

STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM YORK COUNTY  
Court of General Sessions

John C. Hayes, III, Circuit Court Judge

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

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State of South Carolina, ..... Respondent,

v.

Mar-Reece Aldean Hughes, ..... Appellant.

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RECORD ON APPEAL

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(803) 325-7788

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(803) 684-4462

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ATTORNEYS FOR RESPONDENT

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SEPTEMBER 7-8, 1995 - YORK COUNTY

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE CROSS</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>RECROSS</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		

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 PRETRIAL MOTION AND INCAMERA HEARINGS  
 SEPTEMBER 14, 1995

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

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 TRIAL - PHASE I

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE CROSS</u>
Beth Ann Jayne				
Mr. Pope	917		947	
Ms. Brice		937		948
Sean McMillan				
Mr. Pope	954		974	
Ms. Brice		969		
Crystal Ayers				
Mr. Pope	975		998	
Mr. Schusterman		988		1000
Michelle Ayers				
Mr. Pope	1001		1007	
Mr. Schusterman		1005		
Steven Gibson				
Mr. Pope	1008		1019	
Mr. Schusterman		1017		
Lisa Simmons				
Mr. Pope	1020			
Sherrie Grimmit				
Mr. Brackett	1035			
Mr. Schusterman		1044		
Mary Grant				
Mr. Pope	1047		1072	
Mr. Schusterman		1062		1073

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TRIAL - PHASE I (CONTINUED)

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Cathy Ann Pittman				
Mr. Pope	1074			
Mr. Schusterman		1084		
Marvin Bohon				
Mr. Brackett	1087		1109	
Mr. Schusterman		1101		
Jerry W. Waldrop				
Mr. Brackett	1110			
Mr. Schusterman		1116		
Timothy Sanders				
Mr. Pope	1118		1156	
Ms. Brice		1135		
Dan Ketchel				
Mr. Pope	1158		1164	
Mr. Schusterman		1161		1164
Gregory Scott Maggart				
Mr. Pope	1165			
Mr. Schusterman			1168	
James David Holcomb				
Mr. Pope	1171			
Craig Alexander				
Mr. Pope	1174		1195	
Mr. Schusterman		1184		1196
Randy Clinton				
Mr. Brackett	1196		1223	
Mr. Schusterman		1215		
Larry R. Devinney				
Mr. Bracektt	1224			
Mr. Schusterman			1236	
Gary Norman Streett				
Mr. Brackett	1246			
Mr. Schusterman		1249		
James Scott Rockholt				
Mr. Brackett	1250			
Mr. Schusterman		1252		

1 TRIAL - PHASE I (CONTINUED)

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

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3 Mr. Brackett

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4 Ms. Brice

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5	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
6	Donald Diamont				
7	Mr. Pope	1870		1875	
8	Ms. Brice		1873		
9	Randy Weavil				
10	Mr. Pope	1875			
11	Ms. Brice		1881		
12	Robert Reese				
13	Mr. Brackett	1887			
14	Ms. Brice		1901		
15	Broadus Strain				
16	Mr. Brackett	1903		1911	
17	Ms. Brice		1908		1912
18	Richard Douglas Waldrop				
19	Mr. Brackett	1914			
20	Mr. Schusterman		1940		
21	Christopher Gorth				
22	Mr. Brackett	1963			
23	Ms. Brice		1970		
24	Stella Lingerfeldt				
25	Mr. Brackett	1975			
26	David Black				
27	Mr. Brackett	1980			
28	Everett Earl Jenkins				
29	Mr. Pope	1998			
30	Craig Alexander				
31	Mr. Pope	2000			
32	Kelly Carroll				
33	Mr. Pope	2004			
34	William Douglas Taylor				
35	Mr. Pope	2007			

	TRIAL - PHASE II (CONTINUED)				
	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
1					
2	Percy Jones				
3	Mr. Brackett	2015		2029	
4	Mr. Schusterman		2025		
5	Sheila Mazyck				
6	Mr. Brackett	2030			
7	Mr. Schusterman		2032		
8	Otis Speight				
9	Mr. Pope	2035			
10	Myra McCants				
11	Mr. Pope	2043			
12	Caroline Burry				
13	Ms. Brice	2057; 2062		2089	
14	Mr. Pope		2061; 2082		
15	Alice Norwood				
16	Ms. Brice	2091		2113	
17	Mr. Pope		2103		
18	Willie Cornelius Hughes				
19	Ms. Brice	2117			
20	Mr. Pope		2137		
21	Melinda Hughes Gentry				
22	Ms. Brice	2142			
23	Mr. Pope		2151		
24	Peter Skidmore (In camera)				
25	Ms. Brice	2158			
26	Mr. Pope		2161		
27	Renee Kohanski (In camera)				
28	Ms. Brice	2164			
29	Mr. Pope		2167		
30	Mary Hughes Wilson				
31	Ms. Brice	2174		2186	
32	Mr. Brackett		2183		
33	Renee S. Kohanski				
34	Ms. Brice	2188; 2191		2248	
35	Mr. Pope		2190; 2217		2248
36	Donald William Morgan				
37	Ms. Brice	2263		2291	
38	Mr. Pope		2278		2294

1 TRIAL - PHASE II (CONTINUED)

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

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6 TRIAL - PHASE II

7 CLOSING ARGUMENTS

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

STATE'S EXHIBITS:

<u>NO.</u>		<u>ID</u>	<u>EVD</u>
1	1	Certified Copy/Indictments	2475
2	2	Order	2476
3	3	Affidavit	2476
4	4	Copy/Order and Transcript	2487
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16	16	Diagram/Galleria	
17	17	Diagram/Overview	
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19	19	Photograph	2627
20	20	Photograph	2627
21	21	Photograph	2627
22	22	SWAT/Reciprocal Agreement	2790
23	23	Statement/Hughes	2822
24	24	Rights Card	2822
25	25	Report	2844
26	26	Report 12/9/92 - Doctor Morgan	2844
27	27	Report	2847
28	28	Report	2847
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30	30	Report	2848
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1	1	Letter 12/23/92	2822
2	2	Report of Finding/Metal Capacity	2867
3	3	Physicians Notes	2945
4	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
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	12	Sketch		977
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	14	Tape/911		1012
11	15	Photograph		1042
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12	17	Photograph		1060
	18	Photograph		1060
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	20	Photograph		1096
14	21	Photograph		1096
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15	23	Photograph		1096
	24	Photograph		1096
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	26	Photograph		1096
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	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
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3	49	Photo		1318
	50	Photo		1213
4	51	Photo		1213
	52	Hat/woods		1332
5	53	Articles/clothing/personal-Hughes		1233
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6	55	Shoes/Socks		1248
	56	Rights Card		1268
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	58	Measurements		1340
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	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
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	4	Charge Request	
11	5	Charge Request	
	6	Charge Request	
12	7	Charge Request	
	8	Charge Request	
13	9	Charge Request	
	10	Charge Request	
14	11	Note from Jury	
	12	Note from Jury	
15	13	SLED Report	
	14	Photographs (8)	
16	15	Indictment	
	16	Indictment	
17	17	Indictment	
	18	Indictment	
18	19	Daily Population Count/York County	
	20	Chart/Doctor Dupree	
19	21	MitigatingCircumstances	
	22	Motion to Restrict Solicitor's Argument	
20	23	Defense Request No. 8	
	24	Defense Request No. 3	
21	25	Defense Request No. 4	
	26	State's Request No. 2	
22	27	State's Request No. 1	
	28	State's Request No. 4	
23	29	Defense Request No. 6	
	30	Defense Request No. 1	
24	31	Note to Jury (Dinner)	
	32	Note from Jury	
25	33	Note from Jury	
	34	Note to Jury	

1 the ability to set that aside to be able to judge Mr.  
2 Hughes fairly?

3 A Yes.

4 Q You indicate in your questionnaire that someone very  
5 close to you had been murdered.

6 A An acquaintance.

7 Q She was a close friend of your hairdresser?

8 A Right.

9 Q How long ago was that?

10 A I would guess around ten years.

11 Q Was the person who did it was he ever caught?

12 A No.

13 Q Never caught?

14 A No; and when I say -- she was killed, I don't know  
15 what happened, no one does.

16 Q You don't know how it happened?

17 A No.

18 Q Do you feel a certain amount of frustration because of  
19 that?

20 A I think any of us would have like to have seen as with  
21 any, you know, any death where it was not just an accident  
22 on the road or something, you would want someone to  
23 eventually be found, but I mean if they don't know who it  
24 is, I mean I don't want just someone to be brought in.

25 Q You also indicate that you know someone who has been

1 the victim of a robbery.

2 A Yes.

3 Q Indicating that two friends of mine had their purses  
4 snatched, one was drug down a sidewalk, the other knocked  
5 unconscious; our home was broken into approximately four  
6 years ago.

7 A Right.

8 Q Does that pose a problem for you? The State has  
9 alleged that not only did a murder occur, but an armed  
10 robbery occurred also, two things that you have had, maybe  
11 to varying degrees, but you had experience with.

12 A Yes.

13 Q Does that, given the fact that no one has been  
14 prosecuted for those offenses, does that pose a problem  
15 for you to be able to set all those factors aside in  
16 taking a look at another man who is charged with those  
17 same offenses?

18 A No.

19 Q None at all?

20 A No, I really don't believe so.

21 Q You indicated that you believe in the death penalty.

22 A In some cases.

23 Q You would want to hear everything.

24 A Yes.

25 Q You would want to hear the good and the bad.

1 A Yes.

2 Q That's what you told the judge. The gentleman that you  
3 dated, Gene Johnson of the Augusta Sheriff's Department,  
4 was he a deputy with the Sheriff's Department?

5 A An investigator.

6 Q An investigator. The State has alleged that the  
7 victim in this case, Officer McCants, was acting in the  
8 official capacity as a deputy with the Sheriff's  
9 Department when this happened. Your relationship, even  
10 though I believe this was some ten or twelve years ago,

11 ---

12 A Yes.

13 Q --- with a member of the Sheriff's Department, would  
14 that cause you any concern?

15 A No.

16 Q None whatsoever?

17 A No.

18 Q You have indicated you have been the victim of crime  
19 personally, you husband committed some domestic violence  
20 against you.

21 A Yes, sir.

22 Q He was arrested for it?

23 A Yes.

24 Q And he was prosecuted?

25 A He was put on parole, just asked not to be around me

1 any more. I mean, I don't know if it is called parole, but  
2 he was not allowed to be around me any more.

3 Q You in your questionnaire indicate that you wonder if  
4 you could handle this experience of being on a jury  
5 emotionally. What are your concerns? What are your  
6 emotional concerns? Is it the subject matter or is it  
7 just the time away from home?

8 A No, I guess I'm a pretty sensitive person and it would  
9 upset me maybe to hear some of the stuff that has went on.  
10 I remember I wrote that I often wondered about it because  
11 I have often thought about the people on a jury and how  
12 they did do on it.

13 Q The feeling I get from your questionnaire and correct  
14 me if I am wrong that you do believe in the field of  
15 psychiatry and psychology.

16 A Yes.

17 Q You do believe they play a useful role?

18 A Yes.

19 Q Along those lines you do believe that people have  
20 mental illnesses?

21 A Yes.

22 Q If in the guilt phase of the trial eleven of the  
23 jurors believed and voted for guilt and Ms. Carey did not,  
24 what would you do?

25 A If that's what I believed, then that's what I would

1 believe and I would tell them that.

2 Q I asked you that because you said you wondered if you  
3 could handle this experience emotionally and I guess to go  
4 further in that statement do you believe that you would  
5 have the ability to hold your position against eleven  
6 people who thought the other way?

7 A I wouldn't have any choice.

8 Q Well, you would have a choice actually. You could  
9 succumb to them and just give in.

10 A I would, you know, like to have to stick by my  
11 beliefs.

12 Q And certainly I ask the same question as to the guilt  
13 phase, you would do the same thing?

14 A Yes.

15 Q If you determined in the guilt phase if we get that  
16 far that a death sentence was appropriate, then every  
17 member of the jury, not just the foreperson, but every  
18 member of the jury must take a pen and sign their name to  
19 the document indicating that that is the desire of the  
20 jury that Mr. Hughes is to receive or that the defendant  
21 is to receive the death penalty. Do you feel that you  
22 could do that, that you could take a pen and sign your  
23 name, for lack of a better term, a death warrant?

24 A It's a horrible thought to think that you have to do  
25 stuff like that. If there was no doubt and that was what

1 we agreed to, yes.

2 Q And so without putting words in your mouth I think  
3 what you are saying is that it is a difficult decision to  
4 make.

5 A Yes.

6 Q But you could do it if you had to.

7 A Yes, I could.

8 Q But you would listen to both sides?

9 A Absolutely.

10 Q I assume you would give every consideration to both  
11 The State and the defendant?

12 A Yes.

13 Q I appreciate it, Ms. Carey. Please answer any  
14 questions that Deputy Solicitor Brackett may have.

15 EXAMINATION BY MR. BRACKETT

16 Q Good afternoon, Ms. Carey. My name is Kevin Brackett  
17 and I am the deputy solicitor in the Sixteenth Judicial  
18 Circuit. Seated over here is Tommy Pope, the Solicitor,  
19 and Mr. Schusterman pretty much stole all my thunder. I  
20 don't have a whole lot left to ask you; it seems like  
21 everything has been asked. I just came up to ask you one  
22 quick question because right at the end of Mr.  
23 Schusterman's questions of you he got into the business of  
24 signing your name and you hesitated a little bit and, of  
25 course, the last question he asked was would you give a

1 fair trial to The State and to the defense. Now your  
2 answers are just your opinions and you have every right to  
3 that. Nobody is going to question how you feel, but it's  
4 important to know now how you feel about this and whether  
5 you are able to do this because once we get underway it's  
6 too late to say I just don't think I can do it and it's  
7 critically important that we know that you can do these  
8 things and we wouldn't ask you to do something that you  
9 felt you couldn't do. So just one more time you do feel  
10 that you could render a verdict of death in this case if  
11 that was what the facts and the circumstances called for?

12 A Well, I paused because I really want to think about  
13 it.

14 Q And I respect that, I really do and I ---

15 A Because it's not something that I would ever want to  
16 have to do.

17 Q Sure ---

18 A But I have to say, yes, I would have to do that.

19 Q Likewise you could do the same thing with the verdict  
20 of life if you felt that was appropriate and, of course,  
21 that's a much easier decision.

22 A Yes.

23 Q And then, of course, the signing. You have to sign  
24 your name and as we stand here now there may come a day  
25 when you have a pen in your hand and you feel as you sit

1 here now there's no doubt that you could sign your name to  
2 the certificate authorizing a sentence of death for Mr.  
3 Hughes or any other defendant in a similar situation?

4 A Yes, and I say yes because I would have to believe  
5 with everything I have that that was the right decision.

6 Q Thank you very much.

7 THE COURT: I am going to ask you to step outside the  
8 door for just one minute.

9 What says The State?

10 MR. BRACKETT: I submit she is qualified, Your Honor.

11 THE COURT: The defense?

12 MR. SCHUSTERMAN: I submit she is qualified.

13 THE COURT: Bring her back in. You can stand right  
14 there. You will be part of the jury pool and we will draw  
15 a jury tomorrow. Call back between five and seven, you  
16 will be given a number as you go, call back between five  
17 and seven today so you will know what time to report  
18 tomorrow. Now come packed. Come prepared to leave if you  
19 are chosen because as soon as the jury is chosen we will  
20 go directly to York County and don't discuss this case or  
21 anything about it, okay?

22 JUROR: Call back between five and seven today?

23 THE COURT: Call between five and seven today and they  
24 will give you the number.

25 Ms. Perry.

LINDA PERRY (W/F)

EXAMINATION BY THE COURT

1  
2  
3 Q Ms. Perry, how are you today?

4 A Fine, how about you?

5 Q Fine. I am John Hayes. I am going to be asking you  
6 some questions and you are under oath and I am going to  
7 ask you to answer loudly enough so that the people sitting  
8 out there can hear you. First, are you related by blood  
9 or marriage to any of the parties and the participants in  
10 this case?

11 A No, sir.

12 Q Do you have any interest, bias, or prejudice in  
13 regards to this case?

14 A No, sir.

15 Q Have you formed or expressed an opinion as to the  
16 guilt or the innocence of the defendant, Mr. Hughes?

17 A No, sir.

18 Q Do you know of any reason whatsoever why you could not  
19 give both The State and the defendant a fair and impartial  
20 trial?

21 A Personal reasons?

22 Q Any reason.

23 A To serve on the jury?

24 Q Well, let me ask you this way. Do you know of any  
25 reason if you were on the jury you could not give both The

1 State and the defendant a fair and impartial trial?

2 A Oh, no, sir.

3 Q Would you under your oath follow the law in this case  
4 as it was charged to you by the trial judge?

5 A Yes, sir.

6 Q Would you or could you if the facts warranted it and  
7 the evidence and the law warranted it find a defendant not  
8 guilty?

9 A Yes, sir.

10 Q Could you under those circumstances if you felt it  
11 were appropriate find a defendant guilty?

12 A Yes, sir.

13 Q Have you discussed this case with anyone?

14 A No, sir.

15 Q Have you read or heard about it from any source  
16 whatsoever?

17 A No, sir.

18 Q The defendant, Mr. Hughes, is a black gentleman and  
19 the decedent, the deceased, Mr. McCants, was white and was  
20 allegedly performing the duties of a law enforcement  
21 officer at the time of his death. Would this prevent you  
22 in any way from rendering a fair and impartial verdict?

23 A No, sir.

24 Q Would it affect your decision in any way whatsoever?

25 A No, sir.

1 Q Now a death penalty trial is different from most in  
2 that it is done in two parts, one as to guilt and one as  
3 to penalty. We are going to talk about the second part,  
4 that is, the death penalty or life imprisonment penalty,  
5 but that is not to indicate anything as to the first part,  
6 this is, Mr. Hughes is presumed innocent of this charge  
7 and all charges against him and is so presumed until such  
8 time as the jury may find him guilty beyond a reasonable  
9 doubt, but we have to talk at this time about the death  
10 penalty and I want you to know that there are no right or  
11 wrong answers. Do you understand all of that?

12 A Yes, sir.

13 Q Did you review the juror types?

14 A Yes, sir.

15 Q Did you find yourself on that list?

16 A Yes, sir.

17 Q What category?

18 A Three.

19 Q All right. Could you as a juror participate in a jury  
20 verdict recommending the penalty of death for murder if  
21 the evidence and the law warranted such a verdict?

22 A Yes, sir.

23 Q Could you as a juror participate in a jury verdict  
24 recommending life imprisonment for murder if the evidence  
25 and the law warranted such a verdict?

1 A Yes, sir.

2 Q All right, now you and I talked yesterday about your  
3 situation, your surgery?

4 A Yes, sir.

5 Q Other than that is there any other reason that you  
6 would have any hardships by serving on a jury for ten or  
7 twelve days?

8 A Well, I have a four year old daughter and a ten year  
9 old son and I did discuss how my absence would impede my  
10 household with my husband and it would be a hardship by  
11 the fact that he's on shift work, he's at Proctor & Gamble  
12 Company and it would be different.

13 Q Would it be different or would it be unworkable, that  
14 is, would there be someone with your children while he was  
15 on a shift?

16 A I would have to because of the age of his parents  
17 probably have to hire, you know, if he could not switch  
18 off on shifts and it would take some hoop jumping and,  
19 again, ---

20 Q With a four year old you probably do a lot of hoop  
21 jumping.

22 A Oh, I do; I'm good at it. I discussed it with my  
23 children as to how they would feel and, of course, they  
24 have no problem with it they think, but they have never  
25 been cared for by their father for two weeks, so I don't

1 know what I may end up going back to, but other than that  
2 the surgery had been scheduled and although it did seem I  
3 felt like I was talking to you all about removing toe  
4 nails yesterday, so frivolous, but I am experiencing  
5 numbness in the leg and that's why ---

6 Q I did not get the picture that it was some slight -- I  
7 got the picture that it would be more involved  
8 particularly since you said you were facing surgery, so I  
9 think I understood. I didn't think it was having toe  
10 nails taken off.

11 A Well, you know, I felt kind of dumb up here, but it is  
12 some numbness experiencing there, so even though I am  
13 going to be somewhere sometime within the next month  
14 whether it's with all of you or in the hospital  
15 recovering, so, you know, do with me as you please.

16 Q I am going to let the other attorneys ask you -- the  
17 attorneys ask you some questions.

18 A It will be attorneys or the doctors get me.

19 EXAMINATION BY MR. BRACKETT

20 Q Ms. Perry, my name is Kevin Brackett. I am the deputy  
21 solicitor over in the Sixteenth Circuit and I work with  
22 Tommy Pope who is seated there at the table. He is the  
23 solicitor and we are prosecuting the case. We represent  
24 The State. I am sorry to inconvenience you.

25 A That's all right.

1 Q We just have to get some things taken care of. And the  
2 whole purpose of having you here today, of course, is to  
3 get some insight as to how you feel and there are no right  
4 or wrong answers and this isn't a quiz, nobody is going to  
5 grade you.

6 A I understand.

7 Q No one will challenge your answers or criticize you.  
8 Just tell us what you think and we will go from there.

9 A Okay.

10 Q You indicated you were a type three juror.

11 A Uh-huh.

12 Q And a type three juror, to make sure we understand  
13 that, is the kind that can be open minded and fair and  
14 hear all of the evidence and at the conclusion of the case  
15 if the circumstances and the facts warrant it you could  
16 give the death penalty and if the circumstances and facts  
17 don't warrant the imposition of the death penalty, you can  
18 impose a life sentence or if mitigation presented by the  
19 defense indicates that the proper sentence would be life,  
20 you could impose a life sentence, is that correct?

