huh-uh. My closest relatives is in
21 Warrenville.

22 THE COURT: He is not capable of staying overnight by
23 himself?

24 JUROR: Huh-uh.

25 THE COURT: If you had to put an age, I'm not trying

THE STATE VS HUGHES

1 to be anything other than I need to know these things,
2 what age level would he function on, if you could say?

3 JUROR: I would say a two year old.

4 THE COURT: Okay; all right, I'm going to excuse you
5 then. Thank you. I appreciate your coming. I hope
6 things go well for you, Mrs. Greg.

7 JUROR: Thank you.

8 THE COURT: All right, next would be number 65 Terry
9 Davidson.

10 THE CLERK: Terry -- Excuse me, Your Honor. Terry
11 Davidson (W/M) 65.

12 THE COURT: All right, are you Terry Davidson?

13 JUROR: Yes, sir.

14 THE COURT: And you indicated you are involved in law
15 enforcement?

16 JUROR: Yes, sir, I am a reserve officer with the
17 Aiken County Sheriff's Office.

18 THE COURT: Okay. Do you have a commission from SLED?
19 Are you commissioned?

20 JUROR: I have arrest authorities in the state.

21 THE COURT: Do you have a law enforcement commission
22 from ---

23 JUROR: No, sir.

24 THE COURT: You don't? All right, I'll let you remain
25 with us then because that would not disqualify you.

THE STATE VS HUGHES

1 JUROR: Okay, I just thought ---

2 THE COURT: No, that's the kind of information we need
3 to know and I appreciate it. So you will remain with us.

4 JUROR: Okay.

5 THE COURT: Thank you.

6 JUROR: Thank you.

7 THE COURT: Reginald Frazier.

8 THE CLERK: Juror 77 Reginald Frazier (W/M).

9 MR. SCHUSTERMAN: Is there that you can be a
10 non-commissioned officer, but still have the power of
11 arrest?

12 THE COURT: We were chatting about that as you asked,
13 so we will have to check into that.

14 MR. SCHUSTERMAN: Thank you, sir.

15 THE COURT: Come around and stand beside the bailiff
16 over there. Are you Mr. Reginald Frazier?

17 JUROR: Yes, sir.

18 THE COURT: You have a law enforcement commission?

19 JUROR: Yes, sir, it's limited to the Savannah River
20 site.

21 THE COURT: If you have a law enforcement commission,
22 I'll excuse you then. You will be excused from serving.

23 JUROR: Thank you.

24 THE COURT: You will have a check right up here.

25 All right, next Dawn Coffey. We have already taken

THE STATE VS HUGHES

1 care of that. She has already been excused.

2 Valerie Calloway.

3 THE CLERK: Juror 44 Valerie Calloway (B/F).

4 THE COURT: All right, come around, please, ma'am, and
5 stand beside the bailiff.

6 All right, you are Valerie ---

7 JUROR: Calloway.

8 THE COURT: All right. And you have a child under the
9 age of seven?

10 JUROR: Yes, sir, I have two, Your Honor.

11 THE COURT: You stay at home and keep that child?

12 JUROR: Uh-huh, I am presently unemployed.

13 THE COURT: I'll excuse you then; you are entitled to
14 be excused. Good luck to you.

15 JUROR: Thank you.

16 THE COURT: Step right up here.

17 THE CLERK: Patricia Smith (W/F) 208.

18 THE COURT: Have you withdrawn your request to talk to
19 me and you want your name -- you are willing to have your
20 name included?

21 JUROR: I'm sorry, I didn't hear you.

22 THE COURT: All right, we are going to chat with you
23 about keeping a child under seven.

24 JUROR: I babysit my grandson, but I have arranged for
25 child care indefinitely. My mother will come down from

THE STATE VS HUGHES

1 Columbia.

2 THE COURT: All right, we will put you back in - well,
3 we haven't taken you out, but we won't take you out, how
4 about that?

5 JUROR: All right.

6 THE COURT: Thank you.

7 MR. POPE: Madam Clerk, what number was that?

8 THE CLERK: That was 208.

9 Walter Suber (W/M) 216.

10 THE COURT: While he's getting Mr. Suber, we are still
11 having a little confusion about this law commission on
12 Number 65.

13 MR. POPE: Mr. Brackett here -- once we look at it, we
14 may be willing to agree to something.

15 THE COURT: Okay.

16 You can stop right there, Mr. Suber. Are you 65 or
17 older?

18 JUROR: Yes, sir.

19 THE COURT: You have a right to automatically -- how
20 old are you?

21 JUROR: 65 plus about three months.

22 THE COURT: Okay, you have a right to be excused or
23 you can serve. Now we would love to have and particularly
24 like to have people of your age and wisdom and experience
25 to serve and if you think I'm trying to talk you into it,

THE STATE VS HUGHES

1 you might be right, but we do find people in your age
2 brackett bring a lot to the table, but you have the right
3 to be excused if you wish.

4 JUROR: Your Honor, I would like to be excused. My
5 mother is an alzheimer's patient and I make it a policy to
6 go see her every day and I would appreciate it.

7 THE COURT: Okay. all right. If you will come up
8 here, we'll give you a check. Thank you. Good luck to you.

9 68 -- we have already taken care of Ms. Deuse. haven't
10 we?

11 THE CLERK: Yes, sir.

12 THE COURT: 245.

13 THE CLERK: Allen Winkler (W/M) 245.

14 THE COURT: All right, Mr. Winkler, you have asked to
15 be excused?

16 JUROR: Yes, sir, on the grounds I am a principal of a
17 school. We are a small school and I have to deal with all
18 the discipline and punishment and right now I had to close
19 my office down and my secretary is taking my place in
20 classes because I also teach in the classes.

21 THE COURT: We generally transfer teachers until the
22 Summer. Of course, summer has already gone by. Do you want
23 us to do that?

24 JUROR: Yes, sir.

25 THE COURT: How about over one of the holiday periods.

THE STATE VS HUGHES

1 Would you be able to serve if we have a December term or
2 something?

3 JUROR: Like Christmas?

4 THE COURT: Well, it wouldn't be Christmas. I hope.
5 But like the first week or two in December.

6 JUROR: Well, yes, sir. All I need is time right now
7 because we don't have a lot of subs because we are a small
8 school.

9 THE COURT: I am going to transfer you; I think you
10 have a right to be transferred since you do teach, so we
11 will transfer you. Are you all going to let him know or
12 are you going to tell him now?

13 THE CLERK: We don't have any, Your Honor, except
14 another similar case the second week of October in Aiken
15 County unless it cancels.

16 THE COURT: Do you have any civil?

17 THE CLERK: No, sir, that's a non-jury. Another we
18 have is in November, a week after Thanksgiving.

19 THE COURT: We'll call you the week after
20 Thanksgiving. How about that?

21 THE CLERK: November 27th.

22 JUROR: The 27th?

23 THE CLERK: Yes, we will send you a notice in the mail
24 as to what day and time to report then.

25 JUROR: Okay.

THE STATE VS HUGHES

1 THE COURT: All right, if you will step up here, we
2 will give you a check.

3 All right, Number 48 Julie Cauthen.

4 THE CLERK: Julie Cauthen (W/F) 48.

5 THE COURT: Are you Julie Cauthen?

6 JUROR: Uh-huh.

7 THE COURT: Do you feel like you have a reason to be
8 excused?

9 JUROR: Yes, sir, I do. I have just entered into a
10 new position with a new company and we just took on a
11 major client and at this time I am the only one that does
12 what I do there and I don't need to be away, as well as, I
13 have a five day trip planned next Wednesday to go to
14 California for work.

15 THE COURT: And the trip to California is --

16 JUROR: Yes, next Wednesday for a medical show that we
17 exhibit.

18 THE COURT: And there's no one else in your company --
19 you don't get volunteers to go to California?

20 JUROR: Well, this is -- we are taking over this
21 company's business and we are going to be directing all of
22 their literature and exhibit next year and I have got to
23 go to the show to be able to do that.

24 THE COURT: Where is this -- I don't see any address -
25 oh, yes, it is, Augusta. I ask that you step out here

THE STATE VS HUGHES

1 just one minute.

2 MR. POPE: Your Honor, we are at the top of the other
3 list; it would be just the same position.

4 THE COURT: All right.

5 MR. SCHUSTERMAN: The defense position will be
6 whatever the court decides will be just fine.

7 THE COURT: Bring her back in.

8 I am going to have to ask you to stay with us and,
9 of course, you may not get chosen, but I'm going to have
10 to let you stay in the pool of jurors. So if you will
11 just step back outside.

12 THE CLERK: Charles Plenge (W/M) 178.

13 THE COURT: You asked to be excused?

14 JUROR: Yes, sir.

15 THE COURT: On what basis?

16 JUROR: I live alone and it would be a problem if I
17 had to be sequestered. There would be no one to run the
18 house and pay the bills.

19 THE COURT: Nobody run what?

20 JUROR: To run the house and pay the bills. I live
21 alone. It would be hard particularly if it were that long.

22 THE COURT: Well, it won't be that long, probably
23 about ten days or so and you will have until at least
24 Wednesday of this week. We are not going to draw the jury
25 until at least Wednesday and you might want to check if

THE STATE VS HUGHES

1 there is anything you know coming due you might want to go
2 ahead and take care of it or make arrangements for it in
3 case you are drawn to postpone it until you get back, but
4 I'm going to ask you to stay with us.

5 THE CLERK: 121 Richard Jeffords (W/M).

6 MR. POPE: If it please the court, the law enforcement
7 disqualification what section is that?

8 THE COURT: I don't know the section. It should be
9 somewhere between 14-7-810 et seq.

10 Please come up here and stand up here by the bailiff.

11 JUROR: I am on PTI right now.

12 THE COURT: For what?

13 JUROR: Second degree burglary and grand larceny.

14 THE COURT: But you haven't pled guilty or been
15 convicted you are on PTI, is that correct?

16 JUROR: Yes, sir.

17 THE COURT: Step right out there for just one second.
18 Do you have any other offenses in the past?

19 JUROR: No, sir.

20 THE COURT: What says The State?

21 MR. POPE: Your Honor, I don't think that is cause for
22 him to be excused. we might not be excited about it, but I
23 don't think there is cause.

24 THE COURT: What says the defense?

25 MR. SCHUSTERMAN: I think he would make a terrific

THE STATE VS HUGHES

1 foreman, Your Honor.

2 THE COURT: Bring him back in.

3 I'm not going to be able to excuse you. Of course, if
4 you have finished PTI, then your record would be expunged
5 or whatever for some purposes, not all purposes, but since
6 you have not been convicted or pled guilty, you will
7 remain with us. So you will go in the jury pool. You will
8 stay with us. But I appreciate your calling that to our
9 attention. Thank you. Stay with us.

10 242 Beverly Williams.

11 THE CLERK: Beverly Williams (B/F 242).

12 THE COURT: Mrs. Williams, you say you can't serve
13 with us?

14 JUROR: Yes, sir.

15 THE COURT: Why not?

16 JUROR: I have a brother, well, actually, two brothers
17 in prison and a nephew.

18 THE COURT: All right, but you haven't -- you hadn't
19 been in prison, have you?

20 JUROR: No.

21 THE COURT: I didn't think so. Well, that wouldn't
22 disqualify you.

23 JUROR: But I know, but I guess it's my conscious. I
24 don't know.

25 THE COURT: Okay. Well, we are going to have some

THE STATE VS HUGHES

1 questions to ask you later. We are not going maybe not ask
2 you about your conscious, but we are going to ask you some
3 questions, so I am going to let you stay with us at this
4 time.

5 THE COURT: Next I have 93. We have already done,
6 haven't we? All right 106?

7 THE CLERK: 176.

8 THE COURT: Oh, okay, I see that. I'll cross that out.

9 THE CLERK: Juror 176 Linda Perry (W/F).

10 MR. SCHUSTERMAN: When you were questioning that
11 particular juror, she indicated she was too close to
12 prison and then she said "But" and made some comment to
13 you and I couldn't hear her.

14 THE COURT: You will have to check with the court
15 reporter because I don't remember I mean to be honest with
16 you.

17 MR. SCHUSTERMAN: She said something about her
18 conscious or something.

19 THE COURT: Oh, she did say that. Yes, she did say
20 that. I asked her that not -- that wouldn't disqualify you
21 ---

22 MR. SCHUSTERMAN: I didn't hear her response.

23 THE COURT: She said -- I might -- I'll let you get it
24 direct.

25 MR. SCHUSTERMAN: Thank you.

THE STATE VS HUGHES

1 THE COURT: Ms. Perry, you can come stand up beside
2 the bailiff.

3 All right and you are supposed to have surgery the
4 20th?

5 JUROR: Yes, sir.

6 THE COURT: How long has that been scheduled?

7 JUROR: Probably about three weeks, maybe four weeks.
8 I can get the exact date for you.

9 THE COURT: It is elective surgery?

10 JUROR: Yes, sir, to the point to where my feet are
11 bothering me now because I do instruction and the legs
12 were becoming numb so I need to do something about it. I
13 put it off for five years because I don't want to do it.

14 THE COURT: Well, do you want us to help you put it
15 off for another week or two?

16 JUROR: If that's what you want.

17 THE COURT: If it's elective surgery -- is it going to
18 be like out patient?

19 JUROR: No, I am being hospitalized because it's a
20 four hour operation; it's both feet.

21 THE COURT: I mean it could be put off if you end up
22 serving on the jury?

23 JUROR: Well, I need to know.

24 THE COURT: We will know by Wednesday.

25 JUROR: Okay, all right.

THE STATE VS HUGHES

1 THE COURT: All right, we'll let you stay with us
2 then.

3 JUROR: Okay, so you will let me know by Wednesday so
4 I can let them know?

5 THE COURT: Certainly, what we are going to do we are
6 going to have panels of jurors come back because we have
7 some questions we have to ask a little more detailed, I'm
8 not going to say personal, and what we plan to do
9 Wednesday morning is draw the jury and everybody that is
10 going to be on the jury will know hopefully by Wednesday
11 at lunch but probably by the latest Wednesday afternoon.

12 JUROR: All right.

13 THE COURT: Do you want us to keep this?

14 JUROR: Yes.

15 THE COURT: All right, if you will just step out.
16 Thank you.

17 THE CLERK: Juror 106 Eileen Hartman (W/F).

18 THE COURT: Please come on up here and stand by the
19 bailiff.

20 JUROR: I'm Eileen Hartman, Your Honor, dental
21 hygienist, but I have been working for 13 months to get
22 licensed as a dental hygienist in The State and Sunday at
23 9:15 in Columbia if I go, like that, I can practice as a
24 dental hygienist in the State of South Carolina. If not, I
25 have to wait until the next quarter, which I will have to

THE STATE VS HUGHES

1 redo everything because they only allow it for three
2 months. So if somebody would take me to Columbia, ---

3 THE COURT: Well, that's what I was thinking because
4 generally this is on a Sunday morning generally we don't
5 start on Sunday until about lunch time to give everybody a
6 little bit of a break.

7 JUROR: I can't say absolutely that it will be over by
8 lunch time, but the appointment is at 9:15. All I have to
9 do is take the Board and the jurisprudence and I have been
10 doing this for fifteen years.

11 THE COURT: About how long will this take?

12 JUROR: I don't know, but I can probably find out.

13 THE COURT: I am going to ask you to step out here for
14 just a second.

15 JUROR: Sure; because we can call Mrs. Hayworth, the
16 lady that I have been in contact with.

17 THE COURT: Okay.

18 MR. POPE: It appears if the juror is chosen it can be
19 structured so that she can be accommodated.

20 MR. SCHUSTERMAN: The defense agrees.

21 THE COURT: All right. Bring her back in.

22 Mrs. Hartman, if you end up on the jury, we will
23 work something out to make sure you get down on Sunday.

24 JUROR: Okay, thank you, that's all I ask. Can I have
25 that letter back? That's my admission to the Board. I'm

THE STATE VS HUGHES

1 sorry. Thanks. I'm sorry, I should have made a copy, but
2 I didn't.

3 THE COURT: That's okay. It would be nice if at some
4 time we could have a copy.

5 JUROR: Yes, I can get my husband or we can get
6 somebody to run it off.

7 THE COURT: Why don't you get somebody to run it off.
8 You can step back out and we will bring it to you.

9 Number 32 Mary Breland.

10 THE CLERK: Mary Breland (W/F) 32.

11 THE COURT: Since we are running so late, I think we
12 are going to break and let the jury go to lunch and bring
13 them all back. I hate to do it that way. And actually do
14 the drawing unless you would -- well, we'll chat about
15 that in a minute.

16 Yes, ma'am. do you have some reason you can't serve
17 with us?

18 JUROR: Well, I'm not sure; I have a five year old;
19 I'm a single mother and if I am sequestered I do not have
20 anybody in the area I can depend on to keep her for ten
21 days straight.

22 THE COURT: You don't have any family?

23 JUROR: Well, I've got -- I mean I would have to talk
24 with them. I could talk to my mother and sister.

25 THE COURT: Do you work?

THE STATE VS HUGHES

1 JUROR: Yes, sir.

2 THE COURT: All right, but you do have a five year old
3 and you are a primary care giver, so when you are not at
4 work, you would have the duty of taking care of that
5 child?

6 JUROR: Yes, sir.

7 THE COURT: I am going to excuse you then.

8 THE CLERK: Alan Clingan (W/M) 55.

9 THE COURT: Come right down the middle; that will be
10 fine. You are Mr. Clingan and you say you have a reason
11 you cannot serve?

12 JUROR: Well, I have a back problem. I can't sit still
13 very long. My arms are going numb a lot. I am under the
14 care of Doctor Boutwell at Clinic West. They haven't found
15 the problem of what it is. I can't sit still, I mean, I
16 can sit down for a couple of hours, but I am going to have
17 to move around to get the feeling back in my arms and I
18 have a vacation planned for Wednesday of this week until
19 next Tuesday of next week. I have had plans for probably 2
20 or 3 months. Me, my wife, my mother-in-law, my
21 father-in-law we've all taken off work and already had
22 plans. If it was any other time, -- I don't have a problem
23 serving on the jury.

24 THE COURT: You say you have a vacation planned. Were
25 you all traveling somewhere in particular?

THE STATE VS HUGHES

1 JUROR: Pennsylvania.

2 THE COURT: Do you all have family or something?

3 JUROR: Yes, I have elderly parents and my grandmother
4 or great grandmother is in failing health and my
5 grandfather is in failing health.

6 THE COURT: We can accommodate your back problem
7 because we can allow you to sit and stand and we will take
8 breaks and all of that sort of thing. I'm going to have
9 to ask you to stay with us at this time though. You will
10 stay with the jury pool. You may not be chosen, but I'm
11 going to let you stay with us.

12 JUROR: All right.

13 THE COURT: So if you will, just step back out. Thank
14 you.

15 THE CLERK: Linda Neely (W/F) 165.

16 THE COURT: If you would. Ms. Neely, you say you have
17 a reason you can't serve with us?

18 JUROR: Yes. I don't have transportation to get here.
19 I've got a license, but I have no car. A friend brought
20 me up here today.

21 THE COURT: Okay, you are only going to be in this
22 courtroom a couple of times and we can help you get back
23 and forth. When you are sequestered, you will be taken to
24 York for the trial and you will have plenty of
25 transportation, so we can take care of that. Is that your

THE STATE VS HUGHES

1 only problem?

2 JUROR: Well, I was supposed to start a new job.

3 THE COURT: Doing what?

4 JUROR: Working over here at Captain D's.

5 THE COURT: All right, can they hold that job for you
6 or can you check with them on that?

7 JUROR: I can check.

8 THE COURT: Ask them, tell them you need to - you
9 might not have to serve because you might not be chosen,
10 but I am going to let you stay in the jury pool and you
11 might just let Captain D's know that you will be doing
12 your civic duty and we are going to let you stay with us
13 and we'll make arrangements to get you back and forth when
14 you need to be, okay?

15 JUROR: Yes, sir.

16 THE COURT: All right, you will stay with us.

17 THE CLERK: Number 105 Marvin Harrison (W/M).

18 THE COURT: Stand by the bailiff over here in the
19 white coat. Mr. Harrison, do you have some reason you
20 can't serve as a juror?

21 JUROR: Well, Your Honor, I've had my brother was
22 indicted for murder in the last three years and I feel
23 that I couldn't do what was expected of me in this case
24 because it brings back some hard memories.

25 THE COURT: All right, if that's the only reason, we

THE STATE VS HUGHES

1 are going to ask you some questions about that sort of
2 stuff later, but I am going to let you stay with us and
3 later on on an individual basis you will be brought in and
4 there are some questions we will ask you about that, so I
5 am going to let you stay with us for right now.

6 JUROR: Okay.

7 THE COURT: Thank you.

8 THE CLERK: Your Honor, we have two jurors outside
9 that were not here this morning. Do you want us to just
10 have them wait?

11 THE COURT: Just have them wait.

12 THE CLERK: Juror 233 Carol Wagner (W/F).

13 THE COURT: Do you have a reason that you can't serve
14 with us?

15 JUROR: Yes, sir, I have accepted a job out of town in
16 the State of Michigan and I've been trying to get my
17 physical scheduled and, you know, moving and all of that
18 sort of stuff done.

19 THE COURT: When are you supposed to start the job?

20 JUROR: I don't have a definite date yet.

21 THE COURT: I mean, well, it won't be within the next
22 two weeks?

23 JUROR: Within the next couple of weeks, yes.

24 THE COURT: Have you checked with them and told them
25 that you may be on a jury and might have to be ---

THE STATE VS HUGHES

1 JUROR: Yes, I did. I told them last week that I was
2 called for jury duty for this week.

3 THE COURT: Okay, so they know you may not be
4 available to until after that, but you still have your
5 job?

6 JUROR: I hope so: they have not made a definite -- I
7 mean, I've made a verbal acceptance of their offer, but
8 that was prior to this jury duty and I did tell them about
9 this and it was sort of "an okay" sort of situation; they
10 haven't said definitely yes or know.

11 THE COURT: What kind of work is it?

12 JUROR: I work with computers; I am a computer
13 programmer in process control.

14 THE COURT: All right, well, I don't want to
15 jeopardize your job, but if it's going to be available, I
16 want you to stay with us. Do you ---

17 JUROR: I can't say for sure this has been going on
18 for about 3 or 4 weeks now trying to get a physical
19 scheduled. I did have one, they didn't send all the paper
20 work, I am waiting for that to come now, so I can finish
21 all of that up and as soon as that's final I am planning
22 on leaving.

23 THE COURT: Did you have your physical locally?

24 JUROR: Yes, sir.

25 THE COURT: Have you arranged a moving day and all of

THE STATE VS HUGHES

1 that?

2 JUROR: No, sir, not yet.

3 THE COURT: I am going to let you stay with us.

4 JUROR: Okay.

5 THE COURT: Thank you.

6 THE CLERK: Brian Besson (W/M) 22.

7 THE COURT: Stand by this podium. All right, you say
8 you can't serve as a juror?

9 JUROR: I would prefer not to. Your Honor, I am a one
10 man business and I have engineering contracts that I have
11 to fulfill with certain time situations. At present I have
12 got three construction jobs going that I supervise and go
13 out just about daily to check on. I have got one
14 subdivision under construction; I have a dam in Thompson,
15 Georgia, I go up there twice a week; and then I have a
16 parking lot in Savannah that I am supervising.

17 THE COURT: Well, I can't excuse you for that. I am
18 going to have to ask you to stay with us and perhaps -- I
19 don't know that you will get chosen or not, but I'm going
20 to ask you to stay with us. Thank you.

21 THE CLERK: Eugene Bing 24 (B/M).

22 THE COURT: Did you find out about the Law enforcement
23 commission?

24 MR. POPE: Your Honor, I have got some cases here that
25 I can hand up and let the defense know the cases. Let me

THE STATE VS HUGHES

1 right down the cites.

2 THE COURT: Please come around and stand up here by
3 the bailiff. You say you can't serve with us as a juror?

4 JUROR: Well, I would prefer not.

5 THE COURT: Why is that?

6 JUROR: I have a brother that was murdered and the
7 case has never been solved.

8 THE COURT: Well, all right, I am going to let you
9 stay with us right now because we will later call you in
10 and ask you some questions concerning those types of
11 things, so if you will stay with us right now, we will
12 chat about that later, okay?

13 THE CLERK: Juror 152 Michael Melton (W/M).

14 THE COURT: Would you, please, come up here to this
15 podium? You say you have an inability to serve as a juror
16 with us?

17 JUROR: Yes, sir, right now I have been out of work
18 for approximately a month and I have got a class on this
19 Wednesday and Friday coming up and it's only offered once
20 a month and I need that class in order to go to work.

21 THE COURT: All right, what do you do?

22 JUROR: I sell insurance, it's a products class.

23 THE COURT: What class?

24 JUROR: A products class.

25 THE COURT: Who do you sell for?

THE STATE VS HUGHES

1 JUROR: NASE, National Association of Self Employed.

2 THE COURT: Well, I am not going to be able to excuse
3 you for that reason.

4 JUROR: I also had another one, sir.

5 THE COURT: Okay.

6 JUROR: My brother-in-law was a policeman and I worked
7 for Waffle House for ten years and during that time I have
8 known most of the Columbia County, Richland County and
9 Aiken County police force.

10 THE COURT: That wouldn't disqualify you either, but
11 when you come back in, we are going to have everybody come
12 back individually and we are going to ask some questions
13 and we will explore that then. So you remain with us
14 right now.

15 JUROR: Yes, sir.

16 THE COURT: Thank you.

17 THE CLERK: Juror 90 Michael Graham (B/M).

18 THE COURT: Mr. Pope, what do those cases say, if you
19 know? We don't have the books.

20 MR. POPE: Your Honor, the Matthews case there was
21 some distinction about a special deputy showing prejudice
22 and I was looking at Matthews I do not have the older case
23 of Bryant v State regarding the specifics of a special
24 deputy. I might over the lunch period try to retrieve
25 that. I think the argument would have been we probably

THE STATE VS HUGHES

1 could have kept the one we left off and vice versa.

2 THE COURT: Okay.

3 Yes, sir, do you have a problem serving with us?

4 JUROR: Well, I believe it will conflict with my
5 doctors' appointments, which I have set up on a daily
6 basis.

7 THE COURT: What type doctor?

8 JUROR: Excuse me, sir?

9 THE COURT: What type doctor?

10 JUROR: He is a Chiropractor.

11 THE COURT: Okay. What have you got back ---

12 JUROR: I was in an automobile accident a month ago
13 and I go to a Chiropractor like every day, every morning.

14 THE COURT: All right, well, I can't promise we can
15 get you to a Chiropractor every morning if you serve, but
16 if you have some particular problem, we can probably make
17 arrangements to do that while you serve, but I can't
18 excuse you for that. So you remain with us, okay?

19 JUROR: All right.

20 THE COURT: Step back out.

21 THE CLERK: 36 Kedar Brown (W/M).

22 THE COURT: Mr. Brown, you say you can't serve as a
23 juror?

24 JUROR: My reason being that I am self employed in a
25 private practice, which means I am solely responsible for

THE STATE VS HUGHES

1 my patients and my wife and daughter are depending upon my
2 practice for income and paying bills and that kind of
3 thing. I probably could do it, but it would be kind of a
4 hardship financially.

5 THE COURT: Well, I regret that it will be a financial
6 hardship, but I hope it won't be much of one and it may be
7 that you are not ultimately chosen, but I am going to let
8 you stay in the jury pool.

9 THE CLERK: Juror 162 Hugh Murphy (W/M).

10 THE COURT: I believe you have served in the last
11 three calendar years?

12 JUROR: No, sir.

13 THE COURT: You have not?

14 JUROR: I have not.

15 THE COURT: Okay. And why do you say you can't serve
16 with us as a juror?

17 JUROR: At the present time the company I work for I
18 have projects that will go from Delaware to Alabama and we
19 just started two additional projects in Augusta and
20 Greenwood that we have promised our major tenant,
21 Wal-Mart, that we will turn over next year. I'm already at
22 60 and 70 hours a week and there is really no one else to
23 take my place, so that was why I said that. It's just
24 unfortunate the timing right now to be in this situation.

25 THE COURT: Well, I can't excuse you for that, but our

THE STATE VS HUGHES

1 records indicate that you served in April of 1993. I don't
2 know what the mistake is.

3 JUROR: Well, I got papers and they came to me --
4 well, I'll take it.

5 THE COURT: I know you will, remember, you are under
6 oath. Remember you are under oath, but our records
7 indicate that you served. So if that's the case, then you
8 are automatically exempt, but ---

9 THE CLERK: You did come, but maybe were excused from
10 court that day - it was back in '93.

11 JUROR: I worked a lot of hours, but I don't think I
12 would forget that, but --

13 THE CLERK: Here is our printout that shows when the
14 jurors have come and it does have his same address.

15 THE COURT: 925 A Brook Haven Drive?

16 JUROR: No, ---

17 THE CLERK: No, Hugh Murphy.

18 JUROR: 109 Red Oak Lane.

19 THE COURT: 109 Red Oak Lane?

20 JUROR: Uh-huh.

21 THE CLERK: You may not have received it, but we had
22 your name pulled.

23 THE COURT: You may be excused then.

24 JUROR: Thank you.

25 THE COURT: All right, next?

THE STATE VS HUGHES

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164 was next.

THE CLERK: I'm sorry. Herlinda Nadal (W/F 164).

THE COURT: All right, if you will please come around and stand up here. All right, you say you can't serve with us as a juror?

JUROR: Yes, I own and operate Best Bagels in Town and we are only seven weeks old. I do not have enough trained personnel to be able to operate the business. Making bagels is a specialty. We train for many, many months and I don't have anybody that can take my place. We start at 4:30 in the morning and we finish at 6:30 in the afternoon. It would be very, very bad for me to leave the business at this time.

THE COURT: And there's nobody there - you don't have any help?

JUROR: My daughter and I we go in at 4:30 in the morning and start making bagels and she is in charge of the back and I'm in charge of the front, I run the register, I also make sandwiches and it's very hard. I have part time helpers, which are students, that come in one hour or two hours, but that would be - I mean, I don't think the business could operate without me.

THE COURT: Well, I can't excuse you at this time for that reason. We will have a chance to chat with you more later about the situation. I'm not able to excuse you

THE STATE VS HUGHES

1 right now.

2 JUROR: I understand.

3 THE CLERK: Diane Magiante (W/F) 147. Diane Magiante.

4 THE COURT: Please come around. You have a problem
5 with jury service not in general, but --

6 JUROR: Well, I don't think so. I told the bailiff
7 that I thought I probably did need to speak to you. I
8 didn't realize this was going to be a sequestered jury and
9 I am committed to a couple of choirs at a church over the
10 weekend and I wanted to know if that's going to interfere.

11 THE COURT: You won't be able to do that if you are on
12 this jury because you will be in York County and I will
13 probably on Sunday start late, we usually take Sunday
14 morning off, but you wouldn't be able to attend those
15 duties.

16 JUROR: All right.

17 THE COURT: But we will let you stay with us though.

18 THE CLERK: We have those three.

19 THE COURT: We have three additional. Step up here to
20 the podium, please, ma'am. These were additions.

21 THE CLERK: They asked to approach the judge.

22 THE COURT: Since they have gone out. They would not
23 be on your list.

24 MR. SCHUSTERMAN: I thought we had said earlier they
25 were jurors who were not here this morning.

THE STATE VS HUGHES

1 THE COURT: No, we have got some of those too.

2 MR. SCHUSTERMAN: Okay, sir. Thank you.

3 THE COURT: Yes, ma'am. Do you have some reason you
4 can't serve or do you just want to talk to me about
5 something?

6 JUROR: No, sir, I had a reason why I cannot serve. My
7 name is Denise Johnson (B/F 123). I have three small
8 toddlers, 3, 4 and 5, and also two years ago my father was
9 murdered here in Aiken, South Carolina.

10 THE COURT: Do you work outside the home?

11 JUROR: Yes, I do.

12 THE COURT: Who keeps the children?

13 JUROR: They go to Day Care.

14 THE COURT: What about at night? Who keeps them?

15 JUROR: I don't work at night.

16 THE COURT: Who keeps the children at night?

17 JUROR: I am at home at night.

18 THE COURT: Okay, then I'll excuse you. Thank you.

19 THE CLERK: Jane Peterson (W/F) Juror 177.

20 THE COURT: Yes, ma'am.

21 JUROR: Well, you said that we'd probably would have
22 to be sequestered for a number of ten days and I have
23 prepaid for a trip to the New England States with the
24 Daughters of America on the 25th and I am wondering if I
25 need to be concerned about cancelling that trip.

THE STATE VS HUGHES

1 THE COURT: I wouldn't cancel it yet.

2 JUROR: Okay.

3 THE CLERK: Martha Carey (W/F) Juror 45.

4 JUROR: I just wanted to clarify the list of names. I
5 understood when you read the list of names that it would
6 have been if we were related to these people, we should
7 tell you. Well, I recognize the names, but, you know, I am
8 not related to them.

9 THE COURT: Well, any of them like close social
10 acquaintances?

11 JUROR: One of them was.

12 THE COURT: Who was that?

13 JUROR: I believe there was an Alan Morgan.

14 THE COURT: All right. I don't know Mr. Morgan.

15 MR. BRACKETT: Your Honor, Mr. Morgan is a trustee at
16 the Chester County Detention Center. He is a prisoner
17 right now in the custody of the Department.

18 THE COURT: Is that the one you mean?

19 JUROR: I don't know. It's been a while since I have
20 seen him and I didn't know, you know, I just wanted to be
21 sure that you knew that I recognized the name. I wasn't
22 related.

23 THE COURT: Well, if it turns out it's the one that
24 you are referring to, it may or may not be, would that
25 affect your ability to be fair and impartial to The State

THE STATE VS HUGHES

1 and to the defendant in the trial of this case?

2 JUROR: No.

3 THE COURT: Do you feel you could base your verdict
4 solely on the law and the evidence?

5 JUROR: Yes, sir.

6 THE COURT: All right, you remain with us. Thank you.
7 But I appreciate that information.

8 THE CLERK: That's all, Your Honor.

9 MR. BRACKETT: Your Honor, I left the courtroom
10 earlier to retrieve something from our office downstairs
11 and as I was walking down the hallway downstairs an
12 individual in a white shirt with an emblem, a black male,
13 young, maybe 25 or 30, approached me and asked me - he
14 told me that he was a juror and he was summoned to court
15 today and asked me where he had to go and I just said,
16 "Upstairs." I think that may be one of those three people
17 that's out there. That's the extent of my conversation.

18 MR. SCHUSTERMAN: Your Honor, it's my understanding
19 that those are all the people who have wanted to speak to
20 you. Wasn't there a gentleman who indicated he knew
21 several people, thought he recognized the names of several
22 people on the witness list and he stood up and you took
23 his number?

24 MR. BRACKETT: Number 115. And there was another
25 individual Number 197, Warren Safter, who said he had some

THE STATE VS HUGHES

1 knowledge.

2 MR. SCHUSTERMAN: Maybe some or all of those people
3 need to be addressed.

4 THE COURT: All right, well, we will get those in in
5 just a minute, but what I want to do after that, it's
6 almost two o'clock, the folks need to eat, you all need to
7 eat, what I am going to do is after we take care of these,
8 I am going to bring everybody in, except for those three,
9 I'm going to tell everybody to be back in about an hour
10 and fifteen minutes after whatever time that is. We will
11 draw the panels then. That's going to mean we might not be
12 able to do but one panel today and I'm sorry about that,
13 but we are getting a little off schedule - have them all
14 come back, including those three, and wait and qualify
15 those three at that time and then draw the panels. Another
16 option would be -- no, we will do it that way. Let's do it
17 that way. All right, any other suggestions?

18 MR. POPE: No, sir, Your Honor.

19 MR. SCHUSTERMAN: Your Honor, the only thing I would
20 mention to the court is that we had discussed about
21 possibly choosing two panels this afternoon and that's
22 going to be quite difficult ---

23 THE COURT: Yes, I don't think we are going to be able
24 to because I don't run much past six if we can avoid it
25 and it's going to be two -- it will be 3:15 or 3:30 - we

THE STATE VS HUGHES

1 probably won't get the first panel started before 4:00 or
2 4:30.

3 MR. SCHUSTERMAN: Your Honor, what I was going to ask
4 you seem to indicate there's a gap between the 3:30 and
5 the 4:30 what I was going to ask is that once we pull that
6 first group at ten if the court would give us ten or
7 fifteen minutes just for us to get our thoughts together
8 before we start.

9 THE COURT: We can do that.

10 MR. SCHUSTERMAN: Thank you, sir.

11 THE COURT: All right, let's bring in those other two.

12 THE CLERK: Juror 197 and 115, are those the two you
13 were asking about?

14 MR. SCHUSTERMAN: Yes.

15 MR. BRACKETT: From my records Mr. Safter and then all
16 I have is 115.

17 THE CLERK: Wayne Hood (W/M) number 115. Wayne Hood.

18 THE COURT: I believe you had stood in response to one
19 of my questions ---

20 JUROR: Yes, sir, about knowing two names.

21 THE COURT: Okay. And which ones do you know?

22 JUROR: Alan Morgan from Dillon, South Carolina and
23 Doug Taylor of North Augusta, South Carolina.

24 THE COURT: All right. I doubt those are the same
25 two, but are you related to either one of those?

THE STATE VS HUGHES

1 JUROR: No, sir, just work association.

2 THE COURT: Just know the two people by those names?

3 JUROR: Yes, sir.

4 THE COURT: All right, if it turns out those are, in
5 fact, the two that you know, would that affect your
6 abilities, if they are witnesses in this case, would that
7 affect your ability to be fair and impartial to The State
8 or to the defendant?

9 JUROR: No, sir, it wouldn't.

10 THE COURT: Would you be able to base your verdict
11 solely on the law and the evidence as it is received in
12 the trial?

13 JUROR: Yes, sir.

14 THE COURT: All right, thank you, we appreciate that
15 information. You remain with us.

16 THE CLERK: Warren Safter. Warren Safter (W/M) 197.

17 THE COURT: Please come up here where the podium is.
18 You had some question about your ability to serve?

19 JUROR: Yes, three years ago I was a certified peace
20 officer with the State of Georgia and I don't know whether
21 I could be an impartial juror in a case involving the
22 murder of a police officer.

23 THE COURT: All right, I am going to let you stay with
24 us now, but we are going to bring you in here individually
25 later and we will talk to you and inquire about those

THE STATE VS HUGHES

1 matters.

2 JUROR: Okay.

3 THE COURT: Thank you.

4 THE CLERK: I have one more that just asked the
5 bailiff to approach the court. Sean Carter 47 (W/M).

6 THE COURT: What is your situation?

7 JUROR: I don't believe my financial status would
8 allow me to miss no more than two days of work.

9 THE COURT: Where do you work?

10 JUROR: I work for Master Clean. We are working out of
11 town in Greenwood right now and if I miss any more than
12 two days of work, this is going to mess me up financially.

13 THE COURT: Well, I regret I can't excuse you for
14 that, so I'll ---

15 JUROR: Do you have any idea how long this is going to
16 last?

17 THE COURT: Well, the first thing is you haven't
18 actually been chosen to sit on the jury. If you do, it
19 will probably last ---

20 JUROR: How long will the process last of determining
21 the jury?

22 THE COURT: Until Wednesday probably. We hope to have
23 this completed by Wednesday.

24 JUROR: Okay, thank you.

25 THE COURT: The clerk has handed me a list of names

THE STATE VS HUGHES

1 they are not able to get in touch with. I am just going to
2 read you the numbers: 98, 136, 46, 182, 175, 97, and 85.
3 We are going to ask the Sheriff to continue trying to
4 locate those.

5 As to Juror 151 contact was made with someone at that
6 telephone number and address and it is indicated that due
7 to a death in the family this particular juror had moved
8 to Greenwood County and no longer resides in Aiken County.

9 We are going to follow up on all of them except 151
10 and the three additional ones we will qualify after lunch.

11 All right, now, counsel, I am going to bring the jury
12 in and dismiss them until - do you need an hour and a
13 half?

14 MR. SCHUSTERMAN: Your Honor, before we do that, I
15 have one matter regarding a juror that we spoke to. I
16 would like to address the court.

17 THE COURT: All right, just one second, first, let me
18 see, ---

19 MR. POPE: Yes, sir, that will be fine.

20 THE COURT: I mean I can cut it shorter. You all need
21 more time than I do. All I have to do is sort of show up.
22 You all have got work to do.

23 MR. POPE: Your Honor, we will be ready then.

24 THE COURT: And it's probably going to be we are down
25 to doing one panel today anyway, so --

THE STATE VS HUGHES

1 MR. POPE: Your Honor, that would be good.

2 THE COURT: All right. Does that suit the defense?

3 MR. SCHUSTERMAN: Your Honor, actually, an hour and a
4 half is fine or if you want to cut it short, we could
5 actually use some of that hour and a half after we pull
6 the panel. I know we are going to need some time between
7 getting the first panel ---

8 THE COURT: How about an hour, will that --

9 MR. POPE: That will be fine.

10 THE COURT: All right, we will take an hour.

11 MR. SCHUSTERMAN: The other issue would be going back
12 to Juror Number 197, Your Honor. I believe this gentleman
13 said he was a certified peace officer.

14 THE COURT: Formerly.

15 MR. SCHUSTERMAN: All right; and, again, not
16 understanding how this commission and his power of arrest
17 works, does one -- he is still involved in security, is he
18 not?

19 THE COURT: You mean the last gentleman?

20 MR. SCHUSTERMAN: The one before last, the one that
21 said that he didn't feel that he could be objective
22 because he was a former police officer.

23 THE COURT: In the State of Georgia.

24 MR. SCHUSTERMAN: In the State of Georgia. But does he
25 not -- he still has the powers that go along with being a

THE STATE VS HUGHES

1 police officer, would that not preclude him from serving,
2 even before we get to his bias of what he spoke of?

3 THE COURT: Well, the gist of what I got was that it's
4 past tense, that he was -- what's his name? Let's call him
5 back in real quick.

6 THE CLERK: Warren Safter (W/M 197).

7 MR. POPE: Your Honor, I would also say the case law
8 is it's the county officer working in the county
9 courthouse and it isn't like someone working for security
10 wouldn't apply under that 480 or whatever statute that is.

11 THE COURT: Are you still involved with law
12 enforcement?

13 JUROR: No, I'm not.

14 THE COURT: Do you have any kind of constable
15 commission at the present time from either state, any kind
16 of law enforcement commission giving you the power to
17 carry a pistol, make an arrest, or anything like that?

18 JUROR: I believe I still have it in Georgia.

19 THE COURT: You think you do?

20 JUROR: Yes, I do.

21 THE COURT: All right, I am going to let you stay with
22 us right now. We are going to break for lunch in just a
23 few minutes and I am going to ask you to fill in your
24 questionnaire over lunch. All right, you may step back
25 out.

THE STATE VS HUGHES

1 JUROR: I just gave her one that is filled out.

2 THE COURT: Okay, we have one filled out. Thank you.

3 MR. SCHUSTERMAN: Your Honor, I would ask that juror,
4 number 197, be excluded from the panel based on the fact
5 that he has indicated to the court I wrote that he still
6 does have the powers of arrest in the State of Georgia, as
7 well as, he has already indicated to the court that he
8 feels he could not be fair to the defendant because he is
9 a former police officer. I think for one reason
10 statutorily and the other reason just because the defense
11 is entitled to a fair trial that he should be excluded
12 from the jury panel. I believe that was the contemplation
13 that the General Assembly had or the Legislature had when
14 they enacted the statute and the criteria.

15 THE COURT: I am going to take a look at the statute
16 and the cases over lunch, but we are not going to draw the
17 panel until after lunch.

18 MR. SCHUSTERMAN: Thank you.

19 MR. POPE: Your Honor, I believe I would, if possible,
20 ask it be an hour and a half.

21 THE COURT: Yes, I am going to accommodate you because
22 it's pushing. All right, bring all the jury panel in.

23 Mr. Norwood, we are still checking on that. We are
24 trying right now. That's where my law clerk went. We
25 appreciate your being here.

THE STATE VS HUGHES

1 We are running a little behind schedule, which is not
2 that unusual, but I think it's time we break for lunch. I
3 know all of you wish we were further along in the process
4 and you had a little better idea of how you stood, but we
5 don't right now. I am going to let you go for lunch until
6 3:30. Now that seems like a long time, but the attorneys
7 have some matters that now that they have met all of you
8 that they will probably want to look at and chat about
9 over the lunch period. You are not on the jury yet, but
10 you are sworn. You are a potential juror. So keep in mind
11 what I told you, you are not to discuss this case among
12 yourselves, your family, with your friends. If anyone on
13 the street tries to talk to you about this case, tell them
14 you cannot as you are possibly a juror in this trial. Do
15 not discuss the case among yourselves and, again, don't be
16 trying to make up your own mind. So I am going to let you
17 go to lunch. Please be back in the jury assembly room at
18 3:30.

19 Now I am going to ask the three that came in late to
20 stay with us just a minute, but the rest of you you can be
21 excused now and be back ready to go at 3:30. Have a
22 pleasant lunch.

23 JUROR BEATRICE COUNTS (B/F): I wasn't aware I was
24 supposed to be here, Your Honor.

25 COURT REPORTER: I'm sorry, I didn't hear her.

THE STATE VS HUGHES

1 THE COURT: Say it again.

2 JUROR COUNTS: I wasn't aware that I was supposed to
3 be here, Your Honor.

4 THE COURT: Well, you are. You have been summoned to
5 jury duty and I am going to ask you to go ahead and have a
6 seat now.

7 All right, Robert Lofton (B/M). Why weren't you here
8 this morning?

9 JUROR: I had a class, Your Honor.

10 THE COURT: Do you go to school?

11 JUROR: Yes, sir.

12 THE COURT: Are you a full time student?

13 JUROR: A part time student.

14 THE COURT: What else do you do?

15 JUROR: I work at Wal-Mart.

16 THE COURT: How many classes do you have?

17 JUROR: I have two.

18 THE COURT: All right, have a seat, thank you.

19 All right, Evangelia -- how do you pronounce that?

20 JUROR: Evangelia.

21 THE COURT: Evangelia Williams (B/F). Where were you
22 this morning?

23 JUROR: Well, Your Honor, I got the letter in the mail
24 Friday and I just forgot about it.

25 THE COURT: All right. I am going to ask all three of

THE STATE VS HUGHES

1 you to be back at 3:30. We have been working since about
2 9:00 this morning and we kind of want a break, so I am
3 going to ask you to be back at 3:30 and I am going to go
4 over the qualifications and make sure you are qualified
5 and go over certain things with you to determine whether
6 or not you can serve with us on this jury and tell you a
7 little of what the case is about. You don't know much
8 about it, so at this time, I tell you that you are not to
9 discuss the case and if all three of you will stand, I am
10 going to ask the Clerk to administer an oath to you at
11 this time, so you will be under oath regarding this case.

12 THE CLERK: Raise your right hand, please. You shall
13 truly answer make to all such questions that shall be
14 propounded by this court or on order thereof and shall
15 speak the truth, the whole truth and nothing but the truth
16 so help you God.

17 (Each juror answered in the affirmative.)

18 THE COURT: All right, now don't let anybody talk to
19 you about this case, don't talk to the other jurors about
20 what's gone on this morning and just forget you are on
21 this jury, but do remember to be back here at 3:30. I'll
22 see you back here in court to the jury assembly room at
23 3:30. Thank you.

24 One other food for thought over lunch is The Clerk's
25 office has indicated their willingness to stay later in

THE STATE VS HUGHES

1 the evening either today and tomorrow or both in order to
2 make sure we can stay on schedule for Wednesday. Kind of
3 mull over in your minds whether you wish to do it that way
4 but it may be that we could still do some panels today;
5 they can send out for meals, so we could feed those who
6 are waiting, and it may be that when we are able to draw
7 our first panel, two hours thereafter we can have another
8 panel come in. You may not want to do it that way; there
9 may be things you need to do, but I am going to give you
10 that option.

11 All right, have a pleasant lunch.

12 (Lunch recess.)

13 THE COURT: Madam Clerk, if we could have those three
14 late comers?

15 THE CLERK: Yes, sir.

16 MR. SCHUSTERMAN: Your Honor, before you do that, may
17 we bring the defendant in?

18 THE COURT: Yes, sir.

19 All right, let the record reflect the counsel and the
20 defendant are present.

21 Mr. Counts?

22 JUROR COUNTS: Yes.

23 THE COURT: Ms. Counts, I mean. (B/F). Is there any
24 reason you can't serve with us as a juror this week?

25 JUROR: No.

THE STATE VS HUGHES

1 THE COURT: Let me tell you when the jury is drawn it
2 will be sequestered and taken to York County and stay
3 there for about ten days. I mean you might not have a
4 choice, but is there any reason --

5 JUROR: I have a doctor's ---

6 THE COURT: I can't hear you.

7 JUROR: Within the next two days I have a doctor's
8 appointment, but other than that there is no reason.

9 THE COURT: Okay, have a seat.

10 All right, how about Mr. Lofton? You are a full time
11 student?

12 JUROR LOFTON: You are part time, but your part time
13 is full time, right?

14 JUROR: Right.

15 THE COURT: Well, I am going to transfer you under the
16 statute that allows students to be transferred.

17 JUROR: Okay.

18 THE COURT: You are just taking a partial load, but
19 you go on a regular basis, right?

20 JUROR: Right.

21 THE COURT: And you would have to miss classes, right?

22 JUROR: Right.

23 THE COURT: Okay. You need to be seated right now.

24 All right, Mrs. Counts?

25 JUROR COUNTS: Yes.

THE STATE VS HUGHES

1 THE COURT: I'm sorry; I just talked to you. I'll get
2 you all straight.

3 Ms. Williams?

4 JUROR WILLIAMS: Yes, sir.

5 THE COURT: Any reason you can't serve?

6 JUROR: Well, Your Honor, I have three kids and I am a
7 single parent.

8 THE COURT: How old are they?

9 JUROR: 3, 10 and 8.

10 THE COURT: Do you work outside the home?

11 JUROR: Yes, sir, I work in a nursing home. I work day
12 shift there.

13 THE COURT: But you have the primary duty to take care
14 of your children?

15 JUROR: Yes, I'm the only one to take care of them.

16 THE COURT: I'll excuse you then. All right.

17 I am going to let the two of you come forward. Do
18 you have their checks?

19 THE CLERK: Yes, sir.

20 THE COURT: All right. Ms. Williams and Mr. Lofton,
21 if you all will come forward, they will give you your
22 checks and you can go.

23 Ms. Counts, I am going to ask you to listen to me. Can
24 you hear me?

25 JUROR COUNTS: Yes, sir.

THE STATE VS HUGHES

1 THE COURT: The case that we will be trying is that
2 against Mar-Reece Aldean Hughes. Mr. Hughes, I am going to
3 ask you to stand so Ms. Counts can see you. You may be
4 seated. He is charged in four indictments. I am going to
5 let the solicitor tell you what those charges are - didn't
6 we give you that back?

7 MR. POPE: Yes, sir. With murder; armed robbery;
8 count two of armed robbery possession of firearm during
9 the commission of a violent crime; conspiracy with Eric
10 Forney; and there would be possession of a stolen vehicle.

11 THE COURT: These charges arise from an incident that
12 happened September 22 -- September 25, 1992, in York
13 County. It involved the death of a law enforcement officer
14 by the name of Brent McCants. Now do you know Mr. McCants
15 or anything about Mr. McCants?

16 JUROR: No, sir.

17 THE COURT: All right, now the court is going to ask
18 you this. Are you a registered voter?

19 JUROR: Yes.

20 THE COURT: You are?

21 JUROR: Yes, sir.

22 THE COURT: How far did you go in school?

23 JUROR: To the fourth grade.

24 THE COURT: But you can read, write ---

25 JUROR: Yes, sir.

THE STATE VS HUGHES

1 THE COURT: --- you can speak and understand the
2 english language?

3 JUROR: Yes, sir.

4 THE COURT: Do you hold any law enforcement
5 commission?

6 JUROR: No, sir.

7 THE COURT: Have you ever been convicted or pled
8 guilty to any crime?

9 JUROR: No, sir.

10 THE COURT: Do you have a child under the age of
11 seven?

12 JUROR: No, sir.

13 THE COURT: You are not over 65, are you?

14 JUROR: Sir?

15 THE COURT: You are not 65 or older, are you?

16 JUROR: No, sir.

17 THE COURT: Have you served on a jury panel in the
18 last three years?

19 JUROR: No, sir.

20 THE COURT: Do you have any physical or mental problem
21 that would keep you from serving as a juror?

22 JUROR: No, no, no.

23 THE COURT: Now I told you the name of this case and
24 the parties. The State is represented by Mr. Tommy Pope
25 and Kevin Brackett. Mr. Pope is the solicitor and his

THE STATE VS HUGHES

1 deputy is Mr. Brackett, the gentleman seated to your
2 right.

3 Mr. Hughes is represented by Steve Schusterman and
4 Christina Brice. They are the ones that just waved at you.
5 Now, do you know any of those individuals?

6 JUROR: No.

7 THE COURT: Any of them ever served as a lawyer for
8 you?

9 JUROR: No, sir.

10 THE COURT: Are you a resident of Aiken County?

11 JUROR: Yes, sir.

12 THE COURT: Are you a citizen of the United States?

13 JUROR: Yes, sir.

14 THE COURT: Do you hold any type of elective office?

15 JUROR: No.

16 THE COURT: Do you work in this courthouse?

17 JUROR: No, I work with the Department of Mental
18 Retardation.

19 THE COURT: You do? In what capacity.

20 JUROR: I'm a mental retardation specialist.

21 THE COURT: All right. Do you know of any reason why
22 you would have any prejudice towards the State of South
23 Carolina for or against the State of South Carolina or Mr.
24 Hughes?

25 JUROR: No.

THE STATE VS HUGHES

1 THE COURT: Have you heard anything about this case?

2 JUROR: No.

3 THE COURT: Have you formed any opinion or based any
4 opinion or expressed any thoughts about this case?

5 JUROR: I just heard the case, so I really don't know.

6 THE COURT: You are not related to Mr. Hughes?

7 JUROR: No.

8 THE COURT: Are you related to anyone who is involved
9 in law enforcement?

10 JUROR: Yes.

11 THE COURT: Who is that?

12 JUROR: Richard Counts.

13 THE COURT: Where does he work?

14 JUROR: Instructing at the South Carolina State
15 College.

16 THE COURT: He is an instructor?

17 JUROR: Yes.

18 THE COURT: In what?

19 JUROR: Law.

20 THE COURT: Okay. You don't hold any kind of law
21 commission, do you, or do you?

22 JUROR: No.

23 THE COURT: Were you on the grand jury that passed on
24 this indictment against Mr. Hughes?

25 JUROR: No.

THE STATE VS HUGHES

1 THE COURT: Do you know of any reason whatsoever why
2 you could not give The State and the defendant a fair and
3 impartial trial?