21 A Absolutely.

22 Q And if you did decide the death penalty was  
23 appropriate, if you thought after hearing the  
24 circumstances you said and you and the other eleven jurors  
25 sat down and talked it out and listened to each other and

1 applied your common sense and said this is a case that  
2 merits the ultimate sentence, the death sentence, at the  
3 conclusion of that the law requires that each juror take a  
4 pen and sign a certificate attesting to the fact that that  
5 was each juror's verdict and it can't be the verdict until  
6 all twelve have signed, so if that were the case and you  
7 did decide for a death sentence, you wouldn't have any  
8 problems picking up a pen and signing your name?

9 A No, sir.

10 Q Okay.

11 MR. BRACKETT: I beg the court's indulgence.

12 Mrs. Perry, thank you very much.

13 A You are welcome.

14 EXAMINATION BY MS. BRICE

15 Q Hi, Mrs. Perry, my name is Chris Brice. I, along with  
16 my co-counsel Steve Schusterman, we represent the  
17 defendant, Mr. Hughes. As Deputy Solicitor Brackett has  
18 explained, this is just basically a time when we get a  
19 understanding a little bit about what your position is  
20 concerning the death penalty and your ability to render a  
21 fair decision in the guilt.

22 A Okay.

23 Q First of all, I would like to thank you for completing  
24 your questionnaire and taking the time to consider the  
25 questions that were posed in the questionnaire as well as

1 the questions we are posing to you today. Have you ever  
2 considered the death penalty before before coming here  
3 today?

4 A Yes.

5 Q And what considerations did you give to the death  
6 penalty?

7 A Well, just, you know, in media cases what would I  
8 decide here, you know, and, of course, that's so limited  
9 as to, you know, the facts that you have from the media,  
10 you know, like if you are sitting there figuring out was  
11 O.J. innocent, is O.J. guilty, who knows, you know, and  
12 things like that. I think every day ordinary interest.

13 Q And are there cases you have heard in the news that  
14 you are familiar with where you believe the death penalty  
15 is ---

16 MR. BRACKETT: Objection, Your Honor.

17 THE COURT: I sustain the objection.

18 Q In your consideration of the death penalty you stated  
19 there are times that you have considered the death  
20 penalty.

21 A Uh-huh.

22 Q What factors do you believe or that you take into  
23 consideration that would warrant the death penalty?

24 MR. BRACKETT: Objection.

25 THE COURT: I sustain the objection.

1 Q Let me try to rephrase it again. What opinion do you  
2 have concerning the death penalty?

3 A Again like the type three juror if the case warranted  
4 it after I had heard all of the facts I could go for the  
5 death penalty or not go for the death penalty.

6 Q Basically you would be open minded about it, you would  
7 hear the facts of the case, ---

8 A Absolutely.

9 Q --- and based upon the facts of the case it may  
10 warrant the death penalty?

11 A Absolutely, yes.

12 Q And if it so warranted it, then you could sign  
13 essentially the verdict sheet?

14 A Absolutely.

15 Q Do you know anybody in Rock Hill, York, York County?

16 A I have relatives in Gastonia, North Carolina, but they  
17 just always went to York to buy fireworks.

18 Q If you were in a jury room and whether or not the case  
19 was in guilty or innocence or life and death, could you if  
20 you felt that Mr. Hughes was innocent or that he deserved  
21 a life sentence, could you hold true to your conviction?

22 A Absolutely.

23 Q You wouldn't be swayed by maybe others who may try to  
24 convince you?

25 A I don't easily sway.

LINDA PERRY

BY MS. BRICE

1 Q And do you hold any prejudices and biases concerning  
2 someone's race, gender or religion?

3 A No, I have an appreciate for diversity.

4 Q And do you believe that psychologists and  
5 psychiatrists hold a useful function in society?

6 A Yes.

7 Q That's all the questions. Thank you.

8 THE COURT: You may step out for just a minute.

9 JUROR: Thank you.

10 THE COURT: What says The State?

11 MR. BRACKETT: I submit she is qualified, Your Honor.

12 THE COURT: Ms. Brice? Ms. Brice?

13 MS. BRICE: Yes, Your Honor, I submit she is  
14 qualified.

15 THE COURT: Bring her back in.

16 I find that you are qualified. I am going to ask you  
17 to call back between five and seven today, you will be  
18 given a telephone number, and they will tell you what time  
19 to report. You are part of the jury pool. This does not  
20 mean you will actually be chosen.

21 JUROR: Yes, sir.

22 THE COURT: When you come tomorrow, come packed and  
23 prepared to leave immediately if you are chosen for a ten  
24 to twelve day stay in York County. Again, you might not  
25 want to do anything about your doctor's situation until

PAUL ZEH

BY THE COURT

1       you find out what happens tomorrow. Don't read anything  
2       about the case, don't listen to anything about it if you  
3       hear anybody, tv or anything talking about it, and call  
4       between five and seven and come prepared.

5             JUROR: Tonight five and seven?

6             THE COURT: Call between five and seven tonight.

7             JUROR: Okay. They will give me a number?

8             THE COURT: Yes, ma'am.

9             Panel D Paul Zeh.

10                     PAUL ZEH (W/M)

11             EXAMINATION BY THE COURT

12             MR. SCHUSTERMAN: Your Honor, do you always ask have  
13       they spoken to anybody? This is a new group, to make sure  
14       they haven't spoken to each other about ---

15             THE COURT: Well, it is supposed to be written on top  
16       of their --

17             MR. SCHUSTERMAN: Thank you, sir.

18             THE COURT: Come in and have a seat, sir.

19             Q    How are you today?

20             A    Fine, how are you?

21             Q    I'm fine. I am John Hayes. I am going to ask you some  
22       questions.

23             A    All right.

24             Q    I am going to remind you that you are still under oath  
25       and ask you to speak loud enough for all of us to hear

1 you, okay?

2 A Yes, sir.

3 Q Are you related by blood or marriage to any of the  
4 participants in this matter?

5 A No, I am not.

6 Q Do you have any interest, bias, or prejudice in this  
7 case?

8 A No, I do not.

9 Q Have you formed or expressed an opinion as to 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 and the defendant a fair and impartial  
14 trial in this case?

15 A No, I do not.

16 Q Could you under your oath follow the law in this case  
17 as the trial judge instructs you?

18 A Yes.

19 Q Could you depending on the facts and the evidence and  
20 the law if you felt it warranted find a defendant not  
21 guilty?

22 A Yes.

23 Q Could you under the circumstances I just outlined if  
24 you felt it warranted find a defendant guilty?

25 A Yes, sir.

1 Q Have you discussed this case with anyone?

2 A No, sir.

3 Q Have you read or heard anything about this case from  
4 any source?

5 A No, sir.

6 Q Mr. Hughes, the defendant, is a black gentleman and  
7 the victim was white and it is alleged he was on duty as  
8 an officer at the time of his death. Would this in any way  
9 whatsoever prevent you from rendering a fair and impartial  
10 verdict?

11 A No.

12 Q Now I am going to talk to you just a minute about your  
13 views on the death penalty. In a death penalty case there  
14 are two stages, a guilt phase and then a penalty phase. I  
15 am going to talk to you about the second phase and I want  
16 you to understand that that is not any indication of  
17 anything regarding the first phase, that is, Mr. Hughes is  
18 presumed innocent of all the charges and we only move into  
19 the second part, the penalty phase, if a jury were to find  
20 him guilty of murder beyond a reasonable doubt. Do you  
21 understand that?

22 A Yes, sir.

23 Q Did you review the three juror types?

24 A Yes, I did.

25 Q Did you find yourself on one of those?

1 A Yes.

2 Q In what category?

3 A Three.

4 Q Would you as a juror be able to participate in a jury  
5 verdict recommending the penalty of death for murder if  
6 the evidence and the law warranted such a verdict?

7 A Yes.

8 Q Could you as a juror be able to participate in a jury  
9 verdict recommending a sentence of life imprisonment for  
10 murder if the evidence and the law warranted it?

11 A Yes.

12 Q Other than the general inconvenience and hardships  
13 with being away from your usual activities for ten to  
14 twelve days would present, would your serving on a jury  
15 present any unusual hardships for you?

16 A No.

17 Q All right, I am going to ask you to answer counsels'  
18 questions.

19 EXAMINATION BY MR. SCHUSTERMAN

20 Q Good afternoon, sir.

21 A Good afternoon.

22 Q My name is Steve Schusterman. I am an attorney from  
23 York County, from Rock Hill. I represent Mar-Reece Hughes,  
24 the defendant in this action, along with Chris Brice, the  
25 lady seated there. Let me first say there are no right or

1 wrong answers. This is just an opportunity for the  
2 attorneys to have a moment to meet with you and try to  
3 understand your feelings about certain topics relating to  
4 the case.

5 Sir, is there -- you belong to the Resurrection  
6 Church?

7 A That's correct.

8 Q Is there anything -- are there any religious  
9 principles within your faith that you would use to aid you  
10 in your decision making as to guilt or innocence?

11 A Yes.

12 Q May I ask what those are?

13 A I would call upon God to give me the answer.

14 Q Do you call upon God to give you an answer frequently?

15 A Not for matters other than this; this is death we are  
16 talking about versus life imprisonment.

17 Q Do you understand that before we get to the issue of  
18 life and death ---

19 A That guilt has to be proven, yes.

20 Q And that would be a separate trial, a separate  
21 function.

22 A Yes, I understand that.

23 Q You indicated you have no bias or prejudice towards  
24 anybody?

25 A That's correct.

1 Q The fact that Mr. Hughes is black plays no role?

2 A No.

3 Q It is indicated here that you read the Augusta  
4 Chronicle.

5 A Correct.

6 Q The newspaper you get. Did you read it today?

7 A No, I just get the weekend copy.

8 Q You were asked about the field of psychiatry and  
9 psychology and how you feel about them.

10 A Yes.

11 Q And to quote from your questionnaire you said "I  
12 support them in self help, non-drug related treatment  
13 unless it is absolutely necessary."

14 A True.

15 Q Can I take it from there that you do believe that  
16 people have mental illnesses?

17 A Yes.

18 Q You just oppose the use of drugs in treating them?

19 A Unless it is absolutely necessary.

20 Q Okay. You were charged with domestic violence?

21 A That's correct.

22 Q In March of '93.

23 A Yes.

24 Q But the charges were nol-prossed? They were dropped?

25 A Yes.

1 Q If you are faced with a situation where the majority  
2 of the jury believes one position, guilt or innocence, and  
3 you stand in a minority or stand alone, do you feel that  
4 you can maintain your position?

5 A That's a question I've asked myself only that I've not  
6 been in this situation before, so it's a new experience  
7 for me to be there.

8 Q So you are saying you don't know how you would react  
9 to that situation?

10 A That's true at the moment.

11 Q Do you believe in the death penalty?

12 A I've not really formed an opinion about it. The  
13 opinion I have about it is it is a part of our society's  
14 way of correcting crime, heinous crime, whether there  
15 would be incarceration or the death penalty, but I've not  
16 really formed an opinion on it only that society accepts  
17 it and it's law.

18 Q Do you understand that you never -- that if we reach  
19 the second phase of the trial that you never have to give  
20 the death penalty, you can give life without parole for  
21 any reason or no reason at all ---

22 A Yes.

23 Q --- that there will be no -- there will be no mandate  
24 where the judge will say now, if you find this, you must  
25 give the death penalty, that will not be put upon you.

1 A Yes.

2 Q Do you know anybody in Rock Hill or York County?

3 A No.

4 Q Thank you. Please answer any questions the solicitor  
5 may have.

6 EXAMINATION BY MR. POPE

7 MR. POPE: May it please the court?

8 Q Mr. Zeh, I am Tommy Pope. I am the solicitor up in  
9 York County. Mr. Kevin Brackett he's my deputy solicitor.  
10 You have indicated to Mr. Schusterman you haven't been in  
11 a situation like this before.

12 A That's correct.

13 Q One thing I would tell you is that you can't give a  
14 wrong answer because all we ask you is how you feel ---

15 A Right.

16 Q --- and so some of the items that, you know, I realize  
17 when you go back there, you have got to make what we  
18 consider and you consider, we all consider, very serious  
19 decisions.

20 A That's correct.

21 Q So any time when we are talking about life or death  
22 and we are throwing those words around, I don't want you  
23 to think that we are making light or don't take it  
24 seriously as far as the process that we have going forward  
25 here.

1 A All right.

2 Q I would like to touch on a few things. As far as the  
3 church you said in making your decision of this magnitude  
4 that you would have to call on the Lord to give you  
5 guidance, in essence.

6 A That's correct.

7 Q By saying that you were a type three juror you are not  
8 pre-supposing what that guidance would be, you say you  
9 haven't been faced with this situation and you would have  
10 to deal with it when it came, you would want to hear all  
11 of the facts before you made a determination?

12 A Yes.

13 Q Is there any particular teachings that the  
14 Resurrection Church has in regards to the death penalty?

15 A It may, I'm not aware of them; I've not had to look at  
16 them before.

17 Q And would that be such thing, since you are not aware  
18 of them you can't very well be bound by them or going one  
19 way or the other other than what you already know?

20 A That's correct.

21 Q Mr. Zeh, as I understand you to say you talked about  
22 the death penalty being society's way and that you really  
23 have to search for what you believe ultimately as a theory  
24 if you want to call the death penalty a theory, you agree  
25 that society has decided that is part of our law.

1 A That's correct.

2 Q But again you understand Mr. Schusterman I think made  
3 it clear nothing is ever going to make you give the death  
4 penalty, that even if the eleven other jurors want to, you  
5 never have to give it unless you think it is appropriate.

6 A Yes.

7 Q Well, putting yourself in category three there are  
8 some cases when you could give the death penalty and some  
9 cases that you wouldn't give the death penalty; you just  
10 wouldn't know until you had heard the facts, is that a  
11 fair statement?

12 A Yes, sir.

13 Q The situation involving the divorce and the domestic  
14 situation and all of that, was there any experience as far  
15 as law enforcement involvement that would give you a bias  
16 or a predisposition toward law enforcement one way or  
17 another, you know, in all that situation that was  
18 involved? I know how those things go sometimes.

19 A Yes, there would.

20 Q And could you tell me what that would be?

21 A I found out after the fact that my wife at the time  
22 was sleeping with one of the law enforcement officers that  
23 picked me up.

24 Q The ones that were involved?

25 A Yes.

1 Q Needless to say, that gave you a bad taste about law  
2 enforcement in that particular case?

3 A Yes.

4 Q Do you think that that circumstance, the bad  
5 circumstances that you were in, would affect you in your  
6 ability to be fair in this case knowing -- of course, we  
7 have got to prove everything, but knowing that we are  
8 alleging a law enforcement officer had been shot, do you  
9 think that you would have trouble giving The State a fair  
10 trial from the standpoint that it would be a law  
11 enforcement officer on this side?

12 A No.

13 Q Mr. Zeh, my final question would be as part of our law  
14 a jury, as Mr. Schusterman said, once we get to the  
15 penalty phase, of course, we have got to prove the case  
16 beyond a reasonable doubt as far as guilt before we ever  
17 get there ---

18 A Uh-huh.

19 Q --- if we get to the penalty phase, if the jury  
20 determines that life is appropriate, you know, after the  
21 give and take of hearing from each juror and people  
22 speaking their minds and discussing the evidence in some  
23 constructive situation with all the jurors giving whatever  
24 input they deem appropriate, if the jury determined that  
25 life was the appropriate sentence, only the foreperson

1 signs, only the foreman or the forelady of the jury has to  
2 sign saying we determine that life is appropriate.

3 A Uh-huh.

4 Q However, in the case if the death penalty, our law  
5 requires that, one, it must be unanimous and, two, that  
6 each juror must themselves sign a document that would  
7 certify that this is the verdict of the jury and they  
8 would send that to the court to say that death is  
9 appropriate in this case. If you had heard the facts  
10 along with the other jurors and you determined that death  
11 was appropriate, could you put Paul Zeh on that line as  
12 one of the twelve jurors to give death?

13 A That's a supposition on my part right now, something I  
14 can't answer at the moment.

15 Q When you say you can't answer it at the moment, I  
16 realize you have absolutely no facts before you.

17 A Correct.

18 Q Okay, are you saying you can't answer it because you  
19 haven't heard the facts yet or are you saying you don't  
20 know if you would be able to later and, like I say, let's  
21 take it away from the context of this case, let's just  
22 talk about in the abstract, any case, if there is a case  
23 and the facts are proved that you thought death was  
24 appropriate, and you have indicated they may be some times  
25 when you would think that. ---

PAUL ZEH

BY MR. POPE

1 A Certainly.

2 Q --- could you sign your name to give someone death?

3 A If I thought the facts were appropriate, yes.

4 Q Thank you, sir.

5 THE COURT: I want to ask you to step outside just one  
6 minute, Mr. Zeh.

7 JUROR: All right.

8 THE COURT: What says The State?

9 MR. POPE: I submit he is qualified, Your Honor.

10 THE COURT: What says the defendant?

11 MR. SCHUSTERMAN: I submit he is qualified, Your  
12 Honor.

13 THE COURT: I find he is qualified.

14 Bring him back in.

15 You can stop right there. You will be part of the jury  
16 pool. I ask that you call back between five and seven.  
17 They will give you a number. Call back between five and  
18 seven tonight. They will tell you what time to come  
19 tomorrow. When you come tomorrow, come packed because if  
20 you are chosen, the jury will be taken immediately from  
21 here to York, so come prepared to go on a ten to a twelve  
22 day stay if you are chosen and don't talk about this case  
23 with anyone or read anything or listen to anything about  
24 it.

25 JUROR: Okay.

1 THE COURT: Thank you.

2 All right, we will take a short break now.

3 (Recess.)

4 Mr. Alan Clingan.

5 ALAN CLINGAN (W/M)

6 EXAMINATION BY THE COURT

7 Q I am John Hayes and I am going to be asking you  
8 questions. You are still under oath and I am going to ask  
9 you to speak up so everyone can hear what you have to say.  
10 Now are you related by blood or marriage to any of the  
11 participants in this case?

12 A Not that I know of.

13 Q Do you have any interest, bias, or prejudice in  
14 connection with this case?

15 A I've heard some stuff accidentally.

16 Q What have you heard and how did you hear it?

17 A My wife was kind of upset. She got to work and she  
18 heard something in the newspaper and called me and said  
19 she didn't want me involved in this and her co-worker said  
20 something in the background that I heard about the case.

21 Q What was it that you heard?

22 A Something about a police officer that was shot six  
23 times; that's all I heard.

24 Q Would that -- of course, you are going to hear the  
25 evidence during the trial of the case. Would the fact that

1 you had heard that create any interest, bias or prejudice  
2 - could you disregard what you had heard and if the facts  
3 were not as you heard it to be, to disregard those facts  
4 and base your verdict on the law and the evidence that you  
5 receive in the trial?

6 A I think so.

7 Q Okay and other than that do you have any other  
8 interest, bias or prejudice that would affect your sitting  
9 as a juror on this case?

10 A I think my mind would be elsewhere a lot.

11 Q Have you formed or expressed an opinion as to the  
12 guilt or the innocence of the defendant?

13 A No.

14 Q Do you know of any reason whatsoever why you could not  
15 give both The State and the defendant a fair and impartial  
16 trial?

17 A No.

18 Q Would you under your oath follow the law as charged to  
19 you by the trial judge? Would you follow the law the  
20 trial judge tells you must apply?

21 A Yes.

22 Q Could you depending on what the facts, the evidence,  
23 and the law shows, if you felt it warranted, find a  
24 defendant not guilty of the charges?

25 A If he was proven or not?

1 Q I'll rephrase it. If you find the defendant not  
2 guilty, if that was the facts, evidence and the law  
3 warranted, ---

4 A Yeah.

5 Q --- could you under those circumstances, if it was  
6 warranted, find the defendant guilty?

7 A Yes, sir.

8 Q Have you discussed this case with anyone and I'm  
9 really not concerned now - you have already told me about  
10 having heard that - have you discussed the case with  
11 anyone?

12 A No.

13 Q Have you heard anything about this case other than  
14 what you heard on the phone this morning?

15 A No.

16 Q Have you read anything about it?

17 A No.

18 Q Now Mr. Hughes is black and the victim in this case  
19 was white and was allegedly a police officer acting in the  
20 course of his duties at the time of his death; would that  
21 in any way prevent you from rendering a fair and impartial  
22 verdict?

23 A No.

24 Q Now I am going to ask you some questions about the  
25 death penalty at this time about your views on that

1 subject and there are no right or wrong answers. I want to  
2 emphasize to you that the fact we are talking about the  
3 death penalty is no indication as to the guilt or the  
4 innocence of the defendant. He is presumed innocent and  
5 so presumed until the jury were to find him guilty beyond  
6 a reasonable doubt. Do you understand that?

7 A Yes, sir.

8 Q Now a trial of this type takes place in two parts, a  
9 guilt phase and a penalty phase. If the defendant is found  
10 not guilty of murder in the guilt phase, then there is no  
11 penalty phase. If he were found guilty of murder, then we  
12 would move to the second phase where evidence would be  
13 presented and the jury would then consider the penalty of  
14 either death or life imprisonment. Do you understand that?

15 A Yes, sir.

16 Q Did you go over the juror types?

17 A Yes, I did.

18 Q Did you find yourself in one of those and, if so,  
19 which one?

20 A Type one.

21 Q You are the type who believes that if a murder has  
22 been proven beyond a reasonable doubt that the death  
23 penalty would be the most appropriate punishment no matter  
24 what the circumstances of the case?