4 JUROR: No, I don't.

5 THE COURT: All right, I am going to go through a list
6 of witnesses who may testify in this case. If you are
7 related to or know any of these witnesses, I am going to
8 ask you to stand: Craig Alexander; David Allen, Joseph
9 Allen, Harry Anthony, Crystal Ayers, Michelle Ayers, Jerry
10 Bailey, Pauline Bailey, Charles Barnes, Rod Benfield,
11 Harry Benson, David Black, Steve Blair, Marvin Bohan, Ann
12 Boyce, Allen Brandon, Bruce Bryant, Michael Buckaloo,
13 Charles Cabaniss, Zackery Calhoun, Kelly Carroll, Jim
14 Chapman, Randy Clinton, David Collins, Edward Conner,
15 Frances Cox, Larry Crooks, Larry DeVinney, Harold Duke,
16 Gene Ervin, Corey Fewell, Paula Forrest, Larry Gainey,
17 James Gaithers, Steve Gibson, Christopher Gorth, Mary
18 Grant, Sherrie Grimmett, Chuck Guyton, Karen Hendrickson,
19 Les Herring, David Holcomb, Russell Holley, Ernie Hope,
20 Robbie Hudgins, Beth Ann Jayne, Ira Jeffcoat, Dr. Earl
21 Jenkins, Harry C. Jennings, Dr. Leon Johnson, Korey
22 Kaelin, Dan Ketchel, Dr. Raymond Kimball, Michael
23 Kimbrell, Marc Kitts, Leonard Larue, Robin Lewis, Stella
24 Lingerfeldt, Jody Long, Joseph Lowery, Sam Lowery,
25 Priscilla Mack, Greg Maggart, James Mann, Doug Manning,

THE STATE VS HUGHES

1 Dr. Jim Maynard, Myra McCants, Bill McCants, Sean
2 McMillan, Geri Mirro, Alan Morgan, Dr. Donald Morgan, John
3 Ortuno, Armand Parker, Tommy Parnell, John Patton, Leroy
4 Perry, Cathy Ann Pittman, Freddie Powell, Joseph Powell,
5 Kent Pruett, Michael Quinn, Robert Reese, Scot Rockholt,
6 James P. Rogers, Gary Rollins, Tim Sanders, Dr. C.
7 Shroeder, Robert Sears, Lisa Simmons, Shawn Sloan, Michael
8 Smith, Dr. Otis Speight, Mark Spratt, George Stanley,
9 Michael Stitts, Sandra Stowe, Broad Strain, Gary Street,
10 Willie Stroud, Doug Taylor, John Thickens, S. L.
11 Thomasson, Richard Waldrop, Jerry Waldrop, John Walker,
12 Derek Williams, H. S. Williams, Mike Williams, Felix
13 Wimborn, Joe Vahle, Vera Youngblood, Dr. D. DeWitt, Audie
14 Hudson, George Reeder, Billy Washington, Sgt. Norman
15 Brice, Lt. Meyers, Sgt. Mobley, Antonio Lee, Lt. Mazyck,
16 Sgt. Percy Jones, Kevin Greg Kimmer, Jack Ferner, Sarah
17 Lewis, Sally Berg, Gerald Reaves, Cpl Steve Holland,
18 Officer Richard Harvey, Nelson Avila.

19 Do you know any of those people?

20 JUROR: No.

21 THE COURT: You are not related to any of them?

22 JUROR: No.

23 THE COURT: All right, anything further from The
24 State?

25 MR. POPE: No, sir, Your Honor.

THE STATE VS HUGHES

1 THE COURT: Anything from the defendant?

2 MR. SCHUSTERMAN: Nothing from the defense.

3 THE COURT: All right, you are qualified and you will
4 just remain with us as a juror. First, I am going to
5 instruct you not to discuss this case with anybody. And
6 until I tell you to deliberate you are not to talk to the
7 other jurors, you are not to talk to your family, you are
8 not to talk to people at work and you are not to discuss
9 this case in any way whatsoever and you are not to allow
10 anybody outside of the courtroom to discuss the case with
11 you. You also cannot read anything in the paper, listen
12 to anything on tv or on the radio about these cases. Do
13 you understand all of that?

14 JUROR: Yes, sir.

15 THE COURT: All right, I am going to ask you to remain
16 with us at this time and we are going to call the other
17 jurors in and from that we are going to draw a list - just
18 one second - Ms. Counts, I am going to ask you to just go
19 out with the regular jury and we will send for all of you
20 all in just a minute.

21 What was his name. the one deputy we have got left?

22 THE CLERK: 169; 107.

23 THE COURT: Number 65, I think.

24 THE CLERK: 65?

25 THE COURT: Isn't that the one, number 65?

THE STATE VS HUGHES

1 THE CLERK: 65 is a law enforcement officer, a reserve
2 deputy; and the other juror that was excused was 77; and
3 65; 197 was a former police officer.

4 THE COURT: And he's still on.

5 What does The State say about number 65?

6 MR. POPE: 65 being a reserve officer, Your Honor?

7 THE COURT: Well, I thought 65 was the only one left
8 because 77 I excused.

9 MR. POPE: I think I missed an argument on 77; I think
10 65 - I think it leaves it open in Bryant for a special
11 deputy. My understanding too of reserve officers that in
12 this particular situation the reserve officer although he
13 doesn't have independent arrest power does have arrest
14 power when accompanying another deputy and I think it may
15 transcend the Bryant case, which it sounds like they were
16 just serving process and so in a case of this magnitude,
17 Your Honor, I would reluctantly have to say that he
18 probably should be disqualified.

19 THE COURT: Is there any problem with that?

20 MR. SCHUSTERMAN: No, sir, we have no problem with
21 that. I can tell you that from reading State v Matthews I
22 saw it under State v Matthews first and I think under
23 Matthews you could make an argument that he should be
24 disqualified.

25 THE COURT: We are going to disqualify him then.

THE STATE VS HUGHES

1 MR. SCHUSTERMAN: Thank you.

2 THE COURT: What's his name one more time?

3 THE CLERK: Terry Davidson.

4 THE COURT: Davidson. All right.

5 MR. SCHUSTERMAN: You still haven't decided on juror
6 number 197, the gentleman that is the peace officer from
7 Georgia.

8 THE COURT: I thought I had decided on that.

9 What is The State's position on 197?

10 MR. POPE: I beg the court's indulgence. Your Honor.
11 I don't believe it falls within the statute as being a
12 deputy.

13 THE COURT: Wait just a minute.

14 Mr. Davidson, we are going to excuse you. We feel
15 like you come close enough with your law enforcement
16 situation to maybe at least give us some pause to feel
17 like you should be not qualified to serve on this case, so
18 we are going to let you go. You can step up there and get
19 your check.

20 JUROR: Okay, thank you.

21 THE COURT: What is your position? That he does not
22 fall in that category?

23 MR. POPE: Yes, sir, Your Honor.

24 THE COURT: What about the defense?

25 MR. SCHUSTERMAN: Well, Your Honor, for two different

THE STATE VS HUGHES

1 reasons number one. The first reason being that he has
2 already articulated to the court that as a former peace
3 officer that he felt he could not be fair and impartial.
4 He's already made that clear. And if you read State v
5 Matthews, that seems to be the first challenge.

6 THE COURT: Bring in Mr. Safter, Number 197. Mr.
7 Safter.

8 THE CLERK: Safter.

9 THE COURT: Safter. Mr. Safter, you indicated some
10 reluctance you felt when I talked to you earlier that even
11 though you are not involved in law enforcement now that
12 that past experience would prevent you from being fair and
13 impartial.

14 JUROR: Your Honor, I'm afraid it would.

15 THE COURT: You feel sure it would?

16 JUROR: Yes, sir.

17 THE COURT: Well, I'll excuse you then. All right, if
18 you will step up here, they will give you some money.

19 JUROR: Okay.

20 THE COURT: All right, anything else from The State?

21 MR. POPE: No, sir, Your Honor.

22 THE COURT: The defendant?

23 MR. SCHUSTERMAN: Yes, sir, Your Honor, that would be
24 all.

25 THE COURT: Mr. Safter, I am going to ask you to move

THE STATE VS HUGHES

1 over just a little bit, so I can see. Well, I am going to
2 call the jury in and then in their presence we are going
3 to draw the jury. Does The State consent to the Clerk
4 drawing the jury from the names placed in a box without
5 being encapsulated?

6 MR. POPE: The State consents to that, Your Honor.

7 THE COURT: The defense?

8 MR. SCHUSTERMAN: The defense consents to that.

9 THE COURT: All right, bring in the jury.

10 Now we are going to draw all the jurors left
11 starting with group one, one through ten, group two, one
12 through ten.

13 MR. POPE: Your Honor, as I understand it is that that
14 consent is as far as drawing the box as to the clerk
15 drawing it?

16 THE COURT: To the Clerk and with them not being put
17 in capsules.

18 MR. POPE: Yes, sir.

19 THE COURT: Mr. Norwood, you can come on up here for
20 just a minute.

21 All right, those of you who remain with us what we are
22 going to do at this time is all of your names have been
23 placed on little slips of paper like you find in a fortune
24 cookie at a Chinese Restaurant, it's the exact same size
25 and it's got little print on it. They have been placed in

THE STATE VS HUGHES

1 a box and they will be drawn at random by the Clerk. We
2 will draw in panels of ten. We will draw the names. They
3 will be put on a list and then we will have ten of you
4 stay this afternoon so we can go through the first ten and
5 then we will set up times for the remaining panels to come
6 back starting at 9:00 in the morning. I hope to do two
7 panels this afternoon, but it's getting a little too late
8 to do that unless we stay late into the evening. So what
9 we are going to try to do is do ten this afternoon and see
10 how that goes, start back in the morning and if we need to
11 go a little later, it will be tomorrow instead of today.

12 So, Madam Clerk, if you will draw us a jury.

13 THE CLERK: You don't want me to verbally say out
14 loud, do you?

15 THE COURT: Does the ---

16 MR. POPE: May it please the court, Your Honor.
17 Standardly what we've done is ten come down and be seated
18 or whatever and then you decide where you are going to
19 send those ten and let them go to another box; that's the
20 way we've done it in the past.

21 THE COURT: Well, the question though is do you want
22 to announce the names as we go through or just give you
23 the list when we get finished.

24 MR. POPE: Your Honor, just announce it.

25 THE COURT: And have them come forward.

THE STATE VS HUGHES

1 MR. SCHUSTERMAN: Please.

2 THE COURT: If you hear your name called, please come
3 forward and have a seat up here in the jury box. This
4 will be the first panel. We will call it panel A. So you
5 might want to change it. I know you have a 1 on there, but
6 change it to an A.

7 THE CLERK: Yes, sir.

8 Juror 110 Duane Heyward. Would you come forward,
9 please, and have a seat in the jury box to my left.

10 THE COURT: Just step right.

11 THE CLERK: Juror 156 William Mislivets. Juror 116
12 Ruby Howie. Juror 87 Patricia Goad. Juror 48 Julie
13 Cauthen. Juror Number 248 Timothy Wright. Juror Number 90
14 Michael Graham. Juror Number 132 Ann Keller. Juror 241
15 Bobby Wiley. And Juror 166 Byron Neeley.

16 That's ten. Your Honor.

17 THE COURT: All right. Those of you who have been
18 drawn you are Panel A and we are going to have you stay
19 around and start as soon as we get through drawing the
20 rest with what is called the individual voir dire and I'm
21 telling all of you this at the same time so you will know.
22 You will be brought in and you will remain under oath and
23 you will sit in this witness chair. I will ask you a few
24 questions and then the attorneys will have the opportunity
25 to ask you a few questions. Now, I emphasize to you that

THE STATE VS HUGHES

1 although you will be here for a while with us longer while
2 I have everyone together, this may be the last time or
3 probably will be the last time I will have all of you
4 together. What I said earlier, you are not to discuss this
5 case until you have been finally released, that is, after
6 the jury has been drawn and we are on our way to York
7 County. Even then, those of you who are drawn cannot talk
8 about the case until I ask you to deliberate. So none of
9 you should be talking about the case. None of you should
10 be talking about what happens in here. We will bring you
11 in individually. We will ask you some questions and then
12 you will go back to the jury room. But don't be asking
13 what happened and don't be telling what happened. Just
14 each one is individually and it will be up to each of you
15 individually. Again, those of you who are released today
16 and told to come back Wednesday or those of you who are
17 released today and told to come back tomorrow at certain
18 times or to call back at certain times, do not let
19 yourself be exposed to any news media about this case, not
20 to listen to anything on the radio, not to anything on the
21 television and not to anything in the newspaper. Avoid
22 knowing anything about this case from anywhere except in
23 the courtroom.

24 Now, finally, I have in my hand what is called the
25 three juror types. I have ten of these. They will be in

THE STATE VS HUGHES

1 the jury room where you will be waiting. Each of you need
2 to read this. When you come in, the first thing I am going
3 to say is did you read it and I hope you will all say yes.
4 It states the types of jurors that traditionally have been
5 found to exist regarding death penalty cases and I keep in
6 mind that is what we have here. They will outline for you
7 three types of jurors. Read this and decide if you fall
8 into one of those categories. You may not and we can talk
9 about that too. But I think the categories are broad
10 enough that you would find yourself in one of those
11 categories. Read this because when you come in, that's
12 most probably where we are going to start our questions
13 from. I am going to ask you if you read it and, if so, if
14 you find yourself in one of those. If so, which one did
15 you find yourself in. The attorneys have this. I, of
16 course, have one and I'll put ten in the jury room. Do not
17 take these. They are not to leave the jury room. Do not
18 bring them in here with you. Do not take them with you
19 when you leave at any time. They remain my property and,
20 please, don't take my property. So I will send these in
21 with you to the jury room now because, hopefully, in the
22 next forty-five minutes or so we will be having you come
23 back in for your individual questions. All right.

24 Before you leave, anything else from The State or the
25 defense before we let the first panel go?

THE STATE VS HUGHES

1 MR. POPE: No, sir, Your Honor.

2 MR. SCHUSTERMAN: Nothing by the defense. Your Honor.

3 THE COURT: All right, thank you. See you in a little
4 bit.

5 (Panel A retires.)

6 Now as you hear your name called, please come forward
7 and have a seat in the jury box.

8 THE CLERK: Jury Panel B. Juror number 17 Eleanor
9 Baugh. Juror 225 Arnold Tompkins. Juror number 80 Michael
10 Fulmer. Juror 22 Brian Besson. Juror 148 Ted Martin. Juror
11 76 Laurie Frazier. Juror 100 William Hall. Juror 112 Lana
12 Hodson Carter. Juror 177 Jane Petersen. Juror 134 Willie
13 Key.

14 THE COURT: You ten constitute Panel B. Please report
15 back at 9:00 AM to the jury assembly room. Most probably
16 you will be moved to another room fairly soon thereafter,
17 but report back to the jury assembly room where you were
18 earlier at 9:00 AM. Keep in mind what I said about not
19 discussing this case. Have a pleasant evening.

20 Anything from The State before the jury panel is
21 dismissed?

22 MR. POPE: No, sir, Your Honor.

23 THE COURT: Anything from the defense?

24 MR. SCHUSTERMAN: Nothing from the defense.

25 THE COURT: Have a pleasant evening. We will see you

THE STATE VS HUGHES

1 at 9:00 in the morning.

2 THE CLERK: Juror 186 Sandra Reed. Juror 149 Adrina
3 McCollum. Juror 121 Richard Jeffords. Juror 41 Denise
4 Bush. Juror 105 Marvin Harrison. Juror 195 Clydie Ross.
5 Juror 33 Herbert Bright. Juror 193 Belmont Rogers. Juror
6 45 Martha Carey. Juror 176 Linda Perry.

7 THE COURT: Okay, you are Panel C. I am going to ask
8 you to report at 11:00 in the morning, 11:00 AM, to the
9 jury room, the jury assembly room, the same place you have
10 been reporting. Keep in mind my admonitions about not
11 discussing the case and not yourself be exposed to any
12 outside information through the news media or otherwise.
13 So have a pleasant evening.

14 Anything else from The State before this jury is
15 dismissed?

16 MR. POPE: Nothing further, Your Honor.

17 MR. SCHUSTERMAN: Nothing, Your Honor.

18 THE COURT: Have a pleasant evening. We will see you
19 at nine -- eleven in the morning. I'll keep it straight.
20 eleven in the morning.

21 THE CLERK: Juror 250 Paul Zeh. Juror 55 Alan Clingan.
22 Juror 26 T. J. Boatwright. Juror 118 Lashonia Issaac.
23 Juror 106 Eileen Hartman. Juror 135 Virginia Kitchens.
24 Juror 141 Ruben Lee. Juror 147 Diane Mangiante. Juror 49
25 Danny Chavous. Juror 219 Eloise Taylor.

THE STATE VS HUGHES

1 THE COURT: All right, you will be Panel D. Panel D.
2 And I am asking you to be back at 2:00 PM tomorrow, 2:00
3 PM tomorrow. So we will see you in the jury assembly
4 room, not here in the courtroom, in the jury assembly room
5 at 2:00 tomorrow afternoon.

6 Anything from The State?

7 MR. POPE: No, sir, Your Honor.

8 THE COURT: The defendant?

9 MR. SCHUSTERMAN: Nothing, Your Honor.

10 THE COURT: You have the other - you have go
11 everybody's phone number in case we need them. We'll see
12 you at ---

13 JUROR HARTMAN: Excuse me, you said at the beginning
14 that perhaps we could call to see if you all were on time?

15 THE COURT: Tomorrow I am going to ask you all to
16 report at 2:00 unless you hear from us because I think
17 that is going to cause too much confusion. So those of
18 you who are instructed to come back at a certain time,
19 please come back. If we are running late, we will adjust
20 accordingly. So just be here at 2:00 PM. Have a pleasant
21 evening and keep in my my admonitions about outside
22 influences.

23 THE CLERK: Juror number 47 Sean Carter. Juror number
24 24 Eugene Bing. Juror 36 Kedar Brown. Juror 54 Robert
25 Clevenger. Juror 104 Jane Harrison. Juror 6 Eugene Ansley.

THE STATE VS HUGHES

1 Juror 249 James Youngblood. Juror 81 Betsy Furtick. Juror
2 233 Carol Wagner. Juror 209 Ann Smythe.

3 THE COURT: All right, you are Panel E. I am going to
4 ask that you be back at 4:00 PM tomorrow. Keep in mind my
5 admonitions about discussing the case and the outside
6 influences. We will see you back in the jury room at 4:00
7 PM tomorrow afternoon. Have a pleasant evening.

8 I'm sorry, go forward.

9 THE CLERK: Are you ready for another one?

10 THE COURT: Yes, just draw the next panel.

11 THE CLERK: Juror number 16 Willie Battles. Juror 34
12 Ronald Brissey. Juror 157 Judy Moorehead. Juror 242
13 Beverly Williams. Juror 38 Clayton Burdette. Juror 205
14 Joseph Sharpe. Juror 75 Julie Ferrara. Juror 60 Beatrice
15 Counts. Juror 139 Layton Laird. Juror 2 Marcia Allen.

16 THE COURT: All right, you all will be Panel F. Now,
17 what I am going to ask you to do is call back tomorrow
18 between 12:00 and 1:00. Do they have the telephone number?

19 THE CLERK: No, Your Honor.

20 THE COURT: We are going to give you the telephone
21 number and you will get an answering machine and it will
22 have your instructions. These instructions may be a call
23 back for a later time or it may tell you to report, when
24 to report. Follow the instructions because if you are not
25 here, we will have to ask the sheriff come find you and I

THE STATE VS HUGHES

1 don't say that for a threat, but that's what my job makes
2 me do. So please be here. If you have some particular
3 problem that we need to know about that would detain you,
4 let us know. But call between 12:00 and 1:00 and you will
5 receive instructions and follow them. Have a pleasant
6 evening and keep in mind what I told you about outside
7 influences and there is to be none. Thank you.

8 Give us another panel.

9 THE CLERK: Juror number 57 Joel Coleman. Juror 154
10 Jessie Millhouse. Juror 37 Gary Bryant. Juror number 212
11 Tina Spears. Juror 226 Charles Tudor. Juror 70 Joann
12 Duffie. Juror 21 Joe Benson. Juror 160 Joseph Munn. Juror
13 165 Linda Neeley. Juror 187 Victor Rice.

14 THE COURT: You are Panel G. Panel G. I am going to
15 ask you to call between 12:00 and 1:00 also. You will be
16 given a number as you leave. Keep in mind what I told you
17 about not receiving any outside influence about the case
18 from any source whatsoever. We will give you the telephone
19 numbers as you exit and please call and as I told the
20 other panel make sure you call between 12:00 and 1:00
21 tomorrow, follow the instructions you were given and if
22 for some reason you want to be detained, please let us
23 know. You need to be here when you are told and we need
24 you to call back if that is what you are told. You need to
25 follow these instructions.

THE STATE VS HUGHES

1 Give us Panel H.

2 THE CLERK: Juror 109 John Herron. Juror 29 Anthony
3 Boyd. Juror 35 Deloise Brown. Juror 64 Stephen Danker.
4 Juror 208 Patricia Smith. Juror 239 Karen Wessel. Juror
5 164 Herlilnda Nadal. Juror 220 Esther Taylor. Juror 247
6 Timothy Worrell. Juror 9 Betty Arnold.

7 THE COURT: All right, you are Panel H, Panel H. Now I
8 am going to ask you to call between 12:00 and 1:00 just
9 like the others. Call between 12:00 and 1:00. You are
10 Panel H and please follow the instructions you are given.
11 Keep in mind my admonitions.

12 Anything before this panel leaves?

13 MR. POPE: No, sir, Your Honor.

14 MR. SCHUSTERMAN: Nothing, Your Honor.

15 THE COURT: Have a pleasant evening.

16 THE CLERK: Juror 234 DeWayne Walker. Juror 115 Wayne
17 Hood. Juror 196 Gregory Rucker. Juror 178 Charles Plenge.
18 Juror 207 Milton Shope. Juror 152 Michael Melton.

19 THE COURT: You gentlemen will be Panel H -- I mean
20 Panel I. I am forgetting my alphabet, I even wrote it
21 down. Panel I. The six of you are Panel I. Please call
22 back tomorrow between 12:00 and 1:00 and you will receive
23 instructions. As I told the other panels, please follow to
24 the letter the instructions given. If you are not here
25 when you are supposed to be, we will have to send someone

THE STATE VS HUGHES

1 to find you and if any reason you are detained when you
2 are supposed to be here, please let us know. You will get
3 your number on your way out. Keep in mind my admonition
4 about not discussing the case. You are Panel I. Have a
5 pleasant evening and we will see you after you call in the
6 morning.

7 Counsel, we are going to take a short break I know you
8 have asked for that. We will take about it's a quarter
9 'til about 12 minutes or a little bit longer.

10 So before we do that, on the other no show, you know,
11 three came in and one had moved to another county, nobody
12 else has been picked up. The sheriff has been unable to --
13 I can't say can't find, but they just haven't had the
14 people to work that aspect of the situation for us. One
15 may be on the way now, but since we have drawn the jury
16 and they are qualified, I have ordered the Clerk to
17 transfer any that would show up now since we have
18 qualified the jury and since we have drawn the panel if
19 any were to show up at this late hour, we are simply going
20 to transfer them to another term of court. Any comments
21 on that?

22 MR. POPE: No objection, Your Honor.

23 MR. SCHUSTERMAN: Without objection.

24 THE COURT: All right, I'll give you until about 10
25 'til, that's about 15 minutes. We'll see you back then.

THE STATE VS HUGHES

1 (Recess.)

2 THE COURT: Is the defense ready?

3 MR. SCHUSTERMAN: The defense is ready, Your Honor.

4 THE COURT: Mr. Gregory, I am going to ask you, you
5 are in charge of the SLED here, is that correct?

6 AGENT GREGORY: I don't know if I am in charge.

7 THE COURT: I am going to ask you if you would we are
8 now reaching into a stage of the trial where I am sure
9 counsel for the defendant and the defendant will probably
10 have some privileged conversations. I'm not going to ask
11 you or anyone from your office to move; I just want all of
12 you to be aware of the fact for the duration of this trial
13 you are not to discuss anything you overhear at counsel
14 for defendant's table with counsel for The State or any
15 other SLED agents because I want to make sure they feel
16 like they have freedom. I am not saying you would anyway,
17 but just so they will know that -- and Mr. Hughes will be
18 relaxed if The State doesn't have someone sitting at this
19 table who is overhearing what they are discussing. So you
20 don't see any problem with that, do you?

21 AGENT GREGORY: No, sir.

22 THE COURT: Okay, thank you a lot.

23 All right, is The State ready to proceed?

24 MR. POPE: Yes, sir, I believe number 90 was the one we
25 discussed was the one that had earlier been given a

THE STATE VS HUGHES

1 questionnaire to fill out.

2 THE COURT: 90?

3 THE CLERK: Yes, I gave him a questionnaire.

4 MR. POPE: Maybe he will get through before then.

5 THE COURT: When you get Mr. Heyward, who will be the
6 first one in just a moment, if you will ask Mr. Graham if
7 he will send out his questionnaire and Timothy Wright
8 number 248?

9 THE CLERK: Yes, sir.

10 THE COURT: Would you object to me having the bailiff
11 just hand him a questionnaire and say the judge is asking
12 him to fill it out?

13 MR. POPE: No, sir, no objection.

14 MR. SCHUSTERMAN: None from the defense.

15 THE COURT: All right, do you have a blank?

16 THE CLERK: Yes, he has already been given one.

17 THE COURT: She has already given him one. Just ask
18 Mr. Wright and Mr. Graham to send out their questionnaires
19 as soon as they have them.

20 The State is ready to proceed, right?

21 MR. POPE: The State is ready, Your Honor.

22 THE COURT: The defense?

23 MR. SCHUSTERMAN: The defense is ready.

24 THE COURT: All right, Duane Heyward. Step right up
25 here.

DUANE HEYWARD

BY THE COURT

DUANE HEYWARD (W/M):

1
2 THE COURT: Let me introduce myself. I am John Hayes.
3 I am the judge. Remember that you are still under oath and
4 I am going to ask you to speak kind of out that way
5 because they want to hear what you have to say and I can
6 hear you because I am so close. I'll try not to be
7 repetitious, but I just want to ask you individually

8 EXAMINATION BY THE COURT:

9 Q Are you related by blood or marriage to any of the
10 attorneys present?

11 A No, sir.

12 Q Do you have any interest or bias or prejudice in this
13 case whatsoever?

14 A No, sir.

15 Q Do you know anything about this case? Have you
16 expressed or formed any opinion as to the guilt or the
17 innocence of the defendant?

18 A No, sir.

19 Q Do you know of any reason whatsoever why you could not
20 give both The State of South Carolina and the defendant,
21 Mr. Hughes, a fair and impartial trial?

22 A No, sir.

23 Q Under your oath, would you follow the law in this case
24 as I as trial judge would charge it to you?

25 A Yes, sir.

1 Q Could you depending on the facts and evidence and the
2 law as I instruct you find a defendant not guilty if you
3 felt the facts and the evidence so showed?

4 A Yes, sir.

5 Q Could you depending on the facts and the evidence if
6 you felt it was appropriate find the defendant guilty
7 based on the law and the evidence as I instruct you?

8 A Yes, sir.

9 Q Have you discussed this case with anyone?

10 A No.

11 Q Have you read about it, viewed anything, or heard
12 anything about it from any source whatsoever?

13 A No, sir.

14 Q Now in this case Mr. Hughes, who you have met, is
15 black, and the victim, Brent McCants, was white. Would
16 this fact, the fact that the defendant is black and Mr.
17 McCants was white prevent you from in any way whatsoever
18 from rendering a fair and impartial verdict in this case?

19 A No.

20 Q The victim, Mr. Brent McCants, was a law enforcement
21 officer at the time of his death and was engaged in law
22 enforcement at the time of his death. that is, he was on
23 duty. Would this fact in any way whatsoever prevent you
24 from rendering a fair and impartial decision in this case?

25 A No, sir.

1 Q All right, would you without regard to the race of the
2 defendant, the race of Mr. McCants and Mr. McCants'
3 employment render a fair and impartial verdict based
4 solely on the law given to you by the trial judge and the
5 evidence in the record uninfluenced in any way whatsoever
6 by reason of the difference in race between the defendant
7 and the victim?

8 A Yes, sir.

9 Q All right, now, I am going to ask you a few questions
10 concerning the death penalty and your views concerning it.
11 Now there are no right or wrong answers and I emphasize
12 that to you. The mere fact that we are talking about
13 penalty does not indicate anything about the defendant. He
14 is presumed innocent. Do you understand that?

15 A Yes, sir.

16 Q I have put a sheet in the jury room describing three
17 types of jurors. Have you read it?

18 A Yes, sir.

19 Q Do you feel you fall into one of those categories?

20 A Yes, sir.

21 Q Which one?

22 A Type 3.

23 Q All right, that is the juror who would not have your
24 mind made up in advance, but would listen to the evidence
25 and based on the facts presented by The State or the

DUANE HEYWARD

BY THE COURT

1 defendant bring in a verdict without preconceived notions.
2 is that correct?

3 A That is correct.

4 Q Could you as a juror participate in a jury verdict
5 recommending the penalty of death by electrocution or
6 lethal injection for murder if the evidence and the law
7 would warrant such a verdict?

8 A Yes, sir.

9 Q Could you as a juror also participate in a jury
10 verdict recommending a sentence of life imprisonment for
11 murder if the evidence and the law warrants such a
12 verdict?

13 A Yes, sir.

14 Q Now I have already sort of asked this in general, but
15 I am asking you specifically, would sequestration, that
16 is, having you separate and sequestered staying in York
17 County for the duration of this trial, which we anticipate
18 to be ten or so days, pose any particular undue hardships
19 for you?

20 A No, sir.

21 Q All right, I am ask now that you answer any questions
22 posed by the solicitor or the counsel for the defendant.

23 EXAMINATION BY MR. POPE:

24 Q Mr. Heyward, my name is Tommy Pope. I am the solicitor
25 up in York County. This is Kevin Brackett, my deputy

1 solicitor. Of course we represent The State. And a number
2 of the things the judge went through I am just going to
3 touch on briefly. As the defendant sits now he is innocent
4 until proven guilty and The State has to prove the
5 defendant guilty beyond a reasonable doubt. Do you
6 understand that?

7 A Yes, sir.

8 Q And so we bear the burden of proof and they don't have
9 to prove anything, do you understand that?

10 A Yes sir.

11 Q So, again, when the judge says we are talking about
12 penalty, well, first we have got to prove it and in this
13 type of case, a death penalty case, it's really like two
14 trials in one or two cases in one. First, it is guilty or
15 not guilty, just like every other trial, do you understand
16 that?

17 A Yes.

18 Q And we would only go into the second phase, the
19 penalty phase, if he were found guilty and, again, it goes
20 back to us having to prove it, do you understand that?

21 A Yes, sir.

22 Q And from what I heard you tell the judge you are the
23 type of juror that you wouldn't come in with a
24 preconception, you would want to hear everything
25 everything from both sides again knowing we have to prove

1 it and they don't have to say anything, if they don't want
2 to, right?

3 A Correct.

4 Q And so you would want to hear everything we have to
5 say, anything they had to say, if they chose to say
6 anything, before you would make a determination on the
7 guilt, is that right?

8 A That's correct.

9 Q If the defendant is found guilty, and again we have to
10 prove it, but then we would go to the second part and the
11 second part would be penalty and the judge would instruct
12 you and you would be determining whether the penalty
13 should be life or death in the simplest term. And if I
14 understand, you are the type that you would want to know
15 everything you could hear good and bad; you would want to
16 hear whatever good you could hear about the defendant and
17 you would want to hear whatever we might have to say bad
18 about the case or whatever the case may be, is that
19 correct?

20 A Yes, sir.

21 Q You would listen to the judge as far as the law and
22 until you heard everything you wouldn't make up your mind,
23 is that true?

24 A That's correct.

25 Q Okay. There's one more thing I would like to ask you.

DUANE HEYWARD

BY MR. SCHUSTERMAN

1 It's a little unique. As a requirement of our law in a
2 death penalty case, and now again I am talking about the
3 penalty part of it, the second part of the trial, if the
4 jury determines after hearing all of the facts that the
5 appropriate penalty is the death penalty, then each juror
6 is required to sign their name individually. And, of
7 course, again you can give life in a death penalty case
8 for any reason or no reason at all and you, of course,
9 wouldn't have to sign your name to life, but if you
10 determined death was appropriate, and you thought after
11 hearing everything that that was the right thing to do,
12 could you sign your name to that form?

13 A Yes, sir.

14 Q Thank you, sir.

15 THE COURT: Mr. Schusterman or Ms. Brice.

16 MR. SCHUSTERMAN: Thank you, Your Honor, may it please
17 the court?

18 EXAMINATION BY MR. SCHUSTERMAN:

19 Q Mr. Heyward, my name is Steve Schusterman. I am an
20 attorney from York County and I represent Mar-Reece Hughes
21 along with the lady sitting at the table, Mrs. Brice. Let
22 me ask you, Mr. Heyward, you said that you would have the
23 ability to sign your name on a death warrant so to speak,
24 is that correct?

25 A That is correct.

DUANE HEYWARD

BY MR. SCHUSTERMAN

1 Q Let me ask you, if the jury felt everyone on the jury
2 panel felt that death would be an appropriate penalty and
3 you did not, would you believe that you have the internal
4 fortitude and will to hold your ground ---

5 A Yes, sir.

6 Q --- or would you go along with the other jurors?

7 A No.

8 Q You could stand your ground?

9 A Yes, sir.

10 Q Do you understand as the judge said and as Mr. Pope
11 said that Mr. Hughes is absolutely innocent. He has
12 entered a plea of not guilty to the charge. Do you
13 understand that?

14 A Yes, sir.

15 Q And that even though we keep talking about this death
16 penalty that, as Mr. Pope says, that is the second phase
17 of the trial and the first thing they have to do is prove
18 him guilty. do you understand we are not going to skip
19 over the first part and say, well, he's guilty let's just
20 move on and see if it's life or death?

21 A Yes.

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

23 A No. I have no problem with that.

24 Q Do you have any ties to anybody in York County or Rock
25 Hill?

1 A No.

2 Q Do you know anybody there?

3 A No.

4 Q Does it bear an influence on you the fact that Mr.
5 Hughes is black and the victim in this incident is white?

6 A No, sir.

7 Q You have no racial prejudice?

8 A No.

9 Q None whatsoever?

10 A None.

11 Q Do you remember filling out your questionnaire?

12 A Yes.

13 Q I notice that you are a member of the Baptist Church
14 and the Masonic Lodge.

15 A Correct.

16 Q Both, obviously, the church having a religious
17 background and the Masonic Lodge having a religious tie to
18 it ---

19 A Correct.

20 Q Is there anything about those organizations do they
21 have any philosophies regarding punishment, an eye for an
22 eye, or do they refer you in any way to the method of
23 punishment?

24 A You mean like at the Baptist Church?

25 Q The Baptist Church or the Masonic Lodge in any way.

1 A Just only the Bible that I would say going through the
2 verses of like an eye for an eye something like that, but
3 that's all I know of.

4 Q Do you adhere to that concept?

5 A I don't adhere to that exact - to me circumstances
6 matter and the reason I say that is I have been divorced
7 twice and I know how circumstances are. Circumstances
8 matter, so I can't go along with that, no, sir.

9 Q Turn your attention just for a moment to the concept
10 of psychiatry, psychology. Do you adhere to psychiatrists
11 - the need for psychiatrists in society? Do you believe
12 in them?

13 A I believe there's a place for them, yes, sir.

14 Q Just briefly what is that place?

15 A I believe there's a place that people who need help
16 that are stressed out, mentally pressured.

17 Q Do you believe that people have mental illnesses?

18 A Oh, yes, sir, mentally ill people.

19 Q Do you believe that criminals use the field of
20 psychiatry ---

21 MR. POPE: Your Honor, I object. I think we are
22 getting at this point to staking out the jurors.

23 THE COURT: I sustain the objection.

24 MR. SCHUSTERMAN: Thank you, Your Honor.

25 With the court's indulgence, Your Honor.

DUANE HEYWARD

BY MR. SCHUSTERMAN

1 No further questions. Thank you, Your Honor.

2 THE COURT: I am going to ask you to step out into the
3 hall for just one second. You don't need to go back all
4 the way into the room.

5 As to qualifications, what says The State?

6 MR. POPE: I submit he is qualified, Your Honor.

7 THE COURT: What says the defense?

8 MR. SCHUSTERMAN: I submit he is qualified, Your
9 Honor.

10 THE COURT: I so find. I find that 110 Mr. Duane
11 Heyward is, in fact, qualified.

12 Counsel, what I plan to do is have those who are
13 chosen call back between 5:00 and 7:00 tomorrow as to what
14 time to report on Wednesday. Okay. Bring him back in.

15 You can just stand right there. You are qualified to
16 serve. You will be in the jury panel. Please call, we
17 will give you a telephone number as you leave, please call
18 between 5:00 and 7:00 tomorrow and they will tell you when
19 to report on Wednesday. When you report on Wednesday,
20 please bring enough to be prepared to go off on about a
21 ten day stay. You may not, but you need to be prepared
22 because once you are, if you are, seated on the jury, we
23 intend to immediately travel on up there.

24 JUROR: That will be Wednesday?

25 THE COURT: That will be Wednesday. Call between 5:00

DUANE HEYWARD

BY MR. SCHUSTERMAN

1 and 7:00 tomorrow.

2 JUROR: Yes, sir.

3 THE COURT: Thank you. Keep in mind not to discuss
4 the case or receive any information from any outside
5 source including the news media. Thank you.

6 MR. POPE: May it please the court, Your Honor? I
7 would object to -- I did not object during this juror, but
8 Mr. Schusterman's question concerning eye for an eye. We
9 had already reviewed that on the questionnaire and I do
10 have an objection again from his staking out the jury
11 aspect.

12 THE COURT: Did we cover that sort of in the
13 questionnaire?

14 MR. POPE: No, sir, we did not in fact cover it in the
15 questionnaire as we had an objection to this question. I
16 think it was in the original questions the questionnaire.

17 THE COURT: I am going to let him ask that question,
18 but not go any further. I'll allow that. We are going to
19 probably have to step up the process a little bit, but I'm
20 not going to be pushing, but that took about 17 minutes
21 for one person and I admit I was going a little slow
22 myself, but the first few -- it will go faster as we move
23 along.

24 All right, William Mislivits 156.

25 WILLIAM MISLIVITS (W/M)

EXAMINATION BY THE COURT:

1
2 Q I am John Hayes. You are still under oath regarding
3 these questions now. Some of these may be a little
4 repetitious, but I hope not. I hope we avoid repetition.
5 But are you related by blood or marriage to any of the
6 attorneys or the defendant?

7 A No, sir.

8 Q Do you have any interest, bias or prejudice in this
9 case whatsoever?

10 A No, sir.

11 Q Have you heard anything about this case or have you
12 formed or expressed any opinion as to the guilt or the
13 innocence of the defendant?

14 A No, sir.

15 Q Do you know of any reason whatsoever why you could not
16 give The State and the defendant a fair and impartial
17 trial?

18 A I don't have any reason why I couldn't.

19 Q Would you under your oath follow the law in this case
20 as charged by the trial judge?

21 A Yes.

22 Q Could you depending on the facts and the evidence and
23 the law ---

24 MR. SCHUSTERMAN: Your Honor, can I ask the witness to
25 speak up a little bit.

1 Q All right, could you depending on the facts and the
2 evidence and the law as instructed by the trial judge if
3 you feel it appropriate find the defendant not guilty?

4 A I could.

5 Q Could you depending on the facts and the evidence and
6 the law as you will be instructed find the defendant
7 guilty?

8 A I could.

9 Q Have you discussed this case with anyone?

10 A No, sir.

11 Q Have you read, viewed or listened or have any account
12 whatsoever about this case?

13 A No, sir, I have none.

14 Q All right, the defendant, Mr. Hughes, is black and the
15 victim was white and he also, the victim, was a law
16 enforcement officer in the line of his employ at the time
17 he was killed. Would that fact in any way prevent you from
18 in any way rendering a fair and impartial verdict in this
19 case?

20 A No, it would not.

21 Q Could you in spite of that render a fair and impartial
22 verdict based solely on the law and the evidence
23 uninfluenced in any way whatsoever by the difference in
24 race and the fact that the victim was involved in law
25 enforcement at the time?

1 A No, it would not.

2 Q I am going to ask you some questions relative to your
3 views on the death penalty. There are no right or wrong
4 answers. I emphasize that the mere fact that we are
5 talking about the penalty would not indicate anything
6 about the defendant. He is presumed innocent. Do you
7 understand that?

8 A Yes, sir.

9 Q Now I put a sheet in the jury room with three juror
10 types. Have you had a chance to review it?

11 A Yes, I did.

12 Q Did you find yourself in any one of those types?

13 A Yeah, in a round about way I did, sir.

14 Q Which one?

15 A I probably fell like maybe in the third one.

16 Q Okay, now, could you as a juror participate in a jury
17 verdict recommending the penalty of death by electrocution
18 or lethal injection for murder if the evidence and the law
19 warranted such a verdict?

20 A I could.

21 Q Could you also participate in a jury verdict
22 recommending a sentence of life imprisonment for murder if
23 the evidence and the law warranted such a verdict?

24 A I could.

25 Q Now if you were selected on this case to be a juror,

1 you would be sequestered in a motel in York County for the
2 length of the trial. Would this present impose for you any
3 undue hardship?

4 A Depending on my employment what it would do, what they
5 would say, other than that it wouldn't create a hardship
6 on me, just the employment.

7 Q Okay, I am going to ask you now to answer any
8 questions by the solicitor.

9 MR. POPE: We are going to rotate with Mr. Schusterman
10 and Mrs. Brice.

11 THE COURT: Okay. By Mrs. Brice or Mr. Schusterman,
12 counsel for the defendant.

13 EXAMINATION BY MR. SCHUSTERMAN

14 Q Sir, my name is Steve Schusterman. I am an attorney
15 from Rock Hill, York County. I represent Mar-Reece Hughes
16 along with Mrs. Brice seated next to me.

17 A Okay.

18 Q First of all, I would like to ask you I note that when
19 Judge Hayes asked if you could find the defendant not
20 guilty of the offense you did not give as strong a
21 reaction as you did on the second question when he asked
22 you could you find him guilty. Was that done
23 intentionally?

24 A No, that wasn't done intentionally. If I did, it
25 wasn't intentionally.

1 Q Do you understand that Mr. Hughes sits there
2 absolutely innocent?

3 A The way the law states it says he is innocent until
4 proven guilty.

5 Q And you agree with that?

6 A Yes.

7 Q Again, are you qualifying that somewhat?

8 A No.

9 Q Do you understand the burden is completely on the
10 State through Mr. Pope and Mr. Brackett to prove Mr.
11 Hughes guilty beyond a reasonable doubt?

12 A Right.

13 Q And you understand that?

14 A Right.

15 Q Do you understand that if in fact you were to find him
16 guilty and the second step would be that you as a juror
17 would decide life or death, if you decided death, you
18 would have to sign your name on a death warrant?

19 A Uh-huh.

20 Q Would you be able to do that?

21 A If I was a juror, you know, I would.

22 Q Do you understand that even though you are seated up
23 here to discuss the concept of life or death that this is
24 what is known as a bifurcated trial, two phases to the
25 trial; the first phase would be guilt or innocent and we

1 don't pass over it, we are not going to pass over it, but
2 that is an issue. Mr. Hughes has entered a plea of not
3 guilty to the charge. You do understand that?

4 A Yes, sir.

5 Q Do you have any ties to anybody in Rock Hill or York
6 County, South Carolina?

7 A No, sir, I've just been living here three years.

8 Q You lived in Texas before then?

9 A Dallas, Texas.

10 Q You indicate in your questionnaire when asked how do
11 you feel about psychiatry, psychology, psychiatrists or
12 psychologists you said you had no problem with that.

13 A No. I don't.

14 Q Do you believe in a concept of mental illness?

15 A Yes, because I had a daughter that went into
16 depression and we sought treatment for her.

17 Q Depression?

18 A Depression.

19 Q So I think that you do believe in it?

20 A Yes, it helped her.

21 Q Do you believe that defendants use the concept of
22 mental illness to try ---

23 MR. POPE: Your Honor, I am going to object again; he
24 is staking out the juror.

25 THE COURT: I sustain the objection.

1 MR. SCHUSTERMAN: With the court's indulgence.

2 Q Sir, my last question. When Judge Hayes asked you what
3 juror type you fell into you said something to the effect
4 "Number 3 kind of."

5 A All right, I mean, I may have not given you a direct
6 answer, but 3 is what I fall under.

7 Q You wouldn't qualify it in any way?

8 A Do what, sir?

9 Q You wouldn't qualify your answer in any way? You are
10 number 3.

11 A I feel like I would fall under number 3.

12 Q Thank you. I have nothing further.

13 MR. POPE: May it please the court, Your Honor?

14 EXAMINATION BY MR. POPE:

15 Q Sir, I am Tommy Pope, I am the prosecutor for up in
16 York County. Mr. Kevin Brackett is from my office. As I
17 understood what you told the judge you are category 3, you
18 wouldn't come in with any presupposition; you would want
19 to hear everything from both sides before you made a
20 decision?

21 A Yes, sir.

22 Q And you understand again the defense -- when I say
23 both sides, they don't have to prove anything, do you
24 understand that?

25 A Yes, sir.

1 Q Okay. And the judge told you about part of the facts
2 being a law enforcement officer involved in his duties,
3 but you understand again that's a fact that The State has
4 to prove to you, do you understand that?

5 A Yes, sir.

6 Q And the final thing, Mr. Schusterman had asked and I
7 will again make sure I understand, of course, it's a two
8 part trial. The first trial has nothing to do with
9 penalty; it's just whether we can prove beyond a
10 reasonable doubt that the defendant committed the crime.
11 Then and only then if he's found guilty we would go to the
12 second part and the second part you would look at the two
13 penalties life and death. And again, you are the type of
14 juror from what I heard you say that you would want to
15 hear everything good and everything bad about the crime
16 and anything good they might want to put up. You would
17 want to hear everything before you made up your mind, is
18 that right?

19 A Yes, sir.

20 Q If you thought the appropriate penalty was to give a
21 life sentence, then you could decide that and stick with
22 it, is that correct?

23 A Yes, sir.

24 Q Likewise, if you thought the death penalty was
25 appropriate, you could decide that and, again, as part of

1 that you could sign your name along with the other twelve
2 jurors, is that correct?

3 A Yes, sir.

4 Q And again you understand when I say sign your name you
5 never have to decide death as your decision.

6 A Right.

7 Q All right, thank you.

8 THE COURT: You may step out just one minute into the
9 hall.

10 What says The State?

11 MR. POPE: I submit he is qualified, Your Honor.

12 THE COURT: What says the defendant?

13 MR. SCHUSTERMAN: I believe he is qualified.

14 THE COURT: I so find. I find that he is in fact
15 qualified.

16 Mr. Mislivits?

17 JUROR: Yes, sir.

18 THE COURT: You will be part of the panel from which
19 the jury is drawn. I am going to ask you to call back
20 between 5:00 and 7:00 tomorrow. As you go out, you will be
21 given a telephone number and you will be told what time to
22 report on Wednesday. When you do report on Wednesday, be
23 prepared to travel immediately after the drawing of the
24 jury to York County. That doesn't mean you have actually
25 be chosen yet, but in the event you are, we will go

1 immediately to York County to start the trial. So come
2 prepared to stay for ten or so day stay.

3 JUROR: Between 5:00 and 7:00 tomorrow?

4 THE COURT: 5:00 and 7:00 tomorrow and she will give
5 you a number. Thank you.

6 All right, Ruby Howie, number 116.

7 MR. POPE: Your Honor, I think it has been clear to
8 each juror Mr. Schusterman and I have both hit it. but one
9 of the things you bring up is about the officer and in the
10 line of his duty and, of course, again that's something we
11 have to prove because it would be an aggravating
12 circumstances.

13 THE COURT: I understand that.

14 Let her step out just one minute.

15 MR. POPE: I'm not objecting to their being asked
16 that, I just want to make sure we make it clear, you know,
17 that this isn't a fact in the case yet, it could
18 potentially be a fact.

19 THE COURT: Okay, all right. What do you have to say
20 about that, Counsel for defense?

21 MRS. BRICE: Your Honor, we have no objection to that
22 not being a part of the factual scenario.

23 MR. POPE: Your Honor, what I am saying is I don't
24 have any objection to your telling them ---

25 THE COURT: It is a fact question that must be proven,

RUBY HOWIE

BY THE COURT

1 but I think the court would be remiss since the facts ---

2 MR. POPE: You can say The State alleges.

3 THE COURT: All right, that might be better then. That
4 might be a better way to do it, but I'm very reluctant not
5 to say anything about it.

6 MR. POPE: I'm not asking that.

7 THE COURT: Okay, that's good. Bring her in.

8 MRS. BRICE: Thank you.

9 RUBY HOWIE (W/F)

10 EXAMINATION BY THE COURT:

11 Q I'm John Hayes, good to see you. Keep in mind you are
12 still under oath, Ms. Howie.

13 A All right.

14 Q Some of this may be repetitious, I hope not. I am
15 going to ask you to speak up loudly and maybe face toward
16 the attorneys because I am so close I can hear you.

17 A All right.

18 Q My vision is not too good, but my hearing is good.

19 A All right.

20 Q Are you related by blood or marriage to any of the
21 attorneys you have been introduced to or anybody whose
22 name you have heard in the proceeding to this point?

23 A No, I am not.

24 Q Do you have any interest, bias or prejudice in this
25 case?

1 A None.

2 Q Have you formed or expressed an opinion as to the
3 guilt or the innocence of the defendant, Mr. Hughes?

4 A No,

5 Q Do you know of any reason whatsoever why you could not
6 give both The State and the defendant a fair and impartial
7 trial in this case?

8 A No.

9 Q Would you, under your oath, follow the law in this
10 case as the trial judge charged it to you?

11 A Yes.

12 Q Could you depending on the facts and the evidence and
13 the law as I instruct you if you felt it appropriate find
14 the defendant not guilty?

15 A Yes.

16 Q Could you depending on the facts and the evidence and
17 the law as you would be instructed if you found it
18 appropriate find the defendant guilty?

19 A Yes.

20 Q Have you discussed this case with anyone?

21 A No.

22 Q Have you read or viewed or listened to anything about
23 this case?

24 A No.

25 Q Now in this case Mr. Hughes is black and the victim,

1 Mr. McCants, was white and The State alleges Mr. McCants
2 was acting in the course and scope of his employment as a
3 law enforcement officer at the time of his death. Would
4 that prevent you in any way whatsoever from rendering a fair
5 and impartial verdict in this case?

6 A No.

7 Q Could you without regard to the defendant and the
8 victim's race or the alleged employment of the victim
9 render a fair and impartial verdict based solely on the
10 law given by you -- by me to you and the evidence in the
11 record uninfluenced in any way whatsoever by these
12 factors?

13 A I hate to do this, but you confused me.

14 Q Okay, I'll start over then. I'd rather you not be
15 confused. I appreciate that. Would -- without regard to
16 the fact that Mr. Hughes is black, Mr. McCants is white,
17 and it is alleged Mr. McCants was working as a law
18 enforcement officer at the time this happened, without
19 regard to that, could you render a fair and impartial
20 verdict based on the law the trial judge charges to you
21 and the evidence in the record?

22 A Yes, I could.

23 Q Okay, and solely on those matters?

24 A Yes, I could.

25 Q All right. Now I am going to ask you certain

1 questions at this time relative to your views on the death
2 penalty. These have no right or wrong answers and the mere
3 fact that we are talking about penalty does not indicate
4 anything about the guilt or the innocence of the
5 defendant. He is presumed innocent. Do you understand
6 that?

7 A Yes.

8 Q All right, I put a sheet in the jury room with three
9 juror types on it. Have you had a chance to review it?

10 A Yes, sir.

11 Q Did you find yourself as falling into one of those
12 categories?

13 A Yes, sir.

14 Q Which one?

15 A The third.

16 Q Could you as a juror participate in a jury verdict
17 recommending the penalty of death for murder if the
18 evidence and the law warranted such a verdict?

19 A Yes, I could.

20 Q Could you recommend a sentence of life imprisonment if
21 the evidence and the law warranted such a verdict?

22 A Yes, I could.

23 Q Now we are as I told you before traveling to York
24 County once the jury is drawn and the jury will be
25 sequestered. Does this pose any unusual undue hardships

1 for you?

2 A It doesn't propose a hardship, but I just don't want
3 to go.

4 Q That's telling it like it is. I appreciate it. But it
5 doesn't present any undue hardship?

6 A No, it does not.

7 Q Okay, answer any questions the solicitor and counsel
8 for the defendant may have.

9 EXAMINATION BY MR. POPE:

10 Q Ms. Howie, my name is Tommy Pope and I am the
11 solicitor from up in York County.

12 A It's nice to meet you.

13 Q Mr. Kevin Brackett he is my deputy solicitor. I want
14 to touch on a few things right quick. It seems like you
15 have been here all day, which you have I guess, and I want
16 to touch on a few things on your questionnaire.

17 A All right.

18 Q First, again, going back to what the judge said, do
19 you understand and I figure from your watching tv that we
20 have to prove the case beyond a reasonable doubt.

21 A I understand.

22 Q And that the defendant is innocent until we prove him
23 guilty, if we are able to.

24 A I understand.

25 Q What we have in a death penalty trial in South

1 Carolina is a little difference than the standard trial.
2 It's really what they call a bifurcated trial, a two part
3 trial. The first part we just focus on guilty or not
4 guilty; it has nothing to do with the penalty. Obviously,
5 if the defendant is found not guilty, there would be no
6 second part.

7 A Right.

8 Q If the defendant is found guilty, then we go to the
9 second part and that's when the jury would hear maybe good
10 things about the defendant or bad things. Of course, they
11 don't have to put anything up if they don't want to, you
12 understand that?

13 A Yes.

14 Q As I understand it in both the guilt phase and the
15 penalty phase, if we got to one, you are the type juror
16 that would want to hear everything before you made up your
17 mind, is that correct?

18 A Definitely.

19 Q And like I say he doesn't have to put up anything, but
20 if they chose to you would want to keep an open mind and
21 hear what they had to say ---

22 A Yes.

23 Q --- and you wouldn't hold it against him if they
24 didn't put up anything, right?

25 A No, I wouldn't.

1 Q Okay. In going through your questionnaire I read a
2 couple of things about your father owned a store and some
3 of the things that happened in that regard, ---

4 A Right.

5 Q --- while that obviously, you know, everything that
6 happens in all of our lives makes up our lives. that
7 wouldn't affect your ability to be open minded and to be
8 fair to both sides, would it?

9 A No, it would not.

10 Q I noticed you had at least the psychiatrists that you
11 had met that you haven't been real impressed with them,
12 but again if either side, The State or the defense, chose
13 to put up psychiatric testimony and I sound like a broken
14 record, they don't have to put up anything, ---

15 A All right.

16 Q ---but would you have any bias in that regard or would
17 you listen to the testimony and weigh it as you though
18 appropriate?

19 A Yes, I would listen.

20 Q Okay, and I'll go back to the "I don't want to." Are
21 you talking about you are just kind of tired of the system
22 after watching O.J. on tv?

23 A Well, they've pretty much made a joke of things, seems
24 like.

25 Q And arguably you could say both sides ---

1 A Have done.

2 Q --- have done.

3 A Yes.

4 Q And, of course, you appreciate that we are here in
5 South Carolina as opposed to California and, from what I
6 understand, you really haven't been exposed to our system.

7 A No, I have not.

8 Q And from what I understand the type of juror you are
9 you would want to keep an open mind and not totally run us
10 out of the courtroom before we get started in that regard.

11 A Right. I would love to see it work correctly.

12 Q Okay and correctly could be finding someone guilty or
13 not guilty ---

14 A Or innocent.

15 Q Exactly. And, of course, when you say innocent you
16 know we have to prove ---

17 A Right.

18 Q --- they don't have to prove innocence. Okay, and one
19 thing I would say and, again, I keep circling around
20 trying to figure out how to address I don't want to, of
21 course, that may apply to me sometimes too, but the fact
22 that you would rather be elsewhere and not be involved in
23 this would not prevent you from being fair if you were
24 involved, is that true?

25 A I will be fair.

1 Q Okay and the final thing I will tell you if we get to
2 a penalty phase, which is the second part, and, of course,
3 you as a juror have your own mind, you know, you get in
4 and you talk about things with other jurors, but you are
5 one of the twelve and you determine things the way you see
6 it.

7 A Right.

8 Q And you are never ever forced to pick death, you know
9 what I mean, you know, you decide, but in a case the type
10 juror you are sometimes according to what the facts are
11 you may come back with life and there are sometimes you
12 might come back with death; you wouldn't know until you
13 heard the facts, is that correct?