25 A Yes, sir.

1 Q Is that an unalterable position?

2 A Yes, sir.

3 Q Would it be impossible for you to return a verdict of  
4 life imprisonment where one has been found guilty of  
5 murder or would it just be difficult?

6 A It would be impossible.

7 Q Would you be able or would you not be able to  
8 recommend the penalty of life imprisonment for murder when  
9 you felt the evidence warranted such a verdict?

10 A I don't understand the question.

11 Q Would you be able or would you not be able to  
12 participate in a jury verdict recommending life  
13 imprisonment for one found guilty of murder?

14 A I could not recommend life imprisonment.

15 Q Would your bias towards the death penalty in a case  
16 where one is found guilty of murder would there be any way  
17 that the evidence and facts and the circumstances  
18 developed in the trial would overcome that to the extent  
19 that you would impose a verdict for life imprisonment?

20 A No, sir.

21 Q Now if you were selected on this case, you would  
22 travel to York County for ten to twelve days. Other than  
23 the fact you have already told me your wife wouldn't be  
24 very happy are there any other undue hardships this would  
25 cause you?

1 A I told you yesterday.

2 Q Other than what you told me.

3 A No.

4 Q Okay, all right, I am going to let you answer any  
5 questions they may ask.

6 EXAMINATION BY MR. POPE

7 MR. POPE: May it please the court?

8 Q Mr. Clingan, I am Tommy Pope. I am the solicitor from  
9 up in York County. I have just a few brief questions for  
10 you. One thing I tell you is where you sit now you can't  
11 give a wrong answer because it's your answer, it's what  
12 you feel. The judge asked you about the death penalty and  
13 you said in every case, if it was murder, you would give  
14 the death penalty, is that correct?

15 A If it's proven guilt, yes.

16 Q I'm sorry, let me step back just a little bit. The  
17 first thing the defendant is innocent until proven guilty  
18 and then The State has to prove the case beyond a  
19 reasonable doubt. If we don't prove the case, then, of  
20 course, they are not guilty. If we prove it, then they  
21 are guilty.

22 A Yes.

23 Q So that's when we would go to the second stage. We  
24 have got somebody who is guilty of murder what would the  
25 penalty be and you said that you felt it should always be

1 death?

2 A Right.

3 Q Could you tell me why you feel that way and, again,  
4 I'm not trying to talk you out of it, I just wanted to see

5 --

6 A Just the news that I've the court procedures that I  
7 have seen in the past on tv, newspapers, and everything.  
8 I'll give you an example, the Susan Smith trial they  
9 proved her guilty and I think the rights of those two  
10 young kids and the rest of that family I don't think that  
11 she should have deserved to live and that's just the views  
12 that I have got over the years. I think if somebody  
13 murders somebody and took that life, they should pay with  
14 their life if they are proven guilty.

15 Q Again, I want to assure you you are preaching to the  
16 choir on that case, I'm not trying to talk you out of  
17 anything, but that was a heinous case certainly. Can you  
18 envision any murder case where one has killed another, it  
19 is truly a murder case, that there would be facts that  
20 could be presented to the jury in that second phase that  
21 would have you consider a life sentence?

22 A No.

23 Q Thank you, sir.

24 MR. SCHUSTERMAN: No questions.

25 THE COURT: You may step back just one minute.

1           What says The State?

2           MR. POPE: Unfortunately, I submit he is not  
3 qualified.

4           THE COURT: The defendant?

5           MR. SCHUSTERMAN: We will concur with the solicitor.

6           THE COURT: All right, I find that he is unqualified.  
7           Bring him in.

8           Mr. Clingan, you are going to be excused. If you will  
9 just step up here, they will give you a check and you are  
10 free to leave. We appreciate your time.

11          Bring in Mr. Boatwright.

12                           T. J. BOATRIGHT (W/M)

13   EXAMINATION BY THE COURT

14   Q   Step up here and have a seat, please, sir.

15           I am John Hayes and I am going to ask you some  
16 questions and I am going to remind you that you are under  
17 oath. I am going to ask that you be relaxed while you  
18 answer them and I am going to ask that you answer them  
19 loud enough for all of us to hear, okay?

20   A   Yes, sir.

21   Q   Are you related by blood or marriage to any of the  
22 parties in this case or the lawyers?

23   A   No, sir.

24   Q   Do you have any interest, bias or prejudice in regards  
25 to this case?

1 A No, sir.

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, sir.

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?

8 A Well, I've got a lot going on in my life right now  
9 that may would cause me one way or the other to be a  
10 little upset about being here.

11 Q All right, what about anything -- that would be what I  
12 guess we would call external reasons, not internal to this  
13 case itself?

14 A No, sir, not to the case itself.

15 Q All right, if you were seated as a juror under your  
16 oath follow the law in the case as given by the trial  
17 judge?

18 A Yes, sir.

19 Q Could you if the facts warranted it find a defendant -  
20 the facts and the law - warranted it find a defendant not  
21 guilty of the charges?

22 A Yes, sir.

23 Q Could you find the defendant guilty of the charges if  
24 you felt the facts and the law warranted it?

25 A Yes, sir.

1 Q Have you discussed this case with anyone?

2 A No, sir.

3 Q You haven't heard anything about it?

4 A No, sir.

5 Q The defendant, Mr. Hughes, is a black gentleman and  
6 the victim, Mr. McCants, was white and was alleged to be  
7 in the course and scope of his employment as a law  
8 enforcement officer at the time of his death. Would this  
9 in any way whatsoever prevent you from rendering a fair  
10 and impartial verdict?

11 A No, sir.

12 Q Now I am going to talk to you a moment about your  
13 views on the death penalty. There are no right or wrong  
14 answers to these questions. The fact that we are talking  
15 about the death penalty does not indicate anything as to  
16 the guilt or the innocence of the defendant. Mr. Hughes is  
17 presumed innocent of the charges until a jury would find  
18 him guilty beyond a reasonable doubt. Do you understand  
19 that?

20 A Yes, sir.

21 Q And in a death penalty case there are two factors --  
22 or two phases, one has to do with guilt and the other has  
23 to do with penalty. We are talking about the penalty  
24 phase and this in no way indicates what decision the jury  
25 should make in the guilt phase. Do you understand that?

1 A Yes, sir.

2 Q Did you review the sheet of juror types in the jury  
3 room?

4 A Yes, sir, I did.

5 Q Did you find yourself in one of those?

6 A Yes, sir, I did.

7 Q Which type?

8 A The first type.

9 Q All right, you are the type that would give the death  
10 penalty in any case where the murder has been proven to  
11 have been committed beyond a reasonable doubt, is that  
12 correct?

13 A Yes, sir.

14 Q Is that fixation such that it could not be overcome by  
15 the evidence and the circumstances as presented at the  
16 trial of the case?

17 A It's my opinion that if you have committed murder and  
18 you are proven by The State to have done it, then you  
19 deserve to die.

20 Q Would it be impossible for you to return a verdict of  
21 life imprisonment or would it be just difficult for you.

22 A It would be very difficult.

23 Q But would it be impossible?

24 A I'm not going to say impossible.

25 Q It would be very difficult.

1 A Yes, sir.

2 Q All right. Now I am going to ask you again to tell me  
3 if you would what your situation, what things are on your  
4 mind that you want to share with us, that would prevent  
5 you from being able to focus on the trial if you were  
6 chosen as a juror.

7 A Well, I was out of work for ten months at the end of  
8 last year with open heart surgery. Basically, I am just  
9 now getting back on my feet good financially and I work at  
10 the Savannah River Plant in construction and the first of  
11 October they are going to start laying off and that would  
12 be on my mind plus the fact that it's just hard for me  
13 right now to miss the money because I was out of work for  
14 so long last year and had the expenses, the medical  
15 expenses, I did have above what my insurance paid. Plus we  
16 have also got a vacation scheduled the second week in  
17 October. I missed it last year because of the open heart  
18 surgery and I have already got plans made, a deposit made  
19 on where we are going, and I just don't want to be here.

20 Q All right, answer any questions that counsel may have.

21 EXAMINATION BY MR. SCHUSTERMAN

22 A Mr. Boatwright, my name is Steve Schusterman. I am an  
23 attorney from York County. I represent Mr. Hughes along  
24 with Christina Brice who is seated next to me with the  
25 white jacket on. Understand that whatever your positions

1 are regarding the death penalty or any questions that we  
2 ask you these are not questions where we are looking for  
3 right or wrong, these are your feelings, an opportunity  
4 for the court, as well as myself and the Solicitor's  
5 office to get to know you and to ask you certain  
6 questions. I understand that you are a what you call a  
7 type one juror.

8 A Uh-huh.

9 Q You have indicated. And if I understand that  
10 correctly, you are saying that if it's a two part trial  
11 and you understand there are going to be two separate  
12 parts to this trial, first, would be guilt or innocence.  
13 If I understand correctly, you are saying that in a  
14 situation where you as one of twelve jurors you determine  
15 that Mr. Hughes is, in fact, guilty of the charge of  
16 murder, you are saying that you would then be - you  
17 believe that at that point if he is convicted of murder  
18 for killing a police officer, you would automatically give  
19 him a death sentence?

20 A Yes, I would.

21 Q Okay. And while the fact that the victim here he is  
22 alleged to have been a law enforcement officer are you  
23 saying that no matter what I chose to show you in terms of  
24 good things about Mr. Hughes once he was convicted of  
25 murder, you are going to put him to death?

1 A That's my opinion.

2 Q Okay. And just so that I understand and the record is  
3 clear, no matter -- once he's convicted, we'll assume that  
4 he is convicted, once he is convicted, no matter what  
5 aspects I can show you of Mr. Hughes' life, certainly I am  
6 not presenting any evidence to you now, but whatever I  
7 showed you as good as I could get, you would still give  
8 him a death sentence for killing a police officer if he  
9 was convicted of it.

10 A If he was convicted of murder, yes, I would.

11 Q Thank you.

12 MR. SCHUSTERMAN: I have no other questions.

13 THE COURT: Mr. Brackett.

14 EXAMINATION BY MR. BRACKETT

15 Q Good afternoon, Mr. Boatwright. My name is Kevin  
16 Brackett. I am the deputy solicitor in the Sixteenth  
17 Circuit. I work with this gentleman over here, Tommy Pope,  
18 who is the solicitor up in York and Union Counties and we  
19 are going to be prosecuting this case. That is Mr. Hughes  
20 seated over there with counsel.

21 Now the judge asked you about your feelings on the  
22 death penalty and like Mr. Schusterman said there are no  
23 right or wrong answers, but it's important that we know  
24 how you feel.

25 The judge asked you whether or not you could give a

1 death sentence and you indicated you could. You indicated  
2 that you probably would, but he also asked you whether or  
3 not it would be impossible for you to do that and you  
4 said, no, it would be difficult. There are scenarios  
5 where the facts and circumstances would warrant a life  
6 sentence, isn't that correct?

7 A Yes, I feel sure it would be.

8 Q I mean there's -- not every murder is the same, not  
9 every crime is the same, but each person that commits the  
10 crimes or is accused of committing a crime, the facts and  
11 circumstances surrounding the crimes, how the crime  
12 actually took place, and then the history of the person  
13 who is accused of committing the crime, all of those come  
14 together to make each crime different so that each crime  
15 has to be looked at independently of one another and there  
16 are crimes that are less serious than others, there are  
17 burglaries that are less serious than other burglaries,  
18 and there are murders that are less serious than other  
19 murders, wouldn't you agree?

20 A Well, my opinion murder is murder. I don't see how it  
21 can be any less.

22 Q Well, in the sense that someone has lost their life,  
23 that's true, but how they lost their life, for example,  
24 one could be very brutal and a torture murder and that  
25 sort of thing as opposed to a murder that didn't have

1 torture aspects involved in it and that sort of thing. And  
2 that would make them different to some degree, isn't that  
3 true?

4 A Well, they would be, but it's still my opinion is that  
5 if you committed murder, then, you know, I'd give you the  
6 death sentence.

7 Q Okay, but you just agreed a few moments ago that there  
8 are circumstances, there are situations and there are  
9 crimes that are ---

10 A Well, maybe there are, but I'm not aware of right now,  
11 then I haven't sit through a murder trial before, but --

12 Q That's right, that's exactly what you need to do, you  
13 need to hear everything before you make a decision like  
14 that. You couldn't make a decision sitting where you are  
15 right now certainly with no facts in front of you; you'd  
16 have to wait until you heard all of the evidence and then  
17 and only then could you make a decision; but it is  
18 possible, your imagination isn't limited, it is possible  
19 ---

20 A It is possible ---

21 Q And there are instances where a life sentence would be  
22 appropriate, isn't that correct?

23 A I guess it is possible.

24 Q Mr. Boatwright, seeing as it is possible and you agree  
25 with me that you haven't heard the facts of this case,

1 isn't that correct, so it's possible, so if it is possible  
2 depending on the facts and circumstances and you haven't  
3 heard the facts and circumstances, then it is possible in  
4 this case?

5 A Anything could be possible even in this case, yes.

6 THE COURT: I am going to ask you to step outside just  
7 one minute. Just step outside the door.

8 What says The State?

9 MR. BRACKETT: Your Honor, I submit this juror is  
10 qualified under Witherspoon. He did indicate that he  
11 could give the death penalty and certainly he indicated he  
12 could give the death penalty and he indicated that he  
13 could give life, he would consider life, he would consider  
14 life in this specific case, acknowledged that the facts  
15 and circumstances were different from one case to the next  
16 and he would have to hear the facts and circumstances and  
17 he admitted that he couldn't know until he did hear the  
18 facts and circumstances. We submit that this juror is  
19 qualified under Witherspoon to serve in this matter.

20 THE COURT: All right.

21 MR. SCHUSTERMAN: If I may, Your Honor?

22 THE COURT: Yes,

23 MR. SCHUSTERMAN: I cannot imagine a scenario where a  
24 man is more clear that he cannot - he will not do anything  
25 but give a death sentence upon conviction. The only thing

T. J. BOATWRIGHT

1       that the Solicitor managed to extract out of that  
2       exchange was that anything is possible, that's the extent  
3       of what the exchange was to you, to me. I asked him point  
4       blank if I could show you sterling characteristics of Mr.  
5       Hughes, would you then consider a life sentence. No, he  
6       will get the death penalty if I convict him. I don't know  
7       what more we could have had. That's not even a ray of hope  
8       "anything is possible." I would submit, Your Honor, that  
9       he is just completely unqualified and that he falls  
10      classically into a number one category.

11           THE COURT: Well, I disagree with you. I find that he  
12      did and he particularized it to this case that if the  
13      appropriate circumstances were shown, he could consider  
14      life imprisonment, so I find that he is qualified.

15           Bring him back in.

16           Mr. Boatwright, you are going to be part of the jury  
17      pool. That doesn't mean that you will be part of the  
18      jury, but I am going to have you call back between five  
19      and seven tonight and they will tell you what time to  
20      report tomorrow and you need to come prepared if you are  
21      chosen to go to York County for ten to twelve days to  
22      serve on the jury. If you are not chosen, of course, you  
23      can go home and you will be through, but we will be going  
24      directly from here as soon as we get the jury drawn, so  
25      don't read anything about the case, don't talk about the

1 case, and call back to the number they will give you  
2 between five and seven.

3 JUROR: All right.

4 THE COURT: All right. Lashona Isaac.

5 LASHONA ISAAC (B/F)

6 EXAMINATION BY THE COURT

7 Q Come on up here. You are Lashona Isaac?

8 A Uh-huh.

9 Q I am John Hayes and I am going to ask you some  
10 questions now. I am going to ask you to be relaxed and I  
11 am going to ask you to speak up, all right?

12 Now are you related to anyone involved in this trial?

13 A No, sir.

14 Q Have you formed -- do you have any interest, bias, or  
15 prejudice in regards to this case?

16 A No, sir.

17 Q Have you formed or expressed an opinion as to the  
18 guilt or the innocence of the defendant?

19 A (Nodded.)

20 Q You have got to answer with words.

21 A Oh, I'm sorry. No.

22 Q Could you give both The State and the defendant a fair  
23 and impartial trial in this case?

24 A Yes.

25 Q Would you under your oath follow the law in this case

1 as the judge charges it to you?

2 A Yes.

3 Q Could you depending on the facts and the evidence and  
4 the law as it is developed, if you felt it appropriate,  
5 find the defendant not guilty of the charges against him?

6 A Yes.

7 Q Could you if you felt the facts, evidence and law  
8 warranted it find the defendant guilty?

9 A Yes.

10 Q Have you discussed this case with anyone?

11 A No.

12 Q Have you read or heard anything whatsoever about this  
13 case?

14 A No.

15 Q Now Mr. Hughes is a black gentleman and the victim in  
16 this case, Mr. McCants, was white and was allegedly  
17 working as a law enforcement officer at the time of his  
18 death. Would this affect your ability and prevent you from  
19 rendering a fair and impartial verdict?

20 A No.

21 Q All right, I am going to talk to you just a minute  
22 about your views on the death penalty. A case such as this  
23 is divided into two parts, one where a defendant is tried  
24 as to their guilt or not guilty -- guilty or not guilty,  
25 and a second phase where they are tried regarding what

1 sentence they would receive, that is, death or life  
2 imprisonment. We are talking about the second part that's  
3 not to indicate anything about the first part. Mr. Hughes  
4 is presumed innocent of these charges until such time as a  
5 jury were to find him guilty beyond a reasonable doubt. Do  
6 you understand all of that?

7 A Yes.

8 Q All right, now I put a sheet in the jury room. Did you  
9 review it?

10 A Uh-huh.

11 Q Did you find yourself to be in one of those  
12 categories?

13 A Yes.

14 Q Which one?

15 A The third one.

16 Q All right. Would you as a juror be able to participate  
17 in a jury verdict recommending the penalty of death for  
18 murder if the evidence and the law warranted such a  
19 verdict?

20 A Yes.

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 such a verdict?

24 A Yes.

25 Q Are there any things that would cause you a hardship

1           that we don't already know about if you had to serve for  
2           ten or twelve days as a juror and be sequestered?

3           A    No.

4           Q    Answer any questions that counsel may have.

5           EXAMINATION BY MR. BRACKETT

6           Q    Good afternoon, Ms. Isaac.

7           A    Good afternoon.

8           Q    My name is Kevin Brackett. I am the deputy solicitor.  
9           I work up in York with Tommy Pope, who is the solicitor up  
10          in York and Union Counties. We are going to be prosecuting  
11          the case against Mr. Hughes who is seated over there with  
12          defense counsel. Are you real nervous about being here  
13          today?

14          A    A little bit.

15          Q    Don't be nervous. This is where I work in this  
16          courtroom and Mr. Schusterman and the judge and all the  
17          clerks and everybody else and we work every day and I  
18          understand you are just coming in here and it's kind of a  
19          nerve-racking experience, but consider yourself to be kind  
20          of a guest in our house here and we have just kind of  
21          invited you in to sit down and chat with us a little bit  
22          and tell us how you feel about certain issues because it  
23          is important that we know how you feel because, as you can  
24          well imagine, this is a very serious business that we are  
25          engaged in. We need to know everything we can about how

1 you feel about the death penalty and the criminal justice  
2 system and some other issues that have come up. Bear in  
3 mind as I ask you these questions that there aren't any  
4 right or wrong answers. Nobody is going to criticize you  
5 for feeling the way you do, nobody is going to challenge  
6 your answers or question what you believe and why you  
7 believe it. You are entitled to believe what you believe  
8 and that's all there is to it. You are entitled to your  
9 opinion and that's all we want to know is what your  
10 opinion is.

11 Now you indicated to the judge that you are a type  
12 three juror and that you could give the death penalty if  
13 you believed it was warranted or you could give life  
14 imprisonment if that's what you felt was warranted. When I  
15 ask you these questions again, please bear in mind that  
16 now is the time to tell us how you feel. We need to know  
17 now because if you are selected as a juror in this case  
18 and you are empaneled in the box and taken up to York  
19 County to hear this case and you are sitting back in the  
20 jury room and all of a sudden Ms. Isaac says, oh, my god,  
21 what am I doing here, what am I supposed -- I don't know,  
22 this isn't something I can do, it's too late then. It's  
23 too late. Now is the time we need to know these things,  
24 okay? So you understand at the outset that we have the  
25 burden of proof; we have to prove everything in this case,

1 The State. The defense doesn't have to prove anything, you  
2 understand that?

3 A Yes.

4 Q Okay. You agree with that that the defendant is  
5 presumed innocent until we prove him guilty?

6 A Yes.

7 Q Do you agree that that's an important part of our  
8 system?

9 A Yes.

10 Q It is. Do you also agree that The State and the  
11 defendant are both entitled to jurors who are fair and  
12 impartial, who can listen openly to a case, and make a  
13 decision based only on the evidence? Do you agree that  
14 that's an important part of our system too?

15 A Yes.

16 Q Would you agree that it's important for the jurors to  
17 be able to consider both life and death in this case if  
18 that question were to come up? If you were sitting in the  
19 jury box and the judge said you have to make a decision,  
20 Ms. Isaac, you and the other eleven jurors need to go back  
21 in some room back there and sit down and talk and you need  
22 to make a decision, if you were put in that position,  
23 could you make a decision with those eleven jurors that  
24 would send a defendant, this defendant possibly, or any  
25 defendant to death? Could you make that decision?

1 A No.

2 Q You couldn't? That's completely understandable; it's  
3 very serious; like I said, this is a very serious bit of  
4 business and I appreciate your honesty. It's important  
5 that you tell us how you feel. You are saying if you went  
6 back there, you couldn't render a verdict that would send  
7 someone to death?

8 A Yes.

9 Q That's yes, you couldn't make the decision, it would  
10 be impossible for you to make that decision?

11 A No.

12 Q Okay, I need you to maybe clarify your answer a little  
13 bit. Let me put it to you this way, we'll go a little bit  
14 in the future. You and the eleven jurors have gone back to  
15 the jury room and you have sat down and you have decided  
16 this is a terrible case, this is a terrible case and this  
17 man needs to go and be put to death. They are going to  
18 take a piece of paper that has twelve lines on it and they  
19 are going to pass that piece of paper around the room with  
20 a pen and in order for you to render a verdict of death,  
21 each and every juror in that room has to sign that piece  
22 of paper and it's not inconceivable, Ms. Isaac, for you to  
23 be sitting at a table with that piece of paper in front of  
24 you and a pen handed to you and somebody asks you go ahead  
25 and sign your name to that piece of paper to send that man

1 to death. Now imagine yourself in that situation now and  
2 ask yourself right now before it comes to that ask  
3 yourself can I do that. Could you do it?

4 A Yes.

5 Q You could do that?

6 A I think.

7 Q You could sign your name to that piece of paper?

8 A (No response.)

9 Q Like I said, I am not trying to put words in your  
10 mouth or trying to tell you how you should feel. I have no  
11 opinion about how Ms. Isaac should feel. The only person  
12 that knows that is you and that's all I need to know. I  
13 really do need to know though could you do that. If you  
14 were in that situation, could you sign your name to that  
15 piece of paper?

16 A No.

17 Q You could not?

18 A I don't think so.

19 Q Well, that's all right; I am glad you are being  
20 honest. That's important that you tell us how you feel. Is  
21 that because of some religious beliefs or something you  
22 learned at church or something you were raised by your  
23 parents to believe or is this a decision that you kind of  
24 made on your own?

25 A I made on my own.

1 Q The feeling that you have about the death penalty?

2 A Yes.

3 Q Do you feel it is right to take the life of somebody  
4 else or do you feel it is wrong?

5 A I think it's right.

6 Q You don't think it's right?

7 A I do.

8 Q You do think it's right to take the life of somebody  
9 else? Now I am getting a little confused because --

10 A I mean I'm getting confused because I mean I thought I  
11 was answering the question; I mean don't you keep  
12 answering the same question again?

13 Q Am I asking the same questions again?

14 A That's how I feel, I mean, when I answered it the  
15 first time.

16 Q I'm not sure, see, I wasn't sure when you -- first you  
17 said no and then you said yes and I'm just trying to  
18 figure it out and trying to find out where you stand, what  
19 your opinion is, whether or not you can do it, whether or  
20 not you are willing to be involved in it, I mean, it's not  
21 for everybody, but I need to know that now before we go to  
22 York and before we start this trial. Remember what I said,  
23 at a certain point it gets too late and that's why it is  
24 important for us to clear the air now and find out where  
25 Ms. Isaac stands. It really comes down to the simple

1 question when I asked you whether you thought it was right  
2 or whether you thought the death penalty was right and  
3 whether you reached that decision on your own and you said  
4 you had reached the decision on your own that the death  
5 penalty was wrong. I need to know is that what you  
6 believe.

7 A No.

8 Q So maybe you can tell me in your own words, Ms. Isaac,  
9 how do you feel about the death penalty.

10 A I really don't know.

11 Q I know you are nervous. I wish we could go downstairs  
12 and talk about it in the hall instead of having to stand  
13 here in this courtroom, but we have to do it here and it's  
14 important that I know how you feel. We have to know.

15 MR. SCHUSTERMAN: I am going to object at this point.  
16 I think the same question has been asked three times.

17 THE COURT: Let's move on. I am going to ask some  
18 questions of my own in just a moment, but I think she's  
19 somewhat confused right now and I am going to ask some  
20 questions and let everybody else be seated. Let's move on.

21 MR. BRACKETT: I beg the court's indulgence for one  
22 moment.

23 Q I know this is a difficult issues and I appreciate  
24 your candor. I understand you are grappling with it just  
25 like everybody else and I want to thank you very much.

1 A Okay.

2 EXAMINATION BY MS. BRICE

3 Q Lashona, my name is Chris Brice. I, along with Mr.  
4 Schusterman, who is seated here, represent Mr. Hughes.  
5 Have you ever been in court before?

6 A No.

7 Q You feel like you are kind of being interrogated a  
8 little bit?

9 A A little.

10 Q I'll assure you that is not the purpose of what we are  
11 doing here. We are not here to interrogate you or to pick  
12 your brain so to speak. We are trying to merely it's just  
13 ensure that The State and Mr. Hughes receive a fair trial.  
14 Do you understand that?

15 A Uh-huh.

16 Q And do you appreciate the importance behind that?

17 A Uh-huh.

18 Q I want to thank you first of all for even being here  
19 today and listening to the questions that was asked you  
20 and for filling out the questionnaire that you have taken  
21 time to consider the questions at the time that you filled  
22 this questionnaire out. Have you ever considered the  
23 death penalty really before you had to take this chair  
24 here today?

25 A No.

1 Q You really haven't had to give it too much though,  
2 huh?

3 A No.

4 Q It's a very serious question, isn't it?

5 A Uh-huh.

6 Q And it's certainly a question that you cannot come to  
7 a quick judgment on, isn't it?

8 A No.

9 Q And I'm not trying to put words into your mouth; I am  
10 just trying to kind of talk to you just one on one a  
11 little bit, okay. We can kind of pretend nobody else is in  
12 here and maybe you and I are the only ones in the  
13 courtroom. As I said the death penalty is very serious in  
14 its nature and it takes a lot of consideration when you  
15 think about it as you are considering it right now. Do  
16 you believe that there could be a time or do you believe  
17 there could be a factual case that could be presented to  
18 you where the death penalty would be proper punishment?

19 A Yes.

20 Q And if that case presented itself to you, if you were  
21 sitting in the jury box and you were sitting in there and  
22 you were listening to the facts and you were thinking I  
23 cannot believe this person could be that horrible, I  
24 believe that the death penalty in this case is warranted,  
25 could you consider the death penalty if the facts were

1 such it was so horrible, could you consider the death  
2 penalty?

3 A Yes.

4 Q And if the facts were - let's say a factual scenario  
5 where there might be children involved, torture, I am  
6 talking about a very serious crime in nature, where you  
7 fix in your conscious that you believe the death penalty  
8 is warranted, do you believe that you could return a  
9 verdict for the death penalty?

10 A Yes.

11 MS. BRICE: The court's indulgence for just one moment.  
12 That's all the questions I have, Your Honor.

13 Q Thank you, very much, Lashona.

14 A Okay.

15 FURTHER EXAMINATION BY THE COURT

16 Q Ms. Isaac, so if I understand what you are saying is  
17 that under an appropriate set of circumstances you could  
18 vote to impose the death penalty if one was found guilty  
19 of murder, is that correct?

20 A Yes.

21 Q And if you voted that way, would you be able to sign a  
22 verdict sheet indicating that you had, in fact, voted to  
23 impose the death penalty?

24 A Yes.

25 Q All right. I am going to ask you to step right

1 outside. Thank you.

2 THE COURT: All right, what says The State?

3 MR. BRACKETT: Your Honor, I know she gave all the  
4 right answers, but I don't think she really knows what her  
5 position is. I don't think this court can say that we have  
6 a clear idea of whether she is qualified. She vacillated  
7 back and forth so much that I couldn't, as Your Honor  
8 witnessed, I couldn't get a consistent answer out of her  
9 from one minute to the next. It appeared to almost change  
10 with the wind. I don't think we know what she really feels  
11 about this and she was saying whatever she thought would  
12 please us and I would submit she was not qualified for  
13 that reason. I realize that she has said everything she  
14 needs to technically be qualified, but just realistically  
15 assessing this juror's maturity and ability to deal with  
16 the gravity of this situation, I don't think she has any  
17 place in the jury box in a capital murder case.

18 THE COURT: What sayeth the defense?

19 MS. BRICE: Your Honor, our position is in fact she is  
20 qualified. I would submit that any question as far as  
21 vacillating back and forth was based on her inability to  
22 understand the questions that were posed by the Deputy  
23 Solicitor. I believe that she understood the questions  
24 that I was asking her, she answered every question I asked  
25 of her, she answered the questions that the court posed to

LASHONA ISAAC

BY THE COURT

1 her that would qualify her as a juror. I think she  
2 understood the questions I was asking her, she understood  
3 the questions that the court was asking her and I would  
4 submit for those reasons that she is qualified. As far as  
5 her maturity, I don't know of really any case law that  
6 says that maturity would counter or as a fact would  
7 disqualify her. I believe she is qualified, Your Honor.

8 THE COURT: All right, bring -- I find she is  
9 qualified. Bring her back in.

10 Ms. Isaac, I find that you are qualified to be a part  
11 of the jury pool. You are going to be given a telephone  
12 number as you leave. Call that number between five and  
13 seven tonight and they will tell you what time you are to  
14 report tomorrow. When you come tomorrow, make sure you are  
15 on time and bring with you your luggage. You might not be  
16 chosen on the jury, but if you are chosen, you need to  
17 have clothing and other articles so you can stay away for  
18 a period of ten to twelve days in York County. Now do you  
19 understand all of that?

20 JUROR: Uh-huh.

21 THE COURT: So call between five and seven and don't  
22 discuss the case and if there is anything in the newspaper  
23 or on tv or anything, don't listen to it, okay?

24 JUROR: Okay.

25 THE COURT: All right, thank you.

THE STATE VS HUGHES

1           Now before we get Ms. Harkman in, it is getting close  
2 to five. We need to assess what to tell those that call in  
3 at five. What I look for us to do is finish this panel  
4 today. We have by my count 24, 25, 26, 27. Let me tell  
5 you. We have got one or two problems. The one lady who I  
6 think she was first this morning who indicated she would  
7 have -- she had a minor child and thought she could work  
8 things out, she's the one that had the adopted child, she  
9 is having a little trouble with that situation. She is not  
10 out of the picture. She hasn't asked to be relieved yet,  
11 she has called back saying things have not worked out. We  
12 will cross that bridge when we come to it.

13           But we just a few moments ago qualified Martha Jane  
14 Carey. She has called back and to paraphrase what was  
15 related to me by the Clerk's office of someone in  
16 hysterics, she had all of a sudden she could not handle  
17 what she said she could handle and I have brought her back  
18 up here so we can inquire as to her situation. Ms. Carey.  
19 And, again, if she is not here, you all have her  
20 questionnaires and by her own admission she says something  
21 about "If you could see my past life, it is a little  
22 scary." Apparently, she has had quite a bit of trauma in  
23 her life, which I will see what her situation is, but I  
24 want you to be aware of that. So while we potentially have  
25 27, we may not quite have 27.

1 All right, let's bring in Eileen Harkman.

2 EILEEN HARKMAN (W/F)

3 EXAMINATION BY THE COURT

4 Q Please come up here and have a seat. How are you  
5 today?

6 A Fine.

7 Q I am John Hayes and I am going to be asking you some  
8 questions.

9 A Okay.

10 Q I want you to speak up so everybody out there can hear  
11 you and remember that you are under oath, okay?

12 A Okay.

13 Q Now are you related by blood or marriage to any of the  
14 participants in this matter?

15 A No, sir.

16 Q Do you have any interest, bias, or prejudice in this  
17 case?

18 A No, sir.

19 Q Have you formed or expressed an opinion as to the  
20 guilt or the innocence of the defendant, Mr. Hughes?

21 A No, sir.

22 Q Now other than the fact that we have talked about your  
23 hygienist thing on Sunday morning, do you know of any  
24 reason whatsoever why you could not give The State or the  
25 defendant a fair and impartial trial?

1 A No; if I could just get through the thing on Sunday;  
2 after that, I'd be okay.

3 Q Would you under your oath follow the law in this case  
4 as directed by the court?

5 A Yes, sir.

6 Q Could you depending on the facts and evidence and the  
7 law felt it warranted find the defendant not guilty of the  
8 charge?

9 A Yes, sir.

10 Q Could you under those same circumstances if you felt  
11 it was warranted find the defendant guilty of the charges?

12 A Yes, sir.

13 Q Have you discussed this case with anyone?

14 A No.

15 Q Have you heard about it or read about it?

16 A No, before I came down here I had not heard about it.

17 Q Now Mr. Hughes, the defendant, is a black gentleman  
18 and the victim, Mr. McCants, was white and it is alleged  
19 that Mr. McCants was killed in the line of duty of a law  
20 enforcement officer. Would this in any way whatsoever  
21 prevent you from rendering a fair and impartial verdict?

22 A No, I really don't know the circumstances.

23 Q Would it influence your verdict in any way whatsoever?

24 A No.

25 Q Now a case involving a murder where the death penalty

1 is sought is tried in two segments, two phases. One being  
2 whether the defendant is guilty or not guilty of murder.  
3 If he is found not guilty, it's over. If he is found  
4 guilty, the second phase starts, dealing with the penalty,  
5 life imprisonment or death. I am going to talk to you a  
6 little bit about that second part, the death penalty, your  
7 views on the death penalty, but that is to no way indicate  
8 anything as to the guilt or the innocence of the  
9 defendant. He is presumed innocent of the charge against  
10 him, all the charges against him, and that presumption of  
11 innocence would be removed only if he were proven to be  
12 guilty beyond a reasonable doubt. Do you understand that?

13 A Yes, I do.

14 Q All right, have you reviewed the juror types I have in  
15 the jury room?

16 A Yes, I would fall into number three.

17 Q All right, since you tell me that, then could you as a  
18 juror participate in a jury verdict recommending the  
19 penalty of death for murder if the evidence and the law  
20 warranted such a verdict?

21 A Yes, I think I can.

22 Q Could you likewise participate in a jury verdict  
23 recommending a sentence of life imprisonment for murder if  
24 the evidence and the law warranted such a verdict?

25 A Yes.

1 Q Other than the situation on Sunday morning, is there  
2 any other thing that would cause an undue hardship on you  
3 for serving on this jury?

4 A No, other than my husband was shocked. That's all.

5 Q Answer, please, any questions that either side may  
6 have.

7 EXAMINATION BY MS. BRICE

8 Q My name is Chris Brice and my co-counsel, Mr.  
9 Schusterman, is seated to my left. We both represent Mr.  
10 Hughes.

11 This is just a very informal conversation that we are  
12 allowed to have essentially it just allows me to know a  
13 little bit about you and your position and your belief in  
14 regards to basically the legal aspects of the case as far  
15 as guilt and innocence as well as what your beliefs may be  
16 about the death penalty. And as the judge has already  
17 instructed and stated there are no right or wrong answers,  
18 just a conversation that's taking place.

19 A Okay.

20 Q Have you ever served on a jury before?

21 A No; it's my second time in a courtroom.

22 Q Have you ever taken a seat in the witness chair?

23 A No.

24 Q Are you a little nervous?

25 A Yes, a little bit. The only time I have had something

1 was in traffic court.

2 Q If you get a little nervous, that's okay, I get  
3 nervous too, believe me. There are, as the judge  
4 instructed, two phases of a death penalty case. There is a  
5 guilt and innocence phase and a sentencing phase, where  
6 you would decide life or death. But before you would get  
7 to that phase, you would have to decide between guilt and  
8 innocence. Do you understand that?

9 A I kind of do. It's kind of a whole separate trial, the  
10 second part?

11 Q It's almost like a separate trial, different witnesses  
12 - in the sentencing phase different witnesses may be  
13 presented, basically, it will go to show the good things  
14 and the bad things about Mr. Hughes in this particular  
15 case, okay?

16 A That's in the sentencing part?

17 Q Right. But in a death penalty trial essentially the  
18 first phase that you would have is to prove his guilt or  
19 innocence as to the crimes he is charged with and if you  
20 were to find him innocent, then there would be no second  
21 phase, okay? If you were to find him guilty of the  
22 charges, specifically the charge of murder, then there  
23 would be a penalty phase or sentencing phase.

24 A Does that usually come right after the first part?

25 Q Yes, ma'am. And in the sentencing phase the jurors

1       decide the sentence, okay? In other cases the judge  
2       normally will decide the sentence, but in a death penalty  
3       case it's unique in that the jurors decide the sentence.  
4       Do you understand that?

5       A    Do they have the -- I don't know if this is in South  
6       Carolina where they have family members or whatever like  
7       we saw in New York, do they do that here or --

8       Q    Yes, ma'am.

9       A    --- or people that are affected there give responses?

10      Q    Exactly. And that is presented in the sentencing  
11      phase.

12      A    I see.

13      Q    But before we get to that phase, you would have to  
14      pass on the guilt or the innocence of Mr. Hughes.

15      A    Yes.

16      Q    Do you come into court today with any kind of  
17      preconceived ideas or opinions concerning race, religion  
18      or gender?

19      A    No, huh-uh.

20      Q    And do you come into court with the legal premise that  
21      someone is innocent until proven guilty?

22      A    Yes, I do.

23      Q    And, basically, The State has the burden to prove that  
24      Mr. Hughes is guilty. We don't have to put up anything.

25      A    Uh-huh.

1 Q And if you find in your mind that Mr. Hughes is  
2 innocent, would you have the conviction to stand by your  
3 own opinion?

4 A Yes, I would.

5 Q You would not likely be swayed by other people?

6 A No, I am bull headed that way.

7 Q Likewise, if in the sentencing phase if the persons in  
8 there found that he should be sentenced to death, would  
9 you be able to base on your conviction that he should be  
10 sentenced to life?

11 A Yes.

12 Q And do you have any opinion -- have you ever  
13 considered the death penalty before?

14 A Yes, in fact, I did a paper on it in high school, yes.

15 Q Tell me a little bit about that.

16 A First of all, there's both sides of the story in every  
17 situation, there may be extenuating circumstances or  
18 whatever, all that has to be considered first of all. But  
19 then if the person is convicted of, you know, something  
20 that is really bad, then I personally don't have a problem  
21 with that sentence being carried out. I agree with the  
22 Appeals process but to a limit, not years and years and  
23 years and years down the line. So my feeling is yes I  
24 agree I think if it was warranted, proved that this is  
25 what happened, and they were guilty of just point blank

1 doing something like that and the penalty was the death  
2 penalty, then I agree that that should be carried out.  
3 Just like with my son if I told him that, you know, I told  
4 you not to watch television and I will take it out of his  
5 room and he continues to watch tv, then it's gone. So I am  
6 a person, you know, once I see how something -- you know,  
7 if you make a penalty for what's being done and it's not  
8 being carried out, then I feel that the sentence should be  
9 executed.

10 Q Would it be fair for me, I don't mean to put words in  
11 your mouth, but would it be fair for me to say that in a  
12 case of murder would you find the death penalty warranted?

13 A If the circumstances -- I guess if you have the  
14 circumstances where, I mean, just point blank malice, you  
15 know, like she's sitting here, you know, and I just came  
16 up and, you know, (demonstrating), she wasn't bothering  
17 anybody and she wasn't doing anything - there are so many  
18 extenuating circumstances that people react in different  
19 situations, so that would all be taken into and accounted  
20 for, but if I found that they did and there was no reason  
21 other than you just did that because you felt like, you  
22 know, I didn't like the polka dots on her jacket and I did  
23 that, then I would find, yes, the death penalty in that  
24 circumstance because even though not necessarily  
25 premeditated or anything like that, but just the point it

1 was just something fun to do that day, that kind of thing.  
2 I regard life higher than that.

3 Q All right, is your belief in the death penalty based  
4 on any religious beliefs? Where is the basis for your  
5 opinion?

6 A Well, I don't know, it's not I wouldn't say death not  
7 on religious beliefs, mostly I guess it's just the way I  
8 observed - I am 44 years old - I have observed how crimes  
9 now it used to me they might just be, you know, like  
10 somebody is trapped and they feel like they need to do  
11 something, but now it just seems like I mean people are  
12 driving along a road and they get shot in their car, you  
13 know, that sort of thing. To me that takes it out of the  
14 realm where -- you know it comes back to you did  
15 something, you know, just for jollies, just to exterminate  
16 this person and that should be taken - then you have lost  
17 your right, you know, to be treated like the regular  
18 citizen and have all the things allowed.

19 Q Do you believe that people can suffer from mental  
20 illness?

21 A Oh, yes, very much so. I worked as a volunteer dental  
22 hygienist in a large facility in Maryland.

23 Q And do you believe that psychiatry and psychologists -  
24 do you believe in that profession?

25 A Yes, I do. I have a dear friend of mind who is a

1 psychiatric social worker, yes. That's what I mean about  
2 extenuating circumstances, family history, genetics,  
3 there's a whole lot of things.

4 Q Do you know anybody in Rock Hill or York County?

5 A No, I moved here from Michigan. I was born and raised  
6 in Washington, D.C. I went and looked on the map to find  
7 out where it is.

8 MS. BRICE: I beg the court's indulgence for just one  
9 moment.

10 Thank you, Your Honor.

11 EXAMINATION BY MR. POPE

12 Q Mrs. Harkman, I am Tommy Pope. I am the solicitor. I  
13 believe in Michigan they call them district attorneys.

14 A Yes, prosecutor or something, yes, and solicitor means  
15 sales.

16 Q Yes, that exactly, a lot of times we try to get  
17 elected through sales. This is my deputy solicitor. And,  
18 of course, we represent The State in this case.

19 A Right.

20 Q I just have a few questions. I want to touch base. I  
21 think you made it pretty clear where you stand, the bottom  
22 line being as long as you will be taken care of Sunday,  
23 you don't have a problem serving on the jury.

24 A Right.

25 Q You sound like, you have written a paper, you have

1 observed the system and you have opinions about the system  
2 and the carrying out of punishment and so forth.

3 A Right.

4 Q But by the same token, you are willing to follow the  
5 law as the judge instructs you?

6 A Right, yes.

7 Q In other words, like you said, you have seen things in  
8 New York or maybe back home in Michigan, but to the extent  
9 that South Carolina law may or may not be different, you  
10 would follow what he told you?