14 A That's correct.

15 Q And you would follow the law as the judge instructed
16 you to the best of your ability?

17 A Yes, sir, I would.

18 Q One thing in South Carolina that's required on a death
19 verdict, again all twelve jurors, it has to be unanimous,
20 so if all twelve jurors decided that death is the
21 appropriate penalty, that each juror would have to sign
22 their name. If they determined life was appropriate, of
23 course, just the foreperson signs it. But if they
24 determine death was appropriate then each juror would have
25 to sign that. If you felt after hearing everything that

1 death was appropriate, could you put your name to that
2 document?

3 A If I felt that it was appropriate?

4 Q Yes, ma'am.

5 A Yes, I could.

6 Q And likewise if you felt it wasn't appropriate, ---

7 A Then I would not sign.

8 Q --- you would not sign. Okay. Okay, the final thing,
9 as far as the law you don't have to come in with any prior
10 knowledge of the law. But one thing the judge will explain
11 to you at a certain point will be what is called
12 accomplice liability or the hand of one is the hand of all
13 and give instruction when you can consider finding someone
14 guilty based on that and he will also if we got to the
15 penalty phase he will instruct you when you can seek or
16 give the death penalty based on say two or people
17 operating together, he would give you those instructions.
18 If you thought it was appropriate, could you give somebody
19 who was found guilty by that, by accomplice liability, by
20 the hand of one is the hand of all ---

21 MR. SCHUSTERMAN: I object to that question, Your
22 Honor.

23 THE COURT: About the accomplice?

24 MR. SCHUSTERMAN: Yes.

25 THE COURT: All right, I sustain the objection.

RUBY HOWIE

BY MR. POPE

1 MR. SCHUSTERMAN: Thank you.

2 MR. POPE: I might have a matter of law, Your Honor.

3 THE COURT: All right, let me let you step outside,
4 Mrs. Howie.

5 JUROR: All right.

6 (Juror leaves courtroom.)

7 THE COURT: Mr. Pope?

8 MR. POPE: Your Honor, just to address we discussed
9 previously under Longworth and it says "Major
10 participation of crimes committed with reckless
11 indifference for human life is sufficient culpability to
12 impose the death penalty and find a defendant liable for
13 murder under a theory of accomplice liability." That came
14 from Tison v Arizona.

15 THE COURT: Well, I have no problem with that being a
16 legal principle, but I think you have already asked and I
17 have asked if she would follow the law.

18 MR. POPE: Yes, sir; of course, on that particular
19 issue we run into situations where somebody says well, I
20 could never give a non-trigger man a death penalty, so
21 they couldn't follow the law. I would submit this is
22 inquiring as to a specific bias in this particular case.
23 Certainly the structure of the question would be such that
24 if you determine it is appropriate, you could give death;
25 if you determine it was inappropriate or not appropriate,

1 you could give life.

2 THE COURT: Let me hear from the defense.

3 MR. SCHUSTERMAN: Your Honor, I think that you summed
4 up our position that I understand that accomplice
5 liability is a valid theory of law and will be at the
6 proper time charged to the jury. To sit here and go
7 through a scenario and ask, you know, what is your
8 position and would you go along with that, I don't see
9 where that would not be staking out a witness either.

10 THE COURT: I will sustain the objection.

11 MR. SCHUSTERMAN: Thank you, Your Honor.

12 THE COURT: Bring her back in.

13 Q Mrs. Howie, I have got one final question and I'll
14 leave you alone.

15 A All right.

16 Q As I understand being a type 3 juror you would come in
17 with no presuppositions - you don't leave your common
18 sense at the door ---

19 A I understand.

20 Q --- but you wouldn't come with your mind made one way
21 or another and you would follow the law however the judge
22 instructed you the law was and apply it as you were being
23 directed, is that correct?

24 A Yes.

25 Q Thank you.

RUBY HOWIE

BY MRS. BRICE

1 A Thank you.

2 THE COURT: Mrs. Brice.

3 MRS. BRICE: Thank you, Your Honor.

4 EXAMINATION BY MRS. BRICE:

5 Q Mrs. Howie?

6 A Howie.

7 Q Mrs. Howie, my name is Chris Brice. I represent Mr.
8 Hughes, the defendant in the action. My co-counsel is
9 Steve Schusterman, who is seated there at the table. Mrs.
10 Howie, how do you if you overhear a comment or someone
11 making an expression about race - if you hear someone make
12 a racial statement, a derogatory racial statement, how do
13 you feel?

14 MR. POPE: Your Honor, I am going to have to object.

15 THE COURT: I sustain the objection.

16 MR. POPE: I think she can appropriately ask if she
17 has racial bias.

18 THE COURT: I sustain the objection.

19 JUROR: Do I answer or what?

20 THE COURT: No, you do not.

21 Q Do you have any racial bias?

22 A Meaning am I prejudiced?

23 Q Yes.

24 A Yes, I am in some instances. You know, I don't want to
25 say that I am prejudiced just because somebody is black,

1 but I am very opinionated, maybe that's a better way of
2 putting it.

3 Q And can you explain that a little further?

4 A Ask me a question. I don't know what you want me to
5 answer.

6 Q Okay. Are you opinionated when it comes to race?

7 A You mean would I think someone was guilty because they
8 were black, no.

9 Q No. Would you come with a preconceived opinion about
10 someone based upon perhaps their looks or their race or
11 perhaps maybe their religious beliefs?

12 A I don't think so, no.

13 Q I see from your questionnaire at one point in time you
14 had some heart problems, is that correct?

15 A I do now.

16 Q You do now? And you are taking medication for that
17 now?

18 A Yes, but it's under control.

19 Q Okay. And as you know this is a murder trial.

20 A Right.

21 Q How would emotional testimony affect you as far as
22 your heart condition?

23 A It wouldn't, not unless you make me exercise, that
24 would affect me.

25 Q There shouldn't be calisthenics.

RUBY HOWIE

BY MRS. BRICE

1 A Okay.

2 Q If you were the only person in a jury room who was
3 let's say holding out for innocence ---

4 A Right.

5 Q --- or holding out or a life sentence, and everybody
6 was voting for guilt or for giving the death penalty,
7 could you hold out or could you stand your ground?

8 A Yes, ma'am.

9 Q And do you have any ties to York County? Do you have
10 any family members that live there? Do you know anyone who
11 lives in York County?

12 A I have a friend that lives in York, South Carolina; I
13 think that is York County.

14 Q Yes, ma'am. And who is that?

15 A Cindy Burroughs.

16 Q Also, you were questioned about your questionnaire
17 about your feelings about psychiatry and psychology.

18 A Uh-huh.

19 Q Do you believe that people can have mental illness?

20 A Yes, I do.

21 Q And how do you believe this mental illness should be
22 treated? Do you believe that at that point of time
23 psychologists and psychiatrists would be beneficial?

24 MR. POPE: Your Honor, again ---

25 THE COURT: I sustain your objection.

RUBY HOWIE

BY MRS. BRICE

1 You don't have to answer that.

2 Q Do you believe that someone who kills another should
3 get the death penalty?

4 MR. POPE: Objection, Your Honor, I think she's been
5 asked what category she falls in; that's staking out the
6 jury. She said "someone who kills another," she's already
7 been asked about that.

8 MRS. BRICE: I don't know how that's staking out the
9 juror, Your Honor.

10 THE COURT: Well, I overrule the objection, but be
11 cautious about what you go into --

12 MRS. BRICE: Right.

13 THE COURT: --- because there's more to it than that.

14 MRS. BRICE: Yes, sir, thank you.

15 A So what, do I answer now?

16 Q If you could.

17 A Would you ask me one more time?

18 Q Do you think that someone who takes the life of
19 another deserves the death penalty?

20 A Well, it would depend on the circumstances involved, I
21 think.

22 Q Before today have you ever discussed the death
23 penalty?

24 A Yes, I have. You mean just in general?

25 Q Yes, ma'am.

RUBY HOWIE

BY MRS. BRICE

1 A Yes.

2 Q And what was your discussion, what were you saying
3 about the death penalty?

4 A Do you mean am I in favor of the death penalty?

5 Q Yes.

6 A In certain circumstances, yes, I am, but not in all
7 circumstances.

8 Q In what circumstances?

9 MR. POPE: Your Honor, I object to that.

10 THE COURT: I sustain ---

11 MRS. BRICE: I'll withdraw the question.

12 THE COURT: I sustained the objection; you don't have
13 to answer it.

14 JUROR: Okay.

15 Q Just one more question.

16 A All right.

17 Q When I asked you in regards to certain prejudices that
18 you have, can you describe what those prejudices are?

19 MR. POPE: Your Honor, I am going to object on grounds

20 ---

21 THE COURT: I sustain the objection.

22 MRS. BRICE: I have no further questions.

23 THE COURT: You don't have to answer that.

24 JUROR: Okay.

25 THE COURT: You may step out just into the hall just

RUBY HOWIE

BY MRS. BRICE

1 one minute.

2 JUROR: Thank you.

3 THE COURT: What says The State?

4 MR. POPE: I submit she is qualified. As far as the
5 prejudice issue, she changed that to opinionated and went
6 further to describe that she would not hold race against
7 somebody in determining their guilt.

8 THE COURT: All right, what says the defense?

9 MR. SCHUSTERMAN: Well, Your Honor, she did
10 acknowledge that she had some prejudices; she has eluded
11 to them as being of no racial nature. We never got to
12 develop that more fully, but whether you use the terms
13 "opinionated, bias, or prejudiced," it is the same thing.

14 THE COURT: I find her qualified. She did testify that
15 she would follow the law and the evidence in the trial.

16 Bring her in.

17 JUROR: Come back again?

18 THE COURT: You can stop right there.

19 JUROR: All right.

20 THE COURT: You are going to be in the panel from
21 which the jury is drawn. Please call, they will give you
22 a number on the way out, between 5:00 and 7:00 tomorrow
23 and they will instruct you what time to come on Wednesday.
24 When you come on Wednesday, you are not on the panel yet,
25 you are just in the pool from which it will be drawn, but

PATRICIA GOAD

BY THE COURT

1 when you come on Wednesday, be packed and, if you are
2 drawn, we will leave immediately for York County and the
3 rest of the trial.

4 JUROR: Even if I don't want to go?

5 THE COURT: Even if you don't want to go. So you come
6 and be ready to go in case you are drawn.

7 JUROR: And how long do we have to stay if we go?

8 THE COURT: It will be about ten to twelve days.

9 JUROR: Okay.

10 THE COURT: Thank you.

11 Number 87 Patricia Goad.

12 PATRICIA GOAD (W/F)

13 EXAMINATION BY THE COURT

14 Q I am going to remind you that you are under oath and I
15 am going to be asking you some questions. Some of them
16 will be repetitious, but I hope not and I am going to ask
17 you to speak up and speak out that way so they can hear
18 you. Are you related to any of the attorneys or the
19 defendant or the deceased, Mr. McCants?

20 A No, sir.

21 Q Do you have any interest, bias or prejudice in regards
22 to this case?

23 A No, sir.

24 Q Have you formed or expressed an opinion as to the
25 guilt or the innocence of the defendant, Mr. Hughes?

1 A No, sir.

2 Q Do you know of any reason whatsoever why you could not
3 give both The State and the defendant a air and impartial
4 trial?

5 A Not to my knowledge.

6 Q Could you under your oath follow the law in the case
7 as the trial judge charges it to you?

8 A Yes, sir.

9 Q Could you depending on the facts and the evidence and
10 the law as I would instruct you if you felt it appropriate
11 find the defendant not guilty?

12 A If I felt it appropriate, could I find him not guilty?

13 Q If based on the evidence and the law and the facts of
14 the case, if you determine that the appropriate verdict
15 was, in fact, not guilty, could you so find?

16 A Certainly.

17 Q And if you found from the facts and the evidence that
18 it was appropriate that you find the defendant guilty,
19 could you so find?

20 A Yes, sir.

21 Q Have you discussed this case with anyone?

22 A No, sir.

23 Q Have you read, viewed or listened to anything about
24 this case?

25 A Not that I know of.

1 Q Okay, now in this case Mr. Hughes is black and the
2 victim, Mr. McCants, was white and it is alleged that Mr.
3 McCants was in the course and scope of acting as a law
4 enforcement officer at the time of his death. Would this
5 in any way whatsoever prevent you from rendering a fair
6 and impartial verdict?

7 A I don't think so.

8 Q Could you in spite of that render your verdict
9 uninfluenced by those facts?

10 A Uninfluenced by --

11 Q The fact that there's a difference in race in the
12 defendant and the decedent and the fact that the decedent,
13 the dead person, was alleged to have been acting as a law
14 enforcement officer at the time of his death.

15 A I think I would listen to the facts, you know, the
16 things that were presented.

17 Q Okay.

18 MR. SCHUSTERMAN: Your Honor, could the witness repeat
19 that answer?

20 Q Repeat that answer.

21 A I would make a decision based on the facts as they
22 were presented.

23 Q If and I am going to ask you a few questions about the
24 death penalty.

25 A Okay.

1 Q This is in no way to indicate any thoughts about the
2 defendant.

3 A Right.

4 Q The defendant is presumed innocent and would have to
5 be proven guilty beyond a reasonable doubt before a jury
6 could find him guilty. Do you understand that?

7 A Yes, sir.

8 Q Now I put a sheet in the jury room with three types of
9 jurors on it. Did you review the sheet?

10 A Yes, sir.

11 Q Did you find yourself in one of those categories?

12 A If I belong in any of those categories, I would say it
13 would be the third one.

14 Q All right. That type is the type that would hear all
15 the facts and circumstances in aggravation and mitigation
16 and listen to the law before you made a decision regarding
17 punishment, is that correct?

18 A Uh-huh.

19 Q That is, that you would not believe simply because one
20 has been found guilty of murder that they automatically
21 should receive the death penalty.

22 A No, sir.

23 Q And you don't believe or do you believe that one found
24 guilty of murder should under no circumstances be given
25 the death penalty? Do you want me to repeat that?

1 A I read the three and concluded I belonged in category
2 3.

3 Q Well, let me ask that again. Are there no
4 circumstances after hearing the facts in aggravation and
5 mitigation are there no circumstances in which you feel
6 the death penalty would be appropriate?

7 A I feel the death penalty is appropriate at times.

8 Q And would those times be influenced on what the facts
9 were in the context of what legal principles apply?

10 A Yes.

11 Q Now if you were selected to serve as a juror you would
12 be taken to York County and sequestered for some period of
13 time probably ten or twelve days. Would that impose any
14 undue hardships on you other than the general ones it
15 would impose?

16 A Well, in my questionnaire I did say that I am the only
17 secretary in a one man/one girl office and it would pose a
18 hardship on my employer, but as for me personally in my
19 life, no.

20 Q And you work for?

21 A Bill Burkhalter.

22 Q Mr. Burkhalter. I know Mr. Burkhalter, but I think he
23 can -- I know it would be hard to get along without you,
24 but I think Bill is a person who ---

25 A He told me that you all were friends.

1 Q All right, please answer any questions that the
2 counsel for defendant and counsel for The State may have.

3 EXAMINATION BY MRS. BRICE

4 Q You said you are still working for the attorney, is
5 that correct?

6 A Uh-huh.

7 Q And I see in your questionnaire that you also do some
8 lecturing, is that correct?

9 A No.

10 Q Lecturing for the church?

11 A That's just reading scriptures.

12 Q That was there, I'm sorry. I think you have already
13 expressed that you would listen to the facts of a case and
14 render a decision based upon facts, is that right?

15 A Right.

16 Q And based upon the law that the court would order you
17 to follow ---

18 A Uh-huh.

19 Q --- as applied to the facts?

20 A Right.

21 Q And if you were -- do you understand that if you were
22 to find that a death sentence were appropriate under the
23 circumstances that you would have to sign your name upon a
24 certificate for death. Do you think that you could do
25 that?

1 A I think I could; I'm not real comfortable with that,
2 but I think I could if I thought it was appropriate.

3 Q So if it was appropriate you believe that you could
4 sign your name?

5 A Yes.

6 Q And -- I just lost my train of thought, I'm sorry --
7 if you were the only person in the jury room who was
8 standing your ground either against guilt or against the
9 death penalty, do you believe that you could stand your
10 ground or do you believe that you could be wavered by
11 other jurors?

12 A I believe I would stand my ground.

13 MS. BRICE: I have no further questions, Your Honor.

14 THE COURT: All right, Mr. Pope?

15 MR. POPE: If it please the court?

16 EXAMINATION BY MR. POPE

17 Q Ms. Goad, I am Tommy Pope, the Solicitor up in York
18 County. Kevin Brackett is my deputy solicitor. Since you
19 have been involved in the legal community, you know too
20 many judges to name, is that right?

21 A Yes, that's what I said.

22 Q What type of law does your attorney practice?

23 A General law. We do not handle criminal cases except
24 for simple DUIs or possessions, simple things like that.

25 Q At the end, of course, we have a copy of your

1 questionnaire, ---

2 A I know, yes.

3 Q --- question 41 you discussed anything we should know
4 about ---

5 A Right.

6 Q You said that you are not certain that you could be
7 comfortable with the death penalty.

8 A Yes and I just stated that then.

9 Q Right. When you were talking about the aspect of
10 signing, by the same token you told the judge that you
11 were the type of person that you would want to hear
12 everything before you made a decision, is that correct?

13 A Right.

14 Q And I don't know that you understand the process we
15 are in now is what's called a bifurcated trial, okay, it
16 will be tried a little differently than a regular trial in
17 that the first part is just strictly guilt and we have to
18 prove the case beyond a reasonable doubt ---

19 A Uh-huh.

20 Q --- and the defendant is guilty or not guilty
21 according to what the twelve jurors find. If the defendant
22 is found guilty, then we would go to the second stage and
23 that would be the life and death question.

24 A Okay.

25 Q Okay and in that if the defense chooses to, they never

1 have to put up anything, if they chose to they may want to
2 tell you something good about the defendant, but, of
3 course, The State may want to tell you something bad about
4 the crime or about the defendant or whatever the case may
5 be and you told the judge you would be the type of juror
6 that you would want to hear all of that before you made a
7 decision?

8 A Uh-huh.

9 Q Okay and then after hearing those facts you felt life
10 was appropriate, then you could give life, is that
11 correct?

12 A You mean ---

13 Q Come back with a verdict of life.

14 A --- of life imprisonment without parole, for instance?

15 Q Correct, yes.

16 A Uh-huh.

17 Q Okay, then I understand you indicated then that you
18 are more inclined toward a punishment of life without
19 parole.

20 A Uh-huh.

21 Q Likewise if you heard the facts could you give the
22 death penalty if you thought it was appropriate?

23 A I think I could.

24 Q Now again I want to be careful. You can't give a wrong
25 answer, do you understand, so I'm not here to put words in

1 your mouth. When you said that you were more inclined
2 toward a punishment of life without parole, ---

3 A Uh-huh.

4 Q --- is that some presupposition or something that you
5 thought about before you came here, you thought about that
6 in the past?

7 A Yes.

8 Q Is that something that would keep you from considering
9 the death penalty? Again, there's no right or wrong
10 answer, I'm just asking, would the fact that you feel
11 strongly or inclined toward life without parole would that
12 prevent you from considering the death penalty?

13 A No, I would consider the death penalty. I have always
14 believed in the death penalty. As I grow older though I
15 also believe in the sanctity of life and I think that the
16 judicial system is getting to where we are getting into
17 this life without parole where they really don't get out
18 and I think that might be a good thing.

19 Q And, again, as you have told the judge before you
20 could decide that in a given case you would want to hear
21 everything you could?

22 A I would rather hear all the facts ---

23 Q Before you give an opinion?

24 A --- before I weigh and make any kind of decision.

25 Q I understand. I want to make clear we're not -- it's

1 not a flippant decision or a light decision; it's a
2 tremendous decision.

3 A Uh-huh.

4 Q The final question I would have and again this is our
5 one chance to kind of in essence peer into your soul to
6 hear what you have to say. Mrs. Brice has touched on if
7 the jury determines that life is the appropriate sentence
8 and again you have heard about life without parole ---

9 A Uh-huh.

10 Q --- then only the foreperson would have to sign the
11 verdict. Of course, the verdict has got to be unanimous
12 as far as the death penalty.

13 A Uh-huh.

14 Q However, if the jury decided that death was
15 appropriate, then each and every juror - it's a little bit
16 different - so you would have to sign Patricia M. Goud on
17 the line that would send back the death verdict.

18 A Uh-huh.

19 Q If you thought death was appropriate hearing those
20 facts, searching your heart, could you sign that if you
21 thought that was appropriate?

22 A I think I could.

23 Q Thank you, ma'am.

24 THE COURT: I am going to ask you to step out into the
25 hall for a minute.

1 What say The State?

2 MR. POPE: The State submits she is qualified.

3 THE COURT: What sayeth the defense?

4 MR. SCHUSTERMAN: I submit she is qualified.

5 THE COURT: I so find that she is qualified.

6 Bring her back in.

7 You can stand right there, Mrs. Goud. I have found you
8 are qualified to be in the pool from which the jury will
9 be drawn. That will be Wednesday. Call back to this number
10 between 5:00 and 7:00 tomorrow. When you come on
11 Wednesday, we don't know that you will be on the jury, but
12 come prepared for a ten day trip to York in the event you
13 are drawn, okay?

14 JUROR: Thank you, Your Honor.

15 THE COURT: Yes, ma'am.

16 All right, Julie Cauthen.

17 JULIE CAUTHEN (W/F)

18 EXAMINATION BY THE COURT

19 Q I am John Hayes and I want you to just be relaxed and
20 I am reminding you now that you are under oath, okay? You
21 will have to answer so everybody can hear you and this
22 lady can take it down, all right?

23 Now are you related by blood or marriage to any of the
24 participants, that is, the attorneys, the defendant, or
25 the victim, Mr. McCants?

1 A No.

2 Q Do you have any interest, bias, or prejudice in this
3 case?

4 A No.

5 Q Have you formed or expressed an opinion as to the
6 guilt or the innocence of the defendant, Mr. Hughes?

7 A No.

8 Q Do you know of any reason whatsoever why you cannot
9 give both The State and the defendant a fair and impartial
10 trial?

11 A No.

12 Q Would you be able under your oath to follow the law as
13 the trial judge instructs it?

14 A Yes.

15 Q Could you depending on the facts and the evidence and
16 the law if you felt it was appropriate under that to find
17 the defendant not guilty?

18 A Yes.

19 Q Could you depending on the facts and the evidence and
20 the law find the defendant guilty?

21 A Yes.

22 Q Have you discussed this case with anyone?

23 A No.

24 Q Have you read, viewed or listened to any news accounts
25 about this case?

JULIE CAUTHEN

BY THE COURT

1 A No.

2 Q Mr. Hughes is a black man and the victim, Mr. McCants,
3 is white. He also, Mr. McCants, is alleged by The State
4 of acting as a law enforcement officer at the time of his
5 death. Would this in any way prevent you from rendering a
6 fair and impartial verdict in this case?

7 A No.

8 Q We are asking certain questions about your views on
9 the death penalty. There are no wrong or right answers
10 regarding these questions and I emphasize to you that the
11 fact we are talking about them is no indication or
12 anything about the defendant. He is presumed innocent and
13 is so presumed until The State has been able to prove him
14 guilty beyond a reasonable doubt to the jury's
15 satisfaction. Do you understand that?

16 A Yes.

17 Q I put a sheet in the jury room that had three juror
18 types on it. Did you read it?

19 A Yes.

20 Q Did you find yourself in one of those categories?

21 A Yes.

22 Q Which one?

23 A Three.

24 Q All right, well, as a juror participating in this
25 case, could you participate in a verdict recommending the

1 penalty of death if the evidence and the law warranted
2 such a verdict?

3 A Yes, sir.

4 Q Could you if you felt the evidence and the law
5 warranted it find a verdict of life imprisonment?

6 A Yes.

7 Q All right, I discussed this with you a little earlier,
8 but tell me again you said you did have a hardship that
9 may present a problem if you were sequestered. Tell me
10 that again.

11 A I'm going out of town on a business trip to
12 California. It's to a once a year seminar exhibits that
13 I'm going to work on.

14 Q All right and I received - there were some letters
15 from your employer on that.

16 A Uh-huh. Also, I guess, is the court going to reimburse
17 me for my airline ticket?

18 Q We'll find out about that. If it comes to that, we will
19 find out.

20 I am going to ask you at this time if you would answer
21 any questions that the solicitor and the defendant's
22 counsel has.

23 EXAMINATION BY MR. POPE

24 Q Ms. Cauthen, I am Tommy Pope. I am the Solicitor -- I
25 started to say here in York County, but up in York County.

1 Kevin Brackett is my deputy solicitor. I have just a few
2 questions. I know it's been a long day today. One thing,
3 if I understand what you told the judge that you are the
4 type of juror that you wouldn't come in with any
5 presuppositions. You would want to hear everything before
6 you made a decision, is that right?

7 A Yes.

8 Q And one thing that is a little different about our
9 case than the normal case is what's called a bifurcated
10 trial. What that means is it's a two part trial. The first
11 part is just guilty or not guilty and, of course, The
12 State has to prove, the defendant never has to prove
13 anything, we have to prove the case beyond a reasonable
14 doubt. Do you understand that?

15 A Yes.

16 Q Okay, of course, if the defendant is found not guilty,
17 then that would be it. If the defendant were found guilty,
18 then we would go to the second stage. And the second stage
19 that would be the determination of what the appropriate
20 penalty should be life or death. Again what you told the
21 judge is you are the type of juror that would want to hear
22 everything and again the defense doesn't have to put up
23 anything, but if they chose to tell you good things about
24 the defendant in the penalty phase, you would be willing
25 to listen to that?

1 A Yes.

2 Q And, of course, we may want to tell you things bad
3 about the crime or what happened about the crime and you
4 would be willing to listen to that too?

5 A Yes.

6 Q And again following what you told the judge if you
7 thought after hearing everything everything they may put
8 up and everything we may put up if you thought life was
9 appropriate, then you could say so in the jury room and
10 you could say I believe is what we should decide.

11 A Yes.

12 Q Likewise if after hearing everything you thought the
13 case was appropriate for the death penalty, you could say
14 death was appropriate?

15 A Absolutely.

16 Q Okay and then one final question. In South Carolina
17 it's a little different as far as the death penalty. Again
18 now I am talking about the penalty stage. If the jury
19 decides life, then just the foreperson, the head of the
20 jury, would have to sign something that says we, the jury,
21 find life; however, if the jurors determine unanimously,
22 if all twelve determine death is appropriate, then each
23 juror would have to sign their name individually saying we
24 have heard everything, we feel that is appropriate. If you
25 heard the facts and you thought the case was appropriate

1 for death, could you sign Julie Cauthen on that line?

2 A Yes.

3 Q And, likewise, if you heard the facts and you thought
4 this was not an appropriate case for death, you could
5 refuse to sign your name?

6 A Yes.

7 Q Thank you.

8 MR. SCHUSTERMAN: May it please the court?

9 EXAMINATION BY MR. SCHUSTERMAN

10 Q Ms. Cauthen, my name is Steve Schusterman. I am an
11 attorney from Rock Hill, York County, and I am
12 representing Mr. Hughes along with Mrs. Brice, who is also
13 from York County, seated there in the second seat. Just a
14 couple of quick questions. Do you understand that, you
15 know, we have been talking a lot today about life or death
16 and you have been asked a number of questions about it in
17 a questionnaire and questions by the judge. Do you
18 understand that Mr. Hughes sits completely innocent seated
19 over there?

20 A Yes.

21 Q You understand that concept.

22 A Yes.

23 Q And as Mr. Pope said a bifurcated trial that the first
24 part of the trial is guilt or innocence and to the charges
25 against Mr. Hughes he has pled not guilty and he's

1 absolutely innocent until The State proves him guilty
2 beyond a reasonable doubt.

3 A Yes.

4 Q We are not just going to jump ahead; we are not going
5 to just skip that part and go right to life or death.
6 There is a guilt or innocence stage that must be dealt
7 with. Do you understand that?

8 A Yes.

9 Q And as His Honor asked you before, if you felt that
10 The State had not sustained that burden of proof, would
11 you be able to render a verdict of not guilty to the
12 charge?

13 A Yes.

14 Q And you understand by doing that you would never reach
15 a second part of the trial?

16 A Yes.

17 Q Do you hold any racial biases or prejudices?

18 A No.

19 Q None whatsoever?

20 A No.

21 Q You indicated that you would, if appropriate, you
22 would be able to sign a death warrant if you felt that Mr.
23 Hughes should be put to death.

24 A Yes.

25 Q And, of course, that's not a position to be taken

1 lightly.

2 A Yes, I understand.

3 Q All right. If the jury as a majority was in favor of
4 death and you were not, do you believe that you would have
5 the will, the composure, to stand up for your opinion?

6 A Definitely.

7 Q You do?

8 A Yes.

9 Q As it relates to I believe in your questionnaire where
10 it relates to psychology - if you remember there was a
11 question about psychiatry and psychology ---

12 A Uh-huh.

13 Q --- and your feelings about psychiatrists and
14 psychologists you believe that they are useful.

15 A Uh-huh.

16 Q Do you believe in the concept of mental illnesses?

17 A I believe it, yes.

18 Q Do you believe that people suffer from mental defects
19 or mental illnesses?

20 A Yes.

21 Q Do you believe that mental illnesses can affect one's
22 behavior?

23 A Yes.

24 Q I notice that you belong to the First Baptist Church,
25 I assume of North Augusta.

1 A Yes.

2 Q Is there anything in your religious background that
3 would prevent you from giving a fair decision to Mr.
4 Hughes either in a guilt or innocence phase or, should you
5 get that far, in a life or death situation?

6 A No.

7 Q No religious teachings of any sort?

8 A No.

9 MR. SCHUSTERMAN: Thank you, Your Honor. No other
10 questions.

11 THE COURT: I am going to ask you to step back in the
12 hall for just a minute.

13 What says The State?

14 MR. POPE: I submit she is qualified, Your Honor.

15 THE COURT: What says the defense?

16 MR. SCHUSTERMAN: I submit she's qualified.

17 THE COURT: Call her back. I find she is, in fact,
18 qualified.

19 You are found to be qualified - You can stand right
20 there - as far as the jury pool. I am going to ask you to
21 call back between 5:00 and 7:00 tomorrow and you will be
22 told what time to report on Wednesday. When you come on
23 Wednesday, I don't know if you will actually be chosen on
24 the jury, but come prepared to stay for a 10 to 12 day
25 period, but as soon as the jury is drawn we will travel to

JULIE CAUTHEN

BY MR. SCHUSTERMAN

1 York County. If you want to check and find out -- you are
2 not on the jury yet -- but if you will check on if it is
3 refundable and we will see. I can't promise you one way
4 or the other on that, but I will see that it is looked
5 into so we can see what can be done if that occurs.

6 JUROR: Thank you.

7 THE COURT: So call between 5:00 and 7:00. Do not
8 read anything or discuss this case and we will see you
9 Wednesday.

10 JUROR: Thank you.

11 THE COURT: TIMOTHY WRIGHT.

12 TIMOTHY WRIGHT (W/M)

13 EXAMINATION BY THE COURT

14 Q Good afternoon. I am John Hayes again. I am going to
15 ask you to be relaxed and I will remind you you are under
16 oath. I am going to ask you to speak up so everybody out
17 there will hear you. I can hear pretty good. Are you
18 related by blood or marriage to any of the attorneys or
19 the defendant?

20 A No, sir.

21 Q Do you have any interest, bias, or prejudice in
22 regards to this case?

23 A No, sir.

24 Q Have you formed or expressed any opinion about the
25 guilt of the innocence of the defendant, Mr. Hughes?

1 A No, sir.

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

5 A No, sir.

6 Q Would you under your oath follow the law as the trial
7 judge instructs it to you?

8 A Yes, sir.

9 Q Could you depending on the facts and the evidence find
10 the defendant not guilty if you felt that's what the facts
11 and the evidence showed?

12 A Yes, sir.

13 Q Could you by the same token find the defendant guilty
14 if you felt that the facts and the evidence so showed?

15 A Yes, sir.

16 Q Have you discussed this case with anyone?

17 A No, sir.

18 Q Have you read, viewed or listened to anything in the
19 news about this?

20 A No, sir.

21 Q Now in this case Mr. Hughes is black and the victim,
22 Mr. McCants, was white and it is alleged by The State to
23 have been acting in the course and scope of his employment
24 as a law enforcement officer at the time of his death.
25 Would this in any way whatsoever prevent you from

TIMOTHY WRIGHT

BY THE COURT

1 rendering a fair and impartial verdict in this case?

2 A No, sir.

3 Q I am going to ask you a few questions about the death
4 penalty at this time. There are no right or wrong answers
5 to these questions. I emphasize to you that the mere fact
6 we are talking about the penalty phase of the trial does
7 not indicate anything about the defendant. He is presumed
8 innocent and is so presumed until such time as The State
9 would be able to proof his guilt beyond a reasonable
10 doubt. Do you understand that?

11 A Yes, sir.

12 Q I have put in the jury room a sheet with three juror
13 types. Have you had a chance to review it?

14 A Yes, sir.

15 Q Did you find yourself in one of those types?

16 A Yes, sir.

17 Q Which one?

18 A Three.

19 Q All right, could you as a juror participate in a jury
20 verdict recommending the penalty of death if the evidence
21 and the law mandated such a verdict?

22 A Yes, sir.

23 Q Could you as a juror also participate in a jury
24 verdict recommending a sentence of life imprisonment for
25 murder if the evidence and the law warranted such a

1 verdict?

2 A Yes, sir.

3 Q Now if you were selected to serve as a juror in this
4 case, outside of the usual conveniences it would cause
5 anyone in such a case, would it present for you or impose
6 any undue hardship?

7 A Well, I don't get compensated for the time, depending
8 on how lengthy, you know, it was, you know, it would hurt
9 my salary. I work construction, if I'm not there, you
10 know, I'm not salaried personnel.

11 Q Okay, other than that?

12 A Other than that, no, sir.

13 Q I am going to ask you now to answer any questions by
14 counsel for the defendant or Mr. Pope.

15 MR. SCHUSTERMAN: Thank you, Your Honor, may it please
16 the court?

17 EXAMINATION BY MR. SCHUSTERMAN

18 Q Mr. Wright, my name is Steve Schusterman. I am an
19 attorney from Rock Hill, York County. I represent Mr.
20 Hughes, the man charged in this incident, along with the
21 lady seated next to me in the peach dress, Ms. Chris
22 Brice. She is my co-counsel.

23 I just want to ask you a couple of quick questions. I
24 have your questionnaire. I have had an opportunity to read
25 it. I just want to ask you a couple of questions in

1 general. First question, do you understand that in South
2 Carolina this is somewhat of a unique situation where The
3 State seeks the death penalty. It is what is known as a
4 bifurcated trial. There are actually two phases to this
5 trial. Phase number one is to determine guilt or
6 innocence. That's all you are considering. Do you
7 understand that Mr. Hughes is absolutely innocent and has
8 to prove nothing. The burden is completely on the State of
9 South Carolina. They carry the entire burden. If they
10 cannot prove to your satisfaction beyond a reasonable
11 doubt that Mr. Hughes is, in fact, guilty of one or any of
12 the charges then you must find him not guilty?

13 A Yes, sir.

14 Q In the event that you do find that The State were to
15 satisfy the burden of proof and found him guilty we would
16 then go to a second phase, which would be life or death.
17 Do you understand that that would only come after a
18 finding of guilt or innocence or a finding of guilt in the
19 first phase of the trial?

20 A Yes, sir.

21 Q In the event that after hearing whatever The State
22 would want to present, whatever the defense would present
23 in the second phase of the trial you would and the eleven
24 other jurors would then have the responsibility of
25 determining a sentence whether it would be life without

TIMOTHY WRIGHT

BY MR. SCHUSTERMAN

1 parole or death. Do you understand that?

2 A Yes, sir.

3 Q If you should determine that death was appropriate, in
4 South Carolina we require all members of the jury panel to
5 sign their name to that verdict of death. Do you feel you
6 would be able to do that?

7 A Yes.

8 Q You do. By the same token, if you felt that life was
9 appropriate, would you render that verdict or that
10 sentence?

11 A Yes, sir.

12 Q If there was either a majority or every juror but you
13 had a feeling either about guilt ---

14 MR. POPE: Your Honor, I am going to object to his
15 question. It would be staking out the juror or later you
16 would follow -- this type question I would object to.

17 THE COURT: Rephrase the question.

18 MR. SCHUSTERMAN: I was going to ask him whether he
19 felt that if he was in the minority as a juror would he be
20 able to hold to his conviction.

21 THE COURT: I overrule your objection.

22 MR. SCHUSTERMAN: Thank you, Your Honor.

23 Q You may answer that question. Would you be able to
24 hold to your convictions?

25 A Yes.

TIMOTHY WRIGHT

BY MR. SCHUSTERMAN

1 Q Do you know anybody in Rock Hill or York County?

2 A No, sir?

3 Q Have you heard anything about this case?

4 A No, sir.

5 Q Do you have any racial biases or prejudices?

6 A No, sir.

7 Q You have no feelings about the fact that Mr. Hughes is
8 black as you can tell and that the victim in this case was
9 a white gentleman?

10 A No, sir.

11 Q That plays no role in your thinking whatsoever?

12 A No, sir.

13 Q In this questionnaire you were asked the question you
14 didn't answer. You may have missed it. It says, "How do
15 you feel about psychiatry, psychology, psychiatrists or
16 psychologists" and you didn't put anything. So let me ask
17 you now. How do you feel about that?

18 A Well, that was sub-phrase or another question that I
19 -- I really don't have any knowledge of the study of
20 psychology, you know, I didn't feel I couldn't base an
21 opinion; I don't know anything about it.

22 Q Do you believe that there is something though as a
23 mental illness?

24 A I guess, you know, I've heard, of course, on the radio
25 or news or something that says there is, but you can't

1 prove it by me, you know, one way or the other. I don't
2 know anybody that's got a mental what I consider a mental
3 problem.

4 Q Are you open to that idea if you heard somebody
5 talking about it or do you just have to reject it and say
6 there is no such thing?

7 A I'd have to be subject to that particular situation.

8 Q Okay, that's fair enough. You indicated, sir, that you
9 were what Judge Hayes asked you what type juror you were
10 and you were a type three juror. Have you ever thought
11 about the death penalty before?

12 A I have in a sense I felt if I ever was, I've never
13 been, you know, on a jury, if I had to give an opinion or
14 make a judgment call as to a man being put to death or not
15 or a woman that I could do it, but I'd have to know that
16 he was guilty and it would have to be certain situations
17 to make me say it was bad enough, you know, in my mind,
18 you know that, yes, he needed to have the death penalty.

19 Q So you just basically want to hear all the facts?

20 A I would have to before I could give an opinion.

21 Q Let me ask you a question, sir, you were seated I
22 believe in this jury room out here, were you not?

23 A Yes, sir.

24 Q And probably you were there about an hour before you
25 came in here. Did the jurors collectively talk about the

1 three type jurors?

2 A Actually I don't recall it coming up. You know, if it
3 did, it was - I don't remember it coming up as to anybody
4 expressing their opinion.

5 Q Okay, so you don't remember anybody expressing their
6 opinions?

7 A I didn't hear anybody, no, sir.

8 Q Thank you, Mr. Wright, I appreciate it.

9 MR. POPE: May it please the court?

10 EXAMINATION BY MR. POPE

11 Q Mr. Wright, I am Tommy Pope. I am the solicitor up in
12 York County. Mr. Kevin Brackett is my deputy clerk and, of
13 course, we represent The State. When Mr. Schusterman
14 talked about The State had the burden of proof, we've got
15 to prove the case beyond a reasonable doubt. You
16 understand that?

17 A Yes, sir.

18 Q And, of course, the defendant is innocent until we are
19 able -- if we are able to prove him guilty and they never
20 have to put anything up unless they choose to they have
21 the right, but they don't have to, do you understand that?

22 A Yes, sir.

23 Q If I understood what you told both Mr. Schusterman and
24 the judge you are just the type of person that you are not
25 going to go in with a preconception; you want to hear

1 everything before you make a decision, is that correct?

2 A Yes, sir.

3 Q And if we prove the case beyond a reasonable doubt,
4 you could find him guilty; if we don't, then you could say
5 not guilty, is that right?

6 A Yes, sir.

7 Q And then if we did get to the second phase, if the
8 defendant were found guilty and we get to that second
9 phase, after hearing everything that we would put up and
10 hearing everything they would put up, if they chose to put
11 anything up, you would then make a determination. Back
12 when Mr. Schusterman was asking you about the death
13 penalty, certain circumstances you have to hear things
14 before you make a determination, is that correct?

15 A Yes, sir.

16 Q And again sometimes what I say I want to make sure,
17 they don't ever have to put up anything, do you understand
18 that?

19 A Yes, sir.

20 Q And in certain circumstances you could give life and
21 in certain circumstances you could give death and you
22 wouldn't know - you said you had never done this before,
23 you wouldn't know until you sat there and made that
24 decision, is that right?

25 A Yes, sir.

TIMOTHY WRIGHT

BY MR. POPE

1 Q And if you did determine life or the jury did
2 determine line, then the foreperson, the foreman or the
3 forelady of the jury they sign something that says we find
4 a life sentence. If the jury determines death, then it has
5 to be unanimous. When I say it has to be, of course, you
6 are always free to decide whatever you want, but if all
7 twelve say, okay, we think death is an appropriate
8 sentence independently coming up with it, then each person
9 has to sign which, in essence, is a death warrant in that
10 it gives back the judge it says we determine death; if you
11 thought death was appropriate, you could put Timothy
12 Wright on that line knowing that's going to be the
13 document that would direct a sentence of death?

14 A Yes.

15 Q Thank you, sir.

16 THE COURT: All right, I'll ask you to step back in
17 the hall just a minute.

18 What says The State?

19 MR. POPE: I submit he is qualified.

20 THE COURT: The defendant?

21 MR. SCHUSTERMAN: I submit he is qualified.

22 THE COURT: All right, bring him back in.

23 Mr. Wright, you will be qualified to be in the jury
24 pool. That does not actually mean you will be on the jury,
25 but you will be in the pool from which the jury is drawn.

MICHAEL GRAHAM

BY THE COURT

1 We are going to do that - we plan to do that Wednesday. I
2 am going to ask you to call back between 5:00 and 7:00
3 tomorrow afternoon. You will be given a number as you
4 leave to tell you what time to report on Wednesday. When
5 you come on Wednesday, be packed and prepared to go
6 immediately to York County if you are in fact chosen and
7 keep in mind that you are not to discuss this case or
8 anything about it or listen to any news report whatsoever
9 regarding it. Do you understand that?

10 JUROR: Yes, sir.

11 THE COURT: Call between 5:00 and 7:00.

12 Does anybody need a five minute break or are we all
13 right?

14 COURT REPORTER: I do.

15 THE COURT: Well, let's take about a five minute break
16 or maybe even less, a quick break.

17 (Recess)

18 Bring in Michael Graham.

19 MICHAEL GRAHAM (B/M)

20 EXAMINATION BY THE COURT

21 Q Hi, Mr. Graham.

22 A How you doing?

23 Q Fine. I am John Hayes and just be relaxed. You are
24 still under oath in regard to some questions I am going to
25 ask you, do you understand that?

1 A Yes, sir.

2 Q Are you related by blood or marriage to any of the
3 attorneys that I have introduced you to or to the
4 defendant or to the deceased in this, Brent McCants?

5 A No.

6 Q I am going to ask you to speak loudly so all of these
7 people can hear you.

8 A No.

9 Q Do you have any interest, bias or prejudice in this
10 case?

11 A None whatsoever.

12 Q Have you formed or expressed an opinion about the
13 guilt or the innocence of the defendant, Mr. Hughes?

14 A None.

15 Q Do you know of any reason whatsoever why you could not
16 give The State and the defendant a fair and impartial
17 trial?

18 A None whatsoever.

19 Q Would you under your oath follow the law in this case
20 as it is charged to you by the trial jury?

21 A Most definitely.

22 Q Could you depending on the facts and the evidence and
23 the law as you would be instructed find the defendant not
24 guilty if you felt that it was warranted?

25 A Sure.

1 Q Could you under the same token based on the facts, the
2 evidence and the law if you felt it was warranted find the
3 defendant guilty?

4 A Yes, sir.

5 Q Have you discussed this case with anyone?

6 A No.

7 Q Have you read or even listened to any news accounts
8 about this case?

9 A None whatsoever.

10 Q Now Mr. Hughes in this case is a black gentleman and
11 the victim, Mr. McCants, was white and Mr. McCants was
12 alleged to have been acting in the course and scope of his
13 employment as a law enforcement officer at the time of his
14 death. Would that in any way prevent you from rendering a
15 fair and impartial verdict in this case?

16 A No.

17 Q Could you render your verdict uninfluenced by those
18 facts?

19 A No.

20 Q You could not?

21 A Could you repeat your question.

22 Q Could you render a verdict uninfluenced by those
23 facts?

24 A Yes.

25 Q Now I am going to ask you certain questions concerning

1 the death penalty. These have no right or wrong answers
2 and I emphasize that even though we are talking about the
3 death penalty this is no indication about the guilt or the
4 innocence of the defendant. He is presumed innocent of
5 these charges and is so presumed until The State would be
6 able to prove his guilt beyond a reasonable doubt. Do you
7 understand that?

8 A Yes, I do.

9 Q All right, I put a sheet in the jury room concerning
10 juror's thoughts on the death penalty. Did you review it?

11 A Yes, I did.

12 Q Did you find yourself in any of those categories?

13 A I most definitely did.

14 Q Which one?

15 A Number 3.

16 Q All right. Now then you could participate in a jury
17 verdict recommending the penalty of death if the evidence
18 and the law warranted such a verdict?

19 A Yes.

20 Q Could you participate in a jury verdict recommending a
21 sentence of life imprisonment for murder if the evidence
22 and the law warranted such a verdict?

23 A Yes.

24 Q All right, other than the fact we discussed earlier
25 some situations regarding problems other than general

1 inconvenience you would be away sequestered on this jury
2 for some ten to twelve days present any undue hardship on
3 you?

4 A Well, I would think that it would because I was in an
5 automobile accident not too long ago and every morning, I
6 explained that to you when I came in, I have an
7 appointment which I go to a chiropractor, which I
8 explained to you, and you was coming like, you know,
9 that's not going to get it so I don't know whether it's
10 worth bringing that back up again.

11 Q Well, it can't hurt.

12 A Well, I tried. I really truly don't want to have
13 anything to do with it, but if I must, I'll just have to
14 go with it.

15 Q I understand. I am going to ask you to answer any
16 questions posed by the solicitor or counsel for the
17 defendant.

18 EXAMINATION BY MR. POPE

19 Q Mr. Graham, my name is Tommy Pope. I have the
20 solicitor up in York County. Mr. Kevin Brackett is my
21 deputy solicitor and we represent The State. Do you
22 understand when they talk about The State bears the burden
23 of proof, you know, the defendant is innocent until proven
24 guilty, do you understand that?

25 A Yes.

1 Q As I understand from the category you put yourself in,
2 category 3, you are the type person you want to hear
3 everything before you decide. You are not going to jump in
4 the jury box and as soon as you are in there decide
5 whether he is guilty or he is not guilty.

6 A That's right.

7 Q You want to hear everything. And, again, you
8 understand they don't have to put anything up, you know
9 what I mean? They don't have to put evidence up. We have
10 to prove the case beyond a reasonable doubt. Do you
11 understand what I have said?

12 A Yes.

13 Q They can put stuff up, but I just want to make clear
14 when I am asking you questions, they don't have to put
15 anything up if they don't want to. Do you understand that?

16 A Right.

17 Q And you say that other than going to the chiropractor
18 daily for your accident now that there's no other reason
19 really to prevent you from serving?

20 A No.

21 Q You know, it's hard, the judge has told you - you
22 don't know whether to bring that back up, it didn't do you
23 any good.

24 A Right.

25 Q But as far as that if the judge could make some kind

1 of arrangements, you know, being a chiropractor up there
2 or whatever the case may be, would you be able to focus on
3 the case if you were chosen?

4 A Sure.

5 Q And, again, I know you said you truthfully didn't want
6 to, but you would be willing to ---

7 A Well, as far if I had no choice, yes. I would
8 definitely be able to focus myself up there.

9 Q Once you're there ---

10 A I would do the job. Exactly.

11 Q Okay, do you understand and, again, I want to be
12 careful, I don't want to put words in your mouth. You
13 can't give a wrong answer because you are just speaking
14 the truth from your heart. You understand that?

15 A Yes.

16 Q You are the type of juror that would want to hear
17 everything regardless before you made a decision.

18 A Right, I want all the facts and this, that and the
19 other, you know, the ones that they submit to me before,
20 you know, I decide.

21 Q And what the judge would give you as far as the law
22 you want to apply that too, is that correct?

23 A Yes.

24 Q Let me tell you something that the judge or you will
25 find out as far as the trial itself. It is a little

1 different in this type of case, in a death penalty case.
2 It's what's called a bifurcated or two part trial. The
3 first part we don't even worry about. When I say "we," the
4 jury is not even concerned with what the penalty is. The
5 first part of that trial is guilty or not guilty and,
6 again, we have to prove the case beyond a reasonable
7 doubt. Of course, if the defendant were found not guilty,
8 then, obviously, there is no sentence after that. If the
9 defendant is found guilty, then we would go to the second
10 stage and in the second stage of course The State may put
11 up things as far as aggravation, you know, what we call
12 aggravation, bad things about the crime, and the defense
13 if they choose to put up good things about the defendant
14 or whatever the case may be and my understanding is you
15 are the type of person that even though the defendant say
16 was found guilty you are still going to keep an open mind
17 until you determine from whatever facts you hear --

18 A The facts that I gather as to whether -- yes, sir.

19 Q That's right, what the penalty would be.

20 A Yeah, right.

21 Q Okay and you are the type of juror if I understand
22 that if the evidence indicated that the appropriate
23 punishment, when I say "indicated," indicated to you
24 because you have got to make that determination, indicated
25 that the appropriate punishment was life and after you

1 heard everything, heard what the judge told you as far as
2 the law, if you felt life was appropriate, then you would
3 say so, you would say so.

4 A Yes, definitely.

5 Q Okay. Likewise, if after hearing everything that you
6 heard and felt in this particular instance, and, again,
7 I'm not getting specific on this case, but after hearing
8 all of the facts, you said based on everything I've heard
9 that death is appropriate in this case, could you render a
10 death penalty?

11 A Yes.

12 Q And, again, I want to make clear, you know, it's easy
13 for me to stand up here and go through words and say death
14 ---

15 A It was hard for me to say that just then.

16 Q Really?

17 A You know, I don't really like it.

18 Q Okay, and, again, ---

19 A I mean if the facts are there and all that's been
20 proven and if that's what if the death penalty is going to
21 be applied in this situation, I guess I would say yes. I
22 would be able to give it.

23 Q Let me make one thing clear for you. If you are a
24 juror in a death penalty case and we get to the penalty
25 phase, there's nothing in our law that ever makes you have

1 to say death ---

2 A I know.

3 Q You know what I'm saying? Eleven people can say life
4 -- I mean eleven people can say death and you could still
5 say life, do you understand that?

6 A I know.

7 Q But by the same token you would want to hear
8 everything and you would be willing to hear what other
9 jurors have to say and you would tell them what your
10 feelings, you know, you wouldn't be just blown over, but
11 you would be open minded and hear everything.

12 A I'm very optimistic; definitely.

13 Q Okay. So, again, you know it seems like we go through
14 a little ritual up here and I'm saying all of these words
15 and everything and I guess you have never been questioned
16 about something like this before.

17 A No, but I don't have any problem with it.

18 Q And there is one final thing I want to ask you as far
19 as the death penalty and, you know, I kind of headed
20 toward saying it about three times, I'm not making light
21 of it, it is a tremendous decision ---

22 A It's serious.

23 Q It's serious for everybody involved. If you as a
24 juror determine that the death penalty was appropriate, in
25 other words, in South Carolina if a jury determines death

1 is appropriate, of course, that would be unanimous, all
2 twelve of them have to decide, if they determine that
3 death was appropriate, each juror would have to sign their
4 name individually. You know, if they decide life, then the
5 foreperson, the foreman, would sign saying we recommend
6 life ---

7 A Uh-huh.

8 Q --- and when I say recommend, of course, the court
9 will carry out what you say, so it is the verdict ---

10 A Oh, yes, I see.

11 Q And if they say death, a little thing different from
12 life is that each juror has to sign. If you heard all of
13 the facts in the case and you thought that, and it
14 wouldn't be easy, but if you thought death was appropriate
15 in your heart of hearts, could you take your pen and put
16 Michael Graham on that line to give somebody death?

17 A No.

18 Q And, again, there's nothing wrong with that. Let me
19 ask you this and, again, I don't want to put words in
20 Michael Graham's mouth is there something in your
21 background or your upbringing, your religious upbringing
22 or what makes you not be able to write your name?

23 A It's just my personal feelings. It's just how I feel
24 it's not right. Death is wrong all the way around, it's
25 always wrong, but I would feel it would be against my

1 better judgment to put myself into the responsibility of
2 giving someone the death penalty. That's my personal
3 belief. I just couldn't do that.

4 Q And so, again, Mr. Graham, you stop me if I misquote
5 what you are saying. You are not saying that death isn't
6 appropriate in some cases ---

7 A Right.

8 Q --- you are saying that you, Michael Graham, couldn't
9 give somebody death. You are not saying that they
10 shouldn't give them death necessarily; you are saying you
11 couldn't be the one to give it to them?

12 A That's exactly what I am saying.

13 Q Okay, and so, obviously, if you couldn't give them
14 death, you couldn't sign your name to the line to give
15 somebody death?

16 A Exactly my point.

17 Q Okay and I want to make clear to you again; I want to
18 make sure I am not putting any words in your mouth.
19 There's nothing I could say now that is going to suddenly
20 make Michael Graham feel like he can sign his name, that's
21 just ---

22 A Oh, no, that's me, it's no turning back, I mean,
23 that's it.

24 Q Okay, and regardless, and I want to make clear I'm not
25 putting -- regardless of how bad a crime I could show you

1 or whatever, you might feel like he deserves death, but
2 you couldn't sign Michael Graham - you personally couldn't
3 give death. You wouldn't mind if twelve other people did,
4 but you couldn't give him death, is that correct?

5 A That's right; that's me.

6 Q And that's a conviction you have?

7 A That's how I feel that if the facts were that gruesome
8 or that bad or whatever the case and whatever the
9 situation was and it was worth the death penalty itself, I
10 couldn't put my name on it; I couldn't do it.

11 Q I understand.

12 A Not knowing that I had a part to do with death.

13 Q Mr. Graham, let me tell you there is no wrong answer
14 because you just telling me what you feel ---

15 A Oh, yeah.

16 Q --- from your heart and I appreciate your being
17 straight up with me on it. Thank you.

18 A I can be that.

19 THE COURT: Mr. Schusterman.

20 MR. SCHUSTERMAN: Thank you, Your Honor.

21 EXAMINATION BY MR. SCHUSTERMAN

22 Q Mr. Graham, my name is Steve Schusterman. I am an
23 attorney in Rock Hill and York County. I represent
24 Mar-Reece Hughes seated right there along with this woman
25 with the peach dress, Chris Brice. She is from Rock Hill

1 -- York County also. I appreciate all your answers. You
2 indicated when you spoke to the judge that you are a type
3 three juror, right?

4 A Yes, sir.

5 Q You believe that death in certain circumstances is
6 appropriate. That's what you told the judge.

7 A Yes.

8 Q So you believe that in the right instance, hearing the
9 right amount of facts that satisfied you that whoever the
10 person is should receive the death penalty?