11 A Right, yes.

12 Q And I think you said, and I want to make sure I am  
13 using your words, you said that you were bull headed.

14 A Yes, my mother.

15 Q Your mother said that.

16 A She said that I am very bull headed, yes.

17 Q By the same token and when you say bull headed we kind  
18 of laugh about it you are firm in your convictions.

19 A Right; I try to look at all the circumstances and then  
20 come to that conviction and then it takes a while for  
21 somebody to -- you know, I'd really have to see something  
22 really different in order to change my mind.

23 Q You are reasonably bull headed.

24 A Right, reasonably bull headed, okay, yes.

25 Q But that wouldn't preclude you and I think you have

1 just answered that question, that wouldn't preclude you  
2 from being one of twelve jurors and giving each person an  
3 opportunity to give their input ---

4 A Right.

5 Q --- and make it when I say a collective decision never  
6 cowering under to what everybody else says, but being able  
7 to hear other points of view and entertain that ---

8 A Yes.

9 Q --- you would be willing to do that?

10 A Yes. When I worked with the VA I used to work in what  
11 we called the God Squad. Even though as a dental hygienist  
12 people would undergo kidney transplants and you always had  
13 the God Squad that would make the evaluation and decide  
14 who would get them and who would not. Well, if I found a  
15 person that you know had cancer, then why are we giving  
16 this kidney to a person who is probably terminal to begin  
17 with, so that's what I mean about taking consideration  
18 into everything and, you know, but listening to other  
19 people, you know, there might be other circumstances,  
20 let's say, the cancer they have the chances of it  
21 metastasizing somewhere else is very slim where maybe they  
22 would be a good candidate for a kidney.

23 Q So in a whole different forum you have had the  
24 opportunity to be involved in life or death decisions.

25 A Yes, yes, I have.

1 Q And so, obviously, in that forum you realize the  
2 serious nature. We've laughed here some, but you  
3 understand we are talking serious business.

4 A Yes.

5 Q We have to prove the case beyond a reasonable doubt;  
6 the defendant doesn't have to show or prove anything. You  
7 understand that?

8 A Uh-huh.

9 Q If we do prove the case and we get to the second stage  
10 that's when you would hear and, again, they don't have to  
11 put up anything, but the good, the bad, the things about  
12 the victim and their family, you know, his family or  
13 whatever the case may be. You may hear about the defendant  
14 and his family and whatever. You would want to hear all of  
15 that?

16 A Yes, I do.

17 Q And after hearing all of that if you thought life was  
18 appropriate based on what the judge has told you, you  
19 could vote life?

20 A Yes.

21 Q Likewise if you thought death was appropriate, you  
22 could vote death.

23 A Yes, I could.

24 Q And there is a requirement in our law and when I say  
25 "requirement," you are never required to vote death. No

1 one can make you vote death. They can't hold you down and  
2 have you sign or anything else, but all twelve jurors, if  
3 it is a death verdict, not if life, with life just the  
4 foreperson signs, but with death each juror would have to  
5 put their name on a sheet of paper. If you thought death  
6 was appropriate in the case, could you write Eileen  
7 Harkman on a sheet that would give somebody death?

8 A Yes, I could.

9 Q Thank you, ma'am. I appreciate it.

10 THE COURT: I'll let you step outside for just a  
11 minute.

12 JUROR: If I am chosen, could there be a letter or  
13 something for the Dental Hygiene Board?

14 THE COURT: We will work on that.

15 What says The State?

16 MR. POPE: I submit she is qualified, Your Honor.

17 THE COURT: What says the defense?

18 MS. BRICE: I submit she is qualified, Your Honor.

19 THE COURT: Bring her in.

20 You can just stand right there. You are qualified to  
21 serve as a juror. That does not mean you will actually be  
22 on the panel. Tomorrow we are going to get together and  
23 draw from the jury pool the fourteen people who will go.  
24 You will just simply be in the thirty-five or so from  
25 which that fourteen is drawn. Come tomorrow, packed and

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1 prepared to go. If you are chosen, we will go directly  
2 from drawing the jury to York to start the trial. Do not  
3 talk about the case and do not read about it or anything  
4 like that, okay?

5 JUROR: Okay. What time tomorrow?

6 THE COURT: While you are here, if you will step out  
7 or a second I am going to ask the lawyers because we need  
8 to decide that right now.

9 JUROR: All right.

10 THE COURT: My suggestion is that we start at two  
11 o'clock tomorrow. Put that on the telephone.

12 (Mrs. Harkman brought in.)

13 2:00 PM. 2:00 PM tomorrow, packed and ready to go if  
14 you are chosen.

15 JUROR: Okay.

16 THE COURT: And if it turns out you will need any kind  
17 of letter, we will take care of that.

18 JUROR: Okay, thank you.

19 BAILIFF: Your Honor, the lady is back.

20 THE COURT: All right, have her come in.

21 MARTHA CAREY

22 ADDITIONAL EXAMINATION BY THE COURT:

23 Q You can just stand right there or you can have a seat  
24 either one. I got a message you had called - why don't you  
25 sit down, that might be more comfortable - that you had

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1 called after you got home.

2 A Yes.

3 Q Do you want to tell me what you called about?

4 A I just got a little upset.

5 Q Well, do you think you want to be removed or do you  
6 think you can serve as a juror or do you want to think  
7 about it over night and come back at two tomorrow when we  
8 are having all the jurors returned to see what your  
9 emotional feelings are at that time?

10 A What would I do at that time?

11 Q Well, what I would do is take into consideration what  
12 you tell me.

13 A I'm sorry.

14 Q This is better to do now than it is next week in the  
15 middle of the trial, ---

16 A That's why I called.

17 Q --- but as we all know, this is a matter of great  
18 moment and great magnitude and it is a task for all of us  
19 involved, jurors, counsel, court staff and myself. I want  
20 to listen to what you have to say so I can make an  
21 intelligent decision as to how to approach your situation.  
22 Now do you want to make any request of me now or do you  
23 want to sleep on it and come in at two tomorrow or contact  
24 me in the morning or do you feel, and I'm being very  
25 candid and I'm not being personal, but I have to ask this,

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1 do you feel like your emotional situation, and I've read -  
2 you were very candid in your questionnaire - but do you  
3 feel like your emotional situation is such that you would  
4 be unable to endure for a ten to twelve day period of time  
5 a trial where one is on trial for murder and potentially  
6 on trial for their life or death?

7 A Can I say this? I answered the questions truthfully.

8 Q I have no questions about that.

9 A But I'm not sure I let my emotions out while I was in  
10 here and when I got out of here, that's when it hit me.  
11 I'm not sure I can handle it.

12 Q Okay.

13 A And I felt like I needed to tell you now.

14 Q Well, you certainly did. Do you feel like - I'm not  
15 asking you whether you would be able to impose the death  
16 penalty or life imprisonment or anything - I'm asking you  
17 what consideration you could give as to guilt or a not  
18 guilty verdict - but do you think you could emotionally  
19 stand the strain of and I use that word advisedly because  
20 it would be a strain of a trial at this time?

21 A I have doubts now because of the way I reacted the  
22 minute I walked out of this room. It was just awful.

23 Q I am going to ask you to step outside for just a  
24 minute.

25 THE COURT: Does The State have any comments?

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1 MR. POPE: No, sir, I can't really say that I do.

2 THE COURT: The defense?

3 MR. SCHUSTERMAN: Your Honor, I have some serious  
4 reservations about cutting a juror who has been qualified  
5 loose. This is not a topic that was not addressed  
6 yesterday by the court, it was a topic that I addressed  
7 specifically in my questioning of her. I don't -- I do  
8 oppose her being stricken from the panel.

9 MR. POPE: If it please the court, Your Honor?

10 THE COURT: Yes, sir.

11 MR. POPE: I realize she is, in fact, present. I  
12 would suggest since she has been qualified have her return  
13 tomorrow at two with the rest of the jurors. That would  
14 give her some time tonight and it would give all of us  
15 some time to contemplate further. I realize that Mr.  
16 Schusterman has made his position clear.

17 THE COURT: Well, that's probably the way I am leaning  
18 although I will observe that she has had a lot of time to  
19 think about this. She has filled out a questionnaire, it's  
20 undated, but received 8-31-95 and it appears she mailed it  
21 9-2-95 and she stated then "I've always wondered if I  
22 could handle it emotionally, that is, sitting on a murder  
23 case." But I am going to ask her to come back tomorrow,  
24 but I have very grave concerns about requiring someone who  
25 is this fraught with emotional questions of her own and

1 I'm going to give you time so you all can think about it.  
2 You know, if you see something, you usually step around it  
3 and not in it and I don't want to be stepping into  
4 something that can be avoided.

5 (Ms. Carey returns to courtroom.)

6 All right, I am going to ask you if you would just to  
7 come back tomorrow at two and we will make a decision. You  
8 think about everything and I want you to be very candid as  
9 you have been and we will chat about it a little more  
10 tomorrow at two before we begin to draw a jury and make a  
11 determination, okay?

12 JUROR: All right.

13 THE COURT: All right, don't you worry about it now,  
14 okay?

15 JUROR: Thank you, Your Honor.

16 THE COURT: All right, let's bring in Virginia  
17 Kitchens.

18 VIRGINIA KITCHENS (B/F)

19 EXAMINATION BY THE COURT

20 Q Have a seat up here, please, ma'am. I am John Hayes  
21 and I am going to ask you some questions and I want you to  
22 remember that you are under oath and just speak up. Are  
23 you related to any of the parties involved or lawyers or  
24 otherwise in this trial?

25 A No, I am not.

1 Q Do you have any interest, bias, or prejudice in regard  
2 to this case?

3 A No, I don't.

4 Q Have you formed or expressed an opinion as to the  
5 guilt or the innocence of Mr. Hughes, the defendant?

6 A No, I haven't.

7 Q Do you know of any reason why you cannot, any reason  
8 whatsoever, why you cannot give both The State and the  
9 defendant a fair and impartial trial in this case?

10 A No, I don't.

11 Q Would you under your oath follow the law in this case  
12 as instructed to you by the trial judge?

13 A Yes.

14 Q Now could you depending on the facts, evidence and law  
15 if you thought it was warranted find a defendant not  
16 guilty of the charges?

17 A If it was warranted.

18 Q I'll ask you if you felt the evidence, the law, and  
19 the facts warranted a finding of guilty, could you find  
20 the defendant guilty?

21 A Yes.

22 Q Have you discussed this case with anybody?

23 A No, I don't know anything about it.

24 Q You don't know anything, you have never heard about  
25 it, read about it?

1 A No.

2 Q Now the defendant, Mr. Hughes, is a black gentleman  
3 and the victim was a white individual who is alleged to  
4 have been at work as a law enforcement officer at the time  
5 of his death. Would those facts in any way prevent you  
6 from rendering a fair and impartial verdict?

7 A No.

8 Q I am going to talk to you a few minutes about the  
9 death penalty. There will not be any right or wrong  
10 answers to these questions and the fact that we are  
11 talking about the death penalty has nothing to do with the  
12 guilt or innocence of Mr. Hughes. He is considered  
13 innocent of the charges against him until such time as a  
14 jury were to determine his guilt beyond a reasonable  
15 doubt. Do you understand that?

16 A Uh-huh.

17 Q In a trial where the death penalty is sought for  
18 murder, it is a two part trial. One part is where you  
19 just, the jury that is, decides his guilt or innocence. If  
20 they find that he was not guilty, then it's over. If they  
21 find him guilty of murder, then you go to the second phase  
22 where some other evidence can be presented and determine  
23 whether or not the jury decides whether or not he should  
24 be recommended or impose the death penalty or imprisonment  
25 for life. Do you understand that?

1 A Yes.

2 Q We are kind of skipping the first part. That doesn't  
3 mean it's not important because it is. This is, again,  
4 not to reflect any thoughts about his guilt or innocence,  
5 but we have to talk about the second part, that is, the  
6 death penalty. Did you review the sheet?

7 A Yes, I did.

8 Q Did you find yourself in one of those types?

9 A Probably the third one.

10 Q Probably number three. Well, could you then as a  
11 juror participate in a jury verdict recommending the  
12 penalty of death for murder if you felt the evidence and  
13 the law warranted such a verdict?

14 A If the evidence warranted it.

15 Q Could you also as a juror participate in a jury  
16 verdict recommending a sentence of life imprisonment for  
17 murder if the evidence and the law warranted that verdict?

18 A Yes.

19 Q All right, now, are there any reasons or anything  
20 unusual other than the ordinary problems one would have  
21 with being away from home for ten or twelve days it will  
22 take to try this case anything else that would cause any  
23 undue hardship on you to serve as a juror?

24 A The only thing - the problem that I have is I am an  
25 allergy suffer. I have to take two shots a week and I was

1 dismissed from Federal jury for that reason because the  
2 doctor didn't want me to leave at that particular time and  
3 I'm not due to go back to him until the 26th of September.

4 Q I have a good idea we will be through by then, if not,  
5 we will try to make arrangements.

6 A My shots are due like every Friday.

7 Q Okay. Well, would it be possible for you to get your  
8 medication and you serve on the jury if you pick it up  
9 before you come, we could probably make arrangements for  
10 someone to give you an injection. I've been through that;  
11 I know what you are talking about. Thank goodness it  
12 worked for me, so I hope it does for you.

13 A I hope so.

14 Q Answer any questions The State may have.

15 EXAMINATION BY MR. POPE

16 Q Ms. Kitchens, my name is Tommy Pope. I am the  
17 solicitor up in York and Union County. This is Mr. Kevin  
18 Brackett. He is my deputy solicitor. We represent The  
19 State in this case. My understanding from your talking to  
20 the judge that you understand that The State has the  
21 burden of proof and we have to prove the case beyond a  
22 reasonable doubt. Do you understand that?

23 A Yes.

24 Q Okay, and we keep talking about life and death, and,  
25 again, I don't want you to think we are making light of it

1           because we are just bouncing all of these phrases around,  
2           and, obviously, you realize what a serious situation this  
3           is, don't you?

4           A    Yes.

5           Q    If we do get to the second phase, which would  
6           obviously mean that the individual was found guilty, then  
7           is when we ask the jury to make a determination of what  
8           the appropriate penalty would be. In a normal case, you  
9           know, other than a death penalty murder case, the judge  
10          decides. You know, if the jury found somebody guilty, then  
11          the judge would decide what the appropriate punishment  
12          would be. Do you understand that?

13          A    Uh-huh.

14          Q    In this situation the jury makes that determination.  
15          And you said you were in category three being someone who  
16          would want to hear whatever we put up, whatever is bad  
17          about the case or about the defendant or good about the  
18          victim and whatever the defense may want to put up, if  
19          they wanted to put something up about say about the  
20          defendant, you know, about his background or anything of  
21          that nature. And you would be willing to keep an open mind  
22          and listen to all of that?

23          A    Sure.

24          Q    And then you said in some cases and, again, let me  
25          tell you one thing, you can't give me a wrong answer

1 because you are telling me how Virginia Kitchens feels, so  
2 you know I'm saying nothing you could say is right or  
3 wrong and if it ever seems like I am trying to lead you  
4 this way or lead you over that way, I'm not. I'm not doing  
5 that.

6 I notice when the judge would ask you about life and  
7 death and he asked about the death penalty you were a  
8 little bit slower to react and, again, I'm not making  
9 light of that, but why was that?

10 A Just because I don't know anything and so I would have  
11 to know what actually took place, you know, before I could  
12 weigh out what the penalty should be.

13 Q Exactly. And like I say, you haven't heard the facts  
14 and you have already said you would want to -- you are not  
15 going to make a decision until you sit down in the jury  
16 box and you have heard everything.

17 A Right.

18 Q And if you were given the facts in the case and after  
19 hearing the facts and, of course, the judge will give you  
20 the law. You know, a lot of people says oh, I'm going to  
21 be on jury duty and I don't know what the law is. You know  
22 the judge will tell you all of that. Do you understand  
23 that?

24 A Yes.

25 Q If you know the facts and felt that okay, I've heard

1 all these facts and I've heard the good and the bad and I  
2 think a life sentence is the right sentence, could you  
3 vote that?

4 A If it called for it.

5 Q Okay and likewise if you have heard the facts and you  
6 said, okay, I've heard that and I've heard what the judge  
7 says and I think in this case, and, of course, I'm not  
8 talking about this case because you haven't heard the  
9 facts, but a case deserves the death penalty based on the  
10 things I've heard, that I, as a juror, have heard. You say  
11 you could give the death penalty?

12 A I could do that.

13 Q Okay, one of the requirements that we have in our law  
14 about the death penalty verdict that is a little bit  
15 different if the jury decides life, but a jury can decide  
16 life after hearing it for any reason or for no reason at  
17 all, if they decide to give life, they can give it and  
18 only the foreperson, you know, only the foreman or the  
19 forelady of the jury, only they would have to sign saying  
20 we, the jury, find the penalty should be life; however, if  
21 they hear the facts and they determine the appropriate  
22 sentence is death, then each individual juror has to sign,  
23 you know, because of the seriousness of the case, each  
24 juror has to sign their name. If you heard the facts and  
25 you thought that the appropriate sentence was death, of

1 course, after going over the evidence, you know, again  
2 having all of the facts, going over the evidence with all  
3 of the jurors, if you felt that death was appropriate and  
4 that sheet came around to you to sign that would be giving  
5 the death sentence because, of course, the court is going  
6 to carry out what the jury says, if it were your time to  
7 sign that sheet, could you put Virginia Kitchens on that  
8 line to give somebody death?

9 A If it warranted it.

10 Q Ms. Kitchens, I want you to know that I respect the  
11 fact -- I mean, it's not easy. You would put some thought  
12 into it before you did it ---

13 A Definitely.

14 Q --- but if you thought it was right, that's what you  
15 would do. Going back I saw you were really busy at the  
16 church you hold about five different jobs at the church,  
17 is that right?

18 A Yes.

19 Q Is there anything, of course, one thing when you go  
20 in the jury room you don't leave your common sense at the  
21 door and you don't leave your background, that's why we  
22 have people have different walks of life. Is there  
23 anything as far as your church teachings that would have  
24 an effect on your decision as far as the death penalty one  
25 way or the other?

1 A I'm really not sure on that; I'm really not sure.

2 Q And again ---

3 A If it's still warranted, I think I could still handle  
4 it.

5 Q Okay. And I notice that you are a teacher.

6 A Yes.

7 Q What grade do you reach?

8 A Seventh.

9 Q So you are used to being in a room full of people with  
10 different opinions all flying around.

11 A Yes, I am.

12 Q If you were on the jury, you are the type of person  
13 that - would you be willing to hear what other people had  
14 to say?

15 A Yes.

16 Q But likewise you would speak what your heart told you?

17 A Yes. I am opinionated at times.

18 Q Not too opinionated, but ---

19 A No.

20 Q --- you would stand by what you thought.

21 A Yes, I would stand by it, yes.

22 Q Thank you, Ms. Kitchens.

23 EXAMINATION BY MS. BRICE

24 Q Hi, Ms. Kitchens.

25 A Hello.

1 Q My name is Chris Brice and I am attorney from York  
2 County and I, along with Mr. Schusterman, who is seated  
3 next to Mr. Hughes, we represent him.

4 Have you ever been to court before?

5 A No, regular little traffic court and stuff like that.

6 Q Nothing like this?

7 A Nothing like this; this one got me.

8 Q This is the first time you have ever had to sit in a  
9 juror chair?

10 A Yes.

11 Q It's a very nervous experience?

12 A I'm very nervous.

13 Q I promise you I'm not going to bite. And I appreciate  
14 your candor today and answering the questions that we are  
15 asking. Has anyone ever asked you questions concerning the  
16 death penalty before?

17 A Not really, no.

18 Q It's something that is certainly very serious and  
19 takes a lot of consideration, doesn't it?

20 A It does.

21 Q Ms. Kitchens, I only really have one question I want  
22 to ask you and that is do you believe that people can  
23 suffer from mental illness?

24 A Sure.

25 Q And do you believe in the science of psychology and

1 psychiatry?

2 A Yes, in some instances and then in some instances it  
3 can be proven wrong, yes.

4 Q Can you explain that a little bit for me. Is that  
5 based on something that has happened or that you are aware  
6 of?

7 A Well, it's been based on this child molestation stuff  
8 that we have to deal with if it happens in child abuse and  
9 sometimes they say they can go way back and bring this  
10 stuff up and the children can remember after years and  
11 years and then all of a sudden it ruined the whole family  
12 and it never happened, so, you know, that's the only part,  
13 you know, but I definitely believe in mental illness; yes,  
14 I do.

15 Q So you are skeptical about those remission type  
16 things.

17 A Right.

18 Q But as far as the science of psychiatric medicine as a  
19 whole ---

20 A I believe in that.

21 Q And do you believe that psychiatric medicine can help  
22 people?

23 A Yes, I do.

24 Q Those are all of the questions I have. Thank you very  
25 much.

1 THE COURT: You can step out for just a minute.

2 What says The State?

3 MR. POPE: I submit she is qualified, Your Honor.

4 THE COURT: What says the defense?

5 MS. BRICE: We would submit that she is qualified,  
6 Your Honor.

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

8 Ms. Kitchens, you will be part of the jury pool from  
9 which we will draw fourteen jurors, twelve and two  
10 alternates. Please be back in the jury assembly room at  
11 two tomorrow, be packed and ready to go. If you are  
12 chosen, we will go directly and immediately to York County  
13 so that we can start on Thursday the trial. Now don't  
14 discuss this case with anyone and don't read anything  
15 about it and if you want to in the morning, check with the  
16 doctor and if you want to, go ahead and bring your  
17 medicine, if you need to, and just make us aware of it and  
18 if you are chosen, we will try to work something out.