11 A Can I comment on that?

12 Q Of course you can.

13 A I will say this here one more time. Death is wrong no
14 matter how it was committed, who does it, it's wrong. It's
15 wrong either way. That's what I'm saying, you know, it's
16 wrong.

17 Q But yet there was some thinking on your part that
18 leads you to come to a rational conclusion that you were a
19 type three juror, correct?

20 A That's correct.

21 Q You didn't say you were a type one or I don't recall
22 the type that no matter what was said you could never give
23 the death penalty. You didn't feel that way.

24 A Right, because that would probably make myself - I
25 would be prejudiced towards that; I would automatically

1 jump at what's I would automatically want that to happen.

2 Q And that's not you?

3 A No.

4 Q So if that's not you and you do think the death
5 penalty is appropriate in certain circumstances, why is it
6 that only eleven other people could vote for death and you
7 could not?

8 A I don't know; I guess that's what makes me different
9 from the rest of the eleven.

10 Q The question I am asking is where is that line that
11 you have drawn between saying, Judge Hayes, I'm a type
12 three and sitting here now on questioning saying I'm
13 really not a type three, I'm someone who can't give the
14 death penalty?

15 A The reason why, the reason why, it's just like I was
16 telling you earlier I'm the type person who is willing to
17 listen to the whole thing before I jump to a decision
18 about anything. Well, maybe I did jump the gun by saying
19 I would be number three, maybe I did jump the gun. But now
20 that I'm listening to the whole thing and I wouldn't
21 really want to participate in signing my name to the death
22 penalty. That much I can say.

23 Q All right. Do you understand that The State in these
24 type actions have the burden of proof, The State has to
25 prove their case. The defense doesn't have to do anything.

1 You know, Mr. Hughes is absolutely innocent until proven
2 guilty.

3 A Right.

4 Q Do you understand that?

5 A Oh, yeah.

6 Q And are you telling this court that no matter what Mr.
7 Pope showed, no matter how bad he showed Mr. Hughes to be
8 or anybody who he was putting on and you were judging that
9 you could never give that person death?

10 A Never.

11 Q So, in effect, after this questioning if we started we
12 were able to move time, go back in time ten or fifteen
13 minutes, and Judge Hayes asked you what type juror you
14 are, would you change your answer?

15 A I would have to because that would make me none of the
16 above, so that was just eliminate me.

17 Q Okay. Thank you, Mr. Graham.

18 THE COURT: Let me just do a couple of follow-ups and
19 then we will be through with you.

20 EXAMINATION BY THE COURT

21 Q Is your opposition to voting personally to the death
22 penalty so fixed and firm that you are irrevocably
23 committed now prior to this trial starting to vote against
24 the death penalty for murder regardless of the facts and
25 circumstances that may develop during the trial?

1 A If I understand you, you are asking me - can you,
2 please, repeat it?

3 Q Okay. If I understand your answer, you are not
4 opposed to the death penalty per se; you are opposed to
5 Michael Graham imposing it.

6 A Exactly; that's what I mean.

7 Q Is that conviction such and is it -- is that
8 conviction so irrevocably -- are you so irrevocably
9 committed that conviction that you would vote against the
10 death penalty regardless of the facts and circumstances
11 that the trial develops?

12 A Oh, you are saying if the trial had got on and it was
13 like so crucial it really required the death penalty,
14 would I be opposed to ---

15 Q Voting for it.

16 A --- voting for it. Yes.

17 Q You would?

18 A Yes, uh-huh.

19 Q Okay. Could it be changed by the evidence at trial
20 this opinion of yours? Could the evidence at trial change
21 that opinion?

22 A No.

23 Q Are you telling me then could you or could you not
24 consider the two options in the penalty phase, which would
25 be life or death, but that you would only consider life.

1 A Exactly my point.

2 Q Are you so opposed to personally imposing the death
3 penalty that you would vote against it in any and all
4 circumstances?

5 A Against the death penalty, yes. Yes, I would
6 definitely not vote for it. I wouldn't.

7 THE COURT: I am going to ask you to step out in the
8 hall a minute. Thank you for your candor.

9 What says The State?

10 MR. POPE: Your Honor, I submit he is not qualified.
11 He indicated he would not follow the law and that there
12 are no circumstances in which he would himself could
13 impose the death penalty. Regardless of his belief about
14 the death penalty, he himself could not follow the law and
15 impose the death penalty.

16 MR. SCHUSTERMAN: Your Honor, he started out as a Type
17 three juror. Throughout Mr. Pope's examination of him, he
18 maintained the posture of a type three juror and only with
19 Mr. Pope's last question could you sign your name to the
20 death warrant as the verdict, that's when he began to
21 waver. I submit to you, Your Honor, that what we have here
22 is a case, I mean, all he's doing is he's beginning to
23 soul search and make that determination. I mean he clearly
24 said that he's in favor or that he believes that the death
25 penalty is an appropriate punishment in certain instances.

1 To ask him he clearly understands that under certain
2 situations the death penalty is appropriate and I would
3 submit, Your Honor, that only upon if he is faced with
4 that dilemma will he truly make the decision. I mean
5 there's as much evidence that he supports the death
6 penalty as there is that he doesn't support the death
7 penalty and so I submit that the only time we are going to
8 truly find out, you know, whether or not he can do it is
9 when we put him in the jury box and that would make him
10 qualified qualified to hear. Just because he won't commit
11 right at this moment to putting the defendant to death I
12 submit it is not a reason to disqualify him. Thank you.

13 THE COURT: Bring him back in for just a minute.

14 I am going to ask you to stand right there, just a
15 couple of follow-up questions.

16 EXAMINATION BY THE COURT

17 Q Is your belief this belief, this attitude that you
18 could not in any circumstances vote for the death penalty
19 such that you would be unable to return a verdict of guilt
20 of murder according to the law of this state?

21 A You are asking me that with the evidence that would
22 come through the trial whether the man was guilty of the
23 murder?

24 Q Right, of guilt.

25 A Oh, I could do that.

MICHAEL GRAHAM

BY THE COURT

1 Q But is it such that you would be unable to return a
2 verdict of the death penalty according to the law of this
3 state?

4 A I would be unable to do that.

5 THE COURT: All right, I am going to excuse you then
6 the fact that you are not qualified to serve on this
7 particular jury. It's not anything personal, but the law
8 does require that the jurors be able to base their verdict
9 solely on the law and the evidence in the trial and I find
10 you have expressed an inability to that on a personal
11 basis and there's nothing wrong with that. I appreciate
12 it. You will be excused. Can he pick a check up? We have a
13 check for you.

14 Ann Keller.

15 ANN KELLER (W/F)

16 EXAMINATION BY THE COURT

17 Q Ms. Keller, I am John Hayes and I know you are tired;
18 I'm sure we all are, but I am going to ask you to bear
19 with us for just a few minutes. I will remind you now that
20 you are under oath. First, are you related by blood or
21 marriage to any of the parties in this matter, the
22 attorneys, Mr. Hughes, or the decedent, Mr. Brent McCants?

23 A No.

24 Q Do you have any interest, bias or prejudice in this
25 case?

ANN KELLER

BY THE COURT

1 A No.

2 Q Have you formed or expressed an opinion as to the
3 guilt or the innocence of the defendant, Mr. Hughes?

4 A No.

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

8 A No.

9 Q Would you under your oath follow the law in this case
10 as it's given to you by the trial judge?

11 A Yes.

12 Q I am going to ask you to speak up and make sure they
13 can hear you. Could you, depending upon the facts and the
14 evidence if you felt it was warranted, and the law as I
15 instruct you, find the defendant not guilty?

16 A Yes.

17 Q Could you depending on the facts, law and evidence as
18 instructed -- or law as instructed by the trial judge if
19 you felt it warranted find the defendant guilty?

20 A Yes.

21 Q Have you discussed this case with anyone?

22 A No.

23 Q Have you read anything about it or received any
24 information from any source whatsoever outside of this
25 courtroom such as the news?

ANN KELLER

BY THE COURT

1 A No.

2 Q Now in this case the defendant, Mr. Hughes, is a black
3 gentleman and the victim, Brent McCants, was white and it
4 is alleged by The State that at the time of his death Mr.
5 McCants was on duty as a law enforcement officer. Would
6 this in any way prevent you from rendering a fair and
7 impartial verdict in this case?

8 A No.

9 Q Would those facts influence you in any way whatsoever?

10 A No.

11 Q Now I am going to ask you certain questions relative
12 to your views on the death penalty. These questions have
13 no right or wrong answers. I emphasize to you that the
14 mere fact that we are talking about the death penalty is
15 no indication as to the guilt or the innocence of the
16 defendant. He is, in fact, presumed innocent of this
17 charge and is so presumed until The State could be able to
18 prove to a jury his guilt beyond a reasonable doubt. Do
19 you understand that?

20 A Yes.

21 Q I placed in the jury room a sheet that had three juror
22 types. Did you have a chance to review it?

23 A Yes.

24 Q Did you find yourself in one of those categories?

25 A Yes.

ANN KELLER

BY THE COURT

1 Q Which one?

2 A Number 3.

3 Q Now could you as a juror participate in a jury verdict
4 recommending the penalty of death for murder if the
5 evidence and the law warranted such a verdict?

6 A Yes.

7 Q Could you as a juror participate in a jury verdict
8 recommending a sentence of life imprisonment for murder if
9 the evidence and the law warranted such a verdict?

10 A Yes.

11 Q If you were selected as a juror as I have told you you
12 would be taken with us to York County for approximately
13 ten to twelve days. Other than the general inconvenience,
14 would this present any undue hardships on you?

15 A It would as far as my job is concerned.

16 Q Other than job responsibilities.

17 A (Indicating in the negative.)

18 Q Okay. I am going to ask you now to answer any
19 questions posed to you by the solicitor or the defendant.

20 Ms. Brice?

21 MS. BRICE: Thank you, sir.

22 EXAMINATION BY MS. BRICE

23 Q Your Honor, she has not signed the back of her
24 questionnaire.

25 THE COURT: Okay, would you sign the questionnaire for

ANN KELLER

BY MS. BRICE

1 us?

2 THE CLERK: It's signed.

3 MS. BRICE: Evidently the Clerk's office has already
4 taken care of that.

5 THE COURT: Okay.

6 MS. BRICE: Thank you, ma'am.

7 Q My name is Chris Brice. I represent the defendant
8 Mar-Reece Hughes along with my co-counsel Steve
9 Schusterman, who is seated at the table. We are from York
10 County. I think the judge has already asked you if you
11 have heard any facts in this case other than what has been
12 briefly recited by the court and I believe you responded
13 that you have no.

14 A I have not.

15 Q This is a death penalty case and in a death penalty
16 case essentially there are two phases. There is a guilt or
17 innocence phase and there is a sentencing phase. In a
18 guilt or innocence phase, of course, Mr. Hughes is
19 innocent until proven guilty. Do you understand that?

20 A Yes.

21 Q And do you adhere to that principle?

22 A Yes.

23 Q And the burden of proof is upon The State to prove
24 that he is, in fact, guilty. Do you understand that?

25 A Yes.

ANN KELLER

BY MS. BRICE

1 Q And, in fact, we don't have to put up any evidence to
2 prove his innocence or to prove his -- certainly we would
3 not put anything up to prove his guilt, it would be upon
4 The State to do that.

5 A Yes.

6 Q And in the guilt or innocence phase of the trial only
7 the foreperson has to sign basically stating whether or
8 not you find someone guilty or innocent of the charge. Did
9 you know that?

10 A No, I did not.

11 Q Have you ever served on a jury before?

12 A No.

13 Q This is going to be your first experience?

14 A Yes.

15 Q Are you a little bit nervous about it?

16 A Yes, I am.

17 Q That's okay, my first experience as well. When you
18 render -- after the jury would render a finding of guilt,
19 okay, that would bring us to the second stage of the trial
20 for sentencing. If the jury came back with a verdict -- a
21 unanimous verdict of death, each juror has to sign stating
22 that they give the defendant death. Do you have any
23 concerns about that?

24 A No.

25 Q So if you found under the circumstances or under the

1 facts of the case that the death penalty was warranted in
2 this case, you would have no problem signing a certificate
3 saying that this person should be put to death?

4 A Yes.

5 Q Do you come here today with any preconceived opinions
6 or prejudices concerning race?

7 A No.

8 Q So it would not affect your judgment that Mr. Hughes
9 is a black man and the victim is a white man?

10 A No.

11 Q I see here that you work at Augusta Correctional
12 Medical Institution and that as part of your job would be
13 that you look at medical records of inmates.

14 A Yes.

15 Q Is this physical or mental records?

16 A Both.

17 Q And do you believe that people suffer from mental
18 illnesses?

19 A Yes.

20 Q And do you believe that as part of their treatment
21 that psychologists and psychiatrists are useful in
22 assisting people with mental illnesses?

23 A Yes.

24 Q Are you familiar with anyone from York County, Rock
25 Hill, York?

ANN KELLER

BY MS. BRICE

1 A No.

2 MS. BRICE: I beg the court's indulgence one moment.

3 I have no further questions.

4 Q Thank you, Ms. Keller.

5 THE COURT: Mr. Pope.

6 MR. POPE: May it please the court, Your Honor?

7 EXAMINATION BY MR. POPE

8 Q Ms. Keller, my name is Tommy Pope. I am the solicitor
9 up in York County. Mr. Kevin Brackett is my deputy
10 solicitor. We represent The State. When Ms. Brice talks
11 about The State has the burden of proof, we have to bring
12 forth the evidence to prove it, do you understand that?

13 A Yes.

14 Q My understanding from what you told the judge and what
15 you told Ms. Brice is that you are the type of juror that
16 you don't come with any preconceptions. You want to wait
17 and hear what evidence The State puts up and, again,
18 remember, they don't have to put up anything, ---

19 A Right.

20 Q --- but if they chose to you would want to hear that
21 too, is that correct?

22 A Yes.

23 Q And only then would you make your determination, ---

24 A Right.

25 Q --- is that a fair statement?

1 A Yes.

2 Q I think Mrs. Brice explained to you what's called a
3 bifurcated or two part trial.

4 A Uh-huh.

5 Q The first part is just like every other trial, guilty
6 or not guilty, that's all we are looking at. If we get
7 past the guilt stage, if the defendant is found guilty,
8 then and only then do we go to the next stage. Do you
9 understand that?

10 A Yes.

11 Q And, again, in that phase The State may bring up
12 evidence in what's called aggravation or bad things about
13 the crime or anything such as that; the defendant may
14 choose, if they want to, to bring up things in mitigation
15 or positive things about the defendant or reasons to give
16 life. Do you understand that?

17 A Uh-huh.

18 Q It is my understanding that you would be able to
19 consider life and death and you really couldn't decide
20 until you had heard whatever the evidence was, is that
21 correct?

22 A That's correct.

23 Q And Ms. Brice explained to you too that if the jury
24 decides life, and, again, they can decide life for any
25 reason or no reason at all, if the jury decides life, of

ANN KELLER

BY MR. POPE

1 course, the foreperson brings back life, in other words,
2 just one of the twelve has to sign.

3 A Uh-huh.

4 Q But if the jury decides death, it has to be unanimous,
5 all twelve jurors would have to decide that. If the jury
6 decides death, then each one individually has to sign it.
7 You know, it's a little bit different.

8 A Yes.

9 Q If you thought the appropriate sentence was life, then
10 you could so state in the jury room?

11 A Yes.

12 Q Likewise, if you thought the appropriate sentence was
13 death, you could sign Ann Keller on a sheet that said I
14 feel the appropriate sentence is death?

15 A Yes.

16 Q Thank you.

17 THE COURT: I am going to ask you to step out in the
18 hall for just a minute.

19 What says The State?

20 MR. POPE: I submit she's qualified.

21 THE COURT: The defendant?

22 MR. SCHUSTERMAN: I submit she's qualified.

23 THE COURT: All right, bring her back in.

24 Ms. Keller, you can stand right there. I find that you
25 are qualified to serve. You will be part of the jury pool

BOBBY WILEY

BY THE COURT

1 from which the jury will be drawn. That does not mean that
2 you are automatically on the jury yet; you are just in the
3 pool from which it will be drawn. Please call back - will
4 be given a number as you leave - between 5:00 and 7:00
5 tomorrow and you will be told what time to report on
6 Wednesday. When you come on Wednesday, even though you
7 don't know yet if you will be going, come prepared for a
8 ten to twelve day stay in York County. Be packed and ready
9 to go because once we draw the jury we are going to
10 transport them immediately to York County so we can start
11 into the testimony or whatever on Thursday morning and
12 please remember my admonition that you are not to receive
13 information from outside sources in any way whatsoever
14 including any news media. Do you understand?

15 JUROR: Yes, sir.

16 THE COURT: Have a pleasant evening. Call between 5:00
17 and 7:00 tomorrow.

18 JUROR: Okay.

19 THE COURT: Bobby Wiley.

20 BOBBY WILEY (B/M)

21 EXAMINATION BY THE COURT

22 Q Please come up here and have a seat, Mr. Wiley. Good
23 evening. We are getting into the evening now. It's not
24 afternoon any more.

25 I am John Hayes. I've introduced myself to you. I am

BOBBY WILEY

BY THE COURT

1 going to ask you a few questions now. I remind you that
2 you are under oath. Are you related by blood or marriage
3 to any of the attorneys, Mr. Hughes or to Brent McCants,
4 who is the victim in this matter?

5 A No.

6 Q Do you have any interest, bias or prejudice in regard
7 to this case?

8 A No, sir, I don't.

9 Q Have you formed or expressed any opinion about the
10 guilt or the innocence of the defendant, Mr. Hughes?

11 A No, I have not.

12 Q Do you know of any reason whatsoever why you could not
13 give both The State of South Carolina and the defendant,
14 Mr. Hughes, a fair and impartial trial?

15 A No, I do not.

16 Q Could you and would you under your oath follow the law
17 in this case as I, the trial judge, would instruct you?

18 A I would.

19 Q Could you depending on the facts and the evidence on
20 this case, if it were warranted, and the law, if you felt
21 all of that warranted, -- let me start over -- could you
22 based on the facts, the evidence and the law as I instruct
23 you find the defendant not guilty if you thought it was
24 warranted?

25 A I could.

BOBBY WILEY

BY THE COURT

1 Q If you felt from the facts and the evidence and the
2 law it was warranted to find the defendant guilty could
3 you so do?

4 A I believe I could.

5 Q Have you discussed this case with anyone?

6 A No, I have not.

7 Q Have you read or heard or seen anything about this
8 from any source whatsoever?

9 A No, sir, I have not.

10 Q All right, now, Mr. Hughes is a black gentleman and
11 the victim, Mr. McCants, was white. It is alleged by The
12 State at the time of his Mr. McCants was on duty as a law
13 enforcement officer. Would these facts prevent you in any
14 way whatsoever from rendering a fair and impartial verdict
15 in this case?

16 A No, sir, it would not.

17 Q Notwithstanding those facts could -- well, let me ask
18 it this way -- would those facts influence your decision
19 in any way whatsoever?

20 A No, sir, it would not.

21 Q All right, I am going to ask you certain questions
22 about the death penalty. Now there are no right or wrong
23 answers to these questions and the fact that I am asking
24 them is no indication as to the guilty or the innocence of
25 the defendant. He is by law presumed innocent and is

1 so presumed until such time as The State could be able to
2 prove his guilt beyond a reasonable doubt. Do you
3 understand that?

4 A I do.

5 Q I put a sheet in the jury room that has three juror
6 types. Did you have a chance to review it?

7 A I did.

8 Q Did you find yourself in one of those categories?

9 A I did.

10 Q Which one?

11 A Number three.

12 Q Could you as a juror participate in a jury verdict
13 recommending the penalty of death for murder if the
14 evidence and the law warranted such a verdict?

15 A I could.

16 Q Could you as a juror also participate in a jury
17 verdict recommending a sentence of life imprisonment for
18 murder if the evidence and the law warranted such a
19 verdict?

20 A I could.

21 Q All right, other than the general inconvenience it
22 would mean by being away from your family and other
23 matters, would the fact that you would have to be
24 sequestered for a ten to twelve day period cause you any
25 undue hardship?

1 A No, sir.

2 Q All right, I am going to ask you questions posed by
3 The State and the defendant.

4 EXAMINATION BY MR. POPE

5 Q Mr. Wiley, my name is Tommy Pope, Solicitor from up in
6 York County. I am going to touch just briefly on some of
7 the things the Judge asked you. I have just a few
8 questions. I know it's well past quitting time. Have you
9 ever been asked these kind of questions before?

10 A No, I have not.

11 Q Have you served on a jury before?

12 A No, I have not.

13 Q I guess this whole thing is kind of new to you. One
14 thing I will tell you is you can't give a wrong answer,
15 you just speak from your heart. So if I'm asking questions
16 and it seems like I am putting words in your mouth, I
17 don't mean to do that. You stop me and correct me. Now one
18 thing that's a little different on our case, a death
19 penalty case, in South Carolina it's what is called a
20 bifurcated trial. What that means is it is a two part
21 trial. We keep talking about penalty, penalty, but the
22 judge has explained that the defendant is innocent until
23 The State carries the burden of proof to prove he is
24 guilty. You understand that?

25 A Yes.

1 Q So the first part of the trial we don't worry about
2 penalty. We talk about guilty or not guilty. And, of
3 course, what I understood from your saying you are a juror
4 number three your type is you would want to hear
5 everything before you made a decision, is that right?

6 A Yes.

7 Q You wouldn't get in that jury box and as soon as you
8 sit down the first day and say, well, I've decided he is
9 not guilty or I decided he's guilty. You would wait until
10 you heard everything, is that right?

11 A Yes.

12 Q And you understand too that the defendant doesn't have
13 to put up anything, so any time while I am talking to you
14 if I say evidence they put up, evidence we put up, we are
15 the only ones that have to prove anything, do you
16 understand that?

17 A Yes, I do.

18 Q Okay, and you are the type of juror that on the guilt
19 phase the first part you would want to hear everything
20 before you made a decision, is that correct?

21 A Yes, sir.

22 Q If we prove the case beyond a reasonable doubt, in any
23 case, if The State proves the case beyond a reasonable
24 doubt, you could find the defendant guilty?

25 A Right, that's right.

BOBBY WILEY

BY MR. POPE

1 Q If we didn't prove the case, if we didn't prove beyond
2 a reasonable doubt, then you could find him not guilty?

3 A That's right.

4 Q All right, again, just knowing the defendant is
5 innocent until proven guilty, I'm now going to talk about
6 the second phase if the defendant was found guilty. Then
7 we go to the second phase. The second phase is a little
8 bit different in that the determination has been made that
9 the defendant is guilty or you wouldn't be having the
10 penalty, then you start determining, you know, life or
11 death, what the penalty should be. The judge talked about
12 it and has given you sheets, it's certainly serious. You
13 know, we are not saying that life isn't, when we say life
14 or death, but you are the type of juror that would want to
15 hear everything anything The State wanted to put up that
16 may be bad about the crime or about the victim of the
17 crime or anything of that nature, you would want to hear
18 that, is that correct?

19 A That's correct.

20 Q Likewise, if the defense chose to put up anything
21 about the defendant or about things that made the crime
22 not so bad you would want to hear that too?

23 A True.

24 Q And until you have heard everything as far as the
25 penalty phase, you wouldn't make your decision, is that

1 correct?

2 A No, I would not.

3 Q Then after hearing everything you thought that I've
4 heard everything and I've heard what the judge told me as
5 far as the law and I just think life is appropriate, that
6 life is the punishment, then you could decide life, is
7 that correct?

8 A Correct.

9 Q And likewise if you heard everything and you said in
10 this particular case and this particular facts I feel
11 death is appropriate, you could tell all the other jurors
12 my position is death, is that correct?

13 A That's right.

14 Q Okay. One final thing I would ask you. I'll try to be
15 brief with you. One thing that's a little bit different
16 in our law if the jury finds life, of course, it has to be
17 unanimous, you know, as far as a finding even though the
18 jury can give life for any reason or no reason at all, but
19 a verdict of the jury has to be unanimous. If the jury,
20 all twelve, says we think life is appropriate, we've heard
21 the facts and we think life is appropriate, then only the
22 foreperson, the foreman or the forelady of the jury, one
23 person would sign and say we believe life is appropriate;
24 however, under our law if everybody decides death, after
25 hearing everything you decide the death penalty is

BOBBY WILEY

BY MR. POPE

1 appropriate, then each and every juror has to sign, you
2 know, again giving them the opportunity to search their
3 heart and make sure they feel that is the decision they
4 are making. If you got ready to sign and you felt like
5 life -- I mean death was not appropriate, could you refuse
6 to sign it?

7 A Oh, yes.

8 Q And likewise if it came around where you had decided,
9 you had heard everything and you felt like death was the
10 appropriate punishment, would you put Bobby Wiley on that
11 sheet of paper, sign it?

12 A I'd like to believe I could.

13 Q I'm sorry, sir.

14 A I would like to believe I could.

15 Q Thank you, sir.

16 THE COURT: Mr. Schusterman.

17 MR. SCHUSTERMAN: Thank you, Your Honor. May it please
18 the court?

19 EXAMINATION BY MR. SCHUSTERMAN

20 Q Mr. Wiley, my name is Steve Schusterman and I am an
21 attorney from York County. I represent Mr. Hughes. My
22 co-counsel is Christina Brice, also from York County. I
23 just want to ask you a couple of follow-up questions what
24 the judge spoke to you about, what Mr. Pope spoke to you
25 about. Do you understand that we have gone through a lot

BOBBY WILEY

BY MR. SCHUSTERMAN

1 of pomp and circumstance today, you have had a lot of
2 questions asked of you as part of the jury panel, and a
3 lot of this relates to the death penalty. Do you
4 understand that before we can get to you deciding life or
5 death, first, you have to determine that Mr. Hughes is
6 guilty.

7 A Yes, sir.

8 Q And do you understand he is innocent until proven
9 guilty. We are just not going to jump over that step and
10 say we know he is guilty, let's just move on and make the
11 decision of life or death. Do you understand that?

12 A I do.

13 Q Mr. Hughes has been charged as you heard this morning
14 with four indictments, four charges, and he has pled not
15 guilty to it. And when he pleads not guilty, The State has
16 the burden of proof. The State has to prove him guilty
17 beyond a reasonable doubt or we don't even get to the
18 second part. Do you understand that?

19 A Right.

20 Q Let me ask you. Mr. Pope spoke to you about signing
21 the death warrant or signing this form that indicates that
22 you were one of the twelve people in the jury who
23 unanimously agreed to death. It's probably a lot easier
24 to sit here today and say I can do it. Do you believe that
25 when it is time for Bobby Wiley to take pen in hand you

1 could do it?

2 A Like I say, I would like to think that I could, but
3 when that times, who knows.

4 Q But you would stay open minded and would listen to all
5 of the evidence what The State put up and what evidence
6 the defense chose to put up. You know, we don't have to
7 put up anything, but you'd listen to everything, wouldn't
8 you?

9 A Exactly.

10 Q Do you know anybody in Rock Hill?

11 A I don't know. I met some peoples from up in that area
12 through different organizations. Right off hand I can't
13 say that I do.

14 Q Mr. Wylie, do you remember filling out this
15 questionnaire?

16 A I do.

17 Q One question that you left out was there's a question
18 in there how do you feel about psychiatry and psychology,
19 psychiatrists and psychologists and you didn't answer. Was
20 there a reason?

21 A No, no it wasn't. I do remember that and I just didn't
22 fill it out how I feel about peoples.

23 Q Do you feel there is something called mental illness
24 that people can be mentally ill?

25 A Definitely.

1 Q You do. Do you believe that psychiatrists,
2 psychologists help people that are mentally ill?

3 A Exactly.

4 Q You indicated that you have some friends or relatives
5 who are involved in law enforcement. You put the police
6 department in Atlanta.

7 A Right.

8 Q What is that relationship and what do they do in
9 Atlanta?

10 A I have a sister who is a deputy with the Sheriff's
11 Department in Atlanta, Georgia.

12 Q A deputy in Fulton County Sheriff's Department?

13 A Fulton County Sheriff's Department.

14 Q Do you believe that because your sister is a deputy
15 with a Sheriff's Department and the allegation here is
16 that a York County Sheriff's Department deputy was killed,
17 do you believe that that would cause you to be unfair,
18 that you would have an unfair bias because of your
19 relationship with your sister?

20 A No, sir.

21 Q You don't think Mr. Hughes would be automatically
22 guilty because a Sheriff's Deputy was involved?

23 A Definitely not, not at all.

24 Q You also indicate in your questionnaire you put -
25 question 32 was "Have you, your spouse, friend or relative

BOBBY WILEY

BY MR. SCHUSTERMAN

1 been charged or arrested, indicted or convicted of any
2 criminal offense?" You put, "Yes," and on the explanation
3 you put a question mark.

4 A Well, the question mark, yes, I have a cousin that was
5 indicted and charged with murder. The circumstances
6 surrounding it I do not know. What I was told about it, I
7 wasn't there, however, he did make time for it.

8 Q Would the fact that your cousin was charged with
9 murder, would that have any bearing on your ability to
10 judge this case fairly both from The State's perspective
11 or the defendant's perspective?

12 A No, sir, it would not; it wouldn't.

13 Q Thank you, Mr. Wylie.

14 MR. SCHUSTERMAN: I have no other questions, Your
15 Honor.

16 THE COURT: All right.

17 EXAMINATION BY THE COURT

18 Q Let me ask you this. If, Mr. Wylie, you voted for the
19 death penalty and all other eleven jurors voted likewise,
20 would you be able to sign a verdict indicating that you
21 had voted for the death penalty?

22 A Yes, sir.

23 Q I am going to ask you to step outside for just one
24 minute.

25 THE COURT: What says The State?

BYRON NEELEY

BY THE COURT

1 MR. POPE: I submit he is qualified.

2 THE COURT: The defendant?

3 MR. SCHUSTERMAN: I submit he is qualified.

4 THE COURT: All right, bring him in.

5 You can stand right there. Mr. Wylie, you have been
6 found qualified. You will be part of the jury pool from
7 which the jury is drawn. I am going to ask you to call
8 between five and seven tomorrow this number you will be
9 given. When you come on Wednesday, you are not
10 automatically on the jury, you are just in the pool from
11 which the twelve jurors and two alternates will be drawn,
12 but when you come on Wednesday, please come prepared and
13 packed in case you are drawn so that you can travel with
14 us immediately to York County to start the trial and be
15 prepared to stay for a ten to twelve day stay. Don't talk
16 about the case and don't receive any information about the
17 case through the news or otherwise outside this courtroom.
18 Call this number between five and seven tomorrow and they
19 will tell you when to report on Wednesday. Okay? All
20 right, thank you a lot.

21 Mr. Neeley.

22 BYRON NEELEY (W/M)

23 EXAMINATION BY THE COURT

24 Q Hi, Mr. Neeley, come up and have a seat right here.

25 A I am John Hayes. I remind you you are under oath. Have

1 a seat. I am going to be asking you some questions. First,
2 some of them may be a little repetitious, but I hope not.
3 First, are you - and I am going to ask you to speak up so
4 all these people out here can hear you - are you related
5 by blood or marriage to any of the parties, that is, the
6 attorneys you have been introduced to or Mr. Hughes or Mr.
7 McCants who was the individual who was killed?

8 A No, sir.

9 Q Do you have any interest or bias or prejudice in
10 regard to this case?

11 A No, sir.

12 Q Have you formed or expressed any opinion as to the
13 guilt or the innocence of the defendant, Mr. Hughes?

14 A No, sir.

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

18 A No, sir.

19 Q Would you under your oath follow the law in this case
20 as the trial judge charges it to you?

21 A Yes, sir.

22 Q Could you depending upon the facts and the evidence
23 and the law as you would be instructed find the defendant
24 not guilty if you felt that was warranted?

25 A Yes, sir.

1 Q Could you depending upon the facts and the evidence
2 and the law as you would be instructed, if it were
3 warranted, find the defendant guilty?

4 A Yes, sir.

5 Q Have you discussed this case with anyone?

6 A No, sir.

7 Q Have you read or received any information about this
8 case from any source including the news media?

9 A No, sir.

10 Q All right, Mr. Hughes, the defendant, is a black
11 gentleman and the victim in this case, Mr. McCants, was
12 white. Now it is alleged also that Mr. McCants was acting
13 in the course and scope of his employment as a law
14 enforcement officer at the time of his death. Would this
15 in any way whatsoever prevent you from rendering a fair
16 and impartial verdict in this case?

17 A No, sir.

18 Q We are going to ask you now, I am, and perhaps the
19 attorneys will ask you some questions relative to your
20 views on the death penalty. There are no right or wrong
21 answers to these questions. I emphasize to you that the
22 mere fact that we are talking about the penalty at this
23 point is no indication as to the guilt or the innocence of
24 the defendant. He is presumed innocent of this charge
25 until such time as the jury will be convinced beyond a

BYRON NEELEY

BY THE COURT

1 reasonable doubt as to his guilt. Do you understand that?

2 A Yes, sir.

3 Q I placed a sheet in the jury room with three juror
4 types on it. Did you have a chance to review it?

5 A Yes, sir.

6 Q Do you find yourself in one of those types?

7 A Yes, sir.

8 Q Which one?

9 A Number three.

10 Q Would you as a juror be able to participate in a jury
11 verdict recommending the penalty of death for murder if
12 the evidence and the law would warrant such a verdict?

13 A Yes, sir.

14 Q Could you as a juror participate in a verdict
15 recommending a sentence of life imprisonment for murder if
16 the evidence and the law warranted such a verdict?

17 A Yes, sir.

18 Q Other than the general inconvenience that it will
19 cause all jurors who serve, would the fact that you would
20 have to be sequestered in a motel for the duration of this
21 trial present any undue hardship on you?

22 A No, sir.

23 Q I am going to ask you to answer questions imposed by
24 counsel for the defendant, Mr. Schusterman, and then
25 someone, I believe Mr. Pope, on behalf of The State.

BYRON NEELEY

BY MR. SCHUSTERMAN

1 MR. SCHUSTERMAN: Thank you, Your Honor, may it please
2 the court?

3 EXAMINATION BY MR. SCHUSTERMAN

4 Q Mr. Neeley, please tell me there's nobody left in that
5 room back there.

6 A There is nobody left in that room.

7 Q That's good. My name is Steve Schusterman. I am an
8 attorney from Rock Hill. I represent Mr. Hughes, the
9 defendant in this action. Seated next to me in the peach
10 dress is Ms. Brice. She is my co-counsel. We represent him
11 together.

12 You spent the entire day today listening to questions
13 about the death penalty, listening to questions can you
14 give the death penalty, the facts surrounding it. Do you
15 understand that in a situation such as this this is going
16 to be what is known as a bifurcated trial. The trial is
17 going to come in two phases. Phase Number one is going to
18 be guilt or innocence. That's all the jury is going to be
19 concerned with, won't even think about penalty, just
20 things about the guilt or the innocence of Mr. Hughes. Do
21 you understand that?

22 A Yes, sir.

23 Q Do you understand that Mr. Hughes is innocent until
24 proven guilty beyond a reasonable doubt?

25 A Yes, sir.

BYRON NEELEY

BY MR. SCHUSTERMAN

1 Q Mr. Hughes, to the four indictments that you heard
2 this morning Mr. Pope read out he has pled not guilty to
3 all of them and so that means the burden of proof is
4 completely on The State. The State has to present
5 sufficient evidence to you as a juror to prove Mr. Hughes'
6 guilt beyond a reasonable doubt. Do you understand that?
7 A Yes, sir.
8 Q And if you were to come back with a verdict of
9 innocent or not guilty in that first phase, we won't even
10 get to the second phase. Do you understand that?
11 A Yes, sir.
12 Q If we get to a second phase, if you were to determine
13 that Mr. Hughes was guilty and we get to a second phase,
14 the law requires that you set down and put your signature
15 on a form, which indicates that you along with the other
16 eleven jurors unanimously chose that, could you take a pen
17 in your hand and put down your name to determine death?
18 A Yes, sir.
19 Q You believe you could?
20 A Yes, sir, if that's what the law required.
21 Q And do you understand that the law you can choose life
22 as well? Do you understand?
23 A Yes, sir.
24 Q Mr. Neeley, I noticed in the questionnaire, do you
25 remember filling out this questionnaire?

1 A Yes, sir.

2 Q In this questionnaire it appears that you are fairly
3 active at Grace Methodist Church, is that a fair
4 statement?

5 A Yes, sir; well, I grew up in North Augusta and that's
6 my home church, but I am now attending a Baptist Church in
7 the Aiken area. I moved to Aiken in December.

8 Q Is there anything within the philosophies about your
9 religion either being Methodist or now Baptist that you
10 would lean on in terms of making your decision of life or
11 death?

12 MR. POPE: Your Honor, I will object to "lean on" I
13 think that is staking out the witness.

14 THE COURT: Rephrase the question.

15 Q Are there philosophies of your religion that would aid
16 you in your determination?

17 A The way I see it, the law as currently written would
18 be what I would use to judge whether in this particular
19 case a death sentence was in order or life imprisonment
20 and I would have to separate what the law said from my own
21 personal feelings about the death sentence.

22 Q What are your own personal feelings about the death
23 sentence?

24 A I personally think -- I personally don't think Jesus
25 Christ would ever throw the switch.

BYRON NEELEY

BY MR. SCHUSTERMAN

1

Q But in spite of that philosophy, that religious belief, you could separate yourself from that and sit as Mr. Neeley in the jury box and listen to what the judge had to say and make a determination based on that?

2

3

4

5

A Yes.

6

Q You indicated in one of your questions that your mother-in-law's house was robbed.

7

8

A Yes.

9

Q Does that being the case does that render you to have any feelings of animosity towards criminals in any way?

10

11

A No, sir.

12

Q Would that prejudice you in any way in dealing with this particular case?

13

14

A No, sir.

15

Q You indicate that while you haven't studied the field of psychiatry or psychology that you believe that psychiatrists and psychologists provide a useful service to people with emotional needs. May I take it from that statement, I'm certainly not going to put words in your mouth, may I take from that statement that you believe in a concept of mental illness?

16

17

18

19

20

21

22

A Yes.

23

Q And would you agree with the fact that a mental illness, if one is determined to have it, psychiatrists, psychologists might be the appropriate remedy for that for

24

25

BYRON NEELEY

BY MR. POPE

1 that person?

2 A Yes.

3 Q And do you believe that mental illness can change the
4 course of a person's behavior?

5 A Yes.

6 Q Okay. Mr. Neeley, thank you very much. Please answer
7 any questions Mr. Pope has.

8 MR. POPE: May it please the court, Your Honor?

9 EXAMINATION BY MR. POPE

10 Q Mr. Neeley, I am Tommy Pope. I am the Solicitor up in
11 York County. And as late as it is getting I think
12 mercifully I will try to be as brief as possible.

13 You said you are category three. Mr. Schusterman has
14 explained to you it is a two part trial. You would keep an
15 open mind as to guilty or not guilty knowing that we have
16 to prove the case.

17 A Yes, sir.

18 Q Would you keep an open mind as far as penalty, if we
19 got to that stage, hearing whatever we chose to put up in
20 aggravation and whatever the defense chose to put up, if
21 they choose to, they don't have to, but if they choose to
22 in mitigation, is that correct?

23 A Yes, sir.

24 Q And you stated I believe you said that you would sign
25 - Mr. Schusterman explained that if the jury comes back

1 with life, if twelve of you make the determination that
2 hearing everything life is appropriate, the only the
3 foreperson has to sign it and it says, "We the jury
4 recommend life." And I say "recommend," but what you say
5 is what is going to go. But under our law if you say death
6 or if the jurors say death, if unanimously all twelve
7 decide death, then it is a requirement that each juror
8 sign. I want to make sure at the start that you never have
9 to sign, if all other eleven jurors sign, you still don't
10 have to sign, you know, if you don't think it is
11 appropriate. Do you understand that?

12 A Yes, sir.

13 Q I kind of want to make that part clear that the law
14 never is going to make you sign your name unless you think
15 it is appropriate, do you understand that?

16 A Yes, sir.

17 Q Now taking that, you said you would apply the law as
18 it is currently written, in other words, you would apply
19 what the judge told you the law was, is that correct?

20 A Yes, sir.

21 Q And Mr. Schusterman touched on your religious beliefs
22 and you said personally you don't think Jesus Christ would
23 throw the switch, is that correct?

24 A That's correct.

25 Q And, of course, I would presume in your conviction at

1 church we all strive to be more like Christ?

2 A Yes, sir.

3 Q Okay. Do you think that and, again, I want to make
4 clear, I'm, one, not putting words in your mouth, two,
5 there's no wrong answer on your part, do you think that
6 that would prevent you from signing Byron Neeley to a
7 death verdict if you thought it was appropriate?

8 A It wouldn't prevent me from that. I just want to make
9 one thing clear. I'm not sure how the laws and stuff are
10 structured, but my perception is there are things in the
11 law that kind of govern whether it'll be death penalty or
12 life and the motion will be made and we will be directed
13 by the judge or whatever what may or may not be
14 appropriate and I would be willing to make my judgment
15 based on how the laws is ---

16 Q Is presented?

17 A --- is presented.

18 Q And, again, I apologize. I don't want to put words in
19 your mouth. Let me tell you what happens. Of course, the
20 defense has their side to present, if they choose to; we
21 have our side and we have to carry our burden. The jury
22 decides the facts. In other words, Mr. Schusterman puts up
23 something, if he chooses to, and we put up our case to
24 prove it, the judge instructs you as to what the law is
25 that you apply to those facts, but, ultimately, he says

1 the law is X, Y, and Z and you've heard the facts from
2 evidence and you make the determination. And, so, again,
3 the judge would instruct you if you were able to consider
4 the death penalty, but the judge is not going to instruct
5 you we have heard these facts and this should be a death
6 penalty or this should not. You know, if the case were to
7 move along to the second phase, the judge will give you
8 the instructions under what parameters you can consider
9 life or death and, of course, as far as life you can
10 consider it for any reason at all. The death penalty, like
11 you said, there are always certain things, but the judge
12 is never from the Bench going to tell you this meets the
13 criteria of death, therefore, you say death. You are
14 always free to choose. Do you understand that now?

15 A I understand.

16 Q And, again, I don't pretend to be the judge; he's the
17 one - if I ever misstate it, he will tell you what the law
18 is. So going back to my question now, now that you
19 understand that that you will always have a choice, if you
20 heard the facts and thought death was appropriate, you are
21 a number three juror and you like to hear everything, and
22 if you felt that death was appropriate based on what Mr.
23 Schusterman asked you as far as your religious beliefs,
24 based on everything as far as your view of the law, could
25 you sign Byron Neeley to a verdict giving a defendant

1 death if you thought that was appropriate?

2 A Yes, sir.

3 Q Thank you, sir.

4 THE COURT: I am going to ask you to step out in the
5 hall for just one minute.

6 (Juror complied.)

7 What says The State?

8 MR. POPE: I submit he is qualified, Your Honor.

9 THE COURT: The Defendant?

10 MR. SCHUSTERMAN: I submit he is qualified.

11 THE COURT: Bring him back in.

12 All right, Mr. Neeley, you can stand right there. I
13 have found you qualified for the jury pool, which means
14 that you will report back here Wednesday. You will call
15 this number that you have been given tomorrow between five
16 and seven and they will at that time tell you what time to
17 report on Wednesday. This does not mean that you are on
18 the jury; you are just on the pool from which it will be
19 drawn. But do come prepared for a ten to twelve day stay
20 in York County because once we get the jury drawn we want
21 to leave immediately thereafter to go to York County so we
22 can start the trial. Keep in mind that you are not
23 supposed to receive any information about this case from
24 the news or from any source whatsoever outside the
25 courtroom. Do you understand that?

THE STATE VS HUGHES

1 JUROR: Yes, sir. And you are going to call and set
2 this up with my wife, right?

3 THE COURT: No, I don't do that. There are some
4 things that even I am not brave enough to do.

5 All right, anything from the State before we quit for
6 today?

7 MR. POPE: No, sir, Your Honor.

8 THE COURT: Anything from the defendant?

9 MR. SCHUSTERMAN: Absolutely none. I'm sorry. Your
10 Honor, would you be good enough tomorrow before we start
11 each group to inform them not to talk to each other about
12 these three types of jurors?

13 THE COURT: I thought I had told them not to discuss
14 anything at any place at any time, but I will re-emphasize
15 it, yes.

16 MR. SCHUSTERMAN: I just thought it was -- it's
17 probably just coincidence that all ten people thought they
18 were number three.

19 THE COURT: Well, I'm not sure, I think -- well, I
20 can't get into all of that.

21 MR. SCHUSTERMAN: I'd just like for each person to
22 make their own decision ---

23 THE COURT: Yes.

24 MR. SCHUSTERMAN: --- and not be a collective verdict
25 that we are all going to choose number three.

THE STATE VS HUGHES

1 THE COURT: Well, okay, I think we got some very
2 thoughtful, decisive opinions, very reflective people.

3 MR. SCHUSTERMAN: I understand this, Your Honor.

4 THE COURT: I know; I'll do that; there is no problem
5 with that. I want to thank counsel and especially the
6 court reporter and the Clerk's office for all their good
7 work today in hanging in with us. So, thank you. And the
8 bailiffs and deputies.

9 MR. SCHUSTERMAN: Do you want us to reconvene before
10 nine o'clock or nine-forty-five?

11 THE COURT: I will be here about a quarter 'til nine.
12 If you have anything, I'm staying at the Holly Inn, you
13 can call me if you need to convene any earlier, but I will
14 be in probably by a quarter 'til nine because I don't like
15 to come rushing in at the last minute. So if you need me,
16 I should be here about fifteen minutes early.

17 MR. SCHUSTERMAN: Thank you.

18 THE COURT: Have a pleasant evening.

19 SEPTEMBER 12, 1995

20 THE COURT: For the record, I have had my law clerk
21 write on the top of each of the three juror types that the
22 jurors are not to discuss those among themselves while
23 they are waiting. So we are on Panel B. The first one is
24 Eleanor Baugh; is that right? Madam Clerk, did I get the
25 first name right?

ELEANOR BAUGH

BY THE COURT

1 THE CLERK: Yes, sir, Eleanor Baugh.

2 THE COURT: Bring in Ms. Baugh.

3 ELEANOR BAUGH (W/F)

4 EXAMINATION BY THE COURT

5 Q I am John Hayes, how are you this morning?

6 A I'm fine; thank you, Your Honor.

7 Q You are under oath regarding answering these
8 questions.

9 A Yes, sir.

10 Q I am going to ask you to speak up so that all of these
11 people out here can hear you. Some of this may be
12 repetitious, but I hope not, but, first, I am going to ask
13 if you are related to any of the parties to this
14 proceeding, the Solicitor or his assistant, counsel for
15 defendant, Mr. Hughes, or the deceased, Mr. McCants?

16 A No, I am not.

17 Q Do you have any interest, bias or prejudice in regards
18 to this case?

19 A No, I do not.

20 Q Have you formed or expressed an opinion as to the
21 guilt or the innocence of the defendant, Mr. Hughes?

22 A No.

23 Q Do you know of any reason whatsoever why you could not
24 give both the State of South Carolina and the defendant,
25 Mr. Hughes, a fair and impartial trial?

1 A I guess if we are talking about the class that I would
2 describe myself under, I'm not sure I could give a death
3 penalty.

4 Q All right, I am going to get to that in just a minute.

5 A That would be the only thing.

6 Q Okay, you feel that you might not be able to give the
7 death penalty?

8 A Yes.

9 Q All right, let me ask you this before we get to the
10 penalty part. Depending on the facts and the evidence and
11 the law, could you find this defendant not guilty if you
12 felt the evidence warranted that finding?

13 A Yes.

14 Q Could you under the law and facts and the evidence, if
15 all that warranted it, find the defendant guilty of
16 murder?

17 A If everything pointed in that direction, yes.

18 Q Now have you discussed this case with anyone?

19 A Never.

20 Q Have you read anything about it anywhere?

21 A No, I haven't.

22 Q Now the fact that the defendant, Mr. Hughes, is black
23 and the victim, Mr. McCants, was white and also taking
24 into consideration the allegation of The State that Mr.
25 McCants was functioning as a law enforcement officer on

1 duty at the time of his death, would that in any way
2 prevent you from rendering a fair and impartial verdict?

3 A No.

4 Q Now as to the death penalty, I am going to talk to you
5 about that now, we sort of touched on it. But I am going
6 to emphasize that there are no right or wrong answers to
7 these questions, but I also emphasize that the fact that
8 we are talking about the penalty does not indicate
9 anything about the guilt or the innocence of the
10 defendant. We are merely talking about the penalty, which
11 is the second part of a trial of this type. I want you to
12 know that Mr. Hughes is presumed innocent and is so
13 presumed until such time as a jury would have found him
14 guilty beyond a reasonable doubt. Do you understand that?

15 A Yes, sir.

16 Q Now you did read the three juror types?

17 A Yes, sir.

18 Q And you find yourself in which category?

19 A I guess the second one.

20 Q All right, the second type is a juror who under no
21 circumstances would ever give the death penalty and that's
22 your feeling?

23 A I think it would be hard for myself, yes.

24 Q Well, based on the law and the evidence as it
25 developed in the trial could that make a difference and

1 could you if the law -- if the evidence applying the law
2 as I charge it to you warranted the imposition of a death
3 penalty, could you impose it?

4 A I'm not sure.

5 Q All right, is your opposition so firm that you would
6 not vote for the death penalty regardless of the
7 circumstances that developed during the trial?

8 A There again I'm not sure. I wish that I could say yes,
9 but I can't sit here and say yes that I could give the
10 death penalty and not be able to, I mean, you know,
11 without a shadow of a doubt I mean whether or not, you
12 know, they tell me this person is guilty or whatever.

13 Q Well, that would be a decision that you would have to
14 make first. And then would you be willing to consider all
15 the penalties which the law provides, which could be life
16 imprisonment or it could be death by either electrocution
17 or lethal injection?

18 A I guess if I were chosen, I would have to, wouldn't I?

19 Q Well, in addition to considering then could you ever
20 vote for the death penalty? Could you under any
21 circumstances vote for the death penalty?

22 A I'm not sure.

23 Q Well, could you say, and I might be repetitious, could
24 you say that you would automatically vote against the
25 death penalty without regard to the evidence that might be

1 developed?

2 A No, I couldn't say that either. I mean, it would
3 depend on the circumstances. Do you follow what I am
4 saying?

5 Q I'm following what you are saying, but I'm trying to

6 ---

7 A I'm not sure that I could do it, you know, that's
8 like, you know, I'm saying that this person's, you know,
9 life is going to be ended and I don't know if I could do
10 it.

11 Q In spite of the evidence and the circumstances that
12 develops?

13 A Yes.

14 Q All right, now, one last question. If you ended up
15 being on this jury, other than the fact that it would
16 obviously be inconvenient for anyone to have to be away
17 from their homes for some period of time, would the fact
18 that you would be sequestered for ten or twelve days in
19 York County present any undue hardship for you?

20 A I have a two year old at home. I'm a widow; my
21 husband is deceased. I adopted this boy. I would have to
22 just find somebody to take care of him at night.

23 Q When I asked about people with a child under seven you
24 didn't indicate that you wanted to be excused for that
25 reason?

1 A I thought the way you said it was if you did not work
2 outside of the home, see, I do. I work outside of the
3 home; I have him in day care.

4 Q But you have the duty of keeping him at night?

5 A Yes.

6 Q Okay, I am going to let you answer any questions the
7 Solicitor or Mr. Schusterman may have.

8 MR. POPE: May it please the court, Your Honor?

9 THE COURT: Certainly.

10 EXAMINATION BY MR. POPE

11 Q Ms. Baugh, I am Tommy Pope. I'm the Solicitor from up
12 in York County. Mr. Kevin Brackett is my Deputy
13 Solicitor. We represent The State. I just want to touch
14 briefly on what you told the judge. And let me tell you
15 again the purpose of this is - you are not on trial here;
16 I know you feel like it - are you nervous?

17 A Yes.

18 Q Have you been asked this kind of stuff before?

19 A No.

20 Q Okay, one thing you are lucky in sitting there because
21 you can't give a wrong answer from the standpoint --
22 because what you are doing you are speaking from your
23 heart and you are trying to tell us the best you can how
24 you feel and, again, just like the judge said, there is no
25 right or wrong answers. So don't read anything into the

1 way the judge is asking the questions or the way I ask the
2 questions, you know, as to try to get a certain answer out
3 of you. And if I ever seem like I am putting words in your
4 mouth, then you stop me and you clear it up. As I
5 understood, you put yourself in category two and, again,
6 whether you are category one or two or three is strictly
7 up to you. And in category two you said that you would
8 give life, that Eleanor Baugh would give life, and that's
9 your personal view?

10 A Right.

11 Q Where is that seeded; where does that come from? And,
12 again, it is not wrong, I'm just saying from your
13 up-bringing, your views on life or where does that come
14 from?

15 A I just feel that it would be hard for myself to, you
16 know, to give the death penalty. I guess it's just
17 something that I believe in.

18 Q Okay, and, again, I want to make clear - I think I've
19 made it - I'm not disputing that.

20 A No, that's fine.

21 Q Okay and then as far as if you believe in that, if you
22 were chosen, I think you told the judge, "I guess if I was
23 chosen, I guess I would have to." One think I will tell
24 you and, of course, the judge will instruct you if you
25 were chosen you never have to give the death penalty. What

1 we have is a two part trial. Of course, the first part is
2 whether someone is guilty or not guilty. Of course, The
3 State has to prove that and the defense doesn't have to
4 put up anything. If we prove that, then we get to the
5 second part and on the second part that's when you would
6 consider the sentence and, of course, you would hear, you
7 know, whatever evidence we put up bad about the crime and
8 whatever the defense, if they wanted to put up anything,
9 you know, positive about the defendant. If I understood
10 what you are telling me if you went to the jury room, if
11 you were on the jury, you would choose life because you
12 don't believe in giving death, is that correct?

13 A Pretty much, yes, sir.

14 Q Okay. I know just kind of like when the judge was
15 asking you, you feel like you have been asked the same
16 question a hundred times, I'm not, again, doing it to
17 change, I am just trying to refine where you stand and not
18 really why you feel this way, but just to understand your
19 feelings. A jury if they determine that death is
20 appropriate, each juror has to sign their name to a
21 document which, in essence, is the death warrant because
22 what the jury says is what's carried out and so if each
23 juror after hearing the facts determined that death was
24 appropriate, they would have to sign their individual
25 names to a document, which is a court document that would

1 say this defendant should receive death and what you are
2 telling me is that you could not write Eleanor Baugh on a
3 document to give somebody death, is that correct?

4 A No, I don't think I could.

5 Q And no matter how horrible the crime, no matter what
6 facts I could come up with, you know, when I say "come up
7 with," obviously, present, that's your belief, that's the
8 way you feel.

9 A Yes.

10 Q And so if the judge says there is a requirement and,
11 again, let me say that nobody would ever make you sign, if
12 there's a requirement to sign to give death, one, you
13 wouldn't vote for death, and, two, you couldn't sign it or
14 wouldn't sign it if it meant giving anybody death, is that
15 correct?

16 A Yes.

17 Q Okay. Finally, you say you have a two year old that
18 you adopted?

19 A Yes.

20 Q As far as care you work during the day so you have
21 people take care of -- is it a little boy?

22 A I have him in day care, yes.

23 Q But then as far as night you are home ---

24 A I'm home.

25 Q --- to take care of him at night. And so, if not, you

1 would have to make arrangements. You have sole care of
2 him at night, is that correct?

3 A Yes.

4 Q Thank you, ma'am.

5 THE COURT: Mr. Schusterman.

6 MR. SCHUSTERMAN: Thank you. May it please the court,
7 Your Honor?

8 EXAMINATION BY MR. SCHUSTERMAN

9 Q Good morning, Ms. Baugh.

10 A Good morning.

11 Q My name is Steve Schusterman and I am an attorney from
12 York County. I represent Mr. Hughes in this matter. My
13 co-counsel is Ms. Christina Brice seated there in the
14 black dress. I want to ask you a couple of questions just
15 to follow up. I won't be but a minute.

16 You indicate that you would have trouble giving the
17 death penalty, is that correct?

18 A Yes.

19 Q Prior to today had you given the death penalty any
20 thought?

21 A Yes, I have, when the lady killed her two children,
22 yes.

23 Q It is very difficult sitting in that chair being asked
24 how you feel about it, but in spite of that you understand
25 that as the judge has indicated, you can infer from Mr.

1 Pope's comments and questions that the death penalty is a
2 potential remedy here in South Carolina for a crime. In
3 certain situations the death penalty can be given.

4 A Yes.

5 Q Let's assume that the Legislature, the General
6 Assembly, who makes the laws in this state only wanted the
7 death penalty to be given in the most serious situations,
8 not just a murder, but aggravated, there were just a lot
9 of bad things that Mr. Pope could show. If Mr. Pope could
10 show things that made the crime even worse than just
11 murder and you listened to those things and the judge
12 instructed you that you may consider the death penalty,
13 you certainly don't have to give it, but the situation is
14 such that based on various factors in the law, you could
15 give a death penalty, are you saying that under no
16 circumstance could you give the death penalty?

17 A I am saying that I would have trouble doing it; it
18 would be hard for me to do it, yes.

19 Q That makes you human. I understand - this is not to be
20 taken lightly. I mean please understand that no one is
21 saying in a cavalier fashion you should just sign a death
22 warrant. Hopefully, whoever is chosen for this jury, all
23 twelve people will make a very difficult decision. The
24 question is while we understand you would rather not have
25 to make it, it would be a lot easier to just walk out the

1 door and leave it to other twelve people, could you if you
2 were chosen take that responsibility as a juror and make
3 that decision based on the law as the court gives it to
4 you?

5 A I don't know; I don't know.

6 Q But you are saying -- are you saying, and when I say
7 "are you saying," I'm not putting words in your mouth,
8 that you would have the ability at least to take the
9 instructions that the judge gives you and contemplate
10 along with eleven other jurors?

11 A Yes.

12 Q And you are not telling this court that you in spite
13 of what the court may say, in spite of the law that the
14 judge would read to you, that you are categorically
15 rejecting, that you would walk into that jury room and
16 eleven other people would be having a conversation of
17 death versus life, if it should get that far, and you
18 would just be sitting there in a corner, sitting there and
19 saying life, don't bring me any of this death penalty
20 talk, I am giving him life regardless of what the evidence
21 was. Are you saying that?

22 A No, I am not saying that.

23 Q Okay, let me ask you this, Ms. Baugh, I am going to
24 ask you just three very quick questions. You indicated on
25 your questionnaire that you had been -- that your

1 daughter's boyfriend was robbed.

2 A Yes.

3 Q And he was robbed at gun point.

4 A Yes.

5 Q I believe with only Three Dollars.

6 A Right.

7 Q Obviously, that was a significant enough event in your
8 mind that you felt it was appropriate to put it down on
9 this questionnaire. Did that incident, did that incident
10 have any -- will it have any bearing in your deliberation
11 in a guilt phase of a trial?

12 A No.

13 Q The fact that, let me tell you that Mr. Hughes, as I
14 am sure you heard yesterday, is charged with armed robbery
15 and whether you take Three Dollars, Three Hundred, Three
16 Million, it is still armed robbery. The dollar amount
17 doesn't matter whatever he's charged with. Would that
18 phase you, would that prejudice you in any way against Mr.
19 Hughes because he was charged with an offense that you
20 noted in your questionnaire?

21 A No.

22 Q You understand that we are not going to jump the gun
23 in this matter, that we are not going to pre-suppose Mr.
24 Hughes is guilty, he has pled not guilty to this, and if,
25 in fact, you heard all the evidence at the first phase of

1 the trial, all you will be considering is his guilt or
2 innocence and if The State, who has the burden of proof,
3 did not meet that standard in your opinion and the opinion
4 of the other eleven jurors, that we would never get to a
5 death or life situation because if he is not convicted of
6 the offense, we do not move on. You understand that?

7 A Yes.

8 Q And, finally, Ms. Baugh, your feelings toward
9 psychiatry you indicated in your questionnaire that you
10 really gave it much thought. Do you believe in the Science
11 of Psychology, the medical field of Psychology?

12 A I'm sure it can help some people, yes.

13 Q Do you believe people have mental illnesses?

14 A Yes, I do.

15 Q Do you believe that those mental illnesses can affect
16 the way a person behaves?

17 A Yes.

18 MR. SCHUSTERMAN: Your Honor, thank you. I have no
19 other questions.

20 EXAMINATION BY THE COURT

21 Q One last question and I don't want to be going over
22 and over the same ground, but I want to be clear in my
23 mind. Are you saying it would be difficult to impose a
24 death penalty - for you to impose a death penalty or
25 impossible for you to impose a death penalty?

THE STATE VS HUGHES

1 A It would be difficult and hard.

2 Q Okay, I am going to ask you to step outside just one
3 minute.

4 (Juror complied.)

5 THE COURT: What says The State?

6 MR. POPE: If it please the court, Your Honor?
7 Looking at her testimony as a whole, she put herself in
8 category two, she indicated several times that she would
9 not be able to -- I think the most crucial issues would be
10 her being able to follow the law in that she said she
11 could not sign the death penalty. If the court is
12 considering qualifying her, I would ask that he redirect
13 questions on that. She said she could not sign a document
14 giving someone death. Secondly, Your Honor, maybe
15 primary, the situation with her two year old is such that
16 I think she should be disqualified based on the two year
17 old or be allowed to take that exemption or given the
18 opportunity.

19 THE COURT: She never really asked for it. She said
20 she had made other arrangements.

21 All right, the defense?

22 MR. SCHUSTERMAN: Thank you, Your Honor. May it please
23 the court? Your Honor, this is a thoughtful, contemplated
24 woman who, I think, comes in this courtroom and is truly
25 honest that she had concerns about that decision. I think

1 it is very difficult to sit in that chair and be posed
2 with this scenario and to automatically give us a yes, I
3 could give it or no, I couldn't. She never said that she
4 could not under no circumstances that she sign a death
5 warrant. What she said was "I'm not sure, I don't know,"
6 but on my examination of the witness she did indicate she
7 would listen to what the judge said, that she would not
8 categorically reject the death penalty, and because she
9 comes in here and evidences some concern about whether she
10 could give it or not, we'd hope that all the jurors could
11 do that, not just someone who unilaterally says, sure, I
12 can sign a death warrant. This is someone who has
13 indicated that, yes, she has some reservations, some
14 concern, about taking another life. That's the kind of
15 juror that one would want, one that will give it a great
16 deal of thought; I submit she did nothing to indicate that
17 she under no circumstances could give a death penalty and
18 she also indicated she could follow the court's
19 instruction. I would submit she is qualified, Your Honor.

20 THE COURT: Have her come back in.

21 EXAMINATION BY THE COURT

22 Q Mrs. Baugh, let me give you one follow-up question;
23 you can stand right there. As to the signing of if all
24 twelve did in that event vote for the penalty of death,
25 are you saying it would be impossible for you to sign on

THE STATE VS HUGHES

1 the verdict imposing death or difficult?

2 A Oh, gosh; it would be very hard. I'm not saying I
3 could do it, I'm not saying I can't do it; I don't know.
4 Do you know what I mean?

5 Q Yes, ma'am. And you say you can have your two year
6 old taken care of if you serve?

7 A I would have to, wouldn't I?

8 Q Well, do you have ---

9 A Well, you know, I can find somebody to take care of
10 him; I'm not saying I want to, but --

11 Q Somebody you have faith and confidence in?

12 A Yes.

13 Q Okay.

14 THE COURT: I am going to find that you are qualified
15 to serve. Call back between five and seven tonight. That
16 doesn't mean that you are going to serve. That means that
17 you are in a pool. When you come tomorrow, come prepared,
18 packed to go, if you are chosen, to York County for a ten
19 to twelve day visit, so, please, call back. They will give
20 you a number on the way out between five and seven
21 tonight. Thank you.

22 JUROR: Thank you.

23 ARNOLD TOMPKINS (B/M)

24 EXAMINATION BY THE COURT

25 Q Sit up here, sir. How are you this morning? I am John

1 Hayes and I want you to be relaxed and I want to remind
2 you that you are under oath and I want you to answer loud
3 so that everybody in the courtroom can hear you. I hope I
4 won't be too repetitious, but I want to go over a couple
5 of things that I kind of ask all of you and that is,
6 first, are you related to anybody that is involved in this
7 matter to your knowledge?

8 A No, I'm not.

9 Q Do you have any interest or bias or prejudice in
10 regard to this case?

11 A No.

12 Q Have you formed or expressed an opinion as to the
13 guilt or the innocence of the defendant, Mr. Hughes?

14 A No, I have not.

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

18 A No.

19 Q Would you under your oath follow the law in this case
20 as the trial judge charges it to you?

21 A Yes, I will.

22 Q Could you depending on the facts and the evidence and
23 the law, if it were warranted, find a defendant not
24 guilty? If the law and the evidence and the facts
25 indicated, could you find a defendant not guilty?

1 A Yes, sir.

2 Q I ask you the same question as to guilt. Could you
3 find a defendant guilty if you felt that the facts and the
4 evidence and the law warranted it?

5 A Yes.

6 Q Have you discussed this case with anyone?

7 A I have not.

8 Q Have you read anything or heard anything about this
9 case?

10 A No, I have not.

11 Q Now Mr. Hughes, the defendant, is a black gentleman
12 and the victim in this case was white. It is also alleged
13 that at the time of his death the victim was functioning
14 as a law enforcement officer on duty. Would that in any
15 way whatsoever, those facts, in any way whatsoever prevent
16 you from rendering a fair and impartial verdict in this
17 case?

18 A No.

19 Q I am going to ask you certain questions concerning the
20 death penalty. There are no right or wrong answers to the
21 questions and the fact that I am asking you does not
22 indicate anything about the guilt or the innocence of the
23 defendant, who is presumed innocent until such time as The
24 State would prove his guilt beyond a reasonable doubt. We
25 simply have to ask these because we have a two stage trial

1 in this type matter. So we have to talk about the penalty.

2 Do you understand that?

3 A Yes, I do.

4 Q Did you have a chance to review the juror types on
5 that sheet of paper?

6 A Yes, I did.

7 Q Did you find yourself in one of those categories?

8 A Category three.

9 Q So you feel that you are the type of juror that falls
10 in the category three, right?

11 A That's correct.

12 Q Could you as a juror participate in a jury verdict
13 recommending the penalty of death for murder if the law
14 and the evidence warranted such a verdict?

15 A Yes.

16 Q Could you as a juror participate in a jury verdict
17 recommending a sentence of life imprisonment for murder if
18 the evidence and the law warranted such a verdict?

19 A Yes, sir.

20 Q Finally, from me, if you were selected on this case
21 and be sequestered in York County for ten or twelve days,
22 other than the general hardships it would put on anyone
23 for the general inconveniences, would this pose any undue
24 hardship on you?

25 A No.

1 Q I am going to ask you to answer any questions that Mr.
2 Schusterman or the Solicitor has.

3 MR. SCHUSTERMAN: Thank you, Your Honor, may it please
4 the court?

5 EXAMINATION BY MR. SCHUSTERMAN

6 Q Good morning, Mr. Tompkins, how are you?

7 A All right, and you?

8 Q Good. My name is Steve Schusterman. I am an attorney
9 from Rock Hill, from York County; I represent Mr. Hughes
10 in this matter along with this lady seated next to me in
11 the black jacket, Ms. Brice. Let me just ask you a couple
12 of questions. Do you understand that this case -- a death
13 penalty case in South Carolina is somewhat unique in that
14 it is what is known as a bifurcated trial? It means there
15 are two phases to the trial. Phase Number one is guilt or
16 innocence. All you and the eleven other jurors would be
17 considering is guilt or innocence. The penalty has
18 nothing to do with it. Do you understand that?

19 A Yes.

20 Q And do you understand that as bad as the case -- as
21 much as you can ask about the death penalty and life and
22 the penalty, do you understand Mr. Hughes is absolutely
23 innocent of any of these charges that are against him
24 until he is proven guilty beyond a reasonable doubt?

25 A Yes.

1 Q Do you understand that concept?

2 A Yes.

3 Q Do you believe in that concept?

4 A Yes, I do.

5 Q Okay. Do you understand that Mr. Hughes has entered
6 pleas to all four indictments of not guilty. He's saying
7 I'm not guilty. Do you understand that?

8 A Yes.

9 Q Do you understand the burden is upon the State of
10 South Carolina to prove to you and the other eleven jurors
11 beyond a reasonable doubt that, in fact, Mr. Hughes is
12 guilty of the offenses?

13 A Yes.

14 Q Do you understand, Mr. Tompkins, that if, in fact, you
15 do decide, you, and the eleven other jurors, decide that
16 he is, in fact, guilty, that is the only time that we
17 would then go to a second phase of a trial?

18 A Yes, I do.

19 Q In the second phase, as I understand it, as juror
20 number three, as a juror three type, it is my
21 understanding that you are saying that before you make a
22 decision as to life or death, you want to hear everything
23 that The State puts up and the defense may put up,
24 everything that's relevant, the good and the bad, is that
25 correct?

1 A Yes.

2 Q If, in fact, you were in the jury panel and the
3 majority of the jurors all of them except Mr. Tompkins
4 have one point of view, whichever it was, and you had a
5 different point of view, do you believe that your
6 convictions towards guilt or innocence, towards life or
7 death, would be strong enough to where you would hold your
8 position or do you believe that the will of the eleven
9 would probably override, that you would allow the eleven
10 to override your position?

11 A I couldn't let the eleven override me.

12 Q You couldn't ---

13 A If I felt strongly enough about it, I couldn't let
14 them override me.

15 Q Do you know anybody in York County or Rock Hill?

16 A No.

17 Q The judge asked you if there would be any hardship on
18 you regarding serving on the jury. Would there be any
19 hardship on you?

20 A No, not really, as long as I am able to give the
21 people I work for ample time to let them know I am going
22 to be off.

23 Q Do you remember filling out this questionnaire?

24 A Yes.

25 Q You indicate that you have high blood pressure. Would

1 the fact of you having to serve on a jury in a murder case
2 in which The State is seeking the death penalty, the
3 stress involved, would that have any bearing on your
4 health?

5 A No, because I am under medication.

6 Q Okay, as long as you take your medication, you would
7 be all right.

8 A Yes.

9 Q Okay, good. I noticed that you belong to the Bethel
10 AME Church in Augusta, is that correct?

11 A Yes.

12 Q Are there any religious philosophies of your church
13 that you would look to to aid you in your rendering your
14 verdict of guilt or innocence or in a life or death
15 situation?

16 A Well, basically, we believe that we shouldn't take a
17 life, but sometimes there are things that warrant it; you
18 might not be put in a situation that you might not have a
19 choice, so insofar as the church I would have to go on my
20 own personal feelings.

21 Q If, in fact, you choose, you and the eleven other
22 jurors, choose during the penalty phase of the trial, if
23 we get that far, and you choose death, the court requires
24 you to sign a document, you and the eleven other jurors,
25 all twelve jurors have to sign for death. You'll have to

1 put your name down, take your pen and put Arnold Tompkins
2 and sign it. Could you do that? Could you take a pen and
3 sign your name to a death warrant?

4 A Like I say, if all the evidence prove that was what
5 was warranted, yes.

6 Q Okay, but equally speaking, you understand there's not
7 going to be any magic language in terms of life versus
8 death. The judge is going to give you the law, but
9 ultimately it is the twelve jurors who are going to decide
10 it and that's your province and you can decide for life
11 for any reason or no reason at all and that's your choice;
12 there's not going to be any magic formula the judge is
13 going to give you where it says you must give death in a
14 certain situation. You understand that?

15 A Yes, I do.

16 Q In terms of the field of psychiatry and psychology, do
17 you recall answering that question?

18 A Yes, sir.

19 Q You put, I believe, the phrase "No bother with that."

20 A Uh-huh.

21 Q To just elaborate a little bit on that. Do you believe
22 in psychiatrists and psychologists?

23 A Yes, yes, I do.

24 Q Do you believe that there is such a concept out there
25 of mental illness or defect?

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STATE OF SOUTH CAROLINA)
COUNTY OF YORK) COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)
vs.) TRANSCRIPT OF RECORD
MAR-REECE ALDEAN HUGHES) (93GS46-4296; 93GS4303;
93GS46-4304; 93GS4305)

SEPTEMBER 11 - 22, 1995

BEFORE: THE HONORABLE JOHN C. HAYES, III and a Jury.

APPEARANCES:

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A Yes.

Q Do you believe that psychologists and/or psychiatrists can be helpful or useful?

A Yes, I do.

Q You do?

A Yes.

Q Do you believe that a psychiatrist -- do you believe that a person's behavior can be dictated by a mental illness?

MR. POPE: Your Honor, I am going to have to object to his question. We are getting to the point now that ---

THE COURT: I sustain the objection.

Q Have you ever had any experience with psychiatrists or psychologists?

A No, I have not.

MR. SCHUSTERMAN: With the court's indulgence.

Q Thank you, Mr. Tompkins, please answer any questions Mr. Pope may have.

MR. POPE: May it please the court?

EXAMINATION BY MR. POPE

Q Mr. Tompkins, my name is Tommy Pope; I'm the Solicitor up in York County. Mr. Kevin Brackett at our table he is the Deputy Solicitor. We represent The State in this case. I am going to try to be brief with you, of course, I say that every time and it doesn't ever seem like it happens.

1 But do you understand and I understand that you told the
2 judge and told Mr. Schusterman that you are category three
3 in the way you view yourself as far as you want to hear
4 everything before you make a decision?

5 A That's correct.

6 Q And before you -- you sit in that jury box you are
7 going to have an open mind for both sides.

8 A Right.

9 Q You will give The State a fair trial and give the
10 defendant a fair trial, is that right?

11 A That's correct.

12 Q And, again, you understand as Mr. Schusterman said it
13 is a two part trial. The first part is just strictly guilt
14 and we have to prove, they don't have to put anything up,
15 and if they didn't, you couldn't hold that against them;
16 the judge would instruct you not to. You understand we
17 have to prove it, is that right?

18 A Correct.

19 Q Okay. And then if we did get to the second phase, in
20 other words, if the defendant was found guilty and we got
21 to the second phase, you are the type of person that you
22 would want to hear whatever there was to be heard,
23 consider everything before you make a decision, is that
24 correct?

25 A Yes.

1 Q And again we may put up bad things about the crime or
2 good things about the victim and they again wouldn't have
3 to put up anything, but they could put up good things
4 about the defendant or, you know, things that made the
5 crime called mitigation, things that made it a less bad
6 crime; do you understand that?

7 A Yes, I understand that.

8 Q As I understand what you are telling us you wouldn't
9 make up your mind until you had heard everything.

10 A That's correct.

11 Q And you told Mr. Schusterman when he was talking about
12 if there eleven to one, you know, that you wouldn't let
13 other people override your will, that if you had
14 convictions you would stick with your convictions, is that
15 correct?

16 A I'd have to.

17 Q But by the same token you wouldn't decide until you
18 had heard everything and until you had discussed it with
19 other jurors, ultimately, like you have to make your own
20 decision as one of the twelve jurors, but you would be
21 open to discuss it when the judge instructed you that you
22 could do so with the other jurors and going through the
23 evidence and make a determination, is that correct?

24 A Yes.

25 Q Okay and, again, ultimately, you would do what Arnold

1 Tompkins felt was right, but again you wouldn't be so
2 stubborn that you would go in the jury room and sit down
3 and say, well, I'm not going to listen to what you all
4 have to say?

5 A Right.

6 Q Okay, the final thing I would ask you, Mr. Schusterman
7 talked about the signing on the death warrant and that is
8 one thing that is different. If the jury decides life,
9 then only the foreperson signs, only one person would sign
10 and send it back and say we recommend life and I say
11 "recommend," but, of course, the court is going to do, you
12 know, whatever is said, but if the jury determines after
13 hearing all of the facts and circumstances death is
14 appropriate, then it's just different, they have each
15 individual juror sign their name to the verdict of death -
16 to the sentence of death. And, again, I want to make clear
17 that, you know, we are talking about life and death and
18 throwing it around just like they're just words, it is a
19 serious decision because, in essence, you are putting your
20 name on the line and saying after hearing everything I
21 think in this case the appropriate sentence is death. But
22 as I understood it, if you thought the appropriate
23 sentence was death that you could have the conviction to
24 put Arnold Tompkins on that line?

25 A Yes.

1 Q Thank you, sir. Likewise, if you thought it wasn't
2 death, you could say life?

3 A Yes.

4 Q Thank you, sir.

5 THE COURT: I am going to ask you to just step out in
6 the hall.

7 What says The State?

8 MR. POPE: I submit he is qualified, Your Honor.

9 THE COURT: The defendant?

10 MR. SCHUSTERMAN: I submit he is qualified.

11 THE COURT: Bring him back in.

12 All right, you can stand right there. I find that
13 you are qualified to serve as a juror. You will be in the
14 pool from which the jury will be drawn. They will give
15 you a telephone number on the way out; call that number
16 between five and seven this afternoon and they will tell
17 you what time to report tomorrow. When you report
18 tomorrow, come prepared if you are, in fact, chosen come
19 prepared to - packed and prepared to go to York County
20 immediately after you are selected to start trial on
21 Thursday and it will be around twelve days we anticipate.

22 JUROR: Okay.

23 THE COURT: Call tonight.

24 JUROR: Okay.

25 MR. SCHUSTERMAN: Your Honor, before you call the next

THE STATE VS HUGHES

1 juror, may I take up a matter?

2 THE COURT: Certainly. Just wait one minute before we
3 get to that.

4 MR. SCHUSTERMAN: Just to further clarify I was asking
5 the last potential juror, Mr. Tompkins, whether he felt
6 that mental illness could change the course of a person's
7 behavior. At that point Mr. Pope objected and you
8 sustained the objection. I would like to argue that that
9 is a question that just is derivative of the questions
10 about how they feel about psychiatrists and psychologists;
11 it does nothing to box in or stake out a juror; it's
12 merely further elaborating on the understanding of
13 psychiatry and psychology. These people in their
14 questionnaires indicated certain answers to their feelings
15 towards psychiatry and psychology and it's just a further
16 question to elaborate whether or not there's a bias or a
17 prejudice against the use of psychiatrists or
18 psychologists and the question was asked to virtually
19 every witness yesterday. I then asked this morning and it
20 was objected to and quite honestly I don't understand the
21 basis of why it is objectionable. Is it a matter of just
22 rephrasing the question or is it that whole area that the
23 court is saying I can't voir dire.

24 MR. POPE: May it please the court, Your Honor? Our
25 position is that the purpose of this voir dire is to find

THE STATE VS HUGHES

1 bias and prejudice. He wants to ask if they have any bias
2 or prejudice towards psychiatry and the field of
3 psychiatry, that's fine, but when you start getting into
4 the factual basis, -- and now they are saying can
5 treatment help so and so and what we are leading into is a
6 factual thing. You know, the next one would be can
7 something be diagnosed one way one time and one way the
8 next and there be a logical answer. Again, my objection is
9 it is staking out the juror, it is squaring up how they
10 are going to be receptive to their case. The issue here
11 is bias and prejudice, it's not how they are going to
12 intake the defense case. Even though I didn't object
13 yesterday I submit I didn't forego my opportunities to
14 object.

15 THE COURT: A brief reply?

16 MR. SCHUSTERMAN: Yes, sir, Your Honor, just briefly.
17 I am certain not staking out a position, I'm trying to, I
18 mean, within the concept of bias of prejudice within the
19 field of psychology and psychiatry, it's not just a blank
20 answer yes or no. There are people like Mr. Tompkins,
21 specifically on his answer he indicated I believe "I have
22 no problem with that." Well, what exactly does that mean,
23 that they're allowed to live, but I personally wouldn't
24 use that because I don't believe in it? I'm just trying
25 to find out and to ask whether if someone believes mental

THE STATE VS HUGHES

1 illness can change someone's behavior. I submit it is just
2 a question to determine whether or not they believe in the
3 whole field of psychiatry and psychology; it has nothing
4 to do with - it is not remotely fact specific to this
5 case.

6 THE COURT: Well, I am going to restrict the questions
7 to the ones that you have asked this morning, which,
8 basically, is in the nature of do you believe in
9 psychiatry and psychology or - do you believe in something
10 is a real vague kind of question, but something along
11 those lines about do they accept, that may be a better
12 word, psychology and psychiatry and do they believe in
13 mental illness, but I am not going to let you go any
14 further. I think that is getting into what is called
15 staking out a jury in much the same way as while I
16 understand the psychological matters in the trial very
17 well, but in much the same token it is asking do you
18 believe in forensic science and then following up with a
19 question, well, do you believe that forensic science can
20 be accurate or inaccurate. I think we are just going down
21 the line too far, so I am going to restrict the questions
22 of counsel for defendant to their acceptance or rejection
23 of psychiatry. I think if they say no, I might let you
24 follow up, but if they say they accept that as an accepted
25 scientific principle and if they believe in mental

THE STATE VS HUGHES

1 illness, I'm going to require you to stop at that point.

2 MR. SCHUSTERMAN: Now let me just, so that I can avoid
3 a problem with the next witness, several times yesterday I
4 asked the jurors whether or not they believe if someone
5 was suffering from a mental illness or defect that a
6 psychiatrist or a psychologist would be useful in their
7 treatment. I asked that several times yesterday. It was
8 not objected to. I assume that just along those same
9 lines that Mr. Pope would object today and I would like a
10 ruling on that.

11 THE COURT: Let me ask him if he would object to that.

12 MR. POPE: Yes, sir, I would object. It again goes the
13 best example I can give is going down the path - this is
14 like the whole situation of following the law versus the
15 accomplice liability thing that we tried to get into being
16 that going too far down. That's exactly what's happening.
17 Now we are going from the general area of bias to do you
18 believe people can be treated, I mean, we are one step
19 away to can Mar-Reece be treated.

20 THE COURT: Well, I'm going to restrict the questions
21 to basically the two areas I have just gone over and you
22 are on record as too proffering those questions along
23 those lines to each witness and I am ruling that you
24 cannot.

25 MR. SCHUSTERMAN: Thank you, sir.

MICHAEL FULMER

BY MR. BRACKETT

1 THE COURT: All right, bring in Mr. Fulmer.

2 MICHAEL FULMER (W/M)

3 EXAMINATION BY MR. BRACKETT

4 Q How are you this morning?

5 A Just fine.

6 Q I want to remind you that you are under oath still and
7 I am going to ask you to answer up so that the individuals
8 out here can hear you, okay?

9 A Okay.

10 Q Are you related by blood or marriage to any of the
11 individuals that have been introduced to you as
12 participants in this trial?

13 A No, sir.

14 Q Do you have any interest, bias or prejudice in regard
15 to this case?

16 A No.

17 Q Have you formed or expressed any opinion as to the
18 guilt or the innocence of the defendant, Mr. Hughes?

19 A No.

20 Q Do you know of any reason whatsoever why you could not
21 give both The State of South Carolina and the defendant,
22 Mr. Hughes, a fair and impartial trial?

23 A No.

24 Q Would you under your oath follow the law in this case
25 as the trial judge charges it to you?

1 A Yes, sir.

2 Q Could you depending on the facts and the evidence and
3 the law find the defendant not guilty if you felt it was
4 warranted?

5 A Yes, sir.

6 Q By the same token, could you find the defendant guilty
7 if you felt the facts and the evidence warranted it?

8 A Yes, sir.

9 Q Have you discussed this case with anyone?

10 A No.

11 Q Have you read anything or heard anything about this
12 case?

13 A No.

14 Q Now Mr. Hughes is black and the victim, Mr. McCants,
15 was white. It is alleged by The State Mr. McCants was
16 acting in the course and scope of his duty as a law
17 enforcement officer at the time of his death. Would these
18 factors render you from -- I'm sorry, prevent you from
19 rendering a fair and impartial verdict in this case?

20 A No.

21 Q Would they influence your decision in any way?

22 A No.

23 Q Now I am going to have to ask you at this time certain
24 questions concerning your views on the death penalty.
25 There are no right or wrong answers and I want to

1 emphasize to you that the fact that we are talking about
2 penalty as opposed to the guilt of the defendant does not
3 indicate anything about the guilt or the innocence of the
4 defendant, that would have to be determined by a jury and
5 it would be such that The State would have to prove his
6 guilt beyond a reasonable doubt before he could be found
7 guilty because he is presumed innocent of the charges. Do
8 you understand all of that?

9 A Yes, sir.

10 Q Now I have put in the jury room a list of three types
11 of jurors. Have you had a chance to review it?

12 A Yes, I read it.

13 Q Do you find yourself in one of those categories?

14 A I would be the third type.

15 Q All right, now, could you as a juror participate in a
16 jury verdict recommending the penalty of death if the
17 evidence and law warranted such a verdict?

18 A Yes, I could.

19 Q Could you participate in a jury verdict recommending a
20 sentence of life imprisonment for murder if the evidence
21 and the law warranted it?

22 A Yes, I could.

23 Q If you were selected on this case, we will be going to
24 York County for ten to twelve days and you would be
25 sequestered. Other than the general inconveniences and

1 hardships that would impose on anyone, would this present
2 any undue hardships for you?

3 A No.

4 Q I am going to ask you now to answer questions posed by
5 Mr. Brackett and that by someone for the defense.

6 EXAMINATION BY MR. BRACKETT

7 Q Good morning, Mr. Fulmer.

8 A Good morning.

9 Q My name is Kevin Brackett and I am the Deputy
10 Solicitor in the Sixteenth Circuit, York and Union
11 Counties. I work for Tommy Pope, who is seated at the
12 counsel table with me. I just have a few questions for
13 you, Mr. Fulmer. Of course, this is a death penalty case
14 as the judge has explained to you and the type of case
15 this is requires that we have two different stages, the
16 first stage being whether or not the defendant, Mar-Reece
17 Hughes, who is seated over there, is guilty or innocent,
18 and we present evidence and testimony that is related to
19 that specific fact whether he is guilty or innocent and we
20 are not concerned with the penalty. In that phase you have
21 indicated, I believe, that you could listen to all the
22 evidence and follow the law as the judge charges you and
23 render a fair and impartial verdict to both The State and
24 the defense, isn't that correct?

25 A That's right.

1 Q Okay and then the second phase we get into the
2 question of the penalty that should be prescribed for the
3 conduct if, in fact, you do return a verdict of guilty,
4 the penalty that would be prescribed for the conduct Mr.
5 Hughes engaged in. And to that issue we would present
6 evidence in what's called aggravation showing all the bad
7 things surrounding the case and everything you might need
8 to know about Mr. Hughes in order to make an informative
9 decision as far as The State's perspective, the impact on
10 the victims and that sort of thing, and the defense would
11 have an opportunity, if they chose, and they are not
12 required to, but they would have an opportunity to tell
13 you all the good things about Mr. Hughes and in that phase
14 I think you have indicated you could listen to both sides
15 again and give them the same impartial, fair hearing that
16 you gave in the guilt or innocence phase, is that right?

17 A That's correct.

18 Q Now you understand that the defense is not required to
19 put up any evidence at all; they are not required to do
20 anything. They have the presumption of innocence is what
21 it's called and the defendant is presumed innocent and The
22 State, myself and Mr. Pope, bear the entire burden, we
23 have the entire responsibility, to prove to you if you
24 were one of the jurors, that the defendant was guilty and
25 we would have the entire burden of proving to you the

1 aggravating circumstances that would make this case a
2 death penalty case. Do you understand that?

3 A Correct.

4 Q Now involved in this case there are some other issues.
5 One of the things that you are going to have to do is
6 unique in any cases if you did decide to return a verdict
7 of death, if you and the other eleven jurors decided to
8 return a verdict of death, you would have to sign your
9 name on a sheet, each juror has to sign their name on a
10 sheet indicating that they have returned a verdict of
11 death, so we would need all twelve signatures in order to
12 have a verdict of death and you would not have any
13 problems signing your name Michael Fulmer to that sheet?

14 A No.

15 Q Okay. If likewise you decided that life was the
16 appropriate verdict, you could also return a verdict of
17 life and you wouldn't have any problem doing that either?

18 A No problem.

19 Q And if, in fact, you were the one person in the room
20 that decided for life, you could hold out, you wouldn't be
21 swayed just because everybody else wanted to go for death,
22 you wouldn't be swayed and say, well, everybody else wants
23 it, it must be the right thing. If you truly believed that
24 life would be the appropriate verdict, you could stand
25 your ground?

1 A Yes, I could.

2 Q But that doesn't mean that you wouldn't listen to the
3 other people, you would keep your mind open and still
4 discuss it if it be something that you have to decide with
5 the other eleven people rather than taking your own hard
6 line and not listening to the other jurors?

7 A Yes, that's correct.

8 Q Okay, likewise, if your decision was death and
9 everybody else, you would maintain your own integrity, but
10 at the same time listen to the other jurors?

11 A Yes, I would keep an open mind.

12 Q And you are sure you can be a fair juror in this
13 case?

14 A Yes.

15 Q Okay. Thank you very much, Mr. Fulmer.

16 MR. SCHUSTERMAN: May it please the court, Your Honor?

17 EXAMINATION BY MR. SCHUSTERMAN

18 Q Good morning, Mr. Fulmer.

19 A Good morning.

20 Q My name is Steve Schusterman. I am an attorney from
21 Rock Hill. I represent Mr. Hughes in this case. My
22 co-counsel is Ms. Brice. She is seated there with the
23 black jacket. I want to ask you just a couple of quick
24 follow-up questions about jury service.

25 Do you understand that as Mr. Brackett said this is

1 what is known as a bifurcated trial, that there are two
2 aspects to this trial, guilt or innocence, and life or
3 death; and in spite of all the talk over the last day or
4 two about life versus death, there certainly has been a
5 lot of talk about it, you understand that if you are on
6 the jury you in the first phase of the trial will only be
7 dealing with guilty or innocence. Penalty won't even be
8 an issue for you - it is guilt or innocence. Do you
9 understand that Mr. Hughes to all the charges has pled not
10 guilty. Do you understand that, sir?

11 A Yes, I do.

12 Q Do you understand that once he pleads not guilty the
13 burden shifts to the State of South Carolina to prove
14 their case beyond a reasonable doubt?

15 A Yes, sir.

16 Q The defense has no burden whatsoever, do you
17 understand that?

18 A Yes, sir, I understand that.

19 Q Do you understand that if they do not satisfy you and
20 the eleven other jurors beyond a reasonable doubt and you
21 return a verdict of not guilty, we don't even get to the
22 second phase, this choice of life or death won't even come
23 into play? Do you understand that?

24 A Yes, I understand that.

25 Q Do you accept those principles?

1 A Yes, sir.

2 Q Do you have any ties or any relationships with anybody
3 in York County or Rock Hill?

4 A No.

5 Q You indicated to the court that the fact that Mr.
6 Hughes is black and the victim is white would have no
7 impact on you.

8 A No, not at all.

9 Q Are you telling this court that you have no racial
10 bias or prejudice whatsoever?

11 A I am not prejudice at all not really.

12 Q You don't have any prejudice?

13 A No.

14 Q I notice on this questionnaire that you filled out,
15 and you remember filling out this somewhat detailed
16 questionnaire --

17 A Yes.

18 Q -- that you have been the victim of three robberies at
19 your home.

20 A Correct.

21 Q Have they ever caught any of the people involved in
22 the robberies?

23 A No.

24 Q They have not?

25 A No.

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Q Do you harbor any resentment against either law enforcement or the judicial system because these people have not been caught?

A No, I don't.

Q Were there any suspects in the case?

A No, none.

Q The fact that you have been the victim of three robberies and one of the four indictments that Mr. Hughes has against him that he has pled not guilty to is armed robbery, another robbery situation, would that affect you in any way?

A No.

Q Do you accept the principles of psychiatry and psychology?

A Yes, sir.

Q You indicate on your questionnaire there is a need for them because many people need mental health, is that still your position today?

A That's true.

Q You indicated to Mr. Brackett that if you and the other eleven jurors decided that, if we got that far and guilt had been established and now you are in the penalty phase, the second phase of the trial, and if you and the other eleven jurors felt that death was appropriate that you would have the ability to sign your name not just

1 merely on a sheet of paper, but, in effect, you and the
2 eleven jurors could be signing a death warrant for Mr.
3 Hughes. Can you do that?

4 A Yes, I can.

5 Q Do you believe in the death penalty?

6 A Well, I am not totally for or against it. I think it
7 is appropriate in some cases.

8 Q Prior to sitting here today, have you ever served on a
9 jury before?

10 A Only Magistrate's jury.

11 Q Have you ever given the death penalty thought prior to
12 today?

13 A Yes, I have thought about it.

14 Q Do you believe it is appropriate in certain
15 situations?

16 A Yes.

17 Q Just because The State is asking for the death
18 penalty, would it be reason enough for you to give it --

19 A Oh, no.

20 Q -- you would want The State to show you all the
21 reasons why?

22 A Yes, I would have to consider all the evidence.

23 Q Thank you.

24 THE COURT: I am going to ask you to step out in the
25 hall just one second.

THE STATE VS HUGHES

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What says The State?

MR. BRACKETT: I submit he is qualified, Your Honor.

THE COURT: Why says the defense?

MR. SCHUSTERMAN: I submit he is qualified, Your Honor.

THE COURT: All right, bring him back in.

Stand right there. Mr. Fulmer, you will be in the jury pool. You are qualified to serve. Call back to the number you will be given between five and seven tonight and they will tell you what time to report tomorrow and when you come tomorrow, you won't necessarily be drawn on the jury. You won't know that until tomorrow, but come prepared, that is, packed to travel to York, if you are chosen, immediately after we get through choosing the panel. Keep in mind not to discuss the case or listen to anything about it. I will see you tomorrow. Call tonight.

All right, Brian Besson.

Let me make one request of counsel. I don't want to restrict - close the door just one second before you bring him in - I certainly don't want to restrict, but in the essence of time, I am going to ask that the same question be not re-asked. If you ask a question and you get an answer, let's don't ask the same question the second time and that goes for both sides. I don't see -- sometimes you may be shocked and get a different answer the second time,

BRIAN BESSON

BY THE COURT

1 but we need to move on, but let's ask the question once.

2 BRIAN BESSON (W/M)

3 EXAMINATION BY THE COURT

4 Q I am John Hayes and I want to remind you that you are
5 still under oath and I will ask you to speak out so
6 everybody out here can hear you, okay?

7 Are you related by blood or marriage to any of the
8 participants of this case that I have introduced to you?

9 A No, sir.

10 Q Do you have any bias or prejudice or interest in this
11 case?

12 A No, sir.

13 Q Have you formed or expressed any opinion about the
14 guilt or the innocence of the defendant, Mr. Hughes?

15 A No, sir.

16 Q Do you know of any reason whatsoever why you cannot
17 give both The State of South Carolina and the defendant a
18 fair and impartial trial in this case?

19 A No, sir.

20 Q Would you under your oath follow the law in this case
21 as the trial judge instructs you?

22 A Yes, sir.

23 Q Could you, if the facts and evidence and the law
24 warranted it, find a defendant not guilty?

25 A Yes, sir.

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Q Could you if the facts and evidence and the law warranted find a defendant guilty?

A Yes, sir.

Q Have you discussed this case with anyone?

A No, sir.

Q Have you read or heard about this case from any source whatsoever?

A I read the Augusta Chronicle this morning.

Q You did?

A Yes, sir.

Q I thought I had asked everybody not to read ---

A Oh, I'm sorry.

Q Well, that particular article was there anything in there that gave you anything that would affect your ability to be fair and impartial in the trial of this case?

A No, sir.

Q Was there anything in there that would affect your ability to restrict your consideration of this case to the law and the evidence as it was received in the trial?

A No, sir.

Q Could you disabuse, that is, rid your mind of anything that was set forth therein and consider this case solely on the sworn testimony, exhibits, stipulations; that is, the factual evidence put in the record at the trial and

1 the law as the trial judge charged it?

2 A Yes, sir.

3 Q Now in this case Mr. Hughes is a black gentleman and
4 the defendant -- I mean the defendant, Mr. Hughes, is a
5 black gentleman and the victim, Mr. McCants, was a white
6 man, who is alleged was working as a law enforcement
7 officer at the time of his death. Would these factors
8 prevent you from rendering a fair and impartial verdict?

9 A No, sir.

10 Q Would they affect your decision in any way whatsoever?

11 A No, sir.

12 Q I am going to ask you now certain questions as to your
13 views on the death penalty. There are no right or wrong
14 answers to these questions and I emphasize the mere fact
15 that we are talking about the penalty does not indicate
16 anything about the guilt or the innocence of Mr. Hughes.
17 He is presumed innocent of this charge and so presumed
18 until a jury were convinced on his guilt beyond a
19 reasonable doubt. Do you understand that?

20 A Yes, sir.

21 Q I put a sheet with juror types in the jury room. Did
22 you have a chance to review it?

23 A Yes, sir.

24 Q Did you find yourself on that sheet?

25 A Yes, sir.

1 Q Which category?

2 A Type one.

3 Q You are type one?

4 A Yes, sir.

5 Q That is the type who feels that once a murder has been
6 committed the death penalty is the most appropriate
7 punishment no matter what the circumstances, is that
8 correct?

9 A That's correct.

10 Q Is your opinion so fixed that you would automatically
11 vote for the death penalty in a murder case regardless of
12 the facts and circumstances that may develop during the
13 trial?

14 A Yes, sir.

15 Q It is so fixed?

16 A Yes, sir.

17 Q Would the fact that in the initial first half of the
18 bifurcated trial if twelve jurors found the defendant
19 guilty of the murder of Mr. McCants, would you
20 automatically be committed to returning a penalty of death
21 regardless of the circumstances presented in aggravation
22 and/or mitigation during the penalty phase?

23 A Yes, sir.

24 Q Could that opinion be changed by anything during the
25 trial of the case?

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A No, sir.

Q And would you automatically vote for the imposition of capital punishment without regards to the evidence that might be developed during the trial?

A Yes, sir.

Q All right, one last question and that is if you were chosen on the jury and were taken to York County and sequestered for ten or twelve days which this case will try, other than the things we discussed before and the general inconvenience and hardships that that would create, are there any other undue hardships it would create for you?

A None other than I have already stated yesterday.

Q Okay.

Thank you. I want to ask you to answer questions posed by counsel.

MR. SCHUSTERMAN: Thank you, Your Honor, may it please the court?

EXAMINATION BY MR. SCHUSTERMAN

Q Good morning, Mr. Besson.

A Good morning.

Q My name is Steve Schusterman and I am an attorney from York County. I represent Mr. Hughes along with the lady seated next to me in the black jacket, Ms. Brice. Let me just ask you a couple of quick questions. Your position

1 is as I understand it that regardless of any evidence that
2 the defendant puts up, and while we have no obligation to,
3 once or if Mr. Hughes is convicted of murder, your opinion
4 is he should get the death penalty.

5 A Yes, sir.

6 Q Am I clear in that no matter what the defense, if the
7 defense chose to put up some evidence, no matter what
8 evidence we put up showing what we call mitigating
9 factors, factors that lessen the heinousness of the crime,
10 regardless of that, you are going to vote for death?

11 A Yes, sir.

12 Q There is -- let me ask you this question first. Do you
13 understand that a death penalty trial is a bifurcated
14 trial, there are two aspects to the trial, the first is
15 guilt or innocence. Do you understand that?

16 A Yes.

17 Q And do you understand that Mr. Hughes has entered
18 pleas of not guilty to his charges?

19 A Yes, sir.

20 Q And that puts the burden on the State of South
21 Carolina to prove him guilty to you and the other eleven
22 jurors, if you are on the jury, guilty beyond a reasonable
23 doubt? Do you understand those concepts?

24 A Yes, sir.

25 Q In spite of your feelings regarding the death penalty,

1 do you have the ability to judge guilt or innocence?

2 A Yes, sir.

3 Q It's only if we get to a second phase of the trial
4 that you would be then asked to determine life or death. A
5 Yes, sir.

6 Q As I understand it though the moment that you, if you
7 and the eleven other jurors unanimously decided on guilt,
8 from that moment when the foreman stood up and entered
9 their verdict of guilty in this matter, your mind would be
10 made up on what should happen to Mr. Hughes at that point.

11 A Yes, sir.

12 Q And there would be nothing, if The State didn't even
13 put up any evidence, no one said anything in aggravation
14 or mitigation, the moment guilt is determined you are
15 voting for the death penalty.

16 A Yes, sir.

17 Q Thank you.

18 MR. SCHUSTERMAN: I have no further questions of this
19 witness.

20 THE COURT: Mr. Brackett?

21 EXAMINATION BY MR. BRACKETT

22 Q Good morning, Mr. Besson.

23 A Good morning.

24 Q I am Kevin Brackett. I have the Deputy Solicitor from
25 York County. Seated at the counsel table with me is Tommy

BRIAN BESSON

BY MR. BRACKETT

1 Pope, who is my boss, the Solicitor of York County and I
2 just have a couple of questions for you this morning.

3 You have indicated you are type one and I understand
4 that. Is there any reason that you would always vote for
5 the death penalty? Could you explain why?

6 A I feel if a person doesn't have the compassion or the
7 respect not to kill his fellow man, then I don't have any
8 compassion or feeling for him.

9 Q Well, Mr. Besson, you would agree that every single
10 case is different one from the next, each one has
11 different facts surrounding it, each one has circumstances
12 and the circumstances surrounding each one makes each case
13 unique; that's why we have to have a different jury for
14 each one and we separate all the cases out and try them
15 one at a time because we can only focus on one at a time
16 because each one is as unique as a fingerprint and each
17 one requires that we focus exclusively on that. You
18 couldn't take into account the facts and circumstances
19 surrounding each case and maybe look and say this isn't as
20 bad as some? You know, you would agree that some murders
21 are worse than others, wouldn't you?

22 A No, sir.

23 Q You don't think that somebody who kills a school child
24 is worse than somebody in killing an adult?

25 A No, sir, murder is murder.

BRIAN BESSON

BY MR. BRACKETT

1 Q Do you agree with the proposition that the juror
2 should be fair and open minded and wait until the end
3 before they make their decision?

4 A Yes, sir.

5 Q And if the judge charged you that you should listen to
6 all of the evidence both in aggravation and in mitigation
7 at the end of that do you think you could -- you don't
8 think you could find a verdict of life under any
9 circumstances?

10 A No, sir.

11 Q Thank you very much, Mr. Besson.

12 THE COURT: I am going to ask you to step out in the
13 hall just a minute.

14 What says The State?

15 MR. BRACKETT: We submit the juror is not qualified,
16 Your Honor.

17 THE COURT: What says the defense?

18 MR. SCHUSTERMAN: We go along with The State's
19 position on that.

20 THE COURT: All right, bring him in.

21 Mr. Besson, I am going to excuse you from further
22 participation. You can pick up a check and you feel free
23 to go and we appreciate the help on this.

24 JUROR: Thank you.

25 THE COURT: I see you know Mr. Kelly Zeer, my friend.

TED MARTIN

BY THE COURT

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JUROR: Yes, sir.

THE COURT: Ted Martin.

TED MARTIN (W/M)

EXAMINATION BY THE COURT

Q I am John Hayes. How are you this morning?

A Fine.

Q You have got a soft voice, so I am going to ask you to speak up so everyone can hear you. I want you to be relaxed and I want to remind you you are still under oath, okay?

Are you related by blood or marriage to any of the individuals which I have introduced to you over the last couple of days?

A No, sir.

Q Do you have any interest, bias or prejudice in this case?

A No, sir.

Q Have you formed or expressed an opinion as to the guilt of the innocence of the defendant, Mr. Hughes?

A No, sir.

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

A No, sir.

Q Would you under your oath follow the law in this case

1 as the trial judge charges it to you?

2 A Yes, sir.

3 Q Could you depending on the facts and the evidence and
4 the law as you would be instructed, if you felt all of
5 that warranted it, could you find a defendant not guilty?

6 A Yes, sir.

7 Q If you thought those things that the facts, evidence
8 and the law warranted could you find the defendant guilty?

9 A Yes, sir.

10 Q Have you discussed this case with anyone?

11 A No, sir.

12 Q Have you read anything or heard anything about this
13 case from any source whatsoever?

14 A No, sir.

15 Q Now Mr. Hughes is a black gentleman and the victim was
16 a white gentleman. It is alleged by The State at the time
17 of his death the victim, Mr. McCants, was functioning as a
18 law enforcement officer. Would this in any way prevent
19 you from rendering a fair and impartial verdict in this
20 case?

21 A No, sir.

22 Q Would it influence your decision in any way
23 whatsoever?

24 A No, sir.

25 Q Now we are going to talk for a few minutes about the

TED MARTIN

BY THE COURT

1 penalty of death. There are no right or wrong answers to
2 these questions and I emphasize to you the fact that we
3 are talking about the penalty does not indicate anything
4 about the guilt or innocence about the defendant, Mr.
5 Hughes. He is presumed innocent of this charge until such
6 time -- the charge of murder -- and the other charges
7 also, until such time as The State would be able to prove
8 to a jury of his guilt beyond a reasonable doubt. Do you
9 understand that?

10 A Yes, sir.

11 Q Do you understand this will be a two part trial;, one
12 as to guilt, and if he is found guilty of murder, then one
13 as to the sentencing?

14 A Yes, sir.

15 Q I put a sheet in the jury room that has three types of
16 jurors on it. Did you review it?

17 A Yes, sir.

18 Q Did you find yourself in one of those types?

19 A Yes, sir.

20 Q Which type?

21 A Number three.

22 Q Could you as a juror participate in a jury verdict
23 recommending the penalty of death for murder if the
24 evidence and the laws warranted such a verdict?

25 A Yes, sir.

TED MARTIN

BY THE COURT

1 Q Could you as a juror also participate in a jury
2 verdict recommending a sentence of life imprisonment for
3 murder if the evidence and the law warranted it?

4 A Yes, sir.

5 Q Now other than the fact that it's not convenient for
6 anyone to have to be gone from their home for a period of
7 time and other obligations, would your having to go to
8 York County for ten to twelve days to participate in the
9 trial of this case present any undue hardships to you?

10 A My mother is being operated on next Tuesday for
11 gallbladder, that's the only --

12 Q Other than that?

13 A No, sir.

14 Q All right, I am going to ask you to answer any
15 questions that Mr. Pope and Mr. Schusterman or Ms. Brice
16 pose.

17 EXAMINATION BY MR. POPE

18 Q Mr. Martin, I am Tommy Pope. I am the Solicitor up in
19 York County, York and Union Counties. This is Kevin
20 Brackett. He is my Deputy Solicitor. We represent The
21 State. I just want to touch on a few things. Have you ever
22 been in this type of situation before?

23 A No, sir.

24 Q Questioned like this?

25 A No, sir.

TED MARTIN

BY MR. POPE

1 Q One thing you do have an advantage is you can't give a
2 wrong answer because all you are doing is speaking your
3 heart and your feelings. To start out with the judge has
4 touched base with you about the fact this was a law
5 enforcement officer, the State alleges. Of course, when I
6 say "The State alleges" we intend to prove, but we have to
7 prove everything beyond a reasonable doubt. Do you
8 understand that?

9 A Yes.

10 Q I have seen that your cousin was a volunteer?

11 A Yes, sir.

12 Q You took that into consideration in answering the
13 judge's questions as far as law enforcement. You wouldn't
14 use that to sway you one way or the other, would you?

15 A No.

16 Q Likewise I saw where your brother's house had been
17 broken into and so forth and, of course, some of the
18 allegations in this involved an armed robbery situation,
19 but you said you are a class three juror as far as keeping
20 an open mind. You wouldn't bring that in as far as
21 deliberating, would you?

22 A No, sir.

23 Q And I want to make clear as to these things. You don't
24 leave your common sense at the door, you know, you take
25 that with you and you take your life experience with you,

TED MARTIN

BY MR. POPE

1 but you wouldn't use any of this as any bias towards the
2 defendant?

3 A No, sir.

4 Q I want to tell you just briefly, Mr. Martin, the case
5 and is it obvious now and that's what we are going through
6 this process The State is seeking the death penalty. But
7 what happens in that type of case is it is a two part
8 case. The first case is just like every other trial in
9 that it's guilty or not guilty. In other words, if we
10 don't get past the guilt phase, that would be the end of
11 it, so there certainly would be no penalty. And do you
12 understand the concept that the State -- well, the
13 defendant is innocent and The State has to prove
14 everything beyond a reasonable doubt? Do you understand
15 that?

16 A Yes, sir.

17 Q Okay and as being a type three juror you are the type
18 you wouldn't go and jump in that box and automatically say
19 he's guilty or automatically say he's not until you have
20 heard everything, is that correct?

21 A Right.

22 Q If we prove our case and then got to the second phase,
23 that's when you would be looking at life or death
24 decision.

25 A Yes, sir.

TED MARTIN

BY MR. POPE

1 Q I want to make clear you've heard everybody say life
2 and death, we are not taking it lightly, I understand it
3 would, in fact, be a serious decision. You are the type
4 person that you couldn't say -- if the defendant is found
5 guilty, you couldn't say death and you couldn't say life
6 until you heard whatever else there was to hear, is that
7 correct?

8 A That is correct.

9 Q And until you heard the law that the judge would
10 instruct you.

11 A Yes, sir.

12 Q Again, you understand the defense doesn't ever have to
13 put up anything, but they certainly can if they choose to.
14 They make put up what's called evidence in mitigation, in
15 other words, something to mitigate or make lesser, you
16 know, the crime. Likewise, we may put up what's called or
17 we will put up evidence in aggravation, the things we say
18 make this crime deserve the death penalty. You would want
19 to hear both sides before you made a determination?

20 A Yes, sir.

21 Q And in the jury room you have to base obviously the
22 decisions like everything else in life on your own
23 conscious and your own experience and your own
24 determination. If you determined that the appropriate
25 sentence were life, then you could say so, is that

1 correct?

2 A Yes.

3 Q And if you determine that the appropriate sentence was
4 death after hearing everything, then you could say that
5 too, is that correct?

6 A Yes, sir.

7 Q And you would stand your ground, but by the same token
8 you wouldn't be close minded, you would hear what
9 everybody else had to say and review the evidence with the
10 jury when the judge instructed you you could do that.

11 A Yes, sir.

12 Q One final thing that I would ask you, Mr. Martin, our
13 Statute says if a jury returns life, and, of course, the
14 judge will instruct you, you know, when you could
15 consider, and you can give life for any reason or for no
16 reason at all. When the jury gives life, the foreperson,
17 the forelady or foreman would be the only one that would
18 have to decide -- not to decide -- the only one to have to
19 sign, you know, saying we find the appropriate penalty in
20 this case is life; however, our Statute requires if it is
21 death that each individual juror would have to sign, you
22 know, saying we have determined, you know, each individual
23 that this is the appropriate punishment. If you got in
24 that position and you had heard all of the evidence and
25 you thought that the appropriate punishment in the

TED MARTIN

BY MR. POPE

1 particular case was death, could you sign Ted Martin to
2 that document to turn back into the court?

3 A Yes, sir.

4 Q Likewise, if you had heard everything and your
5 conviction was that this should be life, you could not
6 sign that document - you could choose not to?

7 A Yes, sir.

8 Q Thank you.

9 THE COURT: Ms. Brice.

10 MS. BRICE: Thank you, Your Honor.

11 EXAMINATION BY MS. BRICE

12 Q Mr. Martin, my name is Chris Brice. I am an attorney
13 from York County. I represent Mr. Hughes along with my
14 co-counsel and he is seated over here. We represent
15 Mar-Reece Hughes. I have read your questionnaire and I
16 appreciate your carefully considering the questions that
17 were asked. First of all, do you have any ties to Rock
18 Hill at all? Do you know anybody there or any family
19 member?