19 JUROR: What I will probably do is go ahead and take  
20 my shots tomorrow.

21 THE COURT: Okay, all right, we will see you at two  
22 here tomorrow packed and ready to go if you are chosen.  
23 Have a pleasant evening.

24 JUROR: Thank you.

25 THE COURT: Reuben Lee.

REUBEN LEE (B/M)EXAMINATION BY THE COURT

1  
2  
3 Q My name is John Hayes and I am going to be asking you  
4 some questions. You are under oath and I am going to ask  
5 you to speak loudly so all of these people can hear, okay?

6 A Yes, sir.

7 Q Now are you related by blood or marriage to any of the  
8 people involved in this case?

9 A No, sir.

10 Q Do you have any interest, bias, or prejudice in this  
11 case?

12 A No, sir.

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.

23 Q Could you return a verdict of not guilty against the  
24 defendant or as to the defendant if you felt that was what  
25 was warranted under the facts, evidence and the law?

1 A Would you repeat that again?

2 Q After hearing all of the evidence and the judge  
3 charges you the law and as a jury, the twelve jurors  
4 determines the facts, if those facts based on the evidence  
5 and applying the law indicated to you that the defendant  
6 should be found not guilty, could you return a verdict of  
7 not guilty?

8 A Yes.

9 Q If you felt those facts warranted a finding of guilty,  
10 could you return a verdict of guilty?

11 A Yes, sir.

12 Q Now have you discussed this case with anyone?

13 A No, sir.

14 Q Have you read about it, heard about it?

15 A No, sir.

16 Q Do you know anything about it whatsoever?

17 A No, sir.

18 Q All right, Mr. Hughes, the defendant in this case, is  
19 a black gentleman and the individual who was killed was  
20 white and it is alleged that Mr. McCants, the deceased  
21 individual, was involved in working as a law enforcement  
22 agent at the time of his death. Would these facts prevent  
23 you from rendering a fair and impartial verdict?

24 A No, sir.

25 Q Would they affect your verdict in any way whatsoever?

1 A No, sir.

2 Q All right, Mr. Lee, the trial in a death penalty case  
3 is different from most and it's tried in two segments or  
4 two phases, the first has to do with whether or not the  
5 defendant is guilty or not guilty of murder. If he is  
6 found not guilty, it's over with. If he is found guilty,  
7 then we move to a second phase, which is called the  
8 penalty phase, where additional evidence can be presented  
9 and where the jury makes the determination of whether or  
10 not the penalty that should be imposed should be that of  
11 death or life imprisonment. Now I am going to talk to you  
12 a little bit about the death penalty and your views on it,  
13 but I want you to understand that that's not any  
14 indication of anything about the guilt or the innocence of  
15 the defendant. He is presumed innocent of the charges  
16 against him and is presumed innocent of those charges, all  
17 the charges, murder, and the others, until such time as a  
18 jury were to find he is guilty beyond a reasonable doubt.  
19 Do you understand all of that?

20 A Yes, sir.

21 Q Have you had a chance to review the three juror types?

22 A Yes.

23 Q Do you find yourself to be in one of those types?

24 A Yes.

25 Q Which type?

1 A The third one.

2 Q All right, would you be able as a juror to participate  
3 in a jury verdict recommending the penalty of death for  
4 murder if the evidence and the law warranted such a  
5 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 Other than the general problems anyone would have  
12 being away from their family, friends and home and local  
13 familiarity for ten or twelve days, would being  
14 sequestered for the length of this trial for ten to twelve  
15 days pose any undue hardships for you?

16 A No, sir.

17 Q All right, answer questions that the counsel may have.

18 EXAMINATION BY MS. BRICE

19 Q Mr. Lee, my name is Chris Brice and I, along with  
20 Steve Schusterman, who is seated here to my left,  
21 represent the defendant, Mar-Reece Hughes.

22 A Yes.

23 Q We are from York County. This is a very -- this is an  
24 opportunity basically for me to kind of get to know your  
25 opinions and views, just an informal conversation that we

1 are just going to engage in right now. There are no right  
2 or wrong answers, okay, so you just need to relax.

3 A Okay.

4 Q Have you ever been in a juror seat before?

5 A No.

6 Q Are you a little nervous?

7 A A little.

8 Q I'll probably make this very painless; I won't  
9 promise, but I am going to make it as very painless as I  
10 can. The judge has gone over various questions with you  
11 concerning whether or not you could pass on the guilt or  
12 the innocence of a person who is charged. And do you  
13 understand the principle of that when someone comes into  
14 the courtroom charged with a crime that they are innocent  
15 before proven guilty?

16 A Yes, I do.

17 Q And the burden is upon The State to prove, in fact,  
18 that he is guilty.

19 A Yes.

20 Q And that the defense does not have to present any  
21 evidence to you. If The State does not meet its burden of  
22 proof, ---

23 A Yes.

24 Q --- okay, then we don't have to prove anything, you  
25 could still come back with innocence if you found that

1           there was reasonable doubt. Do you understand that?

2           A    Yes, I understand that.

3           Q    Do you come here today with any kind of preconceived  
4           opinions or prejudices concerning race, gender or  
5           religion?

6           A    No.

7           Q    And do you believe that you could listen to the facts  
8           of the case and after hearing the facts and hearing what  
9           the judge told you render a fair opinion or a fair  
10          decision both for The State and for the defendant?

11          A    Yes, ma'am.

12          Q    And if you were one of the twelve jurors who felt that  
13          there was innocence or there should be a sentence of life  
14          imposed, do you believe that you could be firm in your  
15          convictions and beliefs and not be swayed by the opinions  
16          of others?

17          A    Yes.

18          Q    I believe you stated you were a type three juror, is  
19          that correct?

20          A    Type three juror?

21          Q    Well, from the list ---

22          A    Yes, yes.

23          Q    Then a type three juror the way I understand it or the  
24          way I interpret it is someone who has an open mind, who is  
25          going to listen to the facts of the case before rendering

1 a decision and then based upon the facts of the case and  
2 the law that is told by the judge, after listening to that  
3 you could, if you find appropriate, render a sentence of  
4 death, is that correct?

5 A Yes, ma'am.

6 Q Likewise, if you found that the facts are not  
7 sufficient, you could render a decision for life, is that  
8 correct?

9 A Yes, ma'am.

10 Q And have you ever considered the death penalty before  
11 coming here today?

12 A No, ma'am.

13 Q You have said if you believe the facts and the  
14 circumstances warranted it you could give the death  
15 penalty, is that right?

16 A Yes, ma'am.

17 Q Is that basis or that opinion based on any kind of  
18 background history for you or religious principles or  
19 teachings?

20 A No, ma'am.

21 Q Just the way ---

22 A Just the facts, you know, the true evidence to the  
23 case.

24 Q Is that based on a personal belief or is it based upon  
25 a belief that you have from when you grew up or religious?

1 A No, ma'am.

2 Q If you find that someone is to receive the death  
3 penalty, if you find the facts and circumstances of the  
4 case such that would warrant the imposition of the death  
5 penalty, would you be able to sign your name on a  
6 sentencing sheet that would say Reuben Lee basically you  
7 would sentence someone to death. Could you do that?

8 A Yes.

9 Q Do you believe that people can suffer from mental  
10 illness?

11 A Yes.

12 Q And do you believe in the science of psychiatry and  
13 psychology?

14 A Yes, I believe in that.

15 Q So you believe that psychiatrists and psychologists  
16 can help people?

17 A Yes.

18 Q That's all the questions I have. Thank you, Mr. Lee.

19 THE COURT: Mr. Brackett?

20 MR. BRACKETT: May it please the court?

21 EXAMINATION BY MR. BRACKETT

22 Q Good afternoon, Mr. Lee. My name is Kevin Brackett. I  
23 am the deputy solicitor and I work up in York with Tommy  
24 Pope who is seated at counsel table. He is the solicitor.

25 Ms. Brice did such a good job asking you all the

1 questions she only left me with a couple and one of them  
2 you have already been asked. I am going to just go back  
3 over it real quick.

4 A All right.

5 Q One question she asked you. I didn't catch the answer  
6 or got confused somewhere. She was asking you about your  
7 views on the death penalty ---

8 A Yes.

9 Q --- and what you thought about the death penalty and I  
10 really didn't understand or follow what your opinion on  
11 the death penalty is.

12 A I would hear the evidence. She was asking me did I  
13 grow up from that, you know, hearsay, I told her no.

14 Q Oh, how your opinions ---

15 A Yeah, how my opinion was toward the death sentence,  
16 hearsay, something like that.

17 Q Are you generally opposed to the death penalty or in  
18 favor of the death penalty? How do you feel about it?  
19 When somebody says it to you, do you get a warm fuzzy  
20 feeling inside or I mean how do you feel about that?

21 A To me, you know, it's like how the system, the system  
22 goes, you know, like the facts, the evidence, everything  
23 is proven, and then you take it from there.

24 Q So it's a part of the system ---

25 A Yes, viewing the facts and all of the evidence and you

1 listen to the evidence.

2 Q Well, that's how you would make a decision as to  
3 whether or not you were going to impose the death penalty,  
4 is that what you are saying?

5 A Yes.

6 Q How do you feel about the death penalty? Are you in  
7 favor of it? Are you opposed to it?

8 A No, I am not opposed to it.

9 Q You are not opposed to it?

10 A No.

11 Q Okay. And Ms. Brice also asked you and I like to ask  
12 the question myself because, you know, this is a very,  
13 very important part of the entire process, at the end of  
14 the whole case or this case or in any death penalty case,  
15 not just this one, it's just some hypothetical death  
16 penalty case the jurors are required to sign a sheet of  
17 paper, each juror, if they impose a sentence of death is  
18 required to sign, put their name on that, and at some  
19 point in this case it is possible you could be there with  
20 a pen in your hand. You wouldn't have any problem signing  
21 your name Reuben Lee on the line?

22 A No, sir.

23 Q Okay, Mr. Lee, thank you very much.

24 THE COURT: Step outside just one minute.

25 JUROR: Yes, sir.

1 THE COURT: What says The State?

2 MR. BRACKETT: We submit he is qualified, Your Honor.

3 MS. BRICE: We submit he is qualified, Your Honor.

4 THE COURT: I find he is qualified. Bring him in.

5 Mr. Lee, you are going to be part of the pool from  
6 which the jury is drawn. That does not mean you will be  
7 actually a juror, but we will have about thirty-five to  
8 forty people and from that we will draw fourteen.

9 JUROR: Yes, sir.

10 THE COURT: We will do that at two o'clock tomorrow,  
11 so you be back here in the jury assembly room at 2:00 PM  
12 tomorrow. Be packed and ready to go because if you are  
13 drawn, we will leave immediately for York County and you  
14 will be there from ten to twelve days. So come prepared to  
15 travel. Don't talk about this case to anyone or let  
16 yourself be exposed to any news coverage, if there is any,  
17 all right?

18 JUROR: Yes, sir.

19 THE COURT: Have a pleasant evening. We will see you  
20 back at two o'clock packed and ready to go.

21 JUROR: Yes, sir.

22 THE COURT: All right, Mrs. Mangiante.

23 DIANE MANGIANTE (W/F)

24 EXAMINATION BY THE COURT

25 Q I am John Hayes and I am going to ask you some

1 questions. I want to remind you that you are under oath  
2 and I am going to ask you to be relaxed and I am going to  
3 ask you to speak up so all these people out here can hear  
4 you.

5 Now, first, are you related by blood or marriage to  
6 any of the participants in this case?

7 A No, Your Honor.

8 Q Do you have any bias, interest or prejudice in  
9 anything involved in 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 both The State and the defendant a fair and an  
16 impartial trial?

17 A No.

18 Q Would you, if you served, under your oath follow the  
19 law in the case as the trial judge charges it?

20 A Yes.

21 Q Could you if you felt the evidence and the law  
22 warranted it find the defendant not guilty of the charges?

23 A Yes.

24 Q Could you find the defendant guilty if you felt that  
25 was warranted by the evidence and the law?

1 A Yes, sir.

2 Q Have you discussed this case with anyone?

3 A No.

4 Q Have you read, heard, or know anything about it from  
5 any source whatsoever?

6 A No.

7 Q Now, Mr. Hughes is a black gentleman and the victim in  
8 this case was white and it is alleged that he was acting  
9 in the course and scope of his employment as a law  
10 enforcement officer at the time of his death. Would this  
11 in any way whatsoever prevent you from rendering a fair  
12 and impartial verdict in this case?

13 A No, sir.

14 Q Would it influence your verdict in any way whatsoever?

15 A I don't know.

16 Q Okay, why -- just given those facts without any other  
17 facts, the fact that the victim was white and there's a  
18 racial difference between the victim ---

19 A Oh, no, sir, not that.

20 Q Okay, and the fact as far as your determining the  
21 verdict in this case as to guilt or innocence of the  
22 defendant, would the fact just simply that it is alleged  
23 that the victim was a law enforcement officer at the time  
24 would that in and of itself influence you in any way?

25 A No, sir.

1 Q Okay, now this case has two parts, one has to do with  
2 guilt, and that's sort of what we have been talking about  
3 and the other has to do with the penalty. The penalty  
4 phase comes after the guilt phase. The defendant is  
5 presumed innocent of the charges against him until such  
6 time as a jury were in the guilt phase to find or return a  
7 verdict of guilt beyond a reasonable doubt. Do you  
8 understand that?

9 A Yes, sir.

10 Q We will talk about the second part, but that's not in  
11 any way to indicate what should happen in the first part,  
12 but we have got to talk about the second one.

13 A Yes, sir.

14 Q So I am going to ask you a little bit about your views  
15 on the death penalty and there are no wrong or right  
16 answers to the questions. Did you have a chance to view  
17 the sheet I left in the jury room?

18 A Yes, sir.

19 Q Now did you find yourself in one of those categories?

20 A Yes.

21 Q Which one?

22 A The third.

23 Q Would you if you were a juror in this case be able to  
24 participate in a jury verdict recommending the penalty of  
25 death for murder if the evidence and the law warranted

1 such a verdict?

2 A Yes, sir.

3 Q Could you as a juror participate in a jury verdict  
4 recommending a sentence of life imprisonment for murder if  
5 the evidence and the law warranted such a verdict?

6 A Yes.

7 Q Now I believe we talked a little yesterday about a  
8 call, but do you have any particular hardships that this  
9 would pose for you, I know you talked about your choir  
10 service, but other than that and the fact that it's never  
11 convenient for us to be away from our loved ones and our  
12 usual environs, would serving from ten to twelve days as a  
13 sequestered juror on this case pose any undue hardships on  
14 you?

15 A No, sir.

16 Q All right. I am going to ask you to answer questions  
17 as posed by counsel.

18 EXAMINATION BY MR. BRACKETT

19 Q Good afternoon, Mrs. Mangiante?

20 A Mangiante.

21 Q Okay. My name is Kevin Brackett. This is Tommy Pope.  
22 I am the deputy solicitor in York County and he is the  
23 solicitor of the Sixteenth Circuit, which is York and  
24 Union Counties, and we are going to be the prosecutors in  
25 this case, The State vs. Mr. Hughes, seated over there.

1           Before I go into anything I just want to kind of let  
2 you know all we are doing is trying to get your feelings  
3 on these various subjects that have been raised here. I  
4 don't have but a couple of quick questions for you.

5           First of all, you indicate that you said you were a  
6 three, that you could be impartial and that you could hear  
7 both sides and you could give the death penalty in some  
8 circumstances and in other circumstances you could give  
9 life imprisonment; it would just depend upon the facts and  
10 circumstances.

11          A    That's correct.

12          Q    Do you understand that if you decide to impose the  
13 death penalty one of the things before you could render  
14 that verdict that you have to do is that every juror has  
15 to sign a sheet signing their name basically attesting to  
16 the fact that their verdict was death. That is not  
17 required if you give life, only the foreman has to sign  
18 that. But if you are rendering a verdict of death in the  
19 penalty phase, you have to sign your name and would that  
20 pose a problem for you?

21          A    No, sir, if I reached that decision.

22          Q    Okay, of course, that would only come after the guilt  
23 phase, which is the first segment, and we bear the burden  
24 of proof in all of this. The defense doesn't have to prove  
25 anything. Putting the pen in your hand to sign is a long

1 way down the road, we have to first prove that he is, in  
2 fact, guilty and you understand that is our responsibility  
3 and then we get into the penalty phase and then we would  
4 have to present the facts and circumstances to satisfy you  
5 that the death penalty was, in fact, justified. And you  
6 would keep an open mind until the end of the case before  
7 you made that decision?

8 A Yes.

9 Q You have been a legal secretary for how many years  
10 now?

11 A I have had about 15 or 16 years experience in that.

12 Q Do you have any experience in the area of criminal, is  
13 there any?

14 A No, sir, one attorney I recently worked for was  
15 appointed to represent a defendant here in the  
16 Magistrate's Court. That trial was about our weeks ago. I  
17 wasn't involved in that. That's the only time that has  
18 come up.

19 Q The only reason I ask is you understand that anything  
20 you may have learned in the course of being a legal  
21 secretary, I'm sure you have been involved in a lot of  
22 facets of law, any understanding that you have of the law  
23 the judge is going to charge you at the end of both the  
24 guilt phase and the penalty phase, if there is one, ---

25 A Yes.

1 Q --- and tell you what the law is and you would be  
2 required to take the law as His Honor charges it to you.

3 A Yes, I understand that.

4 Q Okay. I beg the court's indulgence for a moment.

5 Thank you very much. Please answer any questions that  
6 counsel for the defense may have.

7 EXAMINATION BY MS. BRICE

8 Q Ms. Mangiante, my name is Chris Brice and I along with  
9 my co-counsel, Steve Schusterman, we represent the  
10 defendant Mar-Reece Hughes and work in York County. You  
11 don't know anybody from York County, do you?

12 A No, I've only lived here about five years.

13 Q I only have a very few questions to ask you. What kind  
14 of legal secretary were you?

15 A Primarily civil defense for the first ten years. Since  
16 moving to Aiken, this is a smaller town, the firms tend to  
17 be general practice, so I have had to do probate  
18 litigation and estates and contracts, a variety of work,  
19 but, again, all civil.

20 Q Since you have been in Aiken County, have you done  
21 civil litigation or is it basically estate work?

22 A Some, we have had a couple of medical malpractice type  
23 cases, car accidents, things of that nature.

24 Q I noticed from your questionnaire that you had an  
25 occasion where your wallet was stolen and that your car

1 was broken into in Augusta and then you also had an  
2 incident where your car was stolen when you were in New  
3 Jersey.

4 A That's correct.

5 Q At any of these times did they apprehend the accused,  
6 I guess?

7 A That I do not know. I do not believe - my wallet was  
8 stolen twice in Chicago. The first time I am sure they did  
9 not apprehend. These were young children. The second time  
10 I don't know. It was some sort of an organized conspiracy.  
11 In fact, I was contacted by the FBI. There was a whole  
12 organized thing, identification was stolen, checks were  
13 issued by a dummy employer to these people whose ID they  
14 had and then they would take the ID and the check and cash  
15 it. I never heard anymore about that. As for the car being  
16 stolen, those were juveniles and we were not told.

17 Q You don't know the names of the assailants or anything  
18 about their background or anything like that?

19 A Nothing at all.

20 Q As the judge has stated this is a case that involves a  
21 victim who was white and the accused defendant, Mr.  
22 Hughes, is black. Do you come into the courtroom today  
23 with any kind of preconceived ideas or prejudices  
24 concerning race, gender or religion?

25 A I would hope not.

1 Q What do you mean by that?

2 A I'm trying to be honest with myself. I don't believe  
3 that I do. I guess I feel we all have certain biases and  
4 prejudices we come through life with. I try to keep mine  
5 to a minimum if at all possible.

6 Q But, basically, I don't mean to put words in your  
7 mouth, but, basically, you just come into the courtroom  
8 with your historical, you know, what you have been  
9 involved in and what your experiences are?

10 A That's correct.

11 Q That's all we would ask of you.

12 MS. BRICE: That's all the questions I have.

13 THE COURT: Step outside for just one minute.

14 What sayeth The State?

15 MR. BRACKETT: I submit she is qualified, Your Honor.

16 THE COURT: The defense?

17 MS. BRICE: We would agree, Your Honor.

18 THE COURT: All right, call her back in.

19 You can just stand right there, Ms. Mangiante. You  
20 will be in the jury pool. I am going to ask you to be back  
21 at 2:00 tomorrow. You are qualified to serve as a juror  
22 with us further. Now come packed, ready to go, because if  
23 you are chosen, you will be traveling immediately tomorrow  
24 to York County for ten to twelve days for the trial. Now  
25 don't discuss this case and don't read anything about it

DANNY CHAVOUS

BY THE COURT

1 if it is in the newspaper or listen to anything if it is  
2 on the news. So we will see you tomorrow at two o'clock  
3 maybe to go, if you are chosen. Have a pleasant evening.

4 Is everybody okay?

5 All right, Mr. Chavous.

6 I don't know whether or not I called it to your  
7 attention, but Kedar Brown, who was actually on Panel E,  
8 we asked him to come on in this afternoon because he has  
9 re-arranged a bunch of stuff, so we actually have three  
10 more to go, one being Kedar Brown also, number 3 on Panel  
11 E. I could have actually told you about that earlier, but  
12 it slipped my mind.

13 MR. POPE: It is my understanding this would be for  
14 the purposes of dealing with him today since he couldn't  
15 be here - it wouldn't change anything as far as order or  
16 anything.