20 A No, sir.

21 Q Do you hold any prejudices or biases concerning
22 someone's race or religion?

23 A No, ma'am.

24 Q I think the Solicitor has already touched upon the
25 fact that The State has the burden of proof in guilt,

1 essentially, they have to prove guilt beyond a reasonable
2 doubt; and I believe you stated that you would stand to
3 your convictions if you thought that innocence, there was
4 innocence there, would you hold steadfast to that opinion
5 that this man was innocent?

6 A Yes, ma'am.

7 Q Even when other persons believed that he was guilty?

8 A Yes, I would.

9 Q Have you ever considered the death penalty before, Mr.
10 Martin?

11 A I haven't.

12 Q Have you ever considered the death penalty before and
13 have you ever given it any thought before coming into the
14 courtroom today or yesterday?

15 A Well, I believe in it, yes.

16 Q What opinion have you arrived at or what consideration
17 have you given to the death penalty?

18 A Well, if it is appropriate, it should be the death
19 penalty.

20 Q Have you ever considered what circumstances the death
21 penalty is ---

22 MR. POPE: Your Honor, I object to that.

23 THE COURT: I sustain the objection.

24 Q I have seen on your questionnaire that you are not
25 really sure about how you feel about psychiatrists or

TED MARTIN

BY MS. BRICE

1 psychologists.

2 A I have never had any dealings with them.

3 Q Do you believe that they are a useful tool to society?

4 A I guess, yes.

5 Q Do you believe that a person could suffer from a
6 mental illness?

7 A Yes, I do.

8 Q So you believe that there is such a thing as mental
9 illness.

10 A Yes, I do.

11 Q And, sir, my last question to you would be if you
12 considered the death penalty appropriate in this case,
13 could you sign your name to a certificate for death?

14 A Yes, I could.

15 Q Thank you, sir.

16 THE COURT: Could you step out for just one minute.
17 What says The State?

18 MR. POPE: I submit he is qualified.

19 THE COURT: What says the defense?

20 MS. BRICE: Your Honor, I submit he is qualified.

21 THE COURT: Bring Mr. Martin back in.

22 Right there will be fine. You will be with us
23 tomorrow when we get all the jury; you will be part of the
24 jury pool. They will give you a number on the way out.
25 Call between five and seven tonight and they will tell you

TED MARTIN

BY MS. BRICE

1 what time to report. When you come tomorrow, come prepared
2 for a ten to twelve day stay in York County. You haven't
3 been chosen actually yet, but that possibility exists
4 because we would like to leave immediately once we get the
5 jury drawn to go to York County. Do not let yourself be
6 exposed to anything outside this courtroom, the media, or
7 otherwise, about this case. We will see you tomorrow.
8 Call between five and seven.

9 I think we will keep on going a little while long. If
10 anybody needs a break at any time, just let me know and
11 that includes Mrs. Nicholson and the Clerk.

12 All right, Laurie Ferguson -- Laurie Frazier.

13 LAURIE FRAZIER (W/F)

14 EXAMINATION BY THE COURT

15 Q I am John Hayes.

16 A Hi.

17 Q How are you doing. And I'm going to ask you to be
18 relaxed; you are still under oath and I am going to ask
19 you to speak up so we can all hear your answers, all
20 right?

21 A Okay.

22 Q Are you related to any of the people that I have
23 introduced to you who are the participants in this trial?

24 A No, sir.

25 Q Do you have any bias or prejudice or interest in

LAURIE FRAZIER

BY THE COURT

1 this case?

2 A No, sir.

3 Q Have you formed or expressed any opinions about the
4 guilt or the innocence of the defendant, Mr. Hughes?

5 A No, sir.

6 Q Do you know of any reason whatsoever why you could not
7 give both The State of South Carolina and Mr. Hughes, the
8 defendant, a fair and impartial trial?

9 A No, sir.

10 Q Would you under your oath follow the law in this case
11 as the trial judge charges it to you?

12 A Yes, sir.

13 Q Could you, depending on the facts and the evidence and
14 the law as it would be instructed to you, if that
15 warranted, could you find a defendant not guilty?

16 A Could you repeat the question, please? I'm sorry.

17 Q After hearing the evidence and receiving all the facts
18 and the judge charges you the law, if you felt that a
19 verdict of not guilty was warranted, could you render such
20 a verdict?

21 A Yes, sir.

22 Q If you felt that a verdict of guilty was warranted,
23 could you render such a verdict?

24 A Yes, sir.

25 Q If you felt a verdict of guilty was warranted, could

1 you render such a verdict?

2 A Yes, sir.

3 Q Have you discussed this case with anyone?

4 A No, sir.

5 Q Have you read, viewed or listened to any news accounts
6 about this case?

7 A No, sir.

8 Q Now, Mr. Hughes, the defendant is a black gentleman
9 and the victim, Mr. McCants, was white and it is alleged
10 was a law enforcement officer acting in his employment at
11 the time of his death. Would those factors prevent you
12 from rendering a fair and impartial verdict?

13 A No, sir.

14 Q Now at this time I am going to ask you some questions
15 concerning the penalty of death. These cases of this type
16 are tried in two parts. One is the guilt and then one is
17 the penalty. Even though we are talking about the penalty
18 phase, that is, the death penalty - first, I want to tell
19 you there are no right or wrong answers and I want to
20 emphasize to you that the mere fact that we are discussing
21 these or discussing the death penalty is no indication of
22 the guilt or the innocence of Mr. Hughes; he is presumed
23 innocent of the charges against him and so presumed until
24 a jury has found him guilty beyond a reasonable doubt. Do
25 you understand all of that?

LAURIE FRAZIER

BY THE COURT

1 A Yes, sir.

2 Q Now I had in the jury room a list of three juror
3 types. Did you review that?

4 A Yes, sir.

5 Q Did you find yourself in one of those types?

6 A Yes, sir.

7 Q Which one?

8 A Three.

9 Q All right, based on that answer then I will ask you
10 could you participate in a jury verdict recommending a
11 sentence of life imprisonment for murder if you thought
12 the evidence and the law warranted such a verdict?

13 A Yes, sir.

14 Q Could you by the same token recommend a sentence of
15 life imprisonment for murder if the evidence and the law
16 warranted such a verdict?

17 A Yes, sir.

18 Q Okay, now if you were selected on this case to serve
19 as a juror, you would have to travel with us to York
20 County for a ten to twelve day period of time. Would that,
21 other than the general inconvenience and hardships that I
22 know it poses without you having to elaborate on them,
23 would that present any other particular hardships for you?

24 A No, sir, the only thing I am a teacher; I don't think
25 that that qualifies me to be excused, but that's the only

1 thing that I have thought about. Other than that, no, sir.

2 Q My wife is a principal, she might enjoy a ten to
3 twelve days rest.

4 A I thought about that.

5 Q What grade?

6 A Seventh grade.

7 Q All right, answer any questions that the solicitor or
8 the defense may have.

9 EXAMINATION BY MR. SCHUSTERMAN

10 Q Good morning, Mrs. Frazier.

11 A Hi.

12 Q My name is Steve Schusterman and I am an attorney from
13 Rock Hill, York County. I represent Mr. Hughes, the
14 defendant in this matter, along with Ms. Brice who is
15 seated there with the black jacket on.

16 Just want to go over a couple of questions with you
17 kind of an off shoot of what the judge talked with you
18 about. This is somewhat of a unique case. Whenever The
19 State seeks the death penalty in a case, it is unique in
20 that this is what is known as a bifurcated trial, meaning
21 there are two phases to the trial. Phase number one is
22 going to be purely guilt or innocence as in any other
23 trial. You and eleven other jurors would be seated and
24 would listen to all the evidence and after hearing all of
25 the evidence you would make the determination of guilt or

1 innocence and all twelve of you would have to agree on
2 guilt in order to convict Mr. Hughes. Further, let me
3 tell you that Mr. Hughes to all four charges that Mr. Pope
4 read yesterday has pled not guilty. Do you understand
5 that?

6 A Yes, sir.

7 Q Do you understand the concept that someone is
8 absolutely innocent until proven guilty beyond a
9 reasonable doubt?

10 A Yes, sir.

11 Q And if the jury was unable to come to a unanimous
12 verdict of guilt in the matter, we wouldn't even get to
13 this question of life or death.

14 A Uh-huh.

15 Q Do you understand that?

16 A Yes, sir.

17 Q And you believe you can adhere to the law as the judge
18 would give it to you?

19 A Yes, sir.

20 Q And that you would come into the case with an open
21 mind?

22 A Yes, sir, absolutely.

23 Q You have indicated that if this matter should go to
24 the second phase, the penalty phase, where you would
25 choose life or death that you were a type three juror.

1 A Yes, sir.

2 Q Basically saying that you could give life or death
3 depending on the situation.

4 A Yes, sir.

5 Q That you would want to hear all of the evidence The
6 State would put forward and any evidence that the defense
7 would put forward.

8 A Yes, sir.

9 Q And based on that you would then determine whether or
10 not you felt this was appropriate to give a death sentence
11 or a life sentence.

12 A Yes, sir.

13 Q Do you understand that if you and the other eleven
14 jurors decide to give the death penalty, that you would be
15 required to sign a document for the court, in essence, a
16 death warrant you and the other eleven jurors would all
17 have to sign it, but if you chose life, only the foreman
18 or foreperson of the jury would be required to sign that
19 verdict form.

20 A I didn't know that until now, but, yes, sir, I
21 understand that.

22 Q Would you be able to take your pen and put down on a
23 death warrant Laurie Frazier?

24 A Yes, sir.

25 Q You would.

1 A Yes.

2 Q So you believe in the death penalty.

3 A Depending upon the case; I would have to hear the
4 evidence and I would have to make up my mind according to
5 the evidence.

6 Q You asked in your questionnaire whether -- for you or
7 for the court to clarify the question regarding the
8 practice of psychiatry and psychology. How would you need
9 that -- how would you want that question --

10 A I just didn't understand the questions how do you feel
11 about it, I mean ---

12 Q Let me try to clarify that.

13 A Go ahead.

14 Q Do you accept the science of psychiatry and
15 psychology?

16 A Yes.

17 Q Do you accept the concept people suffer from mental
18 illnesses?

19 A Yes.

20 Q I noticed in your answer to where you obtained your
21 news that you read the Augusta Chronicle.

22 A Yes, sir.

23 Q Did you happen to read it this morning?

24 A No, sir.

25 Q Do you have any racial bias or prejudice?

1 A No, sir.

2 Q The fact that Mr. Hughes is black will have no impact
3 on this case?

4 A No, sir, being a school teacher I feel like I am very
5 impartial. I have black children, I have white children, I
6 have Hispanic children, Asian children. If I were such a
7 person, I would not be in the position that I am as a
8 teacher. I feel I have to be fair to everybody and I am.

9 Q Thank you, Ms. Frazier. Please answer any questions
10 Mr. Brackett or Mr. Pope may have for you.

11 A Okay.

12 MR. POPE: If it please the court?

13 EXAMINATION BY MR. POPE

14 Q Ms. Frazier, I am Tommy Pope; I am the solicitor up in
15 York and Union Counties. Mr. Kevin Brackett is my Deputy
16 Solicitor and when you hear these things about "The State
17 has to prove," we are The State, we represent The State. I
18 think you understood Mr. Schusterman, you understand that
19 we carry the burden of proof, in other words, the
20 defendant is innocent until proven guilty and we have to
21 prove the case.

22 A Yes, sir.

23 Q Have you ever been in a situation like this before?

24 A No, sir.

25 Q I always try to remember to tell you that you are in

1 one good position in that you can't give a wrong answer
2 because all you are doing is telling how you feel.

3 A Right.

4 Q One thing I noticed about your questionnaire and this
5 will save us a lot of trouble you said that nothing
6 excepted, if I am picked, I believe I would be a fair
7 juror and would be prepared to listen to all the evidence
8 and make your decision based purely on that information.

9 A Yes, sir.

10 Q And that's what you told the judge.

11 A Yes, sir.

12 Q And you would apply the law as he would give it to
13 you?

14 A Yes, sir.

15 Q Okay and Mr. Schusterman explained that we have got a
16 two part trial. The first thing we have to prove is the
17 guilt phase before we would even get to the penalty phase.
18 If we didn't, that would be the end of it.

19 A Yes, sir.

20 Q And going to the second phase, if we prove guilt, you
21 would be the type of juror that would want to hear, and,
22 again they don't have to put up anything, but if they did
23 want to put up good things about the defendant, you would
24 want to hear that, is that correct?

25 A That's correct.

1 Q And if we put up bad things about the crime or good
2 things about the victim that was killed, you would want to
3 hear all of that too?

4 A Yes, sir.

5 Q And then taking all of that and, you know, of course
6 taking the law and when we say "take the law," once you
7 get to that stage the judge is never going to instruct you
8 that you have to give the death penalty, you know, there's
9 no automatic death penalty no matter how horrible the
10 crime.

11 A Right.

12 Q Again, it goes back to what you said of taking
13 everything and making a determination. Based on that you
14 could make a determination if you thought was appropriate
15 after hearing everything and hearing what the judge gave
16 you, you could make a determination for life if you
17 thought that was appropriate?

18 A Yes, sir.

19 Q Likewise, if you heard the facts and you thought this
20 was a case that warranted the death penalty, then you
21 could give the death penalty?

22 A Yes, sir.

23 Q One final thing I would say, Ms. Frazier, you know, we
24 are sitting here saying life and death, you know, just
25 kind of spewing it out like so much litany, but, truly,

1 this is a serious case ---

2 A I understand that.

3 Q --- and when we ask you to, you know, about the death
4 penalty, we are not taking it lightly, you know, to ask
5 you - we are not saying for you to just jump in the box
6 and sign, we understand the grave duty that you would have
7 to fulfill and Mr. Schusterman had asked you about signing
8 and, of course, as far as life, a jury can give life and
9 this all comes from what the judge would instruct you;
10 kind of like the thing of knowing what you have to sign
11 and what you don't and you don't have to come in with any
12 prior knowledge, the judge will instruct you as to that,
13 but as far as the death penalty itself, one of the
14 requirements is a signature by each juror if it is
15 unanimous. And if you thought that it was appropriate,
16 then you could, in fact, sign Laurie Frazier to that
17 document that is telling the court that this case death is
18 appropriate?

19 A Yes, sir.

20 Q And if you felt death was not appropriate, you could
21 choose not to sign it, is that correct?

22 A Yes, sir.

23 Q Thank you, Ms. Frazier.

24 THE COURT: Step out for just one minute.

25 What says The State?

LAURIE FRAZIER

BY MR. POPE

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MR. POPE: I submit she is qualified, Your Honor.

THE COURT: What says the defense?

MR. SCHUSTERMAN: I submit she is qualified.

THE COURT: Bring her back in.

You can just stand right there. I find you are qualified to serve. I will ask you to call back between five and seven tonight and they will tell you what time to report tomorrow. You are a part of the pool. That does not mean that you are actually on the jury, but you are a part of the pool from which the jury will be drawn. When you come tomorrow, please come prepared to travel immediately to York County for a ten to twelve days stay, that is, packed and ready to go in the event you are chosen. Don't talk about this case with anyone at this time and don't read anything about it. Have a pleasant evening. We will see you tomorrow and don't forget to call between five and seven.

JUROR: All right.

THE COURT: Good night.

JUROR: And at that time what were you telling me again?

THE COURT: They will tell you what time to be here tomorrow or there's an outside chance it won't be tomorrow, but we are 99 percent sure we will want you here sometime tomorrow, but you just call between five and

WILLIAM HALL

BY THE COURT

1 seven and they will tell you. Thank you.

2 JUROR: One more question. I can tell my principle
3 that I need to be ready to leave?

4 THE COURT: Yes. If you need a note or anything from
5 the court explaining all of this, let me know and we will
6 prepare one for you.

7 JUROR: Okay, I may need that.

8 THE COURT: We will certainly do it.

9 JUROR: Thank you.

10 WILLIAM HALL (W/M)

11 EXAMINATION BY THE COURT

12 Q Mr. Hall, come up here and have a seat. I am John
13 Hayes and I am going to ask you to be relaxed and I am
14 going to remind you that you are under oath and I am going
15 to ask you to speak up so everyone in here can hear you.

16 Are you related by blood or marriage to any of the
17 parties in this case?

18 A No.

19 Q Do you have any bias or prejudice or interest in this
20 case?

21 A No.

22 Q Have you formed or expressed an opinion about any
23 matter including the guilt or the innocence of Mr. Hughes?

24 A No.

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

1 give both The State of South Carolina and the defendant,
2 Mr. Hughes, a fair and impartial trial?

3 A No.

4 Q Would you under your oath follow the law in this case
5 as the trial judge instructs it to you?

6 A Yes, sir.

7 Q Could you depending on what the facts and evidence and
8 the law are developed during the trial find a defendant
9 not guilty if you thought the evidence warranted it?

10 A Yes.

11 Q Could you under those circumstances if you felt it was
12 warranted find a defendant guilty?

13 A Yes.

14 Q Have you discussed this case with anyone?

15 A No.

16 Q Have you heard about it or read about it anywhere?

17 A No.

18 Q Mr. Hughes is a black gentleman and Mr. McCants, the
19 deceased, was white and it is alleged by The State that
20 Mr. McCants was functioning as a law enforcement officer
21 at the time of his death. Would that prevent you from
22 rendering a fair and impartial verdict in this case?

23 A No.

24 Q Would it affect your ability to be fair and impartial
25 in any way whatsoever?

1 A No.

2 Q Now I am going to talk to you for a few minutes about
3 the death penalty. These questions have no right or wrong
4 answers and the fact we are discussing the death penalty
5 does not indicate anything about the guilt or the
6 innocence of the defendant, Mr. Hughes. He is presumed
7 innocent of the charges against him and is so presumed
8 until The State were to be able to prove if they could his
9 guilt beyond a reasonable doubt. Do you understand that?

10 A Yes, sir.

11 Q Did you review the sheets of the juror types?

12 A Right.

13 Q Did you find yourself in one of those?

14 A I would be a number three.

15 Q Okay. Could you as a juror participate in a jury
16 verdict recommending the penalty of death if the evidence
17 and the law warranted such a verdict?

18 A Yes.

19 Q Could you participate in a jury verdict recommending
20 life for murder if the evidence and law warranted such a
21 verdict?

22 A Yes.

23 Q Other than the general hardships which would be
24 experienced by anyone being away from their familiar
25 environs for ten to twelve days, would traveling to York

1 and participating in this trial pose any undue hardships
2 for you?

3 A It's possible; I would probably lose a good bit of
4 money.

5 Q Well, other than that; that is a hardship I
6 understand, but other than that?

7 A Other than that, no.

8 Q Answer any questions that The State or the defense
9 have for you.

10 A Okay.

11 EXAMINATION BY MR. BRACKETT

12 Q Good morning, Mr. Hall.

13 A Good morning.

14 Q My name is Kevin Brackett and I am the Deputy
15 Solicitor in York County. Seated at counsel table with me
16 is Tommy Pope, he's the solicitor, my boss. Together we
17 are prosecuting this case. We represent The State of South
18 Carolina.

19 You understand we, as The State, bear the burden of
20 proof in this case?

21 A Yes.

22 Q We have all the responsibility of proving whether or
23 not Mr. Hughes, seated over there at counsel table, is
24 guilty or not. Do you understand that that's our
25 responsibility and as a juror you would have to be fair

1 and impartial and listen to the evidence from both sides
2 before making your mind up?

3 A Yes.

4 Q And you have indicated to the judge you could do that.

5 A Right.

6 Q This is a two phase trial, two stages to it. The first
7 part of the trial is guilt or innocence and that's what we
8 focus exclusively on that question. We don't look to
9 anything about but whether or not the defendant is guilty
10 of the crimes which he's charged with in the indictments.
11 The second part of the trial is where we concern ourselves
12 with the actual penalty, whether or not the defendant gets
13 life or death, and you have indicated to the judge that
14 you would be open and fair and listen to all of the
15 evidence and make a fair decision.

16 A Right.

17 Q As as type three juror you could give life, if you
18 felt that the facts and circumstances surrounding the case
19 warranted it, isn't that correct?

20 A That's right.

21 Q And you also feel that if the facts and the
22 circumstances warranted it you could give death?

23 A Right.

24 Q Now in order to give or render a verdict of death in
25 The State of South Carolina each juror back in the jury

1 room once all twelve jurors have agreed to death as the
2 appropriate verdict there's a special form back there that
3 has twelve lines on it, each juror has to sign his name on
4 a line indicating that their verdict was, in fact, death
5 and if that was the verdict, if you were chosen and you
6 were serving on a jury back there, and that was the
7 verdict of you and all the other eleven jurors, then you
8 could sign William F. Hall ---

9 A Right.

10 Q --- on the line?

11 A Right.

12 Q Okay; and, likewise, if you felt that life was the
13 appropriate verdict, you wouldn't all have to sign, just
14 the foreman would have to sign, and you could do that as
15 well?

16 A Yes.

17 Q If you were the only hold-out back there for life, if
18 you were the only juror that felt that life was the
19 appropriate sentence, you wouldn't be swayed by the fact
20 that all other eleven were going for death, would you?
21 Would you hold your ground?

22 A I'd hold my ground.

23 Q And that wouldn't mean that you wouldn't listen to the
24 other jurors ---

25 A Right.

WILLIAM HALL

BY MR. BRACKETT

1 Q --- but if you had a strong conviction, you could hold
2 your ground and, likewise, if the other jurors could give
3 you good reasons as to why you should change your mind,
4 you would be open to that possibility too?

5 A Yes.

6 Q It's part of being a fair juror?

7 A Yes.

8 Q Thank you very much, Mr. Hall. Please answer any
9 questions Mr. Schusterman might have for you.

10 MR. SCHUSTERMAN: May it please the court?

11 EXAMINATION BY MR. SCHUSTERMAN

12 Q Good morning, Mr. Hall.

13 A Good morning.

14 Q My name is Steve Schusterman and I am an attorney from
15 York County up in Rock Hill. I represent Mr. Hughes in
16 this matter. I am assisted by my co-counsel, Ms. Brice,
17 here with the black jacket on.

18 Mr. Hall, just so we don't jump the gun, you
19 understand that there is before we even get to the concept
20 of life or death, that's just the penalty phase, that Mr.
21 Hughes has entered a plea of not guilty to the charges,
22 that he's not saying, well, yes, I'm guilty of it, but
23 please spare my life; he's come to this court and entered
24 a plea of not guilty, that he is not guilty of any of the
25 charges and before you get to a penalty phase, you first

1 have to determine guilt or innocence.

2 A Right.

3 Q And you accept the principles of law that he is
4 absolutely innocent until proven guilty?

5 A Correct.

6 Q You do?

7 A Yes.

8 Q Do you -- you indicated to the court that you hold no
9 racial bias or prejudice?

10 A No.

11 Q None whatsoever?

12 A No.

13 Q Do you know anybody from York County?

14 A No.

15 Q You indicate in your questionnaire that you have --
16 that you don't have any feelings toward psychiatrists,
17 psychologists; you don't have any when they asked about
18 your feelings.

19 A No, huh-uh, I mean, I really don't know that much
20 about a psychiatrist; I have never been to one.

21 Q Okay. Do you accept the science of psychiatry and
22 psychology?

23 A I'd have to hear their testimony, you know, how
24 professional they are, something like that, you know.

25 Q But you would be willing to listen to them?

1 A Yes, what they say.

2 Q Do you believe or do you accept the concept that
3 people suffer from mental illnesses or mental defects?

4 A Yes, some people do.

5 Q Do you have a belief that criminals, people charged
6 with criminal offenses, use psychiatry and psychology ---

7 MR. BRACKETT: Objection, Your Honor.

8 THE COURT: I hadn't heard the rest of the question,
9 but based on what I've heard, I sustain the objection. If
10 you want to rephrase it and --

11 MR. SCHUSTERMAN: I first would just like to ask the
12 question and then you can rule on it.

13 THE COURT: Go ahead and ask the question.

14 Q Do you believe that defendants, people charged with
15 criminal offenses, use psychiatrists and psychologists to
16 explain their behavior, trying to hide behind
17 psychiatrists and psychologists?

18 THE COURT: I sustain the objection.

19 You don't have to answer that question.

20 Q I noticed in your questionnaire that you obtain your
21 news from newspapers and you read the Augusta Chronicle.

22 A Right.

23 Q Did you read it this morning?

24 A No.

25 MR. SCHUSTERMAN: No other questions;.

1 THE COURT: I am going to ask you to step out in the
2 hall for just one minute.

3 JUROR: Okay.

4 THE COURT: What says The State?

5 MR. BRACKETT: I submit he is qualified, Your Honor.

6 THE COURT: What says the defense?

7 MR. SCHUSTERMAN: I submit he is qualified.

8 THE COURT: Bring him in. Mr. Hall, you will go into
9 the jury pool. If you will call the number you will be
10 given between five and seven tonight, you will know what
11 time to report tomorrow and we will draw the jury. That
12 does not mean you are actually on the jury, but you are in
13 the pool from which it will be drawn. Please come packed
14 tomorrow and prepared if you are chosen to go to York
15 County for ten to twelve days and do not read anything
16 about this case or let anybody talk to you while you are
17 outside this courtroom. So call back between five and
18 seven tonight. Thank you.

19 JUROR: Okay.

20 THE COURT: We will take a short break.

21 MR. SCHUSTERMAN: Thank you.

22 (Recess.)

23 THE COURT: Is The State ready?

24 MR. POPE: The State is ready, Your Honor.

25 THE COURT: The defense?

LANA CARTER

BY THE COURT

1 MR. SCHUSTERMAN: The defense is ready, Your Honor.

2 THE COURT: All right, bring in Lana Hodson Carter.

3 LANA HODSON CARTER (W/F)

4 EXAMINATION BY THE COURT

5 Q Good morning.

6 A Good morning.

7 Q I am John Hayes. I am going to ask you to just be
8 relaxed. I want to remind you that you are still under
9 oath. You understand all of that?

10 A Yes.

11 Q I am going to ask you to speak up because everybody in
12 here needs to hear what you have to say, all right?

13 A Okay.

14 Q Are you related by blood or marriage to any of the
15 individuals that I have introduced or the names I read who
16 are possible participants in this trial?

17 A No, I am not.

18 Q Do you have any interest, bias, or prejudice in regard
19 to this case in any way whatsoever?

20 A No, I do not.

21 Q Have you formed or expressed any opinion as to the
22 guilt or the innocence of the defendant, Mr. Hughes?

23 A No, I have not.

24 Q Do you know of any reason whatsoever why you could not
25 give both The State and the defendant a fair and impartial

LANA CARTER

BY THE COURT

1 trial in this case?

2 A No.

3 Q Under your oath could you and would you follow the law
4 in the case as given to you by the trial judge?

5 A Yes.

6 Q Could you depending on what the facts and evidence and
7 law are at the trial if you felt it warranted find a
8 defendant not guilty? Do you want me to repeat that?

9 A Yes, sir.

10 Q All right, let me say it like this. Could you find a
11 defendant not guilty if you thought under the facts and
12 evidence and the law that that would be the appropriate
13 verdict?

14 A Yes.

15 Q Could you find a defendant guilty under the facts,
16 law, and evidence if you felt that were the appropriate
17 verdict?

18 A Yes.

19 Q Have you discussed this case with anyone?

20 A No, I have not.

21 Q Have you read anything about this case or heard
22 anything about it?

23 A No.

24 Q The defendant, Mr. Hughes, is a black gentleman and
25 the victim, Mr. McCants, was white and is alleged to have

1 been at work as a law enforcement officer at the time of
2 his death. Would these facts prevent you in any way from
3 rendering a fair and impartial verdict?

4 A No.

5 Q Would that influence your decision in any way
6 whatsoever?

7 A No.

8 Q At this time I am going to talk to you about the death
9 penalty. This type case is tried in two parts, one as to
10 guilt, and one as to penalty. There are no right or wrong
11 answers to these questions and I want you to understand
12 the mere fact that we are talking about the penalty is no
13 indication as to the guilt or the innocence of the
14 defendant, Mr. Hughes, he is presumed innocent of these
15 charges. Do you understand that?

16 A Yes, I do.

17 Q And he would presumed innocent until such time as he
18 was found guilty beyond a reasonable doubt by a jury, do
19 you understand that?

20 A Yes.

21 Q Did you review the juror types?

22 A Yes, I did.

23 Q Did you find yourself in one of those?

24 A Yes, I did.

25 Q Which one?

1 A Number three.

2 Q Could you then as a juror participate in a jury
3 verdict recommending a penalty of death if you felt the
4 evidence and law warranted such a verdict?

5 A Yes, I could.

6 Q Could you as a juror participate in a jury verdict
7 recommending a sentence of life imprisonment for murder if
8 the evidence and the law warranted such a verdict?

9 A Yes, I could.

10 Q Now other than the fact that it is never convenient
11 for one to be away from home from ten to twelve days and
12 sequestered, other than that would your participating in
13 this trial and being in York County sequestered for that
14 period of time pose any undue hardship for you?

15 A No.

16 Q I am going to ask you to answer questions as posed by
17 Mr. Schusterman and then one of the solicitors.

18 EXAMINATION BY MR. SCHUSTERMAN

19 MR. SCHUSTERMAN: May it please the court?

20 Q Good morning, Ms. Carter.

21 A Good morning.

22 Q How are you this morning?

23 A Just fine.

24 Q Good. My name is Steve Schusterman and I am an
25 attorney from York County, Rock Hill, and I represent Mr.

LANA CARTER

BY MR. SCHUSTERMAN

1 Hughes, the gentleman seated in the back row with the
2 white shirt and my co-counsel is the lady who is seated
3 next to me with the black jacket on. That's Ms. Brice. She
4 is also from York County. We represent him. I want to
5 you a couple of minutes this morning about general
6 concepts about these type cases. Ms. Carter, these cases
7 where The State is seeking the death penalty are unique in
8 South Carolina. They are unique because we are going to
9 have what is known as a bifurcated trial, meaning two
10 phases to the trial. In phase number one all we are
11 dealing with is guilt or innocence. That's the only thing
12 that you and the eleven other jurors would be concerned
13 about would be the guilt or the innocence of Mr. Hughes.
14 Do you understand that?

15 A Yes, I do.

16 Q Do you recall yesterday Mr. Pope read off four
17 indictments, the four indictments that Mr. Hughes is
18 charged with?

19 A Uh-huh.

20 Q He has pled not guilty to those charges. Once he
21 pleads not guilty, the burden is on The State through Mr.
22 Pope and Mr. Brackett to prove to you through evidence
23 that Mr. Hughes is guilty beyond a reasonable doubt. He is
24 presumed innocent. Do you understand that concept?

25 A Yes, I do.

1 Q Do you accept that as a concept in the law?

2 A Yes, I do.

3 Q All right. Do you understand that if you and eleven
4 jurors cannot unanimously decide that Mr. Hughes is guilty
5 of the offense of murder, that we won't even get to phase
6 number two?

7 A Uh-huh.

8 Q Do you understand that?

9 A Yes, I do.

10 Q If we do get to that second phase, you would then have
11 a choice of life without parole or death and you and
12 eleven other jurors would have to decide on that. And as I
13 understand it you read the sheet of paper that the judge
14 gave to you to read and determined that you were juror
15 number three.

16 A Uh-huh.

17 Q Basically telling using that you could decide death in
18 the appropriate circumstances or could decide life and
19 that you want to hear all the evidence that there is, the
20 aggravating circumstances that The State may put up, what
21 makes this crime particular heinous or evidence that the
22 defense might put up regarding good things about Mr.
23 Hughes and you would take all of that into account and
24 would then decide. Is that correct?

25 A That is correct.

LANA CARTER

BY MR. SCHUSTERMAN

1 Q Do you believe in the death penalty?

2 A I do in certain circumstances.

3 Q Would you say that you are upon a conviction for
4 murder that you are more likely to choose death over life?

5 MR. POPE: Objection.

6 THE COURT: I sustain the objection.

7 MR. SCHUSTERMAN: Thank you, Your Honor.

8 THE COURT: You don't need to answer that.

9 Q Ms. Carter, if you and the eleven other jurors decided
10 that death was the appropriate circumstances, the law
11 requires that you along with the eleven other jurors sign
12 your name to a document that would be received by the
13 court, a death warrant so to speak. Do you feel that you
14 could take a pen and sign your name to a death warrant?

15 A Yes, I do.

16 Q On the other hand, do you believe that you would have
17 the power if the eleven other people wanted to sign it and
18 you didn't feel that death was appropriate, would you have
19 the conviction not to sign the death warrant?

20 A I would stick with what I felt.

21 Q Are you saying you would not allow the fact that
22 eleven other people were signing the warrant or were
23 prepared to sign it, you would not allow that to sway your
24 decision?

25 A No, I would not.

1 Q You indicated in this questionnaire, you recall
2 filling out this questionnaire, ---

3 A Uh-huh.

4 Q --- that your brother's house was broken into about
5 three years ago.

6 A Uh-huh.

7 Q Did they ever catch the person who --

8 A No, they did not.

9 Q All right. Do you hold any bias or prejudice against
10 anybody -- do you hold anybody responsible for not finding
11 the person who broke into your brother's house?

12 A No, I don't.

13 Q The fact that Mr. Hughes is charged in an indictment
14 for robbery, armed robbery in this case, but a robbery,
15 would that bias you in any way because of the experience
16 that your brother had?

17 A No, not at all.

18 Q I take it from the answers in your questionnaire that
19 you accept the science of psychiatry and psychology.

20 A Yes, I do.

21 Q And I take it again from your answers that you believe
22 that people do suffer from mental illnesses or mental
23 defects.

24 A Yes, I do.

25 Q Do you know anybody in Rock Hill?

1 A No.

2 Q York County?

3 A No.

4 Q Thank you, Ms. Carter. Answer any questions Mr. Pope
5 may have.

6 MR. POPE: May it please the court, Your Honor?

7 EXAMINATION BY MR. POPE

8 Q Ms. Carter, I am Tommy Pope; I am the solicitor up in
9 York and Union Counties. This is Kevin Brackett. He is my
10 Deputy Solicitor. We represent The State in this case.
11 Have you ever been in a situation like this before, asked
12 these kind of questions?

13 A No.

14 Q Let me tell you one thing is you are in a good
15 position in that you can't give a wrong answer because all
16 you are doing is telling us how you feel and this is our
17 one chance to seek a - we won't be in the jury room with
18 you or we don't sit in the jury box; this is our one
19 chance to just see how you feel, so, again, if I feel like
20 I'm pushing you in one way or another, I'm not trying to
21 put words in your mouth. If I ask the same question the
22 defense is asking, again, I'm not trying to change your
23 answer, I'm just trying to find out a little more fully
24 how you feel.

25 A Okay.

LANA CARTER

BY MR. POPE

1 Q You told the judge and you told Mr. Schusterman you
2 would be the type that you would keep an open mind ---

3 A Uh-huh.

4 Q --- if you were chosen, you wouldn't automatically say
5 guilty or not guilty; you'd have to wait and hear
6 everything.

7 A That's right.

8 Q And, of course, we would have to prove our case before
9 you could find guilt or if we didn't, you'd say not
10 guilty, is that right?

11 A Uh-huh.

12 Q And you said as far as considering everything I think
13 Mr. Schusterman had asked you about the bias as far as
14 this situation with your brother and you didn't blame it
15 on law enforcement or you wouldn't hold that against the
16 defendant, is that correct?

17 A That's correct.

18 Q Likewise, he had touched on a little bit the situation
19 and the surrounding situation with your mother and the
20 help that you had gotten, would you put any greater weight
21 toward testimony as far as psychiatrists or something or
22 would you consider that with everything else?

23 MR. SCHUSTERMAN: Objection, Your Honor.

24 THE COURT: I sustain the objection.

25 MR. SCHUSTERMAN: Thank you.

1 Q Would the experience you had as far as your mother
2 give you any bias for or against that type testimony or
3 would you just take it for what it's worth?

4 A I would just take it for what it's worth.

5 Q All right, Mr. Schusterman had asked about or
6 discussing the penalty phase, the signing, in essence,
7 they call it a death warrant, what it is it is the jury's
8 verdict as far as penalty, you know, when we got to that
9 second phase. If the jury decides that life is
10 appropriate, and the judge will instruct you when you can
11 consider life and when you can consider death. You can
12 consider life for any reason or for no reason at all and
13 he'll tell you all of this. In certain circumstances you
14 can consider the death penalty, but you never have to, do
15 you know what I mean, regardless of what kind of evidence
16 we prove you never have to say death penalty, you know,
17 there is no automatic death penalty. And so you had told
18 Mr. Schusterman if after hearing everything if you thought
19 that life was appropriate, certainly you would say so. You
20 know, I know the judge has instructed you many times don't
21 talk about the case, but there will be a time certainly
22 when he will say for the jurors to talk and you would be
23 willing to keep an open mind and talk with the jurors and
24 you would go with what you believe, but you would be open
25 minded in listening to everything else that everybody else

1 had to say, is that true?

2 A Yes, I would.

3 Q Okay, again if you thought life was appropriate, you
4 would say so. If you felt the circumstances warranted
5 death, then you would say that too, if that's what your
6 belief was, is that correct?

7 A Yes.

8 Q And, again, we say life and death and sounds like we
9 are slinging words around, but certainly this is a serious
10 decision for everyone involved ---

11 A Uh-huh.

12 Q --- if you determined that death was appropriate after
13 hearing the facts, I am not asking you to decide yet
14 because you haven't heard anything, if you determined that
15 death was appropriate, you could sign your name Lana
16 Carter to a verdict of death?

17 A Yes, I could.

18 Q Thank you, ma'am.

19 THE COURT: I am going to ask you to step out in the
20 hall for just one minute.

21 What says The State?

22 MR. POPE: I submit she's qualified, Your Honor.

23 THE COURT: What says the defense?

24 MR. SCHUSTERMAN: I submit she is qualified, Your
25 Honor.

1 THE COURT: Bring her back in.

2 You can stop right there. I find that you are
3 qualified to serve as a juror in this jury pool. That does
4 not mean that you will actually serve on a jury, but you
5 will be on a pool from which the jury is chosen. We plan
6 to do that tomorrow. I'll ask you to call back; you will
7 be given a telephone number to call back between five and
8 seven this evening. When you come tomorrow, please come
9 prepared to travel in the event you are selected to York,
10 that is, pack for a ten to twelve day stay in York County.
11 Keep in mind that you are not to read anything or listen
12 to anything outside the courtroom about this case. All
13 right, please call between five and seven, thank you.

14 JUROR: Thank you.

15 THE COURT: Jane Peterson.

16 JANE PETERSON (W/F)

17 EXAMINATION BY THE COURT

18 Q I want to remind you that you are under oath and I, of
19 course, am John Hayes and I am going to be asking you some
20 questions. I am going to ask you to answer with words and
21 speak up so all of these people can hear you, okay?

22 Are you related by blood or marriage to any of the
23 participants that I have introduced to you?

24 A No.

25 Q Do you have any bias, prejudice or interest in this

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case?

A No.

Q Have you formed or expressed any opinion as to the guilt or the innocence of the defendant Mr. Hughes?

A No.

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

A No.

Q Could you and would you under your oath follow the law in this case as the trial judge charges it to you?

A Yes.

Q Could you depending on the facts and the evidence and the law as instructed by the trial judge, if you felt it was warranted, find the defendant not guilty?

A Repeat that.

Q All right, could you find the defendant not guilty if you thought the facts, evidence and law warranted a finding of not guilty?

A Yes.

Q Could you if you felt those facts, evidence and law warranted find the defendant guilty?

A Yes.

Q Have you discussed this case with anyone?

A No.

1 Q Have you heard about it or read about it from any
2 source?

3 A No.

4 Q Now, Mr. Hughes, is a black gentleman and the victim,
5 Mr. McCants, was white and it's alleged to have been at
6 work as a law enforcement officer at the time of his
7 death. Would these factors prevent you from rendering a
8 fair and impartial verdict?

9 A No.

10 Q Would they affect your decision in any way whatsoever?

11 A No.

12 Q Now we are going to talk in just a moment about the
13 death penalty in this case, this is a two part trial, and
14 if the defendant were to be found guilty of murder, we
15 would move into a second part, which would be the death
16 penalty part of the trial. There are no right or wrong
17 answers and the fact that we are discussing the death
18 penalty is no indication as to his guilty or innocence, do
19 you understand that?

20 A Yes.

21 Q He is presumed innocent and would be so presumed and
22 is so presumed until a jury convicts him based on evidence
23 convincing them of his guilt beyond a reasonable doubt. Do
24 you understand all of that?

25 A Yes.

1 Q Now did you review the juror types?

2 A Yes.

3 Q Did you find yourself in one of those?

4 A Yes.

5 Q Which one?

6 A Three.

7 Q Could you as a trial juror participate in a jury
8 verdict recommending a sentence of death for murder if the
9 evidence and the law warranted such a verdict?

10 A Yes.

11 Q Could you as a juror also participate in a juror
12 verdict recommending any sentence of life imprisonment for
13 murder if the evidence and the law warranted such a
14 verdict?

15 A Yes.

16 Q Other than I believe you talked a little about some
17 problems yesterday, other than those, and the fact that's
18 it is inconvenient for anyone to have to be sequestered
19 away from their home, family and the usual surroundings
20 for a twelve day period, are there any other undue
21 hardships this would work for you?

22 A No, I just didn't want to lose my money on the trip.

23 Q I understand that. I am going to ask if you would to
24 answer any questions posed by Mr. Brackett or Mr.
25 Schusterman or Ms. Brice.

EXAMINATION BY MR. BRACKETT

1
2 Q Good morning, Mrs. Peterson.

3 A Good morning.

4 Q My name is Kevin Brackett; I am the deputy solicitor.
5 I work with Tommy Pope over here at counsel table. We are
6 from York County and Mr. Pope and I will be prosecuting
7 this case on behalf of The State and I just have a few
8 questions for you and I want to preface it by saying the
9 same thing the judge said there are no wrong answers here.
10 You are just telling us how you feel and it is important
11 for us to know because this is kind of our chance to get
12 to know you a little bit and know how you feel about some
13 of these issues that you don't get to talk about every
14 day. You understand that this is a death penalty trial, of
15 course, ---

16 A Yes.

17 Q --- and it has got two stages to it. The first part
18 just concerns guilt or innocence and that's all we are
19 going to be looking at. We don't concern ourselves with
20 the death penalty at all. It's not even an issue because
21 if Mr. Hughes didn't do anything, then there's no penalty
22 to be involved in the case at all. But if we get pass that
23 issue and we carry our burden of proof and it's Mr. Pope's
24 and my burden of proof, we have the responsibility of
25 proving to you and the other eleven jurors that Mr. Hughes

1 is guilty and if we do meet that burden of proof, then we
2 go to the second stage of the trial, which is the penalty
3 phase and in that phase we are looking at some very
4 weighty issues, some serious matters about life and death,
5 which is what this is all about. And in that regards you
6 have indicated that you could be fair and open minded, you
7 are the kind of juror that would listen to all the
8 evidence and weigh the evidence both in aggravation, which
9 means listen to the bad nature of the crime, the effects
10 of the crime, and the horrible circumstances surrounding
11 it and so forth and also the evidence in mitigation if the
12 defense chose to put any up, they are allowed to tell you
13 about Mr. Hughes and any good things they may have to tell
14 you about him. You have indicated that you are the kind
15 of juror that would wait until the end to make up your
16 decision.

17 A Yes.

18 Q And at the end of that if you had heard all the other
19 evidence and heard the evidence from The State and the
20 defense, you could return a verdict of life, if you felt
21 that was appropriate and you felt that the defendant
22 should be sentenced to life, then you could return that
23 verdict.

24 A Yes.

25 Q And likewise if you felt that the case was of such a

JANE PETERSON

BY MR. BRACKETT

1 nature and circumstances you could also return a verdict
2 of death.

3 A Yes.

4 Q And as a part of that process you don't have to do
5 this in the life, if you are going to sentence him to
6 life, you don't have to do this, but there are special
7 requirements, one special requirement, of the death
8 sentence is that if the jury returns a verdict of death,
9 each juror has to take a pen and sign a special verdict
10 form, all twelve jurors need to sign the form in order for
11 there to be a verdict of death. Every juror is going to
12 have to sign their name on that verdict firm and you
13 wouldn't have any problem signing Jane Peterson to that
14 form if you felt that was the verdict that should be
15 rendered?

16 A No.

17 Q Okay. Thank you very much, Ms. Peterson.

18 THE COURT: Ms. Brice?

19 MS. BRICE: Thank you, Your Honor.

20 EXAMINATION BY MS. BRICE

21 Q Ms. Peterson, my name is Chris Brice. I am an attorney
22 from York County and I along with my co-counsel seated
23 over here, Steve Schusterman, we both represent Mar-Reece
24 Hughes. I would first like to thank you for considering
25 the questions that we posed to you in the questionnaire

1 and also carefully considering the questions that we have
2 posed to you today. Have you ever given in the past much
3 thought to the death penalty?

4 A No.

5 Q In general, have you ever given it thought by talking
6 with friends or yourself pondering the death penalty?

7 A I guess I have thought about it.

8 Q And what were your thoughts about it?

9 A That there's so many sitting on death row it doesn't
10 seem to be going anywhere and it doesn't seem to be
11 stopping crimes.

12 Q Would those thoughts render you unable to be fair in
13 this case to Mr. Hughes?

14 A No, I don't think so.

15 Q As Mr. Brackett has stated, if you find that the death
16 penalty was warranted in this case and, of course, that is
17 the second stage of the trial. But if the death penalty is
18 warranted, could you put your name to a certificate saying
19 that you would find someone to put to death?

20 A If I thought the evidence warranted it.

21 Q And do you think that you are the type of person that
22 whether it be for guilt or innocence or life or death if
23 you believed contrary to the majority, do you believe that
24 you could stand fast in your convictions?

25 A I do.

1 Q You don't feel that anyone could waiver your mind,
2 that you would make your own decision?

3 A I would make my own decision.

4 Q Ms. Peterson, do you have any prejudices or biases,
5 pre-conceived opinions, of people based upon their race or
6 gender or religion?

7 A No.

8 Q I understand from your coming before us yesterday that
9 you have a trip with the Daughters of America?

10 A Yes.

11 Q What kind of organization is that?

12 A It's an auxiliary to the Junior Mechanics of America.
13 It was started I believe after World War II or during
14 World War II.

15 Q Is it some type of -- is it similar to Union?

16 A No, it's -- I suppose it's something like the Eastern
17 Star, something like that.

18 Q And I believe that you have already prepaid for your
19 trip, is that correct?

20 A Yes.

21 Q Would the inconvenience that that would place you in
22 as far as maybe perhaps not being able to go, would that
23 cause you to be unfair in considering evidence that was
24 presented before you?

25 A No.

1 Q And, finally, I think in your questionnaire we
2 questioned you about your feeling about psychologists and
3 psychiatry and you stated that you believe that society
4 being what it is they have a good role in society, is that
5 correct?

6 A Yes.

7 Q Do you believe that they can help people?

8 A Yes.

9 Q So you believe that there is a place in society for
10 psychologists and psychiatrists?

11 A Yes.

12 Q Thank you, ma'am. I appreciate your time.

13 THE COURT: Please step out for just a minute.

14 What says The State?

15 MR. BRACKETT: We submit she is qualified, Your Honor.

16 THE COURT: The defense?

17 MS. BRICE: We submit she's qualified, Your Honor.

18 THE COURT: Bring her back in. Ms. Peterson, you will
19 be in the jury pool. This does not mean that you will be
20 on the jury. I am going to ask you to call back between
21 five and seven tonight. You will be given a number. When
22 you come tomorrow, in the event you are chosen, we need to
23 have you ready to go, that is, packed and ready to go to
24 York for a ten to twelve day stay, if you are chosen.
25 Don't read anything or listen to anything outside the

WILLIE KEY

BY THE COURT

1 courtroom about this case and please call between five and
2 seven.

3 JUROR: Today.

4 THE COURT: Today, yes, ma'am. Thank you.

5 WILLIE KEY (B/M)

6 EXAMINATION BY THE COURT

7 Q Good morning, Mr. Key. Come up here and have a seat
8 right here. I'm John Hayes. I want you to be relaxed. I
9 want to ask you a few questions and remind you that you
10 are under oath. I am going to ask you to speak so everyone
11 can hear you, okay?

12 A All right, sir.

13 Q Are you related by blood or marriage to any of the
14 individuals that I have introduced you to who are
15 participants in this case?

16 A No, sir.

17 Q You are going to have to speak up.

18 A No, sir.

19 Q All right, do you have any interest, bias or prejudice
20 in regard to this case?

21 A No, sir.

22 Q Have you formed or expressed an opinion as to the
23 guilt or the innocence of the defendant, Mr. Hughes?

24 A No, sir.

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

WILLIE KEY

BY THE COURT

1 give both The State and the defendant a fair and impartial
2 trial in this case?

3 A No, sir.

4 Q Could you depending on depending on what the evidence
5 and facts and the law had developed in the trial if you
6 felt it warranted, find the defendant not guilty?

7 A (No response.)

8 Q Do you want me to rephrase that?

9 A Yes, sir.

10 Q Could you find the defendant not guilty if you thought
11 that's what the facts and evidence and the law warranted
12 or showed?

13 A No, sir.

14 Q You could not find him not guilty?

15 A (No response.)

16 Q Let me rephrase it again. After you have heard all of
17 the evidence and the judge has charged you the law, if you
18 felt based on that, the law and the evidence, that Mr.
19 Hughes was not guilty, could you return a verdict of not
20 guilty?

21 A I will say he's guilty?

22 Q If you heard the evidence and the evidence and the law
23 convinced you that the appropriate verdict was not guilty,
24 could you find him not guilty?

25 A Yes, sir.

1 Q And if you felt the evidence and the law were such
2 that the appropriate verdict was guilty, could you find
3 him guilty?

4 A Yes, sir.

5 Q Have you discussed this case with anybody?

6 A No, sir.

7 Q Have you heard about it or read anything about it?

8 A No, sir.

9 Q Now, Mr. Hughes, the defendant is a black gentleman
10 and the victim, Mr. McCants, was white and is alleged to
11 have been working as a law enforcement officer at the time
12 of his death. Would those facts and factors in any way
13 prevent you from being fair and impartial in this case?

14 A I would be fair.

15 Q All right, now I am going to ask you certain questions
16 about the death penalty. This type case is in two stages.
17 One as to guilt or innocence or guilty or not guilty and
18 one phase if the defendant is found guilty of murder, the
19 same jury will consider the penalties. There are no right
20 or wrong answers to these questions and the fact that we
21 are talking about the penalty does not indicate anything
22 as to defendant's guilt or innocence. You understand
23 that.

24 A Yes, sir.

25 Q He is presumed innocent of the charges until such time

1 as the jury were convinced of his guilt beyond a
2 reasonable doubt. Do you understand that?

3 A Yes, sir.

4 Q I have put in the jury room a sheet with three juror
5 types on it. Did you review it?

6 A Yes, sir, could you go over that with me again?

7 Q Okay, type one is the type of juror who once the crime
8 of murder has been proven by The State and you as jurors
9 are considering punishment, this type juror feels that he
10 or she is required to give a death penalty in each and
11 every case. This juror simply feels that once a murder
12 has been committed, the death penalty is the most
13 appropriate punishment no matter what the circumstances of
14 the case.

15 The second type juror is one once guilt has been
16 determined would under no circumstances ever give a death
17 penalty and would not need to hear any facts and
18 circumstances in aggravation as to that particular case
19 because the juror would have their mind made up concerning
20 punishment no matter what they had heard.

21 The third type is one who once guilt has been
22 established would listen to all of the evidence and the
23 charge of the jury -- of the judge and make a decision
24 based on all the law, all of the evidence, the aggravating
25 circumstances proven, if any, and the mitigating

1 circumstances proven, if any, and would consider returning
2 a verdict of life imprisonment or death depending on the
3 circumstances.

4 In short, juror type number one who would always
5 impose the death penalty for murder.

6 Juror number two is one who would never impose the
7 death penalty for murder.

8 And type three is one who would listen, keep an open
9 mind as to the penalty to be imposed.

10 A I would go with Number three.

11 Q So you would be a juror who could participate in a
12 jury verdict recommending the penalty of death for murder,
13 if that's what the law and the evidence warranted?

14 A Yes, sir.

15 Q And you could also return a verdict of life
16 imprisonment if that was what the law and evidence
17 warranted?

18 A Yes, sir.

19 Q Now if you were chosen on this case you would be
20 sequestered in York County for ten or twelve days. Other
21 than the general hardships that would create for anyone,
22 would this pose any undue hardship to you?

23 A Excuse me?

24 Q Would this cause you any great hardship to serve on
25 this jury other than the ones we know it is always

THE STATE VS HUGHES

1 inconvenient to have to go to another county and be
2 sequestered in a motel for a period of time. Would that
3 present any undue hardships to you?

4 A I wouldn't want to do it, but if I have to do it, I
5 guess that's what I'll have to do.

6 Q All right. Answer any questions posed by Mr.
7 Schusterman and/or the Solicitor.

8 MR. SCHUSTERMAN: Your Honor, before we begin
9 questioning, I'm first up. I would like to take up a
10 matter.

11 THE COURT: Okay, I am going to ask you to step outside
12 just one minute.

13 All right, sir.

14 MR. SCHUSTERMAN: Your Honor, I don't really know how
15 to handle this situation. There is, I certainly don't want
16 to interrogate a witness, maybe this is something the
17 court could inquire into, but if the court will, I don't
18 know if the court has it, but the first questionnaire was
19 sent out several months ago and the new questionnaire, it
20 appears that the signatures on it are different. I had a
21 concern that this person may not be able to either read or
22 write; I certainly don't want to embarrass him. The
23 signatures, if you will look at them, ---

24 THE COURT: Hand up the old one, I have one, the new
25 one.

1 (Mr. Schusterman complied.)

2 (The court reviews questionnaires.)

3 Call him back in.

4 EXAMINATION BY THE COURT (RESUMED)

5 Q You had filled in two different questionnaires. It has
6 been called to my attention that the signatures are a
7 little different. Did someone help you with these?

8 A Yes, sir.

9 Q All right, did you sign one or both of them?

10 A Yes, sir.

11 Q Is this your signature on this one?

12 A Yes, sir.

13 Q All right, that's dated 4-14-95 and it appears to be a
14 little different from whoever signed that one.

15 A My sister signed that one.

16 Q Your sister signed the second one. Okay, did she read
17 it and go over it with you?

18 A Yes, sir.

19 Q And were the answers that she went over correct?

20 A Yes, sir.

21 Q Such things as you lived at 171 Main Drive for eleven
22 years, lived in this county all of your life, born here in
23 Aiken and worked at Carlisle Rubber, drives a forklift ---

24 A Yes, sir.

25 Q --- that you play sports, those type things. Those

WILLIE KEY

BY MR. SCHUSTERMAN

1 are correct?

2 A Yes, sir.

3 Q So what you did was that you had someone help you with
4 this and they signed for you on this second one, is that
5 correct?

6 A Yes, sir.

7 Q Okay, we have no problem with that. I just wanted to
8 make sure I understand.

9 A All right.

10 THE COURT: Mr. Schusterman?

11 MR. SCHUSTERMAN: Thank you, Your Honor.

12 EXAMINATION BY MR. SCHUSTERMAN

13 Q Good morning, Mr. Key.

14 A Good morning.

15 Q How are you?

16 A All right.

17 Q My name is Steve Schusterman. I am an attorney from
18 Rock Hill, up in York County. I represent Mr. Hughes in
19 this case, the man seated with the white shirt. He is the
20 man charged in this incident. Seated next to me is the
21 lady with blonde hair and the black jacket on, that's
22 Chris Brice. She is my co-counsel. We represent Mr. Hughes
23 together.

24 Mr. Key, I am going to ask you some simple questions
25 pretty much an off shoot of what the judge asked you

1 certain things you understand. First, Mr. Key, this
2 situation, this trial here, is what is known as a
3 bifurcated trial, it's somewhat unique in that it's going
4 to be two phases to the trial. Phase number one is to
5 determine guilt or innocence. That's all that you will be
6 concerned with is guilt or innocence.

7 A Right.

8 Q I know there's been a lot of talk about life or death,
9 but we put that on the side until this first phase of the
10 trial is over. Now do you understand that someone who
11 pleads not guilty, as Mr. Hughes has, Mr. Hughes has pled
12 not guilty, are you aware of that?

13 A Yes, sir.

14 Q Okay and you understand that he is absolutely innocent
15 until proven guilty beyond a reasonable doubt?

16 A Yes, sir.

17 Q Do you understand that principle?

18 A Yes, sir.

19 Q Do you accept that as a principle of law?

20 A Yes, sir.

21 Q Do you understand that The State through Solicitor
22 Pope and Deputy Solicitor Brackett have the responsibility
23 to prove to you through evidence beyond a reasonable doubt
24 that Mr. Hughes is guilty and if they fail to do that and
25 you and the other jurors were to return a verdict of not

1 guilty, we wouldn't even get to the second part of the
2 trial; do you understand that?

3 A Yes, sir.

4 Q If we do get to the second part of the trial, do you
5 understand you and the other eleven jurors are going to be
6 asked to decide between life without parole or the death
7 penalty?

8 A Yes, sir.

9 Q And The State will put up any evidence what's known in
10 aggravation, the bad things about the crime ---

11 A Right.

12 Q --- the effects the crime may have on people. And the
13 defense, while we don't have to put up anything, we may
14 put up the good things about Mr. Hughes.

15 A Right.

16 Q After that it will be the responsibility of the jury
17 to unanimously decide on life or death. Do you understand
18 that?

19 A Yes, sir.

20 Q Now you have indicated that you are a type three
21 juror. Is that correct?

22 A Right.

23 Q And you want to hear all of the evidence before you
24 make a decision?

25 A Yes, sir.

1 Q You are not predisposed, you are not automatically
2 going to choose death or automatically going to choose
3 life?

4 A No.

5 Q Is that correct?

6 A Right.

7 Q Do you have beliefs regarding the death penalty?

8 A What do you mean?

9 Q Have you ever thought about death penalty before you
10 sat in that chair or filled out that questionnaire today?

11 A Oh, no.

12 Q You never thought about the death penalty?

13 A No.

14 Q If you were on this jury with eleven other jurors and
15 the eleven other jurors said we want death, but you didn't
16 think it was appropriate for death, what would you do?

17 A If they picked death and I didn't pick death?

18 Q Right, everybody picked death and you are seated there
19 and everybody else said death, but Willie Key doesn't say
20 death, how are you going to handle that situation? What
21 are you going to do?

22 A He's guilty or not guilty that's all I can say.

23 Q And that's absolutely true in the first half of the
24 trial, I certain agree that you are going to decide that
25 he's guilty or that he's not guilty; that's absolutely

1 true.

2 A Right.

3 Q But now we are in the second part of the trial. If he
4 is guilty -- if you say he's not guilty and that's what
5 the jury comes back with, we go home, there is no second
6 phase.

7 A Right.

8 Q But assuming that in the first phase you and the
9 eleven other jurors unanimously say Mr. Hughes is guilty.
10 Now we go to part two. Do you understand that?

11 A Right.

12 Q Now when we are in part two, the jury is going to hear
13 what we talked about, the bad things and the good things
14 about Mr. Hughes, and then they are going to go back and
15 decide life without parole or the death penalty. Do you
16 understand that?

17 A Yes, sir.

18 Q Okay, Mr. Key, what I am saying to you is that eleven
19 other jurors say death, but Willie Key doesn't believe
20 death is appropriate, what is Willie Key going to do?

21 A On the second?

22 Q Yes.

23 A Life.

24 Q Okay, even if the other people choose death?

25 A Right.

- 1 Q You would stick to life?
- 2 A Right.
- 3 Q By the same token, assuming that the eleven other
4 jurors said this is a life sentence, Mr. Hughes should not
5 be put to death, but Willie Key felt that death was
6 appropriate, what would you do?
- 7 A I'd still put life.
- 8 Q Do you remember filling out this questionnaire?
- 9 A Yes, sir.
- 10 Q I think you said your sister filled it out for you?
- 11 A Right.
- 12 Q Question 17 wasn't filled out and I just would now
13 like for you to answer it for me. It says "Have you or
14 anyone close to you ever been robbed?"
- 15 A My sister.
- 16 Q Your sister was robbed?
- 17 A Right.
- 18 Q Tell me what happened?
- 19 A Somebody broke in her house and stole a stereo and tv.
- 20 Q Did they ever catch the person?
- 21 A No, that's the second time she was broke in.
- 22 Q The second time.
- 23 A Yes.
- 24 Q The first time did they catch anybody?
- 25 A No, they didn't catch no one.

1 Q The fact that your sister's house was broken into and
2 a robbery occurred, one of the indictments against Mr.
3 Hughes is for robbery, he's been charged by The State with
4 armed robbery. Does that affect you in your decision
5 making?

6 A I think if he did wrong he should be punished for it -
7 what he did.

8 Q Okay. Only if he's found guilty?

9 A Right.

10 Q What I'm asking you though is because you have in the
11 back of your mind that your sister's house was broken into
12 twice ---

13 A Right.

14 Q --- and because Mr. Hughes is charged with robbery, a
15 similar offense, do you think you can still be fair to Mr.
16 Hughes knowing that your sister was robbed twice?

17 A I'd still be fair with him.

18 Q You wouldn't hold it against him because of --

19 A No, because someone else broke into my sister's house,
20 I wouldn't hold it against him.

21 Q Not at all?

22 A No.

23 Q You indicate, Mr. Key, that you are a member of the
24 Mt. Anna Baptist Church?

25 A Right.

1 Q Do you go regularly?

2 A Pretty much.

3 Q Okay. Does your religion -- do you use your religion
4 or would you use your religion to aid you in deciding on
5 life versus death?

6 A Yes.

7 Q Does your religion say anything regarding life or
8 death as a means of punishment?

9 A I don't quite follow you.

10 Q Okay. Every religion has certain beliefs.

11 A Right.

12 Q Within the Baptist faith, ---

13 A Right.

14 Q --- are there any religious principles related to
15 punishment life versus death that you would use -- that
16 you might use, I'm not saying you would, you might use to
17 help you decide whether if we get to that second phase of
18 the trial, whether Mr. Hughes should be put to death or
19 whether he should be given a life without parole sentence?

20 A Yes, sir.

21 Q What would those philosophies be?

22 A I'd still have to go with the jurors, you know, with
23 the procedure.

24 Q Okay. You wouldn't allow any beliefs you had about
25 your religion to affect your decision here on the jury.

1 A Right.

2 Q Just so that we understand, what are those
3 philosophies, your religious philosophies regarding
4 punishment?

5 A What you mean?

6 Q Does when you go to either Sunday School or during a
7 religious sermon, is there any religious -- is there any
8 preaching about punishment, is there any philosophies
9 within your church about someone who takes a life whether
10 they should be punished by being put to death or not?

11 A No.

12 Q There's none like that.

13 A No.

14 Q Mr. Key, do you know anything about psychiatry or
15 psychology?

16 A The only thing I know is they just talk to you if you
17 have a break down, that's what I am thinking it stands
18 for.

19 Q Okay. Do you believe -- does Willie Key believe that
20 there is something that people can have something wrong
21 with their mind, that they have a mental illness?

22 A Yes.

23 Q You do believe in that?

24 A Yes.

25 Q And my last question for you, we are back to the

1 second phase of the trial, okay? Assuming that you find
2 Mr. Hughes guilty, all right, that's the only way we get
3 to the second phase of the trial.

4 A Right.

5 Q Assuming that we do, the law of South Carolina
6 requires that you and your other eleven jurors, all twelve
7 of you, must take your pen and put Willie Key, put your
8 name, on a death warrant for Mr. Hughes. Could you do
9 that?

10 A Yes, sir.

11 Q You could sign for him to be put to death either my
12 electrocution or lethal injection?

13 A Yes.

14 Q And, equally speaking, if you felt that death wasn't
15 appropriate and the other eleven people wanted to sign it
16 and Willie Key thought he should get life, you wouldn't
17 sign it?

18 A Would I put life or death what I think he deserved?

19 Q That's right.

20 A Yes, I would sign it.

21 Q You would -- let me just so I understand, you would
22 only sign death if you thought that death was appropriate?

23 A Right.

24 Q If you thought life was appropriate, then you would
25 say life?

WILLIE KEY

BY MR. POPE

1 A Yes.

2 Q Thank you. I have no other questions.

3 MR. POPE: If it please The court?

4 EXAMINATION BY MR. POPE

5 Q Mr. Key, I am Tommy Pope. I am the prosecutor up in
6 York and Union Counties. Mr. Kevin Brackett is my Deputy
7 Solicitor and we represent The State's side of this case.
8 Do you kind of feel like you are the one on trial here
9 with all of these questions being asked?

10 A Yes.

11 Q Let me tell you one thing as far as you sitting there,
12 you can't give a wrong answer. Do you know what I mean?
13 You have been asked all of these questions and you wonder
14 where we are coming from, you can't give a wrong answer
15 because all you are doing is telling us how you feel.

16 A Right.

17 Q And so if I in asking you questions if I ask you
18 something and it feels like I am putting words in your
19 mouth or I'm twisting it around or if it seems like it,
20 just stop me because again there is no right answer to
21 what any of us is asking; it's just how Mr. Key feels.

22 A Right.

23 Q Going back just briefly over what you have just gone
24 over and it seems like you have been asked I know the same
25 things about twenty times now about being fair and open,

1 you are the type of man you would want to hear everything
2 from both sides before you made a decision, is that right?

3 A Yes, sir.

4 Q Of course, you realize -- the defense doesn't have to
5 put up anything, we have to prove our case; you understand
6 that?

7 A Yes, sir.

8 Q And so if you were seated in the jury box, of course,
9 it will be up in York County, but if you were seated in
10 the jury box, as soon as you went in that jury box, you
11 wouldn't make up your mind because you wouldn't have heard
12 anything yet, is that right?

13 A Right.

14 Q You would have to wait to hear whatever facts came up
15 before you could decide if somebody was guilty or not
16 guilty, right?

17 A Right.

18 Q And then if we got to the second phase, of course, if
19 they are not guilty, that's the end of it, but if you find
20 him guilty, I think you said if somebody did wrong, they
21 need to be punished.

22 A Right.

23 Q That's when we get to the second part. What's a
24 little different in a death penalty case, in a normal case
25 if a man is found guilty and punished, then the judge

1 would determine what the penalty would be. In a death
2 penalty case the jury decides and they decide by hearing
3 whatever we put up, we call them bad things like
4 aggravation, maybe you would hear something about the
5 victim, you know, the person that was killed; the defense
6 may, and they don't have to, but they may put up good
7 things about the defendant or things of why it shouldn't
8 be a death penalty. One thing I want to go back to and
9 like I say I know it feels like we are just hitting you
10 question after question. Once you got to that second
11 phase, once the verdict has been determined, in other
12 words, once we found guilty or not guilty and if the
13 defendant was guilty and we then went to that second
14 phase, you wouldn't decide whether it should be life or
15 death until you had heard everything, is that right?

16 A Right.

17 Q And if you heard everything and you thought life was
18 appropriate after hearing the good, the bad, and
19 everything else, if you thought life was appropriate, you
20 would say so?

21 A Right.

22 Q If you had heard everything and you thought death was
23 appropriate, again you've heard everything the judge said
24 and everything we put up, if you thought death was
25 appropriate, could you give death?

1 A Right.

2 Q And so there's no way sitting here today -- I think
3 Mr. Schusterman had asked you had you ever thought about
4 it before, nobody has ever asked you these kind of
5 questions before, right?

6 A No.

7 Q And so you would want to wait until you had heard the
8 facts and then you would make a decision?

9 A Right.

10 Q The reason I ask Mr. Schusterman asked you a series of
11 questions and he asked you about saying, you know,
12 remember what he said eleven jurors and you were the one
13 and you believed life and they believed death, so you said
14 you would stick with life.

15 A Yes.

16 Q You are the type of juror as I understand it, and
17 again I don't want to put words in your mouth, you'd want
18 to hear everything, you wouldn't be close minded, but you
19 are going to speak your heart, you are going to speak what
20 you feel, is that right?

21 A Right.

22 Q Okay, he then gave you the opposite and he said if
23 everybody said life and you felt death and you told him,
24 you said, well, I'd still put life. Is that right or if
25 you felt death was appropriate, would you say death?

1 A Right.

2 Q Okay. I know sometimes we seem like we ask the same
3 thing six times and spin it around. The final question
4 and I want to make clear on this, you know, we are saying
5 life or death and, you know, certainly this is serious,
6 you know, and this is a serious task that we are asking
7 any juror to do, you know, because, you know, The State
8 alleges there is a murder and, of course, the man is on
9 trial for his life. If the jury determines -- if you are
10 a juror and you determine after hearing everything that
11 death was appropriate, each juror, just like Mr.
12 Schusterman said, each juror is required to sign a form
13 that says, you know, we've heard the facts, we've heard
14 the evidence, and in this case we think death is
15 appropriate.

16 A Right.

17 Q If after you heard and your heart told you that death
18 was appropriate in the case, would you have any trouble
19 writing Willie Key on that form with those other jurors?

20 A No.

21 Q Even knowing that is is a document that ultimately
22 could send a man to death row and to death?

23 A Right.

24 Q You could speak your heart?

25 A Right.

1 Q Thank you, sir.

2 THE COURT: I am going to ask you to step outside for
3 just a minute.

4 What says The State?

5 MR. POPE: I submit he is qualified, Your Honor.

6 THE COURT: The defense?

7 MR. SCHUSTERMAN: I submit he is qualified, Your
8 Honor.

9 THE COURT: Bring him in. Mr. Key, you are going to
10 be in the jury pool. We are going to draw the jury
11 tomorrow. Call back between five and seven tonight and
12 they will tell you what time to come in tomorrow. That
13 doesn't mean you are on the jury, but you will be in the
14 group from which the jury is drawn. When you come
15 tomorrow, come prepared, that is, packed to go to York
16 County for ten to twelve days because in the event you are
17 chosen, then we want to leave immediately for York County
18 so we can start into the trial -- further start into it on
19 Thursday. So, please call back between five and seven. Do
20 not discuss the case with anyone outside the courtroom and
21 do not read or listen to anything about it from the news
22 media. Okay?

23 JUROR: All right.

24 THE COURT: All right, thank you. Don't call the next
25 one yet. I am going to let everybody order their lunch at

THE STATE VS HUGHES

1 this time. We have got menus. Let me ask The Clerk how she
2 wants to do this. Do you want to mark a menu or write
3 down. How do we do this?

4 THE CLERK: I would suggest that they order from one
5 place, Your Honor.

6 THE COURT: Well, we are; we are all going to order
7 from the Bowery.

8 THE CLERK: Okay, that will be fine. We will take a
9 legal pad and put their name and what they want.

10 THE COURT: Okay, we have got some menus and before we
11 start doing that, while we are still on the record I know
12 I am the one repeating now, but I can tell you there's no
13 value to the court in asking the same questions that has
14 already been answered. I'm trying not to restrict people,
15 but if you ask whether it's A or B and the witness answers
16 it's A, I don't need to know that four more times. So I'm
17 asking you to please in the interest of time and there's
18 no value in it. So I've said enough on that.

19 MR. SCHUSTERMAN: Judge, could I respond to that, just
20 to let you know -- I understand that and I ---

21 THE COURT: Well, this witness in particular both
22 sides asked him whether he could sign the death warrant or
23 could vote for the penalty. He's answered it the same way
24 both times. Now maybe we will find one witness that
25 perhaps wouldn't, but once a witness has said I will do A,

THE STATE VS HUGHES

1 I don't know that it is a value to the court for someone
2 else to ask the same question. I'm just putting it as
3 simple as I can.

4 MR. SCHUSTERMAN: I mean, Your Honor, with a witness
5 like that I myself asked the same question twice and I
6 didn't get the same answer two times. I understand the
7 court's example, but, I mean, sometimes I ask the same
8 question again, I am speaking for myself, not Mr. Pope,
9 but I ask the same question again just because I plan to
10 take it and go down a different line of questioning. I
11 tried my best, but a witness like Mr. Key I had real
12 concerns about that he was even following about what we
13 were talking about.

14 THE COURT: Well, he started off very ifie, I have to
15 admit that and maybe this was not the right witness to
16 call that to everyone's attention and he did make a
17 statement that was confusing and Mr. Pope followed up on
18 that and I have no problem with that because he said the
19 question was if everyone else -- I can't remember how he
20 phrased it, but there was one answer that did not make
21 sense and I have no problem with that being developed, but
22 just for future reference I'm just telling you, I mean I'm
23 going to sit here until midnight tonight and we'll sit
24 here tomorrow and go through Thursday, if we have to, but
25 I want you to know that the court finds no value in the

THE STATE VS HUGHES

1 same question being asked simply by both sides. So just
2 put that in your pipe and smoke it as they say.

3 Now order your lunches and we will take a break at
4 1:00 and eat.

5 MR. POPE: Your Honor, I would have a request that may
6 speed it up some. We both end up explaining a bifurcated
7 trial, that's something really that you haven't touched
8 on, you know, some of ---

9 THE COURT: I will be more thorough in telling them
10 that when I talk to them about the penalty, that it's a
11 two part trial. But, again, like you say, both of you end
12 up telling them about it. If one has already told them
13 about it, why would the other need to? That's what I am
14 driving at.

15 MR. POPE: Well, obviously, Your Honor, again I know
16 Mr. Schusterman has spoken about signing, you know, our
17 whole point in signing, it's like we found with a juror
18 yesterday suddenly, he could do everything until it came
19 down to signing. Mr. Schusterman said, "Could you sign a
20 document if that's what it took?" And they say, "Yes,"
21 but then if I go and slow it down and explain and say you
22 are putting your name John Hayes or whatever on something
23 that gives somebody death, then it focuses in, and lots of
24 times you do, in fact, get a different answer. I mean I
25 don't ---

THE STATE VS HUGHES

1 THE COURT: I haven't addressed any particular
2 questions that I have restricted. I'm just telling you
3 from the court's standpoint that there's no value in
4 getting the second kick of a mule as they say if you learn
5 it all in the first one and so, I am not restricting
6 anything and I certainly don't anyone to back off on their
7 questioning, but just listen to what questions have been
8 asked and answered and ask your questions as to what needs
9 to be followed up on. All right.

10 Let's take a couple of minutes. I have got the menus.

11 (Recess.)

12 We are running so far behind what we are going to ask
13 the Clerk's office to do is call the group that is
14 supposed to be coming in at four ---

15 THE CLERK: Yes, sir.

16 THE COURT: --- and tell them not to come in until
17 nine in the morning.

18 THE CLERK: Nine in the morning.

19 THE COURT: And we have yet to decide what time we
20 want to ask the jurors to come back in. We will know
21 before five. It will probably be like one or two
22 tomorrow, but right now the way we are going we feel that
23 we will be getting a fair number out of each group - knock
24 on wood that that will continue - but we are going slower
25 than we thought and rather than start a group at five or

SANDRA REED

BY THE COURT

1 six tonight, which is what we are looking at, we are just
2 going to carry the four o'clock over until nine in the
3 morning. If the other groups call, ---

4 THE CLERK: They are calling, Your Honor.

5 THE COURT: All right. Tell them to call back
6 tomorrow between nine and eleven. It may be that we will
7 need one more group to come in around lunch time, so we
8 need to keep them on tap, but we won't know that probably
9 until in the morning.

10 THE CLERK: Okay.

11 THE COURT: Is that confusing?

12 THE CLERK: I have got the information. Thank you.

13 THE COURT: Is the defense ready?

14 MR. SCHUSTERMAN: I'm checking on the questionnaire.

15 THE COURT: Sandra Reed.

16 MR. SCHUSTERMAN: Yes, we need the questionnaire, Your
17 Honor, there's a missing questionnaire for the next juror,
18 Juror Number 186.

19 THE COURT: We have one right here. You can use my
20 copy.

21 MR. SCHUSTERMAN: Thank you, Your Honor. I'll hand it
22 back up to the court, Your Honor.

23 THE COURT: Let the record show Mr. Hughes is present.

24 All right, bring in Ms. Reed.

25 SANDRA REED (B/F)

1 Q Have a seat right there. I'm John Hayes and I am
2 going to ask you some questions and I want to remind you
3 that you are still under oath and I am going to ask you to
4 answer pretty loud so everybody out here can hear you,
5 okay?

6 A Okay.

7 Q Are you related by blood or marriage to any of the
8 individuals that you've been introduced to who are
9 involved in this trial?

10 A No, I'm not.

11 Q Do you have any interest, bias or prejudice in this
12 case?

13 A No, I don't.

14 Q Have you formed or expressed any opinion as to the
15 guilt or the innocence of Mr. Hughes?

16 A Excuse me?

17 Q Have you formed any opinion about whether or not Mr.
18 Hughes is guilty or innocent?

19 A No, I haven't.

20 Q Do you know of any reason whatsoever why you could not
21 give The State of South Carolina and the defendant a fair
22 and impartial trial?

23 A No, I don't.

24 Q Would you under your oath follow the law in this case
25 as the trial judge charges it to you?

1 A Yes, I would.

2 Q Now could you depending on the facts and the evidence
3 and the law find a defendant not guilty if you thought
4 that was the correct verdict?

5 A Say that one more time.

6 Q Okay. Could you find a defendant, Mr. Hughes, the
7 defendant not guilty if after hearing the evidence and the
8 law and the facts you thought that was the verdict that
9 was warranted, that would be appropriate?

10 A Yes, I could.

11 Q Could you if you felt that the evidence and the law
12 and the facts warranted a finding of guilty, could you
13 find him guilty?

14 A Yes, I could.

15 Q Have you discussed this case with anyone?

16 A No, I haven't.

17 Q Have you read anything about this case?

18 A No, I haven't.

19 Q Now Mr. Hughes is a black gentleman and Mr. McCants,
20 the victim, was white and is alleged to have been at work
21 as a law enforcement officer at the time of his death.
22 Would these facts prevent you from rendering a fair and
23 impartial verdict?

24 A No, it wouldn't.

25 Q Now I am going to talk to you a minute about the death

1 penalty. Now this type case is tried in two stages, one
2 where a defendant's guilt or innocence is determined and a
3 second, if he were found guilty and only if he is found
4 guilty, you go into a penalty phase, a bifurcated trial.
5 Do you understand that?

6 A Yes, I do.

7 Q The fact that we are talking about the second part,
8 the sentencing phase, the penalty phase of the trial, is
9 no indication by the court or anyone else as to Mr.
10 Hughes' guilt or innocence. He is by law presumed innocent
11 and until a jury would find him guilty beyond a reasonable
12 doubt, he continues to be presumed innocent. Do you
13 understand that?

14 A Yes, I do.

15 Q And there are no right or wrong answers to these
16 questions that I am posing to you. Do you understand?

17 A I understand.

18 Q Now I put a sheet in the jury room. Did you have an
19 opportunity to review that?

20 A Yes, I read it.

21 Q Did you find yourself in one of those categories?

22 A Yes, I did.

23 Q Which one?

24 A The third one.

25 Q All right. Now as a juror could you participate in a

1 jury verdict recommending the penalty of death if the
2 evidence and the law warranted such a verdict?

3 A No, I don't believe in the death penalty because of my
4 religion.

5 Q All right, what religion?

6 A I'm a Jehovah Witness and I do believe in punishment
7 though. I could about the life imprisonment; I do believe
8 in life imprisonment.

9 Q If the defendant were found guilty, you could
10 participate in recommending a sentence of life
11 imprisonment, is that correct?

12 A That's correct.

13 Q But you are telling me that you could not recommend
14 the penalty of death for murder?

15 A No, I don't.

16 Q Is that the case regardless of the facts and
17 circumstances that developed during the trial?

18 A Yes, it would be regards the circumstances, like if I,
19 you know, found him and believed that he was guilty, I
20 believe in life imprisonment instead of the death penalty.
21 I don't believe in - I believe God give us life and he
22 don't want you to take life, so I couldn't present the
23 death penalty.

24 Q Could that opposition to the death penalty be changed
25 by the evidence during the trial?

1 A No.

2 Q In spite of that position, would you be willing to
3 consider the option, if he were found guilty, of both life
4 and death or is your opposition so fixed that you would be
5 prevented from voting for the death penalty under any
6 circumstances?

7 A That's right, I wouldn't present the death penalty.

8 Q Okay. Now if you were selected on this case, you
9 would have to go to York County for ten or twelve days and
10 be sequestered. Would that present any hardship to you?

11 A No, if I have to, I'd have to go along with it.

12 Q All right, answer the questions by Mr. Brackett and
13 then someone from the defense side.

14 EXAMINATION BY MR. BRACKETT

15 Q Good afternoon, Ms. Reed. My name is Kevin Brackett. I
16 am the deputy solicitor and I work with Tommy Pope, who is
17 the solicitor over in York County and we are prosecuting
18 this case and I just have a couple of quick short
19 questions for you.

20 A Okay.

21 Q You indicated that you were a type three person, but
22 now after further questioning you have said based on your
23 religious beliefs there is absolutely no way you could
24 vote for the death penalty.

25 A No, in any circumstances.

1 Q Now these are heart felt religious beliefs and you
2 have given this matter a good deal of thought?

3 A Yes.

4 Q No matter how bad the case is or how terrible the
5 circumstances of the murder are, no matter what, you could
6 not give the death penalty under any circumstances?

7 A No.

8 Q In addition to voting for the death penalty, if you
9 were called on to be a juror, not only would you have to
10 vote for the death penalty, you would have to sign your
11 name on a form indicating that you voted for the death
12 penalty. You couldn't do that? You could not participate
13 in any way?

14 A No.

15 Q And this is your heart felt religious -- and there is
16 no wrong answer, this is exactly what you are supposed to
17 do, tell us how you feel.

18 A Right.

19 Q And that's how you feel that there is no way you could
20 participate in a death penalty case?

21 A No.

22 Q Okay, well, thank you very much.

23 EXAMINATION BY MR. SCHUSTERMAN

24 Q Good afternoon, Ms. Reed.

25 A Hi.

SANDRA REED

BY MR. SCHUSTERMAN

1 Q My name is Steve Schusterman and I am an attorney from
2 York County and I represent Mr. Hughes.

3 A Okay.

4 Q The lady seated next to me in the black jacket, that's
5 Ms. Brice. She also is an attorney and she is representing
6 Mr. Hughes.

7 Ms. Reed, you indicated that you are a Jehovah
8 Witness, correct?

9 A That's right.

10 Q And it's your religious belief that says you are not
11 to believe in the death penalty?

12 A That's right.

13 Q That's correct, right?

14 A Correct.

15 Q Okay, when you were sitting in the juror room out
16 there, you took that piece of paper that had the three
17 types of jurors on it ---

18 A Uh-huh.

19 Q --- and you read all three?

20 A Yes, I did.

21 Q And when the judge asked you, he said to you, Ms.
22 Reed, which type juror are you, and what did you say?

23 A Number three.

24 Q You said you were number three.

25 A Uh-huh.

1 Q And you know what number three said?

2 A Yes.

3 Q Number three said that you are open minded, that you
4 want to listen to all of the evidence, that once you
5 listened to everything that's when you are going to make
6 your mind up, no preconceived ideas, but you are going to
7 listen to the judge, you are going to listen to the
8 evidence and then you are going to go along with eleven
9 other people and decide whether life without parole or
10 death was appropriate.

11 A Right.

12 Q Is that how you understood Juror Number three to be?

13 A Right.

14 Q And you told the court that you were a juror number
15 three, is that correct?

16 A That's correct.

17 Q And now, Ms. Reed, you are saying that you are not a
18 number three, is that right?

19 A Well, the way I read it, the way I understood it, that
20 I could give a person life imprisonment if he did the
21 wrong doing.

22 Q That's absolutely true, you can give a person life
23 imprisonment for any reason or no reason at all.

24 A Yes, I could give him life imprisonment ---

25 Q That's correct.

1 A --- if he did wrong, that's right, I want him to have
2 the life imprisonment, but I would under no circumstances
3 give him the death penalty.

4 Q But juror number three ---

5 A That's the way I understood it.

6 Q Okay, but juror number three says that if appropriate
7 it says in the language of juror number three it says the
8 last sentence says "If the facts presented by The State,
9 Mr. Pope, or by the defendant, Mr. Hughes, so warranted,
10 the juror could bring in a verdict for the death penalty."
11 Do you remember reading that?

12 A Yes.

13 Q The last sentence of number three?

14 A Uh-huh.

15 Q And when you read that and you decided you were number
16 three I assume you took that into account.

17 A Yes, I did, but that's the way I'm seeing it, that's
18 the way I had the feeling, the way I read it was saying --
19 thinking that I could give, which was my choice, I could
20 pick the life imprisonment instead of giving him the death
21 penalty, if it was appropriate; that's what I was taking
22 it as.

23 Q If it was appropriate.

24 A Right.

25 Q So if the judge said to you and the judge is going to

1 instruct you on the law, if the judge says to the jurors
2 that under these situations you could give the death
3 penalty or life, you would consider both, and I don't want
4 to put words in your mouth, but what you are saying is you
5 would lean towards a life without parole ---

6 A Right.

7 Q --- but what I'm asking you as a juror number three
8 what you are saying is that you will consider the death
9 penalty if it's appropriate, if it's an appropriate
10 situation, you will consider it, not that you definitely
11 will give it, not that you definitely won't give it ---

12 A That's right.

13 Q --- but you would consider it.

14 A Right, I'd consider it. I would consider it, but I'm
15 not saying I would give it.

16 Q Absolutely -- and no one is asking you today to decide
17 whether you are going to give life; you haven't heard the
18 first word of it; the fact is we don't even know if Mr.
19 Hughes is guilty, he's pled not guilty to it ---

20 A That's right.

21 Q --- so first you are going to give consideration to
22 guilt or innocence.

23 A Right, a hearing.

24 Q A hearing, ---

25 A That's why ---

1 Q --- absolutely and you would hear ---

2 A That's right; that's why I picked number three.

3 MR. BRACKETT: Objection ---

4 THE COURT: Just ask a question and let her answer it,
5 one at a time.

6 Q If you hear the evidence and you are not satisfied
7 that he is even guilty, you can go not guilty, correct?

8 A Correct.

9 Q And then you don't even go to a second phase, you
10 won't even have to make this decision.

11 A Correct.

12 Q But if we go to the second phase, if you determine
13 that Mr. Hughes, you and the eleven other jurors determine
14 that Mr. Hughes is guilty, then you go to life or death
15 ---

16 A Yes.

17 Q --- and all we are asking you is if the judge says to
18 you that you may consider the death penalty or life, you
19 can consider either one, would you consider the death
20 penalty, will you consider it along with the eleven other
21 jurors?

22 A Yes, I could consider it, yes.

23 Q You could consider it.

24 A Right.

25 Q And now that you said that you could consider it, when

1 if you considered it and this was a situation where you
2 and the eleven other jurors decided that this case is so
3 bad the facts in it are so wrong that this man needs to be
4 put to death, could you take your pen and sign that he
5 deserves death?

6 A No, I could not do that, no. I wouldn't do that.

7 Q Under no circumstances?

8 A No, under no circumstances.

9 Q Even though you had considered it.

10 MR. BRACKETT: Your Honor, I am going to object. I
11 think she has answered --

12 THE COURT: I sustain the objection. I think she's
13 been asked.

14 MR. SCHUSTERMAN: I have nothing further.

15 THE COURT: You may step outside.

16 What says The State?

17 MR. BRACKETT: Your Honor, I submit she's not
18 qualified.

19 THE COURT: What says the defense?

20 MR. SCHUSTERMAN: Your Honor, again I was attempting
21 to rehabilitate her; I think she ---

22 THE COURT: Right, I think that's the problem is - I
23 think you were trying, you reached beyond the scope of
24 delving into her thoughts in trying to convince her of a
25 certain position. She had unequivocally on several

1 occasions said that under no circumstances could she give
2 the death penalty. Go ahead and finish, but ---

3 MR. SCHUSTERMAN: Your Honor, you say that she
4 unequivocally, she also came in and assuming that she can
5 read the English language also said that she was a type
6 three juror, which would seem to me ---

7 THE COURT: She also testified that she misinterpreted
8 what type three meant. She thought it meant it gave her a
9 choice and would choose life. In any event, you are on
10 the record. You think you were cut off too early, correct?

11 MR. SCHUSTERMAN: Yes, sir.

12 THE COURT: And you think she is qualified.

13 MR. SCHUSTERMAN: Yes, sir.

14 THE COURT: All right. I find she is not qualified.

15 Bring in the juror, Ms. Reed.

16 Ms. Reed, we appreciate your being with us. We
17 appreciate your time. I am going to excuse you from any
18 further service. If you will step around here, they will
19 give you a check and a slip to take to your work.

20 All right, bring in Adrena McCollum.

21 ADRENA MCCOLLUM (W/F)

22 EXAMINATION BY THE COURT

23 Q Hey, come on and have a seat, please. I am John Hayes
24 and I am going to ask you some questions. I want you to be
25 relaxed and I want to remind you that you are under oath

1 and I have got one further request and that is if you will
2 speak loudly so all these people out here can hear you,
3 okay? Now are you related by blood or marriage to any of
4 the individuals participating in this matter, the
5 defendant, or anyone participating as an attorney?

6 A No, sir.

7 Q Do you have any interest, bias, or prejudice in
8 connection with this case?

9 A No, sir.

10 Q Have you formed or expressed an opinion as to the
11 guilt or the innocence of the defendant, Mr. Hughes?

12 A No, sir.

13 Q Do you know of any reason whatsoever why you could not
14 give The State of South Carolina and the defendant, Mr.
15 Hughes, a fair and impartial trial?

16 A No, sir.

17 Q Would you under your oath follow the law in this case
18 as the trial judge charges it to you?

19 A Yes, sir.

20 Q Could you depending on the facts and the evidence and
21 the law if you felt it was warranted find the defendant
22 not guilty?

23 A Yes, sir.

24 Q Could you under the facts, the law, and evidence if
25 you felt it was warranted find the defendant guilty?

1 A Yes, sir.

2 Q Now have you discussed this case with anyone?

3 A No, sir.

4 Q Have you read or heard about this case from any source
5 whatsoever?

6 A No, sir.

7 Q Now, Mr. Hughes, the defendant is a black gentleman,
8 and the victim, Mr. McCants, was white. He is alleged to
9 have been, Mr. McCants, that is, on duty as a police
10 officer at the time of his death. Would these facts and
11 factors affects your ability to render a fair and
12 impartial verdict?

13 A No, sir.

14 Q Would you be able to make your verdict uninfluenced by
15 those particular factors?

16 A Yes.

17 Q Now I am going to ask you certain questions about your
18 views on the death penalty. These questions have no right
19 or wrong answers and the fact that we are discussing the
20 death penalty is no indication of any thoughts or any
21 indication whatsoever as to the guilt or the innocence of
22 Mr. Hughes. He is presumed innocent of these charges until
23 such time as a juror would determine his guilt beyond a
24 reasonable doubt. Do you understand that?

25 A Yes, sir.

1 Q Do you understand that in a death penalty case there
2 are two stages. The first you would be considering whether
3 or not The State has proven the defendant's guilt beyond a
4 reasonable doubt and if they find him guilty of murder,
5 then they hear additional evidence in a second phase of
6 the trial to determine what penalty, death or life
7 imprisonment. Do you understand that?

8 A Yes, sir.

9 Q And, of course, as I say he is presumed innocent until
10 he is found guilty. Now I put a sheet in your jury room
11 with the three types of jurors on it. Did you review it?

12 A Yes, sir.

13 Q Did you find yourself in one of those categories?

14 A Yes, sir.

15 Q Which one?

16 A Number three.

17 Q All right, could you as a juror participate in a jury
18 verdict recommending the penalty of death if the evidence
19 and the law warranted such a verdict?

20 A Yes, sir.

21 Q Could you as a juror participate in a jury verdict
22 recommending a sentence of life imprisonment for murder if
23 the evidence and the law warranted that verdict?

24 A Yes, sir.

25 Q Now other than the general inconvenience that we know

1 it will work on anyone to have to leave their home for ten
2 or twelve days to participate in a trial and be
3 sequestered, would doing that present any undue hardships
4 to you?

5 A Yes.

6 Q What?

7 A Because I'm the only one that sees to my children
8 besides my mother. I'm divorced.

9 Q How old are your children?

10 A Four and nine.

11 Q Do you have an outside the house job?

12 A Uh-huh.

13 Q And your mother can take care of the children if you
14 serve on the jury?

15 A Yes, it would be according, you know, to what time it
16 was. She usually sees to them like when I work from nine
17 to four or four until eleven.

18 Q All right. Could she keep them for a ten to twelve day
19 period of time if you went and served on the jury?

20 A I don't know; I'd have to ask her that.

21 Q Does your mother work?

22 A She cleans houses and sees to my children.

23 Q Answer any questions the solicitor and the defense
24 have.

25 EXAMINATION BY MS. BRICE

1 Q Ms. McCollum?

2 A Yes, ma'am.

3 Q I notice the list has Adrena Mills.

4 A That was my married name.

5 Q Your married name is Mills?

6 A Uh-huh.

7 Q So you don't mind my referring to you as Adrena Mills?

8 A Right.

9 Q My name is Chris, Chris Brice, and I represent the
10 defendant Mar-Reece Hughes along with Steve Schusterman.
11 He is seated there. First of all, I would like to thank
12 you for taking the time out to complete your questionnaire
13 and I appreciate the consideration you have given to the
14 questions that were asked not only on the questionnaire,
15 but also today. Have you ever given any consideration to
16 the death penalty before?

17 A No.

18 Q So prior to today you have never given it much
19 thought?

20 A Huh-uh.

21 Q What are your opinions, after thinking about it, what
22 are your opinions concerning the death penalty?

23 A I guess it's according to what the person had done
24 before I could make a judgment.

25 Q So you are saying that you would look at the facts and

1 circumstances of the case to determine whether or not the
2 death penalty was warranted?

3 A Yes, ma'am.

4 Q I think the judge has already mentioned the fact that
5 there are basically two phases to the trial. It's the
6 guilt or innocence phase and if Mr. Hughes is found
7 guilty, then it would go into a sentencing phase. Did you
8 know that or do you understand that?

9 A I didn't know that.

10 Q Okay, you didn't know that?

11 A No.

12 Q So what will happen is in the guilt or innocence phase
13 we will present certain facts and circumstances and those
14 facts and circumstances may be different in the sentencing
15 phase, okay?

16 A Okay.

17 Q Do you believe that you could, first of all, before we
18 even got to the sentencing phase, you would have to find
19 whether or not Mr. Hughes was guilty or innocent. You
20 understand that?

21 A Yes.

22 Q And that guilt has to be established beyond a
23 reasonable doubt by The State.

24 A Yes.

25 Q And if there were reasonable doubt in your mind, do

1 you believe that you could return a verdict of innocence?

2 A Yes, ma'am.

3 Q And if the jurors, the other eleven jurors, believed
4 that he was guilty and you believed that he was innocent,
5 could you stand fast in your convictions that he was, in
6 fact, innocent?

7 A Yes, ma'am.

8 Q Do you have any preconceived ideas or opinions
9 concerning race, gender or religion?

10 A No, ma'am.

11 Q I see in your questionnaire that in question number 27
12 that your brother had been shot.

13 A Uh-huh.

14 Q Could you describe the circumstances?

15 A He shot himself.

16 Q Did he commit suicide?

17 A No, he's still living, but he shot himself in the
18 stomach.

19 Q Was it accidental?

20 A No, he was going through a divorce.

21 Q Would what happened to your brother in any way affect
22 your judgment concerning Mr. Hughes?

23 A No, ma'am.

24 Q Do you believe that people can suffer from mental
25 illnesses?

1 A Yes, ma'am.

2 Q And do you believe that psychiatrists and
3 psychologists are helpful in assisting people with mental
4 illness?

5 A Yes, ma'am.

6 Q Do you know anybody from Rock Hill or York County?

7 A No.

8 Q Just one moment, please. Adrena, you told me that you
9 didn't realize that there were two different phases to a
10 death penalty trial, the guilt and innocence phase and the
11 sentencing phase. Also, if you rendered a verdict of
12 death, if you find that the sentencing is appropriate --
13 that death is appropriate in this case, what you would
14 have to do is sign a Adrena Mills for death on this sheet
15 of paper showing that you believed that Mr. Hughes should
16 be put to death. Could you do that?

17 A Yes, ma'am.

18 Q Thank you.

19 EXAMINATION BY MR. BRACKETT

20 Q Ma'am, my name is Kevin Brackett and I am the deputy
21 solicitor of the 16th circuit. I work for Tommy Pope who
22 is seated over there at counsel table with me. Mr. Pope
23 and I are prosecuting this case and I just have a couple
24 of quick questions for you. You say you have two children?

25 A Yes, sir.

1 Q One is four and one is nine?

2 A Right.

3 Q And you have the primary responsibility of taking care
4 of those kids?

5 A Yes.

6 Q In the evening and you work in the day different
7 shifts?

8 A Yes.

9 Q But your mother could take care of them?

10 A Yes.

11 Q If you had to go to York to sit on this case she could
12 take care of them?

13 A Yes.

14 Q The questions we are asking this is our chance to get
15 to know you a little bit and because of the serious nature
16 and how important this case is for everybody involved
17 that's why we need to know because this is your chance to
18 tell us how you feel about the death penalty and whether
19 you would have any problems because if you did get
20 selected for the jury, once you're back in that jury room
21 trying to make a decision and grappling with this it's too
22 late to come back and say wait a minute I have a problem
23 with this, I can't do this, you're asking me to do
24 something I just can't do. This is your chance really to
25 tell us how you feel and there are no wrong answers. So

1 you have indicated you are a type three juror and you
2 could give the death penalty if that's what you thought
3 were appropriate.

4 A Yes.

5 Q And likewise you could give life?

6 A Yes, sir.

7 Q And I just wanted to confirm that you understood the
8 signing. You hesitated a little bit and I wanted to just
9 make sure and give you another opportunity, you would have
10 to sign the death warrant or acknowledging with all twelve
11 jurors or all eleven other jurors that death was the
12 appropriate penalty in your opinion. And you could sign
13 your name?

14 A Yes, sir.

15 Q Thank you very much.

16 THE COURT: I am going to ask you to step outside for
17 just one minute.

18 What says The State?

19 MR. BRACKETT: Your Honor, we submit she's qualified.

20 THE COURT: The defendant?

21 MS. BRICE: We submit she is qualified, Your Honor.

22 THE COURT: All right, bring her back in. I so find.

23 Ms. Mills, I am going to have you included in the pool
24 for which the jury will be drawn. You might go ahead and
25 chat with your mother to make sure all of that is

RICHARD JEFFORDS

BY THE COURT

1 taken care of. You may not be drawn, but if you will call
2 back between five and seven tonight, they will give you a
3 number to call, and when you come tomorrow, do come
4 prepared to go on a ten to twelve day sequestration, that
5 is, be packed in case you are chosen. Keep in mind that
6 you are not to read anything or listen to anything about
7 this case. All right, thank you.

8 RICHARD JEFFORDS (W/M)

9 EXAMINATION BY THE COURT

10 Q Hi, Mr. Jeffords, please come up here and have a seat.
11 I am John Hayes and I want you to be relaxed. I am going
12 to be asking you some questions and you are still under
13 oath regarding these questions. I am going to ask you to
14 answer loud so everybody can hear you, okay?

15 Mr. Jeffords, are you related by blood or marriage to
16 any of the participants in this matter?

17 A No, sir.

18 Q Do you have any interest or any bias or prejudice in
19 regards to this case?

20 A No, sir.

21 Q Have you formed or expressed any opinion of the guilt
22 or the innocence of the defendant, Mr. Hughes?

23 A No, sir.

24 Q Do you know of any reason whatsoever why you could not
25 give both The State and the defendant a fair and impartial

1 trial?

2 A No, sir.

3 Q Would you under your oath follow the law in this case
4 as the trial judge charges it to you?

5 A Yes, sir.

6 Q Would you or could you depending on the facts,
7 evidence and law find the defendant not guilty if you
8 thought that was the appropriate verdict?

9 A Yes, sir.

10 Q Could you under the same circumstances based on the
11 facts, evidence and law if you thought it was appropriate
12 find the defendant guilty?

13 A Yes, sir.

14 Q Have you discussed this case with anyone?

15 A No, sir.

16 Q Have you read about it or heard about it from any
17 source whatsoever?

18 A No, sir.

19 Q Now the defendant, Mr. Hughes, is a black gentleman
20 and the victim, Mr. McCants, was white and is alleged to
21 have been working as a police -- a law enforcement officer
22 at the time of his death. Would that in any way prevent
23 you from rendering a fair and impartial verdict?

24 A No, sir.

25 Q Would that influence your verdict in any way

1 whatsoever?

2 A No, sir.

3 Q All right, Mr. Jeffords, we are going to talk a few
4 minutes about your views on the death penalty. There are
5 no right or wrong answers to these questions and I want to
6 emphasize to you that we are talking about penalty, but
7 that is no indication as to any guilt or innocence of the
8 defendant. He is presumed innocent of the charges against
9 him and is so presumed unless and until a jury finds him
10 guilty beyond a reasonable doubt. In a death penalty case
11 you have two stages of the trial. You have one where it is
12 essentially decided whether or not the defendant is guilty
13 or not guilty of murder and if he is found guilty, then
14 you have a second phase, a second stage of the trial,
15 where the jury determines the penalty, life imprisonment
16 or death. Do you understand that?

17 A Yes, sir.

18 Q All right, now, I put a list in the jury room of juror
19 types. Did you review it?

20 A Yes, sir.

21 Q Did you find yourself in one of those categories?

22 A Yes, sir.

23 Q Which category?

24 A Number two.

25 Q And that is a juror who would under no circumstances

1 impose the death penalty, is that correct?

2 A Yes, sir.

3 Q So you are telling me that you have a fixed opposition
4 to the death penalty?

5 A Yes, sir, I don't believe in killing anybody.

6 Q Could this opposition to the death penalty even though
7 one had been found guilty of murder, could it be changed
8 by the evidence presented during the trial?

9 A No, sir.

10 Q In spite of your opposition to the death penalty,
11 would you consider penalties that The State of South
12 Carolina provides in this case, that would be life
13 imprisonment or death?

14 A Could you repeat that, sir?

15 Q All right. Could you -- is your opinion against the
16 death penalty so fixed that it would prevent you from
17 considering it along with life imprisonment, which are
18 allowed by law in South Carolina? Would your opposition
19 to the death penalty so fixed that you would under no
20 circumstances consider it?

21 A Yes, sir.

22 Q Are you telling me that it would be difficult for you
23 to impose the death penalty or impossible to impose the
24 death penalty?

25 A It would be really difficult for me to.

1 Q Okay. But it would not be impossible?

2 A No, sir, it won't be impossible.

3 Q So -- let me make sure I'm understanding you now.
4 After you heard The State's evidence and the defendant's
5 evidence concerning the circumstances of the death, that
6 is, certain things that we call aggravating circumstances
7 and certain things we call mitigating circumstances -
8 after you have heard all of that, you could -- are you
9 telling me that you could, if you felt it was appropriate,
10 impose the death penalty on a defendant?

11 A Yes, sir.

12 Q All right, could you sign the verdict, that is, when a
13 verdict of death is imposed by a jury, all twelve jurors
14 must sign indicating that is their finding and that they
15 are voting in favor of the death penalty. Could you sign
16 such a document if you determined that death was the
17 appropriate penalty?

18 A Yes, sir.

19 Q Okay, other than the general hardships that are
20 presented to anybody being taken away from their home for
21 a period of time, would traveling to York, and I know we
22 talked yesterday, but any other hardships that would be
23 imposed upon you by being sequestered for ten to twelve
24 days?

25 A No, sir.

1 Q Answer the questions imposed by The State and the
2 defense.

3 EXAMINATION BY MR. POPE

4 Q Mr. Jeffords, I am Tommy Pope. I am the solicitor up
5 in York and Union Counties. Kevin Brackett is my deputy
6 solicitor.

7 A Yes, sir.

8 Q Have you ever had to sit up here like this and answer
9 these kind of questions before?

10 A No, sir.

11 Q Have you had an opportunity to sit and think much
12 about the death penalty before?

13 A I just don't believe in taking anybody's life like
14 that.

15 Q Let me tell you one thing before I go any further. As
16 you sit there, you can't give a wrong answer because all
17 you are doing is telling us what you think.

18 A Yes, sir.

19 Q And so if I feel like I'm trying to push you one way
20 or another, I'm not doing that and if I look like I'm
21 putting words in your mouth, you stop me, you strike me
22 down, okay?

23 A Yes, sir.

24 Q When we came in, you told the judge that you were a
25 type two, that you would always give life.

1 A Yes, sir.

2 Q Okay and then when he was asking you some other
3 questions, you said that you could give death. How do you
4 feel about it and, again, you said twice you don't believe
5 in killing anybody.

6 A Yes, sir, it'd have to be circumstances like really
7 bad, you know, and I'd have to weigh the evidence, however
8 you call it.

9 Q Okay. So for me to understand where you stand and,
10 again, first, there is a two part trial, the first thing
11 The State has to prove everything, the defense doesn't
12 have to prove anything. Do you understand that?

13 A Yes, sir.

14 Q And we would have to prove the defendant guilty before
15 we ever even got to the second part; you understand that?

16 A Yes, sir.

17 Q Then in the second part if the defendant was found
18 guilty, then we would get to the situation where we would
19 put up bad things about the crime or bad things about the
20 defendant or good things about the victim or whatever and
21 likewise they could put up good things about the defendant
22 or things they say make the crime not so bad; do you
23 understand?

24 A Yes, sir.

25 Q As I understand what you are telling me after hearing

1 that your basic position is that you couldn't take
2 somebody else's life, but you are saying if it were bad
3 enough you would take somebody else's life? Again I am
4 not trying to put words in the situation.

5 A If it was bad enough, the evidence, you know, how it
6 exactly happened and everything.

7 Q And you would have to wait until you heard that?

8 A Yes, sir.

9 Q So really what has happened as far as you being a
10 number two you don't believe in taking somebody else's
11 life, but you could do it after hearing the facts and
12 hearing the law that the judge instructs you, is that
13 right?

14 A Yes, sir.

15 Q So really that would be more of the three because
16 there are times when you would give the death penalty?

17 A Yes, I guess so, yes, sir.

18 Q And, again, there's no right or wrong answers. If you
19 don't feel you are a three, just tell me that. But you
20 feel you are the type that would want to hear everything?

21 A Yeah, I guess three, yes.

22 Q Okay. One of the requirements, now we are talking
23 about the second phase, I keep reminding you if we don't
24 prove guilt, we don't get to the second phase, but a part
25 of the second stage the defendant would have to -- I mean

1 the defendant wouldn't have to do anything -- The State
2 would have to show -- if we showed evidence beyond a
3 reasonable doubt or showed evidence that you felt like it
4 was bad enough that death was the verdict, one of the
5 requirements is that each juror who feels that death is
6 appropriate, of course, it has to be unanimous, would have
7 to sign a sheet that comes back to the court and that
8 sheet would say that we feel after hearing the facts in
9 this case death was appropriate and each juror would sign
10 their names. And that form is going back to the judge to
11 tell the judge that this jury says that death, in essence,
12 that the jury says that someone should be put to death for
13 this particular crime. If you felt like that was
14 appropriate, could you sign Richard Jeffords' name, could
15 you sign your name to put somebody to death?

16 A Yes, sir.

17 Q Okay. All right, Mr. Jeffords, I have just a few
18 other questions. You had come up before the court the
19 other day and told about PTI and all that stuff. Is there
20 anything surrounding that that would give you any bad
21 feelings toward law enforcement that would affect this
22 case?

23 A No, sir.

24 Q I know too you say that you take insulin?

25 A Yes, sir.

1 Q Would that cause you any problems as long as the court
2 accommodates you, would that cause any problems as far as
3 this case?

4 A No, sir.

5 Q And I think you said you have a baby on the way?

6 A Yes, sir.

7 Q And you have told the judge -- would that cause you
8 any problems or prevent you from being fair on this
9 particular case?

10 A No, sir.

11 Q I beg the court's indulgence. Thank you, Mr.
12 Jeffords.

13 MR. SCHUSTERMAN: May it please the court?

14 EXAMINATION BY MR. SCHUSTERMAN

15 Q Good afternoon, Mr. Jeffords. How are you, sir?

16 A Good.

17 Q My name is Steve Schusterman and I'm an attorney up
18 from Rock Hill, York County, and I represent Mr. Hughes,
19 the man charged in this offense, this incident. Seated
20 next to me, the lady with the black jacket on, that's
21 Christina Brice, she's my co-counsel; she's helping me try
22 this case, trying it together.

23 A Yes, sir.

24 Q I just have one or two questions for you. Do you
25 remember filling out this questionnaire?

1 A Yes, sir.

2 Q You do remember it. One of the questions that was
3 asked of you is how do you feel about psychiatry or
4 psychology, psychiatrists or psychologists and your answer
5 to it was "Not sure."

6 A Yes, sir.

7 Q What did you mean by that?

8 A I've not really thought about it, about psychiatrists
9 or nothing like that.

10 Q Do you believe that people can have mental illnesses,
11 that something can be wrong with them?

12 A Yes, sir.

13 Q You do believe it.

14 A Yes, sir.

15 Q Do you believe that psychiatrists and psychologists
16 can help with those problems?

17 A Yes, sir, I guess so.

18 Q But you have never had any experience with them?

19 A No, sir.

20 MR. SCHUSTERMAN: I don't have any other questions.

21 THE COURT: I am going to ask you to step outside for
22 just a few minutes.

23 What says The State?

24 MR. POPE: Your Honor, for the record he indicated he
25 didn't believe in killing anybody. I think that he did

DENISE BUSH

BY THE COURT

1 definitely at the beginning say he was a two, but he came
2 around to three and said if the circumstances were bad
3 enough he could give death, so I submit he is qualified.

4 MR. SCHUSTERMAN: We would concur in the solicitor's
5 conviction.

6 THE COURT: Bring him in.

7 Mr. Jeffords, you are qualified and will be serving
8 as a juror or at least in the panel from which a jury will
9 be selected. Don't talk about this case or read about it.
10 Call tonight between five and seven, you will be given a
11 number, and they will tell you what time to report
12 tomorrow. When you report, be prepared, if you are chosen,
13 to immediately go to York County, that is, have your bags
14 packed for a ten to twelve day stay. Thank you.

15 All right, lunch should be here momentarily, if it is
16 not already.

17 THE CLERK: Your Honor, they are to come in and let me
18 know as soon as it gets here.

19 THE COURT: Well, why don't we see if we can work in
20 another. All right, Ms. Bush, Denise Bush.

21 DENISE BUSH (B/F)

22 EXAMINATION BY THE COURT

23 Q Have a seat, please, ma'am. How are you today?

24 A Fine, how are you?

25 Q I'm fine. I am John Hayes and I am going to be asking

1 you some questions and I want you to be relaxed and I want
2 to remind you under oath and I am going to ask you to
3 speak loud so all of us can hear you, okay?

4 A Okay.

5 Q Now are you related by blood or marriage to any of the
6 individuals who were introduced to you yesterday?

7 A No, sir.

8 Q Do you have any interest, bias or prejudice in
9 connection with this case?

10 A No, sir.

11 Q Have you formed or expressed an opinion as to the
12 guilt or the innocence of the defendant, Mr. Hughes?

13 A No, sir.

14 Q Do you know of any reason whatsoever why you could not
15 give The State of South Carolina and Mr. Hughes a fair and
16 impartial trial?