17 THE COURT: No.

18 Come on in and have a seat, please, sir.

19 DANNY CHAVOUS (B/M)

20 EXAMINATION BY THE COURT

21 Q You are Danny Chavous, right?

22 A Yes, sir.

23 Q I am John Hayes. I am going to ask you a few  
24 questions. I am going to ask you to speak loudly so all of  
25 these people will hear you and I am going to ask you to be

1 relaxed and I am going to remind you that you are under  
2 oath, okay?

3 A All right.

4 Q First, are you related to any of the parties by blood  
5 or marriage? Anybody involved in this suit related to you?

6 A No.

7 Q Do you have any bias, prejudice or interest in this  
8 case?

9 A No.

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 both The State and the defendant a fair and impartial  
15 trial in this case?

16 A No, sir.

17 Q Would you, under your oath, follow the law in this  
18 case given to you by the trial judge?

19 A Yes, sir.

20 Q Could you if the facts and evidence warranted it find  
21 the defendant not guilty of the charges which he has been  
22 charged with?

23 A Say that again, sir?

24 Q All right. Could you find the defendant not guilty if  
25 after hearing the evidence and determining the facts and

1 applying the law you felt that he was not guilty? Could  
2 you return such a verdict?

3 A Yes.

4 Q If under those circumstances you felt, however, that  
5 he was guilty, could you return a verdict of guilty?

6 A Yes, sir.

7 Q Now have you discussed this case with anyone?

8 A No, sir.

9 Q Have you read, heard anything about this case?

10 A No, sir.

11 Q Now Mr. Hughes, the defendant, is a black gentleman  
12 and the victim, Mr. McCants, was white and it is alleged  
13 by The State that Mr. McCants was acting as a law  
14 enforcement agent, that he was working a job as a law  
15 enforcement agent, at the time of his death. Would these  
16 facts in any way prevent you from rendering a fair and  
17 impartial verdict?

18 A No, sir.

19 Q All right, I am going to talk to you now about the  
20 death penalty. These type cases has two parts, one where  
21 it essentially determines whether or not the defendant is  
22 guilty or not guilty. We are not talking about that and  
23 the fact that we are moving to talk about the second part  
24 where the penalty comes into play is no indication as to  
25 what finding the jury should make or would make as to Mr.

1 Hughes' guilt or innocence. He is presumed innocent of  
2 the charges until such time as The State did prove his  
3 guilt beyond a reasonable doubt. Of course, if he was  
4 found not guilty, then the case is over. If he is found  
5 guilty, then The State could and the defense could present  
6 additional evidence concerning what punishment, death or  
7 life imprisonment, the jury should impose. Do you  
8 understand that?

9 A Yes, sir.

10 Q Did you review those three juror types I had put on  
11 paper?

12 A Yes, sir.

13 Q Did you find yourself in one of those types?

14 A The third one.

15 Q All right, number three. Well, as a juror would you  
16 be able to participate in a jury verdict recommending a  
17 penalty of death for murder if the evidence and the law  
18 warranted such a verdict?

19 A It's kind of hard to hear these things.

20 Q Well, let me ask you this. Would it be difficult to  
21 say -- well, let me ask one step further. Could you as a  
22 juror participate in a jury verdict recommending a  
23 sentence of life imprisonment for murder if the evidence  
24 and the law warranted a life imprisonment sentence?

25 A Yes.

1 Q Going back to the death penalty. Do you have an  
2 opposition to the death penalty per se or are you telling  
3 me, and you tell me, would it be difficult for you to  
4 impose a death penalty or would it be impossible for you  
5 to impose a death penalty?

6 A It would be kind of difficult.

7 Q All right, now your feelings about the death penalty  
8 are those so strong against it that they could not in any  
9 way be changed by evidence presented during the trial?

10 A No, sir, it depends on the facts.

11 Q In spite of your feelings about and you are telling me  
12 that it is difficult to impose the death penalty, would  
13 you be willing to consider all of the penalties provided  
14 by law which in this state are death or life imprisonment?  
15 Are you willing to consider both of those?

16 A It depends on the facts are saying.

17 Q Would your concerns about imposing the death penalty  
18 prevent you from voting for the death penalty under any  
19 and all circumstances?

20 A It depends on what the facts are saying.

21 Q Okay. Now if you were selected as a juror on this  
22 case, would it present any undue hardship for you other  
23 than the general inconvenience of being away for ten to  
24 twelve days?

25 A A little bit, yes.

1 Q How is that?

2 A Well, not really, on the job right now we are going  
3 through a lot of changes in positions and I'd like to  
4 really give a notice like when we come back I don't know.

5 Q I could give them a notice and tell them we don't  
6 know, but we anticipate you will be back Friday in ten or  
7 twelve days, but no other hardships other than the one you  
8 discussed with me, is that right?

9 A Yes, sir.

10 Q All right, answer the questions posed to you by  
11 counsel.

12 EXAMINATION BY MS. BRICE

13 Q Mr. Chavous? Chavous? How do you pronounce it?

14 A You are pronouncing it right, but down here they say  
15 Chavis. You are pronouncing it right.

16 Q That's pretty good then. My name is Chris Brice and  
17 I, along with my co-counsel, Steve Schusterman, we  
18 represent Mr. Hughes and we are from York County.

19 Are you kind of nervous?

20 A Yes.

21 Q That's okay, we'll just talk back and forth and I  
22 guarantee you that by the time we start talking you will  
23 get a little bit more comfortable.

24 The questions that are being asked you are pretty  
25 serious questions, aren't they?

1 A Yes, ma'am.

2 Q Have you even been through them before?

3 A No, ma'am.

4 Q I note that you filled out your juror questionnaire  
5 and it has been very helpful. When you were filling out  
6 the questionnaire, did it get you to kind of thinking  
7 about it?

8 A Yes, ma'am.

9 Q And the judge asked you if you had any opinions  
10 concerning the death penalty. Do you have any opinions  
11 about the death penalty?

12 A Yes, ma'am, I guess it depends on how the law is  
13 written and how the Bible discusses it; the law is written  
14 similar to the Bible. Then kind of like today law kind of  
15 like sways a little bit in the old way of the law and a  
16 little bit in the new way of the law and I kind of have a  
17 hard decision in that sometimes, you know, and God say no  
18 man shall not kill, you know, and, again, you know, if you  
19 kill somebody, you have got to serve the punishment, but,  
20 you know, in my mind I put like he served their  
21 punishment, but at the same time he also gives authority  
22 to impose that law because he gives the law. Man has also  
23 got to abide by man's law because of this.

24 Q So, obviously, from what you have told me you have  
25 really considered that, you have put a lot of thought into

1 that?

2 A Yes, you know, like you said, the questionnaire, you  
3 know, but I didn't really think hard into it, you know,  
4 until later. I get to think about it.

5 Q I guess it is my understanding that if you heard the  
6 facts and the circumstances of a particular crime and  
7 after hearing the facts and circumstances of it and then  
8 listening to the law that is told to you by the judge  
9 depending on what the law applies to the facts and  
10 circumstances, there could be a case where you would feel  
11 that the death penalty is warranted? Is that right?

12 A (No response.)

13 Q You told me - I don't want to put words - you can't  
14 give a right or wrong answer. I'm just trying to  
15 understand what you are saying and if you want to explain  
16 it to me, you explain it to me.

17 A I'll say it one more time, let me see if I understand  
18 what you are trying to say, please.

19 Q That's right, if you don't understand the question,  
20 just say to me I don't understand the question. If you  
21 hear facts and circumstances in a particular case, I can't  
22 give you a factual scenario, but let's say there is a  
23 factual scenario that is given to you and you are sitting  
24 on a jury and you are listening to the facts and it's a  
25 pretty bad crime, okay, it's a pretty horrible crime,

1 could you give the death penalty?

2 A Yes and no.

3 Q Let me put it this way. Could you consider giving a  
4 life sentence without parole?

5 A Yes.

6 Q Could you consider giving a death penalty?

7 A No, for I believe it won't really solve nothing, you  
8 know, maybe at the time that it happened, you know, yeah,  
9 you could, but then, you know, but I look at it if you  
10 give him the death penalty, you are really freeing him, he  
11 really ain't serving nothing, you know, he's gone, he's  
12 not feeling nothing. You give him the life penalty, then  
13 he has time to think about what they have done wrong, you  
14 know, but, you know, giving him the death penalty you are  
15 really wiping them free, you are leaving the blood on your  
16 hands.

17 Q So is it my understanding that under no circumstances  
18 you could give the death penalty?

19 A It depends on really how bad he really was, but not  
20 really, no, because, like, you know, you are really  
21 setting the person free, you know, he's not serving his  
22 time, he's not really looking at nothing where he's done  
23 wrong, you know, because, really, like I say, you are  
24 letting him go free, you know him or she, you know. You  
25 are wiping his blood or her blood on your hands, you know.

1 Q So you would have difficulty in following the law as  
2 it was given by the court? You would basically have a  
3 preconceived idea that you would have to give someone  
4 life; you could not listen to the court, you could not  
5 follow the court's instruction to consider death?

6 A No, because then I have to follow by man's law, that's  
7 what -- if that's their ruling, that's what they want to  
8 see to him and I'm in that situation, then I have to abide  
9 by their law, I'd just ask God to forgive me, you know,  
10 I'd have to abide by that law because I have to abide by  
11 the law of the land.

12 Q So what you are saying is if the judge instructed you  
13 concerning the death penalty - I am just trying to  
14 understand and I know you are probably confused yourself,  
15 I'm just trying to understand what you are saying - are  
16 you saying that if the judge instructed you, you could  
17 follow his instructions and consider the death penalty?

18 A If that was his order, yes.

19 Q And if you felt that the case warranted the death  
20 penalty, could you impose a sentence of death?

21 A That's after the judge had give their order?

22 Q Well, the judge is not going to order you to find  
23 somebody that they have to have the death penalty. That's  
24 a decision that twelve jurors would make.

25 A Okay.

1 Q So the judge is not going to tell you that you have to  
2 give the death penalty, okay? He is going to give you  
3 some theory of law to which you would apply to the facts  
4 and circumstances of the case and, based upon the facts  
5 and circumstances of the case as well as the direction of  
6 the court, based upon that, you would go into chambers and  
7 you, yourself, would consider the law that was given by  
8 the court, the facts and circumstances, and your own  
9 principles, okay, and taking all of that into  
10 consideration do you believe that you could render a  
11 verdict for death?

12 A No.

13 MS. BRICE: I beg the court's indulgence for one  
14 moment.

15 I have no other questions, Your Honor.

16 EXAMINATION BY MR. POPE

17 MR. POPE: May it please the court, Your Honor?

18 Q Mr. Chavous, I'm glad that she went first because I  
19 would have gotten up here and said Chavis too.

20 You had indicated to Ms. Brice - I am Tommy Pope. I am  
21 the solicitor from up in York County. This is Mr.  
22 Brackett, my deputy solicitor.

23 A Right.

24 Q When we keep talking about The State, that's us, we  
25 are the prosecutors in this case. Ms. Brice had asked you

1 and I think everybody has explained to you that regardless  
2 of how you feel -- you are not on trial; it feels like it  
3 though.

4 A Yes.

5 Q So you can't give a wrong answer because what you are  
6 speaking is from your heart and you are speaking how you  
7 feel and everybody that comes through that door has an  
8 opportunity to say what they feel. There is no right and  
9 there's no wrong. I think from what I heard you tell Ms.  
10 Brice that you thought about the death penalty in the past  
11 as far as that applies and you have talked about God's law  
12 and man's law and how it applies, you haven't ever been  
13 forced to sit in a seat and say, okay, now is the time,  
14 you tell us what you think, is that right?

15 A Right, yes.

16 Q I notice since you were talking and Ms. Brice asked  
17 you a number of questions it has kind of changed a little  
18 bit. Is that because you are having a chance to think  
19 about it as you are sitting here now more than you have  
20 had in the past?

21 A Yes.

22 Q Okay. A couple of things I want to touch on and,  
23 again, I want to be careful because I'm not going to put  
24 words in your mouth and like I say, if I do, you stop me  
25 and say that's not what I mean because I want to know what

1 Danny Chavous means. One thing that you said -- let me  
2 ask you some things - you have studied the Bible some it  
3 sounds like to understand, you know, or from your family  
4 background understand about the Bible and what the Bible  
5 says, is that right?

6 A Yes.

7 Q And you have firm beliefs in regards to that? Is that  
8 true?

9 A Yes, sir.

10 Q What I was going to get to is when you talked about,  
11 one, you said if you give a man death, basically, you set  
12 him free, setting his soul free, is that what you mean?

13 A Yes, sir.

14 Q Okay and the other thing I noticed that you said  
15 talking the blood on your hands, in other words, that you  
16 would have another man's life on your hands if you gave  
17 death. Is that what you mean?

18 A Yes, sir.

19 Q Okay. And you said if the judge ordered you to give  
20 death and you understand about following the law, as Ms.  
21 Brice explained, the judge can't ever order you to give  
22 death, that's not the way our law is set up. And, again, I  
23 don't want to put words in your mouth, but hearing what  
24 you were saying knowing that you couldn't be ordered to  
25 give death, you wouldn't give death, is that right?

1 A No.

2 Q And that's because of your conviction and feeling that  
3 you wouldn't want the blood on your hands, is that -- you  
4 tell me.

5 A A little bit of that and then really you are setting  
6 him free. I'm not really the judge, you know, Jesus is the  
7 judge, but, you know, he leaves us to do the judging for  
8 him too also on his land, but I see that if he dies or she  
9 dies they are not really serving nothing, they really is  
10 set free, they are not serving no time on this side, no  
11 punishment in this life time. On the other side it might  
12 be punished, I don't know, I don't know what the  
13 conditions is on the other side, you know, it might be  
14 worser on the other side, but they haven't served nothing  
15 on this earthly time.

16 Q Sir, you wouldn't give them the death penalty in any  
17 case because you are kind of cutting them a break if you  
18 give the death penalty?

19 A Yes.

20 Q Okay, one requirement and, again, I don't want to put  
21 words in your mouth. I think I know the answer to this  
22 having heard you, but one requirement if the jury decides  
23 death and you have already indicated to me that you  
24 wouldn't decide death, but if the jury decides death, each  
25 juror has to sign, each juror has to sign their own name

1 and you would have to sign -- and I say would have to - to  
2 give death you would have to sign Danny Chavous and I am  
3 going to say Chavis before it's over, you would sign Danny  
4 Chavous on that line with the eleven other jurors to say  
5 our verdict after hearing the facts in this case is death.  
6 And what you are telling me is that you wouldn't be able  
7 to sign, that you wouldn't sign your name to give somebody  
8 else death, is that right?

9 A At this time, no.

10 Q Okay. And when you say "At this time," of course, the  
11 time would be at hand, this is our one chance to see how  
12 you feel, the time would be at hand when you heard the  
13 facts, you know, you heard the circumstances, but based on  
14 your beliefs and, again, I'm trying to make it clear, I'm  
15 not questioning your beliefs, but based on your beliefs as  
16 far as setting a man free, as far as the blood that would  
17 be on your hands, you could not give somebody death, is  
18 that correct?

19 A No, sir.

20 Q I appreciate your being honest with me, Mr. Chavous.

21 FURTHER EXAMINATION BY THE COURT

22 Q Let me just follow up so I can be sure I understand. I  
23 had asked you earlier if you felt there were  
24 circumstances under which you felt that the death penalty  
25 you could impose and I thought you told me that you could.

1 Are you now saying that there are no circumstances under  
2 which you would personally vote for the death penalty?

3 A No, sir, I couldn't. You know, like I said, you know,  
4 you are really setting him free, you know, him or she,  
5 setting them free, you know, because only God can make the  
6 last judgment, but then, you know, he lets people down on  
7 earth to judgment to the land of the law, but I feel like,  
8 you know, you are setting them free; they really not  
9 having time to sit down to think about what they done  
10 wrong for their own conscience and own guilt for being  
11 judgment. When you set them free, there would be no  
12 conscience. It won't be nothing.

13 Q Are you telling me that under no circumstances would  
14 you vote for the death penalty?

15 A Yes, sir.

16 THE COURT: All right, just step outside for just a  
17 minute.

18 All right, what sayeth The State?

19 MR. POPE: Based on his religious views I think after  
20 he had an opportunity to work through it with Ms. Brice he  
21 made it clear that he did not feel that he could give the  
22 death penalty.

23 THE COURT: What say the defense?

24 MS. BRICE: Your Honor, he did waver back and forth as  
25 to his convictions as to whether or not he could impose

ELOUISE TAYLOR

BY THE COURT

1 the death penalty. I believe he's probably not qualified  
2 to serve.

3 THE COURT: Okay. I so find.

4 All right, bring him in.

5 We appreciate your time and candor. You can just stand  
6 right there. We are going to excuse you and if you will  
7 step up here, they will give you a check for your services  
8 and you feel free to leave.

9 JUROR: All right.

10 THE COURT: Thank you for being here.

11 JUROR: All right, sir.

12 THE COURT: Elouise Taylor.

13 ELOUISE TAYLOR (B/F)

14 EXAMINATION BY THE COURT

15 Q Good afternoon.

16 A Good afternoon.

17 Q I am John Hayes and I am going to be asking you some  
18 questions. I want you to answer loudly enough for all of  
19 us to hear. I want you to be relaxed and I remind you that  
20 you are under oath, okay?

21 A Okay.

22 Q Are you related by blood or marriage to any of the  
23 people involved in this case?

24 A No.

25 Q Do you have any interest, bias or prejudice in regards

1 to this case?

2 A No.

3 Q Have you formed or expressed an opinion as to the  
4 guilt of the innocence of the defendant, Mr. Hughes?

5 A No.

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

9 A No.

10 Q Would you under your oath follow the law in the case  
11 as the judge instructs you?

12 A Yes.

13 Q Could you depending on the evidence and the law if you  
14 felt it was warranted find the defendant not guilty?

15 A Sir, I don't know.

16 Q All right, let me ask you like this. Can you find the  
17 defendant not guilty if you think the facts and the  
18 evidence when you applied the law was not enough to prove  
19 that he was guilty of the charges? Could you find him not  
20 guilty under those circumstances?

21 A Yes.

22 Q If, however, you felt that from the evidence and the  
23 facts as you determine them to be applying the law if that  
24 convinced you and you felt that the defendant was guilty,  
25 could you return a verdict of guilty?

1 A Yes.

2 Q Have you discussed this case with anyone?

3 A No.

4 Q Have you heard about it, read about it, know anything  
5 about it whatsoever?

6 A No.

7 Q Now Mr. Hughes is a black gentleman and the victim,  
8 Mr. McCants, was white and it was alleged that Mr. McCants  
9 was acting as a law enforcement officer at the time of his  
10 death. Would that in any way affect your ability to render  
11 a fair and impartial decision in this case?

12 A No.

13 Q Now I am going to talk to you a moment about the death  
14 penalty. I want you to understand that a case such as this  
15 has two parts. First, the case focuses on whether or not  
16 the jury determines guilt or innocence or guilty or not  
17 guilty of the defendant. The defendant is presumed  
18 innocent of all the charges until such time as a jury were  
19 convinced beyond a reasonable doubt as to his guilt. Do  
20 you understand all of that?

21 A I understand.

22 Q All right, if he were found not guilty in the first  
23 part of the trial, then it would be over. If the jury  
24 found beyond a reasonable doubt that he was guilty of  
25 murder, then we would proceed into the second part of the

1 trial where The State and the defendant, if they wished,  
2 could present evidence and the jury would decide what  
3 penalty to impose either life imprisonment or death. Do  
4 you understand that?

5 A I understand.

6 Q All right, we are talking about that second part where  
7 you look at the penalty, but that's not to say that we are  
8 jumping over the first. I want you to understand that we  
9 are not indicating anything about the guilt or the  
10 innocence of Mr. Hughes at this time. We are simply  
11 talking about the penalty phase. Do you understand that?

12 A I understand.

13 Q Have you reviewed the three juror types?

14 A Yes, I have.

15 Q Did you find yourself in one of those types?

16 A Yes, I have.

17 Q Which one?

18 A Three.

19 Q All right, would you then as a juror be able to  
20 participate in a verdict which -- in a verdict  
21 recommending the penalty of death if the evidence and the  
22 law warranted such a verdict?

23 A Yes.

24 Q Could you likewise participate in a jury verdict  
25 recommending life imprisonment for murder if that's what

1 you felt the evidence and the law warranted?

2 A Yes.

3 Q All right, if you are asked to serve or if you are  
4 chosen to serve on this jury, other than being away from  
5 your usual environs, home, and family and friends and  
6 those things, would it present any undue hardship on you  
7 to be away for ten or twelve days?

8 A Yes, it would.

9 Q All right, tell me about it.

10 A I am a mother of five.

11 Q All right.

12 A And I'm the one that usually take my children to  
13 school and take them home and my oldest daughter she is in  
14 adult day lab and she don't have transportation to get to  
15 and from and she goes from nine until twelve and I am a  
16 home health aid and I have a client roll of at least six  
17 people per day and it's kind of hard trying to get away  
18 from that because my husband he do work and he works from  
19 eight until four and I am the transportation.

20 Q Would your husband be available to keep them at night  
21 though, I mean, to be at home? I know it would be  
22 difficult for him to get them around to where they have to  
23 go, but would he be there at night to make sure they eat,  
24 make sure they bathe, make sure they go to bed, make sure  
25 they don't watch Bart Simpson on tv and stuff like that?

1 A That's right; he'll be there for them.

2 Q Okay, I am going to ask you to answer any questions  
3 that they make ask.

4 A Okay.

5 EXAMINATION BY MR. POPE

6 Q Mrs. Taylor, it sounds like your husband is going to  
7 have his hands full. Mrs. Taylor, I'm Tommy Pope. I am  
8 the solicitor up in York and Union Counties. Mr. Kevin  
9 Brackett he's my deputy solicitor. When the judge keeps  
10 talking about The State, we represent The State, the  
11 prosecution, in this case.