17 A No, sir.

18 Q Would you under your oath follow the law in this case
19 as the trial judge charges it to you?

20 A Yes, sir.

21 Q Could you depending on the facts and the evidence and
22 the law as it would be instructed find a defendant not
23 guilty if you thought that was the appropriate verdict?

24 A Yes, sir.

25 Q Could you based on the facts, evidence and the law

1 find a defendant guilty if you felt that were the
2 appropriate verdict?

3 A Yes, sir.

4 Q Have you discussed this case with anyone?

5 A No, I haven't.

6 Q Have you heard about it or read about it from any
7 source whatsoever?

8 A No, I haven't.

9 Q All right, Mr. Hughes is a black gentleman and the
10 victim, Mr. McCants, was white and it is alleged he was
11 working as a law enforcement officer at the time of his
12 death. Would these facts prevent you from in any way
13 rendering a fair and impartial verdict?

14 A No, it wouldn't.

15 Q Would they influence you in any way?

16 A No, sir.

17 Q Now we are going to talk for just a moment about the
18 penalty of death; that is what is being sought in this
19 case. This case will be tried in two parts, that is,
20 first, the jury would determine whether or not the
21 defendant was guilty of murder and he is presumed innocent
22 of that charge and it is so presumed until such time as
23 the jury were to determine that The State had proven his
24 guilt as to murder beyond a reasonable doubt. Once that
25 has been determined, then there would be a second part to

1 this trial. You will then hear additional evidence and
2 make a decision as to whether the defendant, after having
3 been found guilty of murder, whether it would be the death
4 penalty or life imprisonment. Do you understand that?

5 A Uh-huh.

6 Q So the fact that we are talking about the death
7 penalty at this time is no indication as to the guilt or
8 innocence of Mr. Hughes; you understand that?

9 A Uh-huh.

10 Q And you understand he is presumed innocent.

11 A Yes.

12 Q Now I put a sheet in the jury room that had three
13 types of jurors on it. Did you read it?

14 A Yes, sir.

15 Q Did you find yourself in one of those types?

16 A Yes, I did.

17 Q Which one?

18 A Type two.

19 Q You are type two and type two is one who would under
20 no circumstances ever give the death penalty regardless of
21 the circumstances in the case, is that correct?

22 A Correct.

23 Q Are you telling me then that there are no
24 circumstances in which you would vote for the penalty of
25 death?

1 A Yes, sir.

2 Q Is your opposition to the death penalty such that it
3 could not be changed by the evidence presented during the
4 trial?

5 A No.

6 Q Is your opposition such that you would vote against
7 the death penalty regardless of the facts and
8 circumstances that may develop during the trial?

9 A Yes, sir.

10 Q Is your opposition to the death penalty such that you
11 would even though -- that even though the law allows a
12 jury to impose death or life imprisonment you would only
13 consider life imprisonment?

14 A Right.

15 Q Are you telling me that it would be difficult for you
16 to impose a death penalty or impossible to impose a death
17 penalty?

18 A Impossible.

19 Q Now if you were chosen on the jury, what, if any,
20 hardships would this create for you other than the general
21 ones?

22 A None.

23 Q Okay. Answer any questions from Mr. Schusterman and
24 then someone from the Solicitor's Office.

25 MR. SCHUSTERMAN: Thank you, Your Honor. May it please

1 the court?

2 EXAMINATION BY MR. SCHUSTERMAN

3 Q Good afternoon, Ms. Bush.

4 A Hi.

5 Q How are you?

6 A Just fine.

7 Q My name is Steve Schusterman and I am an attorney from
8 York County. I represent Mar-Reece Hughes. The lady
9 seated next to me is Christina Brice, another attorney, we
10 represent him together.

11 A Uh-huh.

12 Q Let me first state that when the judge is asking you
13 these questions, I am sure he said it, but let me tell
14 you, there are no wrong answers, this is an opportunity
15 for the court, myself and Solicitor Pope and Deputy
16 Solicitor Brackett just to get to know you for a couple of
17 minutes. You indicated that you felt that it would be
18 impossible to give the death penalty.

19 A Correct.

20 Q You say that not knowing any facts about any case.

21 A Uh-huh.

22 Q Are you saying that no matter how heinous the crime,
23 not only murder, but the Solicitor might be able to show
24 you as what is known as aggravating circumstances, things
25 that make it a murder plus ---

DENISE BUSH

BY MR. SCHUSTERMAN

1 A Uh-huh.

2 Q --- just a heinous crime and no matter what the
3 Solicitor presented, no matter how heinous the crime was,
4 under no circumstances would you even let the death
5 penalty come into your mind?

6 A Right.

7 Q Is that your position?

8 A Yes.

9 Q Can you think I'm not asking you to be gory in anyway,
10 but can you think of any scenario where you would think
11 the death penalty would be appropriate?

12 A No, I can't.

13 Q Never?

14 A No.

15 MR. SCHUSTERMAN: I have no further questions, Your
16 Honor.

17 MR. POPE: I have no questions, Your Honor.

18 THE COURT: All right, you may step outside for just a
19 minute.

20 What is the position of The State?

21 MR. POPE: I submit she is clear and unwavering and
22 she does not qualify.

23 MR. SCHUSTERMAN: We would agree, Your Honor.

24 THE COURT: All right, bring her in.

25 Ms. Bush, we appreciate your time and we are going

1 to excuse you and I am going to let you step up here and
2 you will be paid and, again, we thank you for your time.
3 Good luck to you.

4 All right, Marvin Harrison.

5 MARVIN HARRISON (W/M)

6 EXAMINATION BY THE COURT

7 Q Come up here and have a seat, Mr. Harrison. How are
8 you this morning?

9 A Fine.

10 Q Well, it's afternoon, I'm afraid. I am John Hayes and
11 I am going to ask you some questions and I want you to be
12 relaxed and I am going to remind you that you are under
13 oath.

14 A Yes, sir.

15 Q I want you to answer loud enough so that these people
16 out here can hear you. Okay?

17 A All right.

18 Q Are you related by blood or marriage to any of the
19 individuals that I have introduced to you that will
20 participate in this trial?

21 A No, sir.

22 Q Do you have any interest, bias or prejudice in regards
23 to this case?

24 A No, sir.

25 Q Have you formed or expressed any opinion about any

1 issue or matter involved in this case? First, do you know
2 anything about this case?

3 A No.

4 Q Have you formed or expressed an opinion as to the
5 guilt or the innocence of the defendant?

6 A No, sir.

7 Q Do you know of any reason whatsoever why you could not
8 give The State or the defendant a fair and impartial
9 trial?

10 A My brother was indicted on a murder case and I had to
11 go to the penalty phase and we did get -- he did get life
12 out of it and I don't know if, you know, that would affect
13 me in my judgment or anything; I'm just not sure.

14 Q Well, let me follow up with some questions and I'll
15 come back to that in just a moment. Under your oath,
16 keeping in mind what you just told me, absent that, could
17 you under your oath follow the law in this case as the
18 trial judge gives it?

19 A Yes, sir.

20 Q Could you if you felt it was appropriate based on the
21 facts and the evidence and the law find the defendant not
22 guilty, if you thought that were the appropriate verdict?

23 A Yes, sir.

24 Q Could you find him guilty if you felt that were the
25 appropriate verdict?

1 A Yes, sir.

2 Q Have you discussed this case with anyone?

3 A No, sir.

4 Q Have you read or heard about it from any source
5 whatsoever?

6 A No, sir.

7 Q Now, Mr. Hughes is a black gentleman and the victim,
8 Mr. McCants was white, and it is alleged Mr. McCants was
9 working in law enforcement and on duty at the time of his
10 death. Would these factors prevent you from rendering a
11 fair and impartial verdict?

12 A No, sir.

13 Q Would they affect your decision in any way whatsoever?

14 A No, sir.

15 Q We are going to talk just a minute about the death
16 penalty and there are no right or wrong answers to these
17 questions. In a death penalty case as you have just
18 observed has two phases, ---

19 A Right.

20 Q --- the guilt phase and the penalty phase. Now we are
21 not talking about the guilt phase and the fact that we are
22 talking about the penalty phase is no indication as to
23 whether or not he is or not guilty of murder, do you
24 understand that?

25 A Right.

1 Q He is presumed innocent of the charge of murder and
2 would be so presumed until a jury were to find him guilty
3 beyond a reasonable doubt. Do you understand that?

4 A Yes, sir.

5 Q So we are talking about the penalty phase at this
6 time. I put in the jury room a list of three types of
7 jurors. Have you had a chance to review it?

8 A Yes, sir.

9 Q Did you determine whether or not you fell into one of
10 those categories?

11 A Well, I did, but I still wasn't sure about it because
12 of the past dealings with my brother.

13 Q All right, which type do you feel like you fell into?

14 A Number two at first and, you know, I'm still uncertain
15 how it would affect me.

16 Q Let me ask you and follow up with a few questions.
17 Each case, of course, stands on its own ---

18 A Right.

19 Q --- and in each case there are certain circumstances
20 and in the penalty phase of a death penalty case The State
21 presents or is allowed to present matters in what we call
22 aggravation, that is, things perhaps about the ---

23 MR. SCHUSTERMAN: Your Honor, if we may interject. If
24 we could have a moment of the court's time we might be
25 able to clear up several issues.

1 THE COURT: Okay, step out just a minute and let me
2 see what they have to tell me.

3 (Juror out.)

4 MR. SCHUSTERMAN: Your Honor, while I think that Mr.
5 Harrison would probably make a terrific juror, I feel as
6 an officer of the court that if we can get around this
7 issue of he's a two or three, my records indicate that he
8 has a record for housebreaking, grand larceny where he
9 received a sentence of a YOA under 5(c) back on the 12th
10 of May, 1972. So rather than the court trying to
11 determine whether he's a two or a three, I think he is
12 statutorily prohibited from serving.

13 THE COURT: Bring him back in.

14 (Juror in.)

15 All right, you can just stand right there. Were you
16 sentenced under a Youthful Offender sentence at one time
17 for breaking and entering?

18 JUROR: Yes, sir.

19 THE COURT: All right. That would prohibit you from
20 serving even though it's a youthful offender. One cannot
21 serve as a juror if they have been convicted or pled
22 guilty to a crime that had a possible punishment of more
23 than one year. So I am going to excuse you.

24 JUROR: Okay.

25 THE COURT: If you will come forward, they will

CLYTIE ROSS

BY THE COURT

1 give you a check. Thank you.

2 Clytie Ross.

3 Oh, the food is here? Okay, we will stop and eat
4 lunch then. Thank you.

5 (Recess)

6 MR. POPE: The State is ready, Your Honor.

7 THE COURT: Is the defense ready?

8 MR. SCHUSTERMAN: Yes, Your Honor.

9 THE COURT: Bring in Clytie Ross.

10 CLYTIE ROSS (B/F)

11 EXAMINATION BY THE COURT

12 Q How are you?

13 A Okay.

14 Q I am going to ask you a few questions and I want you
15 to know that you are under oath and just be relaxed and
16 answer for me. I want you to speak loudly so people can
17 hear you, okay?

18 A All right.

19 Q Are you related by blood or marriage to any of the
20 individuals who I have introduced who are involved in this
21 case?

22 A No.

23 Q Do you have any interest, bias or prejudice in regards
24 to this case?

25 A No.

1 Q Have you formed or expressed an opinion as to the
2 guilt or the innocence of Mr. Hughes, the defendant?

3 A Could you ask that again?

4 Q Have you made any opinion or formed any opinion or
5 expressed any opinion as to whether or not Mr. Hughes is
6 guilty or innocent of the charges against him?

7 A No.

8 Q Do you know of any reason whatsoever why you could not
9 give both The State and the defendant a fair and impartial
10 trial?

11 A Well, one reason I don't believe in all of this murder
12 and death penalty. I don't believe in that.

13 Q Well, I'll ask you some more about that in a minute.

14 MR. SCHUSTERMAN: Your Honor, could I ask the witness
15 to speak up; I didn't hear her.

16 A I just didn't believe in giving the death penalty for
17 murder and all of that; I really don't believe in that.

18 Q Would you be able under your oath follow the law as
19 the judge charges it to you?

20 A Yes, I would, but I really wouldn't like to be serving
21 on the jury.

22 Q Okay. Could you not talking about what penalty one may
23 receive, but just as to whether one is guilty or innocent
24 or not guilty, could you find someone not guilty if that's
25 what the evidence and the facts and the law convinced you

1 was the correct decision?

2 A That's why I really don't want to do it.

3 Q I am asking you about not guilty. Could you find
4 somebody not guilty if you thought the law and the
5 evidence showed that they weren't guilty?

6 A If he has enough case against not guilty, in that case
7 I could.

8 Q Could you find someone guilty if the evidence and the
9 law convinced you that they were guilty?

10 A I have to answer your question?

11 Q Uh-huh.

12 A I wouldn't want to do that.

13 Q Have you talked about this case with anybody?

14 A No.

15 Q Have you read anything or heard anything about it?

16 A No.

17 Q Now Mr. Hughes is black and the man that died was
18 white and it is alleged that he was employed as a law
19 enforcement officer at the time of his death. Would that
20 affect your ability to be fair and impartial?

21 A I think so.

22 Q Now, are you telling me that would influence you one
23 way or the other?

24 A I guess not, but like I say I really --

25 Q Well, the fact that Mr. Hughes is a black gentleman

1 and Mr. McCants was white, would the fact that there is a
2 racial difference would that make any difference to you as
3 to whether somebody was guilty or innocent?

4 A It wouldn't make no difference, but I just hate to be
5 -- have to decide on either side.

6 Q Would the fact that Mr. McCants was allegedly working
7 as a law enforcement officer at the time of his death,
8 would that affect your ability to be fair to the
9 defendant?

10 A I want to ask another question. I have had people
11 related to me that have been in, you know, trouble and
12 stuff like that and they had to make time and serve for
13 different things and I didn't feel fair about that, so
14 it's kind of hard for me to be fair with it.

15 Q Do you think people should not serve time if they
16 commit some crime?

17 A No, it's not that they shouldn't serve, but it's just
18 a pain and it's just a hurt when you have a loved one that
19 have to go make time, you know, but automatically if you
20 do a crime you have to serve time for it.

21 Q Ms. Ross, a case like this has two parts, one to
22 determine whether the defendant is guilty or not guilty,
23 is found guilty or not guilty of the charge and the
24 defendant is presumed innocent of the charge until such
25 time as the jury were to find beyond a reasonable doubt

1 that he was guilty. If he is found guilty of murder, then
2 there would be a second part to the child, being with what
3 penalty he should receive. Do you understand that?

4 A Yes.

5 Q And I'll talk to you a minute about the penalty part
6 to this case, but that doesn't mean anything about whether
7 he's guilty or innocent. Do you understand that?

8 A Nodded.

9 Q You have got to answer with words. You have to
10 verbally answer.

11 A What?

12 Q You have got to say your answer.

13 A Oh, say my answer?

14 Q Uh-huh.

15 A Say it again now.

16 Q I asked you if you understood that we were talking
17 about the penalty and not the guilt phase and that Mr.
18 Hughes is presumed innocent of these charges. Do you
19 understand that?

20 A Until he is proved innocent of his charge.

21 Q Until he is proven guilty beyond a reasonable doubt.

22 A Uh-huh.

23 Q You understand that?

24 A Yes.

25 Q All right, now I had a list in the jury room of the

1 types of jurors. Did you examine that?

2 A Yes.

3 Q Did you determine to be in one of those categories?

4 A Well, I think it would be like in the third one. I
5 think it had something to do with life or something.

6 Q Well, the third one says that you could find life or
7 death depending on the circumstances of the case. Is that
8 where you fall?

9 A I don't want to give nobody death.

10 Q Well, would it be difficult to impose the death
11 penalty or would it be impossible for you to impose the
12 death penalty.

13 A Yes.

14 Q Impossible?

15 A Uh-huh.

16 Q You could under no circumstances impose the death
17 penalty even if you listen to all of the evidence and the
18 evidence showed there were some factors that were in an
19 aggravating situation, you still could not impose the
20 death penalty?

21 A No.

22 Q I am going to let you answer any questions Mr.
23 Brackett or Mr. Schusterman may have.

24 EXAMINATION BY MR. BRACKETT

25 Q Good afternoon, Ms. Ross.

1 A Good afternoon.

2 Q My name is Kevin Brackett and I am the deputy
3 solicitor up in York County near Rock Hill in the northern
4 part of the state and over here with me at counsel table
5 is Tommy Pope, my boss, and he is the solicitor up there.
6 I wanted to ask you some questions, but before I do, I
7 want you to understand that this isn't like a quiz that
8 you are going to be graded on and, you know, we are
9 checking the answers off and saying, oh, she got that one
10 right. There are no right or wrong answers.

11 A Okay.

12 Q All you need to do is tell us how you feel and that's
13 really all we need to know. And whatever your feelings are
14 about the death penalty or criminal court or criminals or
15 anything like that, you have just as much a right to your
16 opinion as anybody else does, so all we need to know is
17 what that opinion is and nobody is going to question you
18 or challenge you about that. So that's all you need to
19 tell me is from your heart how you feel about these
20 matters we are dealing with here. Now as the judge said,
21 this is a two part trial and the first part is the guilt
22 or innocence and you seem to indicate that you have a
23 little bit of difficulty even participating in the guilt
24 or innocence part of it. You might not be willing to stand
25 in judgment of another man, is that correct?

1 A Right.

2 Q And some of that you indicated you have some family or
3 something who has been in trouble, friends or something,
4 and it is painful, and it is painful for everybody
5 involved, ---

6 A Right.

7 Q --- and I can understand that. But does that perhaps
8 have something to do with why you feel the way you do?

9 A Yes.

10 Q Now assuming we got a conviction and assuming we did
11 find that Mr. Hughes was guilty of what he is charged with
12 ---

13 A Right.

14 Q --- we would go to the second part of the trial, which
15 is concerned with the penalty, what penalty Mr. Hughes
16 should get, and there's only two choices, life or death.
17 Now you would want to be a fair juror and I think you
18 would agree that jurors have to be fair in order to be a
19 good juror and they would have to consider both sides,
20 isn't that right?

21 A Right.

22 Q Are you saying that your feelings about the death
23 penalty are such that you could never give the death
24 penalty under any circumstances - is it because you have
25 some feelings about taking another human life?

1 A Taking another human's life.

2 Q And ---

3 A Because you can't give it back.

4 Q And you don't feel that you should be responsible or
5 participate in any way?

6 A Yes.

7 Q Is that kind of a moral thing for you?

8 A Yes.

9 Q Are you very, very firm in your convictions about
10 that?

11 A Yes.

12 Q So under no circumstances if we presented evidence and
13 if this crime was so horrible and terrible and what was
14 done was just so tragic and terrible, there's nothing we
15 could do to get you to participate in the process and give
16 a verdict of death?

17 A No.

18 Q Okay. In addition to just having to sit back there
19 and deliberate, which just means talk with your other
20 jurors, you would also have to involve yourself in one
21 more step if they did give the death penalty, if you did
22 decide to give the death penalty, and I think you have
23 indicated you couldn't no matter what, but you'd have to
24 sign your name to the death warrant indicating that you
25 wished or that it was your verdict that the defendant

1 should be put to death and you'd have to sign your name,
2 Clytie Ross, on a sheet saying I think he should be put to
3 death. You obviously couldn't do that?

4 A No.

5 Q Okay. Is there nothing, is there no scenario that you
6 could imagine, no situation so terrible that the death
7 penalty would be warranted?

8 A (Nodded.)

9 THE COURT: You have got to say your answer.

10 A No. No.

11 Q Just one moment, Ms. Ross. Thank you very much. I
12 appreciate it.

13 THE COURT: Any questions?

14 EXAMINATION BY MS. BRICE

15 Q Ms. Ross, my name is Chris Brice and I represent
16 Mar-Reece Hughes, the defendant in this case. He is seated
17 to my left over here and I, along with my co-counsel Steve
18 Schusterman, we represent him together.

19 Essentially, we are all asking questions about your
20 feelings about the death penalty and I respect your
21 feelings and I appreciate you explaining them to us.

22 You have read this questionnaire back in the jury
23 room, is that correct?

24 A Right.

25 Q Did you talk with the other jurors concerning it?

1 A No.

2 Q And what made you decide that you were a type three
3 juror?

4 A Well, from, well, like I said, I really don't want to
5 give death. I feel maybe just life and let them die on
6 their own, then say just give them death, it doesn't mean
7 like you have got to kill them. I really didn't want that.

8 Q A type three juror is a type of person who is open
9 minded, who could consider the facts in the case, could
10 listen to the instructions that the judge gave them, and
11 then could consider life, but could also consider death.
12 Do you think that you just couldn't even consider death,
13 you couldn't be fair ---

14 A I couldn't even consider that.

15 Q --- you just couldn't even consider that, it's
16 straight right there with life?

17 A Right.

18 Q And, again, I know the solicitor or deputy solicitor
19 has already talked to you about that, but even if the
20 crime was such, for example, if it involved children or if
21 it were just a brutal crime involving torture, for
22 example, would that not change your opinion as to whether
23 or not the death penalty might be warranted under that
24 circumstance?

25 A I just feel like I don't want to take no one's life.

CLYTIE ROSS

BY MS. BRICE

1 Q And I respect your decision on that. Thank you, ma'am.

2 THE COURT: You may step outside for just one moment.

3 What says The State?

4 MR. BRACKETT: I submit she is not qualified, Your
5 Honor.

6 MS. BRICE: We agree with The State, Your Honor.

7 THE COURT: Bring her back in.

8 Ms. Ross, you are going to be excused. Step up here
9 and they will give you a check. Thank you for your time.

10 Call Herbert Bright.

11 HERBERT BRIGHT (B/M)

12 EXAMINATION BY THE COURT

13 Q Mr. Bright, I am John Hayes and I am going to ask you
14 a few questions at this time and remember you are under
15 oath and I am going to ask you just to be relaxed and
16 answer these questions. I am going to ask you to speak
17 loudly so that everyone out here can hear you, okay? I am
18 going to make sure you answer with words so this lady down
19 here can take everything down.

20 Are you related by blood or marriage to any of the
21 individuals who I introduced you to yesterday?

22 A No.

23 Q Do you have bias, prejudice or interest in this case?

24 A No.

25 Q Have you formed or expressed an opinion as to the

1 guilt or the innocence of Mr. Hughes?

2 A No.

3 Q Do you know of any reason whatsoever why you could not
4 give The State and the defendant a fair and impartial
5 trial in this case?

6 A No, sir.

7 Q Could you under your oath follow the law in this case
8 as given by the trial judge?

9 A Yes, sir.

10 Q Now could you if the facts and circumstances and the
11 law warranted it find a defendant not guilty?

12 A Could you repeat that over again?

13 Q Could you find a defendant not guilty if the facts,
14 evidence and the law indicated that that was the
15 appropriate verdict?

16 A No, sir.

17 Q You couldn't find somebody not guilty?

18 A Yes, sir.

19 Q Could you find them guilty if the law and the facts
20 indicated they were in fact guilty?

21 A Yes, sir.

22 Q All right, now have you discussed this case with
23 anyone?

24 A No, sir.

25 Q Have you read or heard anything about it?

1 A No, sir.

2 Q Mr. Hughes, the defendant, is a black gentleman and
3 the victim, Mr. McCants, was white and is alleged to have
4 been working in law enforcement at the time of his death.
5 Would that prevent you from rendering a fair and impartial
6 verdict?

7 A No, sir.

8 Q Now I am going to talk to you a minute about the death
9 penalty. In regards to a death penalty case we have two
10 stages, first, to determine whether or not the defendant
11 is guilty of the offense of murder; if he is found guilty
12 of the offense of murder, then we have what we call a
13 penalty phase an additional trial where other evidence may
14 be presented. Now the defendant is presumed innocent of
15 the charges and is presumed innocent of the charges until
16 such time as the jury were to find him guilty beyond a
17 reasonable doubt. We are going to go ahead and talk about
18 that second part, that is, the penalty phase and
19 particularly the death penalty, but that's not to indicate
20 in any way that Mr. Hughes is guilty or not guilty because
21 he is presumed innocent. Do you understand all of that?

22 A Yes, sir.

23 Q Did you see the sheet that I put in the jury room?

24 A Yes, sir.

25 Q Did you read it?

1 A Yes, sir.

2 Q And did you find yourself on that sheet?

3 A No, sir.

4 Q You didn't?

5 A No, sir.

6 Q How do you feel about the imposition of the death
7 penalty? Are you open minded about it or are you firmly
8 against it in all cases or are you firmly for it in all
9 cases where -- when I say "All cases," that is, where one
10 has been found guilty of murder.

11 A Well, I ain't never been on nothing like this before
12 and I say like this, I really don't have no answer for it
13 really.

14 Q All right, well, I'll ask it this way. If you were a
15 juror and after you had heard the law that the judge
16 charges to you and viewed the evidence, could you if you
17 felt it was appropriate impose the penalty of death for
18 one who has been found guilty of murder?

19 A Yes.

20 Q Could you in those same circumstances if you felt it
21 was appropriate recommend a sentence of life for murder?

22 A Yes.

23 Q All right, now I am going to ask if you would in just
24 a moment answer some questions. Let me ask you like this.
25 If you were selected on this jury, you would be housed in

1 a motel in Rock Hill, York County, for ten to twelve days
2 while we tried this case. Now other than the usual things
3 -- usual problems that would cause for anybody, would that
4 present any undue hardships for you?

5 A No, sir.

6 Q All right, answer any questions the Solicitor's office
7 or the defense has.

8 EXAMINATION BY MR. SCHUSTERMAN

9 MR. SCHUSTERMAN: May it please the court?

10 Q Good afternoon, Mr. Bright.

11 A How are you doing?

12 Q Good; how are you, sir?

13 A All right.

14 Q My name is Steve Schusterman and I am an attorney from
15 York County and I represent Mr. Hughes in this matter. The
16 lady seated next to me with the blonde hair and the black
17 jacket that is Christina Brice. She is from York County
18 also. She is my co-counsel.

19 Mr. Bright, this is an opportunity for myself,
20 Solicitor Pope and Deputy Solicitor Brackett to spend a
21 couple of minutes with you and get to know you and your
22 feelings about the death penalty.

23 First, let me ask you the judge told you that this
24 trial is bifurcated or there is two parts to this trial.
25 You understand that principle, do you not?

1 A Yes, I understand.

2 Q As I recall when you were being asked the questions by
3 the judge you indicated that -- I thought you indicated
4 that you might have trouble finding somebody innocent or
5 not guilty, is that not correct?

6 A That's not correct.

7 Q You could find somebody innocent?

8 A I could.

9 Q If The State didn't present enough evidence, you could
10 find a defendant not guilty?

11 A Yeah.

12 Q Okay, do you understand the principle of law that Mr.
13 Hughes is innocent until proven guilty?

14 A Yes.

15 Q And as the judge indicated he told you that Mr. Hughes
16 has pled innocent to the charges.

17 A Yes.

18 Q Now if, in fact, you and eleven other jurors determine
19 that Mr. Hughes is guilty, it'll move on to the second
20 part of the trial, which is just a penalty phase, and you
21 and the other eleven jurors will determine whether Mr.
22 Hughes should get life without parole or be sentenced to
23 death. Do you understand that?

24 A Yes.

25 Q And at that time, if the trial does get that far, you

1 will be presented evidence by The State about aggravating
2 circumstances, the bad things that Mr. Hughes has done,
3 and we, the defense, may - we don't have to, - but we may
4 put up things in what is known as mitigation, the good
5 things about Mr. Hughes. And then after that you would
6 deliberate, you and the eleven other jurors would
7 determine whether or not to give Mr. Hughes life without
8 parole or death. Why is it that you felt that you didn't
9 fit into one of those three categories when you read that,
10 when you read the sheet in the jury room?

11 A I mean I probably fell in one of them, but like I
12 said, I ain't never been in this kind of thing, it makes
13 me nervous, and, you know, I --

14 Q That's understandable, it's a tough position to be in,
15 but you understand that there are no right or wrong
16 answers. The judge wasn't looking for you to say a certain
17 answer.

18 A Yeah, I know.

19 Q There's no right or wrong. This is not a test. We are
20 not going to grade you on your answer. We just want your
21 feelings about this. But after the judge spoke to you,
22 you indicated that under a certain set of circumstances
23 you could give the death penalty, is that correct?

24 A Yes, sir.

25 Q And under another set of circumstances, you might give

1 life?

2 A Yes.

3 Q So you are basically saying you want to hear the
4 evidence ---

5 A Yeah, hear the evidence, you know, on both sides.

6 Q --- on both sides and once you determine the evidence,
7 weighing the good and the bad, you'll come to a decision,
8 is that right?

9 A Yeah, come to a decision because I couldn't come to a
10 decision right now.

11 Q Because you have heard no evidence.

12 A No.

13 Q Mr. Bright, do you remember the questionnaire you
14 filed out for us?

15 A Uh-huh.

16 Q I notice that you are a member of Victory Baptist
17 Church.

18 A Yes, sir.

19 Q Is there anything about your church, your religion,
20 that you would look to and philosophies you would look to
21 to aid you in your decision regarding punishment, if it
22 got that far, life or death - does your religion have any
23 philosophies regarding that?

24 A No.

25 Q You indicated in the questionnaire that you are a

1 member of the Rising Sons and Daughters Society. What is
2 that, sir?

3 A That's like a Society like when people pass away take
4 up money and stuff like that and if they get sick and need
5 some money they help them out, old people and stuff like
6 that, that's what they do.

7 Q Does it have a religious background to it?

8 A Yeah, uh-huh.

9 Q Is it tied in with Victory Baptist Church?

10 A No, it's a different church.

11 Q Okay, but it is religious.

12 A Yes.

13 Q Do you read any newspapers?

14 A Every now and then.

15 Q What newspaper do you read?

16 A Augusta Chronicle.

17 Q The Augusta Chronicle. Did you read it this morning?

18 A No, sir.

19 Q Mr. Bright, on this questionnaire you were asked how
20 do you feel about psychiatry, psychology, psychiatrists
21 and psychologists. Do you remember that question?

22 A Uh-huh.

23 MR. SCHUSTERMAN: May I approach the witness? I would
24 like to point out --

25 Q I'd just like you to tell me, I don't understand this

1 answer - if you could just tell me - Solicitor, I am
2 referring to question 37 (a) - what is that saying, sir?
3 A Like I don't have any questions for it, you know, any
4 answer for it how I feel about it.

5 Q Okay, you say you don't know anything about it.

6 A No, I don't know anything about it.

7 Q Do you believe that people have mental illnesses?

8 A Yeah.

9 Q You do.

10 A Uh-huh.

11 Q And do you believe in the discipline or the science of
12 psychology and psychiatry?

13 A Yes.

14 Q You do?

15 A Uh-huh.

16 Q Okay. Is there any reason that you believe you
17 couldn't give a fair trial to both Mr. Hughes and The
18 State? Any reason why you couldn't be fair?

19 A I could be fair.

20 Q You could?

21 A Yes.

22 Q Thank you.

23 MR. SCHUSTERMAN: I don't have any further questions.

24 EXAMINATION BY MR. POPE

25 MR. POPE: May it please the court?

1 Q Mr. Bright, I am Tommy Pope. I am the solicitor from
2 up in York and Union Counties. Mr. Kevin Brackett is my
3 deputy solicitor. We represent The State in this case.

4 Do you have any relatives or friends up in York
5 County?

6 A No, as far as I know I don't have.

7 Q You have been down here all of your life?

8 A Yes, sir.

9 Q One thing I want to touch on I think the judge and Mr.
10 Schusterman both told you this as soon as you come in the
11 door you kind of feel like you are on trial, you are put
12 there and you say you have never been in this kind of
13 situation.

14 A No, sir.

15 Q So as far as given these sheets and all this stuff to
16 fill out you have never had to go through anything like
17 that.

18 A No, sir.

19 Q When you came out and Mr. Schusterman had asked you
20 and you said you didn't fit in a category, you now say
21 really you do fit into a category, it kind of was thrown
22 on you.

23 A Yes, it was a shock to me.

24 Q Okay, as I understand it, Mr. Bright, I want to make
25 sure, don't let me, you know, put words in your mouth. One

1 thing you have got going is you can't give a wrong answer,
2 all you are doing is telling how Herbert Bright feels.
3 You said you are the type of man you want to hear
4 everything before you decide.

5 A Yes, sir.

6 Q And you talked about the fact that this was a police
7 officer, that we are saying it's a police officer in this
8 case, you don't hold that against anybody and you don't
9 hold that for anybody.

10 A No, sir.

11 Q The fact that one man is black and another man is
12 white, you don't hold it against him, you don't hold it
13 for him.

14 A No, sir.

15 Q Okay, when you sat down in the jury box, you wouldn't
16 have your mind made up until you heard the evidence,
17 right?

18 A No, sir.

19 Q Okay, and you understand like they talked about a two
20 part trial, the first stage is guilty or not guilty and
21 you understand they don't have to prove anything.

22 A Yes, sir.

23 Q But you would want to hear everything before you
24 decided, is that right?

25 A Yes, sir.

1 Q When you get to the second part, in a normal case the
2 judge would decide the penalty, you know, some other type
3 case if somebody were convicted, the judge would say the
4 sentence is so and so. But the death penalty is a little
5 different in that this is one where the jury decides the
6 penalty and, again, like Mr. Schusterman said, you'd hear
7 good things and bad things and anything they want to put
8 up and they don't have to put up anything and anything
9 that we would want to put up. Once the first part was
10 over, if the defendant was found guilty, you wouldn't make
11 up your mind what the penalty should be until after you
12 had heard everything, is that right?

13 A Yes, sir.

14 Q And if you thought it was right, you would give life
15 and if you thought it was right, you could give death.

16 A Yes, sir.

17 Q Okay, one final question, as a part of the death
18 penalty, our law requires if the jury decides life, you
19 know, you get back there and you would talk and you would
20 be open minded, you would be willing to hear what other
21 jurors would have to say too ---

22 A Yes, sir.

23 Q --- once you get through, if you decide life, then the
24 foreperson, the one that is the head of the jury, they
25 just one of twelve votes, but the one that is chosen to

HERBERT BRIGHT

BY MR. POPE

1 speak for the jury would sign a form that said we decide
2 life, but if the jurors all decided death, in other words,
3 if all twelve jurors said we have heard these facts and in
4 this case it ought to be death; you know, based on what
5 they heard, then each juror has to sign their name on a
6 sheet of paper that says we give death and the judge is
7 going to do exactly what you say. If you say life, he is
8 going to give life; if you say death, he's going to give
9 death. If you thought death was appropriate, could you
10 sign your name with the other eleven jurors, Mr. Herbert
11 Bright, to give a man death?

12 A Yes, if I thought so, I mean, if it was, yeah.

13 Q If you felt in your heart it was right?

14 A Right.

15 Q Thank you, Mr. Bright.

16 THE COURT: I'll ask you to step out for just one
17 minute.

18 What says The State?

19 MR. POPE: I submit he is qualified, Your Honor.

20 THE COURT: What says the defense?

21 MR. SCHUSTERMAN: I submit he is qualified.

22 THE COURT: All right, bring Mr. Bright back in.

23 That's fine right there. You are going to be part of
24 the jury pool. I am going to have you call back between
25 five and seven tonight. Now they tell me you have got a

HERBERT BRIGHT

BY MR. POPE

1 little trouble with time, so I want to make sure that you
2 call back between five and seven. That's very important.
3 Do you promise to do that?

4 JUROR: Yes, sir.

5 THE COURT: They will tell you to come in at a certain
6 time tomorrow and it is very important that you do that.
7 Will you promise me that you will do that?

8 JUROR: Yes.

9 THE COURT: When you come tomorrow, come prepared if
10 you are drawn on the jury we will go immediately to York
11 County and you will need to bring -- you will need to be
12 packed, ready to go, that is, if you are chosen on the
13 jury, you will not have a chance to go back home and pack
14 clothes for a ten to twelve day stay in York County. You
15 come prepared for that, okay?

16 JUROR: Yes, sir.

17 THE COURT: Now don't ready anything about this trial
18 or talk to anybody about it, okay?

19 JUROR: Yes, sir. Call back at five?

20 THE COURT: Between five and seven call and they will
21 give you the number.

22 JUROR: All right.

23 THE COURT: Write on the slip between five and seven.
24 All right, Belmont Rogers.

25 BELMONT ROGERS (W/M)

1 EXAMINATION BY THE COURT

2 Q Please come up here and have a seat, please.

3 I'm John Hayes and I am going to be asking you some
4 questions. Remember you are under oath, okay?

5 A Yes, sir.

6 Q I'm going to ask you to speak up so that all of these
7 individuals out here can hear you. Are you related by
8 blood or marriage to any of the participants in this
9 trial?

10 A No, sir.

11 Q Do you have any interest, bias or prejudice in regard
12 to this case?

13 A None.

14 Q Have you formed or expressed an opinion as to the
15 guilt or the innocence of the defendant, Mr. Hughes?

16 A None.

17 Q Do you know of any reason whatsoever why you could not
18 serve as a fair and impartial juror in this trial?

19 A I do not.

20 Q Would you under your oath follow the law in this case
21 as the trial judge charges it to you?

22 A No, sir.

23 Q Could you depending on the facts, evidence and law, if
24 you felt it warranted, find a defendant not guilty?

25 A Yes.

1 Q If depending on the facts, evidence and the law you
2 felt it warranted, could you find a defendant guilty?

3 A Yes.

4 Q Have you discussed this case with anyone?

5 A No.

6 Q Have you read or heard anything about it from any
7 source whatsoever?

8 A None.

9 Q Now, Mr. Hughes is a black gentleman and Mr. McCants
10 was white. It is alleged that Mr. McCants was working as a
11 law enforcement officer at the time of his death. Would
12 these facts prevent you from rendering a fair and
13 impartial verdict in this case?

14 A I would not think so.

15 Q All right, I am going to be asking you certain
16 questions relative to the death penalty. These questions
17 have no right or wrong answers. Now the fact that we are
18 talking about the death penalty does not indicate anything
19 about the guilt or the innocence of the defendant. Mr.
20 Hughes is presumed innocent off these charges until such
21 time as the jury were to find him guilty beyond a
22 reasonable doubt. Do you understand that?

23 A (Nodded).

24 Q You need to say yes or no, so this lady can hear you.

25 A Yes, I do.

1 Q Now a death penalty case has two parts, the guilt
2 phase, and if the defendant is beyond a reasonable doubt
3 found guilty of murder by the jury, you move into the
4 penalty phase and at that time the options to be
5 considered by the jury would be life imprisonment and
6 death, do you understand that?

7 A Yes, I do.

8 Q Did you have a chance to review the three juror types
9 list?

10 A Yes, I did.

11 Q Did you find yourself in one of those?

12 A Yes, I did.

13 Q Which one?

14 A The third.

15 Q Would you then be able to participate in a jury
16 verdict recommending the penalty of death for murder if
17 the evidence and the law warranted such a verdict?

18 A Yes.

19 Q Could you as a juror also participate in a jury
20 verdict recommending a sentence of life imprisonment for
21 murder if the evidence and the law warranted it?

22 A Yes, sir.

23 Q Now other than the usual reasons I think we talked
24 about yesterday, but other than the usual things that
25 would make it inconvenient for one to be away from their

1 home for ten to twelve days and sequestered, are there any
2 other unusual or anything else about this that would cause
3 you an undue hardship?

4 A None.

5 Q I am going to ask you to answer questions imposed by
6 counsel for The State and the defendant.

7 EXAMINATION BY MR. POPE

8 MR. POPE: May it please the court, Your Honor?

9 Q Mr. Rogers, my name is Tommy Pope, the solicitor from
10 up in York County. Kevin Brackett is my deputy solicitor.
11 Briefly I want to follow up with what Mr. Brackett touched
12 on -- what the judge touched on. My understanding is you
13 understand from the judge told you that it is a two part
14 trial, first, the guilty or not guilty and the second
15 would be the penalty if the defendant were found guilty.

16 A Yes.

17 Q In each stage you are going to keep an open mind and
18 if you were seated in the box, until the close of the case
19 and the judge instructed you to take the evidence into
20 consideration, you wouldn't form an opinion one way or the
21 other, is that correct?

22 A I'd do my best not to form one.

23 Q Okay.

24 A I would be open.

25 Q In the appropriate case after hearing the facts and

1 circumstances in the penalty section you would be the type
2 that you would want to hear whatever bad we may have to
3 say, evidence in aggravation, and you would want to hear
4 whatever good the defense, if they chose to put up
5 anything, evidence in mitigation. You'd want to hear both
6 sides?

7 A Certainly.

8 Q And after hearing that you could give life if you
9 thought it was appropriate and you could give death if you
10 thought that was appropriate?

11 A Yes, sir.

12 Q Mr. Rogers, as to the death penalty in South Carolina
13 there is a requirement as far as the jury if the jury --
14 of course, that has to be unanimous -- and if the jury
15 makes a determination that death is appropriate, then each
16 and every juror would have to sign their name to the
17 verdict form, which is -- the court is going to carry out
18 the verdict the jury sends back -- and so if a life
19 sentence comes back, then only the foreperson has to sign,
20 but if a death sentence is the unanimous verdict of the
21 jury, then each individual has to sign. If after hearing
22 the circumstances of the case, if you thought death was
23 appropriate, could you sign Belmont Rogers to that form?

24 A Yes, sir.

25 Q Mr. Rogers, I have a copy of your questionnaire that

1 you filled out. On the issue of the different questions
2 about psychiatry and psychology and all those things you
3 said a family member had stood in order to receive a
4 degree, is that correct?

5 A Oh, her degree, excuse me.

6 Q What was that in relation to? Who was that and what
7 degree.

8 A I think that my degree and my wife's degree, both of
9 us had to take psychology courses in order to graduate ---

10 Q I understand.

11 A --- from college.

12 Q So it wasn't solely psychiatry or psychology ---

13 A No.

14 Q --- it was just some of the courses that were taken.

15 A It was required courses.

16 Q Okay. I also see that you hold a Masters of Divinity
17 from South Eastern Theological Seminary?

18 A Yes.

19 Q Are there any views that would help or hinder you in
20 being a fair and impartial juror based on your studies
21 there?

22 A No. MR. POPE: I beg the court's indulgence.

23 Q Mr. Rogers, one final question. The judge will
24 instruct you as to the law that is to be applied. Now I
25 note you have a tremendous educational background, if I

1 understood correctly you have taken a year in law school
2 too, is that correct?

3 A Yes.

4 Q You understand how the jury system is set up, it is
5 the interaction of twelve individuals from all walks of
6 life and you don't leave your common sense at the door,
7 but each juror has the opportunity to give their input.
8 Would you both give and receive input from all other
9 jurors in making your determination once the judge so
10 instructs you?

11 A That's part of keeping an open mind to be able to
12 listen to other people's opinions.

13 Q Thank you, sir. I appreciate it.

14 MR. SCHUSTERMAN: May it please the court?

15 EXAMINATION BY MR. SCHUSTERMAN

16 Q Good afternoon, Mr. Rogers. My name is Steve
17 Schusterman and I am an attorney in York County. I
18 represent Mr. Hughes in this matter. My co-counsel is Ms.
19 Brice. She is seated next to me with the black jacket on.
20 She represents him also.

21 Just a couple of follow-up questions. You have
22 indicated that you would keep an open mind.

23 A To the best of my ability I certainly would.

24 Q Thank you. I believe that's the same way you answered
25 it to Solicitor Pope and the judge that you would keep an

1 open mind to the best of your ability. Do you feel there
2 is some type of prejudice or bias that you may have that
3 would prevent you from keeping an open mind? When you
4 give that statement, are you concerned that there may be
5 something about this particular case or a case that would
6 prevent you from being totally objective?

7 A No, I think maybe this is just a figure of speech. I
8 am convinced that no one is totally open because we are
9 all influenced by life, you know, what life drills us, so
10 that's what I am saying. In my work I have to keep an open
11 mind dealing with patients to be able to meet their needs
12 and not to say well this might be wrong with you or that
13 might be wrong with you. I don't know what's wrong with
14 you, but I want to do what I am supposed to do. That's
15 what I am saying. I mean I don't say this is what I need
16 to do.

17 Q All right, I understand from your questionnaire that
18 you have a year of law school.

19 A Yes, but that was many years ago.

20 Q Okay. You understand the concept that Mr. Hughes
21 stands innocent of these charges and when we get to the
22 second part of this trial, if we get that far, first, the
23 determination has to be made as to guilt or innocence -
24 Mr. Hughes has, in fact, entered a plea of not guilty to
25 all of these indictments and we are not even going to

1 start thinking about penalty until we get through the
2 first part of the trial.

3 A Yes.

4 Q And The State has the burden of proof. They have to
5 prove their case beyond a reasonable doubt for if they do
6 not in the opinion of you and the eleven other jurors, we
7 don't even get to phase two.

8 A Yes.

9 Q The fact that you indicated that there was no
10 discrimination, you have no prejudice based on race or any
11 such thing?

12 A No.

13 Q All right, Mr. Pope asked you a question in the field
14 of psychiatry and I would just like to follow up on that.

15 A I think that is misworded the way I wrote it because I
16 was writing it in a hurry.

17 Q Okay. What do you believe is misworded?

18 A Something about the degree.

19 Q The fact going back the fact that as I understand your
20 questionnaire a friend's mother committed suicide?

21 A Being in the ministry -- that happened when I was in
22 high school and then I had several circumstances when I
23 was in the pastorate with members of the congregation or
24 family members that would commit suicide.

25 Q And I was going to follow that up with you have here a

1 friend's wife was killed.

2 A Yes.

3 Q May I interpret that to mean murder?

4 A Well, she wasn't found guilty. I think it was an
5 accident. She was -- they were playing with a gun and the
6 person pointed a gun at her and shot her, you know, I
7 don't know what circumstances it was; that was so many
8 years ago.

9 Q Looking at the fact that you were a pastor -- are you
10 currently?

11 A No.

12 Q The fact that you were a pastor and you apparently
13 have had a number of encounters with death either by
14 suicide, accidental shootings, does that from an
15 occupational standpoint as opposed to a religious
16 standpoint do you think that prevents you from being
17 unfair and objective in a case like this where murder is
18 alleged?

19 A No, I think if anything I have probably a greater
20 concern for the value and the worth of life because I know
21 how precious life is - not that I know any more than
22 anyone else, but I have a great -- that's the reason I am
23 in nursing now because I have a great appreciation of
24 those values, the preciousness of life.

25 Q From your religious training that you have had and I

1 think maybe Mr. Pope touched on this are there any
2 philosophies within your particular religion that you
3 practice that speak to punishment in a case such as this
4 where murder is alleged?

5 A No, none that I would - I think that I have been a
6 part of the main line Baptist and main line Methodist. I
7 can't think of any, certainly have never encountered it.
8 This is a unique situation for me.

9 Q Do you know anybody from Rock Hill or York County?

10 A No.

11 Q And so that I am clear. There is no racial issue the
12 fact that Mr. Hughes is a black gentleman and the alleged
13 victim or the victim is caucasian.

14 A None.

15 Q Even thinking about it would it play any role?

16 A None.

17 Q Okay. Mr. Rogers, I appreciate it.

18 THE COURT: Step outside

19 What says The State?

20 MR. POPE: I submit he is qualified, Your Honor.

21 THE COURT: The defendant?

22 MR. SCHUSTERMAN: I submit he is qualified, Your
23 Honor.

24 THE COURT: Bring him back in.

25 You are going to be part of the jury pool. You can

1 stop right there. The jury is going to be drawn
2 tomorrow. If you will call back between five and seven,
3 they will give you a number to call, when you come
4 tomorrow, come prepared to travel, if you are chosen, to
5 travel directly from here to York County, that is, have
6 your bags packed and available, so you can go with us if
7 you are chosen and don't read anything or listen to
8 anything about the case.

9 JUROR: Explain the jury pool.

10 THE COURT: The jury pool consists of somewhere
11 between thirty-five and forty people. From that each side
12 will have a certain number of what we call strikes, that
13 is, without cause they can strike a certain number of
14 people. Those numbers will be drawn at random, that is,
15 you will not necessarily be the first one, you could be
16 the last one, and we will draw those at random and I will
17 describe that procedure before we start, but it will be
18 forty or so people from which fourteen are chosen. Thank
19 you.

20 JUROR: Thank you so much. What time in the morning?

21 THE COURT: Call between five and seven that number
22 that you will be given and they will tell you what time.

23 JUROR: Thank you.

24 THE COURT: Martha Carey.

25 MARTHA CAREY (W/F)

1 EXAMINATION BY THE COURT

2 Q I am John Hayes. I am going to be asking you some
3 questions and I am going to remind you that you are under
4 oath. I am going to ask you to relax. I am going to ask
5 you to speak up so everyone can hear you, all right?

6 A Okay.

7 Q Are you related by blood or marriage to any of the
8 participants in this trial?

9 A Not that I know of.

10 Q Do you have any interest, bias or prejudice in regard
11 to this case?

12 A No.

13 Q Have you formed or expressed an opinion as to the
14 guilt or the innocence of the defendant, Mr. Hughes?

15 A No, sir.

16 Q Do you know of any reason whatsoever why you could not
17 give both The State and the defendant a fair and impartial
18 trial?

19 A No, sir.

20 Q Would you under your oath follow the law in this case
21 as the trial judge charged it to you?

22 A Yes, sir.

23 Q Could you depending on the facts and evidence and law,
24 if warranted, if they warrant it, find the defendant not
25 guilty?

1 A Would you repeat that?

2 Q All right, let me rephrase it. Could you find a
3 defendant and particularly this defendant not guilty if
4 after hearing the facts and receiving all the evidence and
5 hearing the law you were convinced that that was the
6 appropriate decision?

7 A Yes, sir.

8 Q Could you under those same circumstances if you felt
9 it was appropriate find the defendant guilty?

10 A Yes, sir.

11 Q Have you discussed this case with anyone?

12 A No, sir.

13 Q Have you heard about it, read about it?

14 A No, sir.

15 Q Now the defendant, Mr. Hughes, is a black gentleman
16 and Mr. McCants, who was killed, was white and it is
17 alleged he was working as a law enforcement officer at the
18 time of his death. Would this in any way whatsoever affect
19 your ability to render a fair and impartial verdict?

20 A No, sir.

21 Q Now I am going to talk with you for just a moment
22 about the death penalty. Now the fact that we are talking
23 about your views on the death penalty is no indication as
24 to the guilt or the innocence of Mr. Hughes. He is
25 presumed innocent. Do you understand that?

1 A Right.

2 Q He is presumed innocent until -- it's a two part trial
3 where you have a death penalty, one as to guilt and one as
4 to punishment. If the defendant is found not guilty in
5 the first phase, there is no second phase. But if a jury,
6 again he is presumed innocent, if the jury in that initial
7 phase were to find beyond a reasonable doubt he is guilty
8 of murder, then we would move into the penalty phase. Do
9 you understand that?

10 A Yes, sir.

11 Q Now the fact that we are discussing the death penalty
12 at this time is no indication as to the guilt or the
13 innocence of Mr. Hughes, do you understand that?

14 A Yes, sir.

15 Q Now did you review the sheets of the juror types?

16 A Yes.

17 Q Did you find yourself on it?

18 A Yes, sir.

19 Q In what category?

20 A The third.

21 Q All right. Could you as a juror participate in a jury
22 verdict recommending the penalty of death for murder if
23 the evidence and the law warranted such a verdict?

24 A Yes, sir.

25 Q Could you as a juror participate in a jury verdict

1 recommending a sentence of life imprisonment for murder if
2 the evidence and the law warranted such a verdict?

3 A Yes, sir.

4 Q Other than the general inconveniences that we all have
5 and that some of us have already discussed of being away
6 from our family and home for a ten to twelve day period of
7 time and being sequestered are there any additional
8 hardships that this would pose for you?

9 A The only one being what I wrote the letter about, one
10 or two people out of our office that broke her back and it
11 will put an additional hardship on someone in my office,
12 but, you know, we are dealing with that if I need to do
13 this.

14 Q Okay. Now answer any questions that Mr. Schusterman or
15 one of the solicitors will have for you.

16 MR. SCHUSTERMAN: Thank you, Your Honor. May it please
17 the court?

18 EXAMINATION BY MR. SCHUSTERMAN

19 Q Good afternoon, Ms. Carey, how are you?

20 A I am fine.

21 Q My name is Steve Schusterman. I am an attorney from
22 York County. I represent Mr. Hughes, the defendant, in
23 this action, along with Ms. Christina Brice, who is seated
24 to my left, the lady with the black jacket. This is an
25 opportunity for the court as well as myself and Solicitor

1 Pope and Deputy Solicitor Brackett to talk to you and get
2 to know you. Let me tell you at the outset there are no
3 right or wrong answers. This is just Ms. Carey's feelings
4 about the death penalty and related situations that you
5 may be put in and you don't need to be nervous.

6 A Okay, I'm trying not to.

7 Q First, as the judge indicated, this will be a two
8 phase trial. Mr. Hughes has been charged with several
9 offenses. You heard about them yesterday when Mr. Pope
10 read out the indictments. To those charges Mr. Hughes has
11 pled not guilty. So that's the first thing we have to
12 deal with. The first phase of the trial is going to be the
13 guilt phase where the only thing that you and eleven other
14 jurors will be considering will be guilt or innocence,
15 nothing to do with penalty and you understand that this
16 burden is completely on The State of South Carolina. They
17 have to give you sufficient evidence such that you
18 determine, you and the eleven other jurors, can
19 unanimously determine that Mr. Hughes is guilty beyond a
20 reasonable doubt. Do you understand that?

21 A Yes.

22 Q And that he is innocent until such time.

23 A Yes.

24 Q If you were to find him not guilty, then there is no
25 second phase to the trial. We all go home. But if you

1 were to find that the Solicitor did meet this burden of
2 proof and find him guilty, that's when we would move on to
3 the second phase, which would be a decision between life
4 without parole and death. And that's when at that time The
5 State would present what is known as aggravating
6 circumstances, the things that made the crime in their
7 opinion particularly heinous. The defense has the right to
8 present evidence what is known as in mitigation, the good
9 things about Mr. Hughes. From that you and the other
10 eleven jurors would determine whether he should be
11 executed or whether he would receive life in prison
12 without parole. Do you think you could do that?

13 A I believe so.

14 Q And certainly it is not a decision to be taken
15 lightly; it's very difficult here on the spur of the
16 moment to ask your opinion considering you haven't been
17 presented with any evidence yet. I notice that you are
18 active religiously. Is there anything about your
19 membership in the Methodist Church that you believe would
20 prevent you from being a fair and impartial juror?

21 A I don't believe so.

22 Q Are there any principles within the Methodist Church
23 or religious philosophies that you might look to in
24 determining a punishment, if we were to get that far?

25 A No.

1 Q I notice that you are a member of what is known here
2 as Crime Watch Group. Would you tell me what that is?

3 A Well, it is a group that was formed in our
4 neighborhood and we just watch out for each other,
5 suspicious looking vehicles in our neighborhood, people
6 that we don't know, that are not neighbors.

7 Q Was that done as a product of break-ins or a crime
8 rate in your neighborhood?

9 A Yes.

10 Q The fact that you are a member of this Crime Watch
11 Group and at some point there may have been a problem with
12 break-ins and the fact that Mr. Hughes is charged with -
13 one of his charges is a robbery, an armed robbery, would
14 that prejudice you in any way against being able to be
15 fair towards the defendant?

16 A No.

17 Q It would have no effect?

18 A No, I was one of the persons that was burglarized. I
19 would still have to hear the facts before I would make a
20 decision.

21 Q The point being, these aren't trick questions in any
22 way, Ms. Carey, I'm just - obviously, your home being
23 broken into can be an emotional traumatic experience.

24 A Yes.

25 Q The fact that you had been violated, would you have