12 A Okay.

13 Q Just a couple of questions I want to touch on. It is  
14 my understanding - the judge explained to you that this is  
15 a little bit different than other trials. It's a two part  
16 trial. The first part is as to guilty or not guilty, you  
17 understand that?

18 A I understand.

19 Q And do you understand that we have to prove the case  
20 beyond a reasonable doubt. The defendant doesn't have to  
21 put up anything. We have to prove it. Do you understand  
22 that?

23 A I understand.

24 Q If we prove our case beyond a reasonable doubt and the  
25 defendant would be found guilty, then we would go to the

1 second phase. That's again somewhat different in that the  
2 penalty in normal cases would be decided by the judge. The  
3 penalty in a death penalty case is decided by the jury. Do  
4 you understand that?

5 A I understand.

6 Q Okay, in the penalty part The State we would bring  
7 forth called evidence in aggravation. What we would do is  
8 try to show the jury why the case was a bad case or, you  
9 know, bad things about the defendant or good things about  
10 the victim and things like that. And my understanding is  
11 you would be the type of juror you said you would want to  
12 listen to all of that, is that correct?

13 A Yes, I would.

14 Q Okay, now the defense never has to put up anything. If  
15 they wanted to, they may come and tell you things about  
16 the defendant's background or about his family or, you  
17 know, about his life and you would want to listen to that  
18 too?

19 A Yes, I would.

20 Q Okay and then based on hearing all of that then and  
21 only then you would make your decision as to penalty?

22 A Yes, I would.

23 Q So you wouldn't jump in the jury box and as soon as  
24 somebody is found guilty you'd say we got them guilty, we  
25 are going to give them death or we are going to give them

1 life, you'd wait to hear things out?

2 A Yes, I would.

3 Q From what you told the judge there are some cases, and  
4 I am not going to sit here, you know, make up  
5 hypotheticals, but there are some cases when you could  
6 give life, if you thought that was the right thing to do,  
7 is that right?

8 A Right.

9 Q And, likewise, there are some cases if you heard the  
10 facts and you thought they were bad enough you could give  
11 death in the case?

12 A Yes.

13 Q Now let me tell you one thing. You are not on trial. I  
14 know you feel like you are getting all the questions asked  
15 to, but you are not on trial and another thing is you  
16 can't give a wrong answer because you are just speaking  
17 from your heart. You are speaking how you feel about that  
18 and so if I give the impression I am trying to take you  
19 over this way and take you over that way, I'm not. I just  
20 want to know how you feel, okay?

21 A Okay.

22 Q When I ask you about death, let me say this to you. We  
23 are talking about life and death, because we are using  
24 words and the judge is going through it, we are not making  
25 light of it, do you know what I mean? This is an

1 extremely serious case, a life was taken and a man is on  
2 trial for his life and this is a serious case and I think  
3 we all realize that. I want you to know that when I ask  
4 you about death, I am not making light of it, okay?

5 A Okay.

6 Q When I asked you about death a minute ago you kind of  
7 hesitated for a second. Could you tell me why that was?

8 A Well, I wanted to make sure I would say the right  
9 thing because, you know, it's two sides to every story  
10 before you can really make a decision on it.

11 Q Okay. And when you said "say the right thing," you  
12 want to say the right thing as to how Elouise Taylor  
13 feels, not just say the right thing for whatever you think  
14 we want to hear, is that right?

15 A Right.

16 Q Mrs. Taylor, one of our requirements as far as the  
17 death penalty case, if the jury determines life, you know,  
18 after everybody has heard everything and, of course, you  
19 have got twelve jurors and the judge sends you back and  
20 you get to go through the evidence, if the jury determined  
21 life was appropriate, then the foreperson, the foreman or  
22 the forelady, the one selected to speak for the jury, has  
23 to sign something that says we have heard everything and  
24 we feel that life is appropriate in this case. If the  
25 decision of the jury was death, and it has to be

1 unanimous, all twelve of them has to decide it, if the  
2 decision of the jury is death, it's a little bit  
3 different. Each juror has to sign their own name. Instead  
4 of one signature, it would be twelve signatures. Do you  
5 understand that?

6 A I understand it.

7 Q If you heard the facts in the case or a case and the  
8 time came and you, along with the other jurors, had  
9 decided the appropriate sentence was death, and, again, I  
10 am not making light of that sentence, if you determined  
11 the appropriate sentence was death and it came time and  
12 you had pen in hand and the sheet was handed around to you  
13 and you were going to write Elouise Taylor on the sheet,  
14 just like you signed that questionnaire, you would sign  
15 this saying that you recommended death for somebody, could  
16 you do that?

17 A I could.

18 Q One final question, Mrs. Taylor, I think with the kids  
19 you have got your hands full with three kids and work,  
20 obviously, but I saw you wet to New and Living Way?

21 A That's right.

22 Q Are there any views or anything that the church  
23 teaches, you know, I want to make clear we all bring with  
24 us what we learn from our church or from life or, you  
25 know, from wherever, is there anything in particular that

1 the church has taught that gives you a conviction on the  
2 death penalty?

3 A Well, they, you know, they talk about it, but it's not  
4 so much as to where any one of us has experienced that  
5 yet, but they talk against using weapons and stuff like  
6 that or having them. That's about it.

7 Q Like talk against murder?

8 A Right.

9 Q So there's nothing that you are aware of one way or  
10 the other that your church says if you are ever on a jury,  
11 you decide this or you decide that? You would be free to  
12 decide what you wanted to?

13 A Yes, I would be.

14 Q Okay, and finally, I would ask you what -- have you  
15 got, like I say, the last thing you thought was you were  
16 going to be dragged up here and asked a bunch of  
17 questions, but have you had the opportunity at any time  
18 prior to this or since then to really think how you really  
19 feel about the death penalty?

20 A No, not really.

21 Q Well, one last thing I'd say is what we are doing here  
22 is our opportunity to kind of look into your heart, you  
23 know, you are letting us do that, by responding to us, but  
24 kind of looking into how you feel and this is the time now  
25 and you have not indicated you have any problems with

1 anything, but if you have any, other than the handful you  
2 have got at home, you know, if there is any problem that  
3 you have as far as the death penalty, once the trial  
4 started we won't get to talk about this, you know, with  
5 the court. Is there anything you can think of that would  
6 prevent you from being able to give life or the death  
7 penalty according to the facts in the case?

8 A No.

9 Q Thank you, ma'am.

10 EXAMINATION BY MS. BRICE

11 Q Hi, Mrs. Taylor.

12 A Hi.

13 Q Almost done. My name is Chris Brice and I am an  
14 attorney from York County and myself and co-counsel, Steve  
15 Schusterman, we represent Mar-Reece Hughes.

16 A Okay.

17 Q And I'm not going to keep you up there much longer.

18 A All right.

19 Q You've done a great job.

20 A Thank you.

21 Q Are you nervous?

22 A A little bit.

23 Q Nothing to be nervous about. The solicitor was asking  
24 you a lot of questions about whether or not you could  
25 impose the death penalty or whether or not you could come

1 back and vote for life. My question to you is if you found  
2 that a case did not warrant the death penalty, okay ---

3 A Okay.

4 Q --- but the other eleven jurors believed that the  
5 death penalty was warranted, do you believe that you are  
6 strong enough, a strong of a person enough, that you could  
7 stand firm in your convictions and not be swayed by the  
8 other members of the jury?

9 A I could be.

10 Q You kind of hesitate on that. Would you have a hard  
11 time under the pressure or do you believe that you might  
12 succumb to the pressures of the other jurors?

13 A No.

14 Q See, it takes a unanimous decision in order for  
15 someone to be sentenced to death. It takes all twelve  
16 jurors and if you were the only one holding out, do you  
17 believe that you could be strong willed enough to be firm?

18 A I could be.

19 Q I was probably a little unclear as to your question or  
20 your statement in regards to the teachings of your church.  
21 Mr. Pope questioned you as to whether or not your church  
22 had any views regarding the death penalty and I believe  
23 you stated that it was talked about at church, you know,  
24 about murders and guns and things like that, but what,  
25 specifically, do you recall your church teaching or saying

1 in regards to the death penalty?

2 A Well, they didn't really go into full details about  
3 it, you know, they just touched at it and let it went, you  
4 know, because each and every one has their own opinion,  
5 you know. Rather than to have arguments or something like  
6 that, you know, they just touched and let it went.

7 Q Your pastor kind of tiptoed around it?

8 A Right.

9 Q Okay. And do you have any opinion regarding the death  
10 penalty?

11 A No.

12 Q Do you believe that someone can have a mental illness?

13 A Yes.

14 Q You do believe in mental illness?

15 A Yes.

16 Q Do you believe in the science of psychiatry and  
17 psychology? Do you know what I mean about that?

18 A Yes, I know what you are talking about.

19 Q Do you believe in psychiatrists and psychiatry?

20 A I do.

21 Q And do you believe that that science can help people  
22 with mental illness?

23 A Yes, if they had the help.

24 Q Do you believe there is a time when people couldn't be  
25 helped by them?

1 A Sometimes.

2 Q You sound a little skeptical in your opinions of them;  
3 I was just wondering.

4 A Just sometimes that, you know, it helps and sometimes  
5 it don't. I guess really it just depends upon the person.

6 Q Just like going to a doctor or an attorney sometimes  
7 you have to go to one, sometimes you have to have one? Is  
8 that what you mean?

9 A Yes.

10 MS. BRICE: I beg the court's indulgence.

11 Q Those are all the questions I have. Thank you, Your  
12 Honor. Thank you, Ms. Taylor.

13 THE COURT: I am going to ask you to step outside for  
14 just a minute.

15 JUROR: Okay.

16 THE COURT: What says The State?

17 MR. POPE: I submit she is qualified, Your Honor.

18 THE COURT: The defense?

19 MS. BRICE: We would agree that she is qualified, Your  
20 Honor.

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

22 Mrs. Taylor, you are going to be included in the jury  
23 pool, that is, we are going to have thirty-five or forty  
24 people come back tomorrow at two and from that forty will  
25 be chosen and you are going to be part of that -- I mean

KEDAR BROWN

BY THE COURT

1 fourteen will be chosen. So I want you to be back here at  
2 two o'clock tomorrow. I don't want you to talk about this  
3 case to anyone, your family, your friends, I don't want  
4 you to let yourself hear or read anything about it in the  
5 newspaper, if there is anything, and when you come  
6 tomorrow, I am going to ask you to be packed as if you  
7 would be staying ten or twelve days away because if you  
8 are chosen on this jury, we will leave immediately  
9 tomorrow or after the jury is chosen to go to York County  
10 for about that period of time. Do you understand?

11 JUROR: I understand.

12 THE COURT: We will see you back here at two tomorrow  
13 packed and you may be traveling with us or you may not,  
14 okay?

15 JUROR: Okay.

16 THE COURT: All right, thank you.

17 JUROR: Thank you.

18 THE COURT: All right, now we have Kedar Brown.

19 KEDAR BROWN (W/M)

20 EXAMINATION BY THE COURT

21 Q I am John Hayes. I am going to be asking you some  
22 questions and, remember, that you are under oath and I ask  
23 you to answer loudly so that all of us can hear, okay?

24 A All right.

25 Q Now are you related by blood or marriage to any of the

1 participants in this case?

2 A No, I am not.

3 Q Do you have any interest, bias, or prejudice in  
4 regards to this case?

5 A No, I do not.

6 Q Have you formed or expressed any opinion as to the  
7 guilt or the innocence of the defendant, Mr. Hughes?

8 A No, I have not.

9 Q Do you know of any reason whatsoever why you could not  
10 give both The State and the defendant a fair and impartial  
11 trial in this case?

12 A No, I do not.

13 Q Would you under your oath follow the law in this case  
14 as has been given to you by the trial judge?

15 A Yes, I would.

16 Q Could you find a defendant and Mr. Hughes, in  
17 particular, not guilty if the facts and evidence and law  
18 warranted such a finding?

19 A Yes, I could.

20 Q Could you find him guilty if you felt the evidence  
21 warranted such a finding?

22 A Yes, I could.

23 Q Have you discussed this case with anyone?

24 A No, I have not.

25 Q Have you heard about it from any source whatsoever?

1 A No, I have not.

2 Q Now, Mr. Hughes, is a black gentleman and Mr. McCants,  
3 the deceased, was white. It is alleged he was acting in  
4 the course and scope of his employment as a law  
5 enforcement officer at the time of his death. Would those  
6 facts in any way prevent you from rendering a fair and  
7 impartial verdict in this case?

8 A No, they would not.

9 Q Now I am going to talk to you about your views on the  
10 death penalty. This type case has two parts, one where  
11 guilt is tried and if the defendant is found not guilty,  
12 it's over, and if he is found guilty, then we proceed to  
13 the next stage, the penalty stage. Now we are going to be  
14 talking about the penalty stage. That's not to indicate  
15 anything whatsoever about the guilt or the innocence of  
16 Mr. Hughes.

17 A I understand.

18 Q He is presumed innocent of these charges until such  
19 time as a jury were to find him guilty beyond a reasonable  
20 doubt. Do you understand all of that?

21 A I understand.

22 Q Have you read the juror types that I had placed in the  
23 jury room?

24 A Yes, I have.

25 Q Did you find that you fit into one of those

1 categories?

2 A Yes, I did.

3 Q Which one is that?

4 A I fit into the second category.

5 Q All right, this second category is the type of juror  
6 even though the guilt of the defendant had been determined  
7 would under no circumstances ever give the death penalty  
8 regardless of the facts and circumstances that were heard  
9 in aggravation. Is that the one you say you fall into?

10 A That's the one.

11 Q Is your opposition to the death penalty so fixed and  
12 firm that you are irrevocably committed to it?

13 A I have given that a lot of thought and at this point I  
14 will say yes.

15 Q To vote against the death penalty for murder, would  
16 you -- would you vote against the death penalty for murder  
17 regardless of the facts and circumstances that may develop  
18 in the trial?

19 A Yes.

20 Q Could your opposition to the death penalty be changed  
21 by evidence presented during the trial?

22 A No.

23 Q Notwithstanding your opposition to capital punishment,  
24 would you be willing to consider the two penalties,  
25 seriously consider the two penalties the State provides

1 for murder cases when the death penalty is sought, that  
2 being life imprisonment or death? Could you consider both  
3 of those?

4 A I could consider one of those.

5 Q But not both?

6 A But not both.

7 Q The one you could not consider would be --

8 A It would be death.

9 Q You told me yesterday and I have also read your  
10 questionnaire and I know you have some employment  
11 concerns, but other than that, are there any undue  
12 hardships you would suffer as a result of being  
13 sequestered for ten to twelve days?

14 A Other than those, no, sir.

15 Q All right, answer any questions that The State or the  
16 defense may have.

17 EXAMINATION BY MR. SCHUSTERMAN

18 Q Mr. Brown, good afternoon. My name is Steve  
19 Schusterman and I am an attorney from York County. I  
20 represent Mar-Reece Hughes along with Christina Brice  
21 sitting there with the black jacket. I want an opportunity  
22 to talk to you a little bit about some of the answers you  
23 gave the judge about your feelings generally about the  
24 process. Let me tell you in advance that there are no  
25 right or wrong answers. No one is quizzing you here,

1 nothing like that.

2 A Uh-huh.

3 Q You indicate from your answers to Judge Hayes that you  
4 are a type two juror ---

5 A Uh-huh.

6 Q --- that you believe the death penalty is never  
7 appropriate, is that correct?

8 A That is correct.

9 Q You will -- are you telling this court that you would  
10 stick to that belief regardless of the court's instruction  
11 to you?

12 A I'm a little confused ---

13 Q Do you want me to rephrase that?

14 A Yes.

15 Q Okay. If the court so instructed you in the second  
16 phase of the trial, understand this is what is known as a  
17 bifurcated trial, we are going to have a trial on guilt or  
18 innocence ---

19 A Uh-huh, I understand that.

20 Q --- and Mr. Hughes has pled not guilty to all of these  
21 charges, so if The State, which has the burden of proof in  
22 this case, cannot meet their burden of proof to the  
23 satisfaction of you and eleven other jurors, and you  
24 return a verdict of not guilty, then we go home. This  
25 issue of life or death it become irrelevant.

1 A Uh-huh.

2 Q But assuming we make it to that second stage and now  
3 we have to deal with life without parole or death, the  
4 court will instruct you that you could consider what we  
5 call aggravating circumstances. What we are talking about  
6 are the bad things relating to the crime, things that  
7 makes the crime especially heinous in the eyes of The  
8 State, they are going to present that to you ---

9 A Uh-huh.

10 Q --- on the other hand, the defense will probably show  
11 you mitigating factors, things that make the crime less  
12 heinous.

13 A Right.

14 Q But the court will instruct you that you may consider  
15 the death penalty under certain situations. What my  
16 question gets back to, are you telling the court that  
17 sitting as a juror with those instructions that you could  
18 not even consider the death penalty?

19 A I would not give the death penalty, but I could find  
20 someone guilty if the facts pointed in that direction.

21 Q You could find somebody guilty of the underlying ---

22 A Yes, I understand the separate issues of guilt and  
23 then --

24 Q Right. I understand with the first part of the trial  
25 you have no problem judging guilt or innocence.

1 A Right.

2 Q But you are telling this court that you could not find  
3 -- you could not under any circumstances find a situation  
4 where the death penalty would be appropriate?

5 A I would not find the death penalty appropriate under  
6 any situation.

7 Q Under any situation.

8 A Uh-huh.

9 Q Without getting graphic or gory and not getting facts  
10 specific are you telling me today that I could not come up  
11 with a scenario of a crime being that heinous that you  
12 would not say that draws the line, at that point I could  
13 consider the death penalty.

14 A That's right.

15 Q There is no factual situation?

16 A Not if I am -- my thought on that is as long as I feel  
17 objective about it, that's my opinion. If it involved my  
18 daughter, then I would have, you know, if it was something  
19 personal to me, then I would be in a different area  
20 because I would have to go the other way, but as far as  
21 ---

22 Q What do you mean by "Go the other way"?

23 A If I was subjectively involved in a case that was  
24 personal to me, I could probably out of my own rage come  
25 to that decision.

1 Q And be able to invoke the death penalty.

2 A Yeah, but I don't think that would be clear, but I  
3 think I could probably - I could see that possibility  
4 happening, so I won't say I am beyond the scope of saying  
5 this person should die for what he has done. But sitting  
6 on a jury and being objective, I could say, no, that I  
7 wouldn't come to that decision regardless of the details  
8 or the facts of the case.

9 Q But there are - am I understanding correctly there is  
10 a scenario where contemplation of the death penalty would  
11 be a possibility?

12 A I guess I would have to say yes.

13 Q Okay. Let me ask you this, sir. Once we get past that  
14 hurdle my next question to you is a lot easier. If the  
15 twelve jurors decided that death was appropriate and you  
16 were one of the twelve, the law of South Carolina requires  
17 that you return a form to the court saying that you have  
18 considered all options and you believe that death is  
19 appropriate, it would be passed around in the juror room  
20 or passed around the jurors and they would have to sign  
21 it. If you had gotten to this point, would you be able to  
22 sign it then?

23 A If I was the one person who didn't ---

24 Q No, you were one of the twelve. Once we had overcome  
25 the hurdles that we have talked about here that it met

1 this criteria this possibility and now the act of signing  
2 your name onto a for lack of a better term death warrant,  
3 could you then sign it?

4 A At this point I would say no, I would not sign it.

5 Q You would not?

6 A No.

7 Q Okay. Let me ask you, how about if the factual  
8 scenario was such as you had indicated you would be able  
9 to give the death penalty?

10 A I wouldn't be sitting on a jury if it was as such as I  
11 indicated; I would be involved in the case. If it was  
12 personal to me, then I could see how out of that  
13 involvement I could out of my hurt or rage want to see  
14 somebody dead, but that's not the situation here.

15 Q I understand. Mr. Brown, what I am saying to you is  
16 that I understand what you are saying is that the rage  
17 that you would feel would personalize the situation, but  
18 those same acts, even worse, that would happen to somebody  
19 else, are you saying could not invoke enough rage as to  
20 the heinousness of the crime that you could not then  
21 invoke the death penalty? At least as a possibility?

22 A A very distant one; I would still say now I would not  
23 do that. If I felt that I was giving my judgment on  
24 whether this man should die out of my rage, I wouldn't do  
25 it. It doesn't feel -- it feels kind of -- it's doesn't

1       feel like objective; it feels like I've personalized it,  
2       made it my agenda to kill this person because of what he's  
3       done. So if I felt rage or hurt or my own stuff involved  
4       with whether or not this person should die, then that  
5       would be an indication to me, no.

6       Q    Would you not consider that at some point a crime  
7       would become so heinous that that's just a natural human  
8       reaction?

9       MR. POPE: Your Honor, I object --

10       THE COURT: I sustain the objection. I think we have  
11       covered all of this.

12       Q    No other questions. Thank you.

13       EXAMINATION BY MR. BRACKETT

14       Q    Just one brief question. You don't know anything  
15       about this case, isn't that correct?

16       A    That's correct.

17       Q    You could be completely objective in the guilt or  
18       innocence phase, isn't that correct?

19       A    That's correct.

20       Q    And your emotions wouldn't have any part or anything  
21       to do with your deciding the penalty in this case if you  
22       were called upon to do so, isn't that correct?

23       A    Ask that one more time, please.

24       Q    Your emotions -- and you would not lose your  
25       objectivity if you were called upon to decide the penalty

1 in this case because you have no involvement personally in  
2 this case.

3 A That's correct.

4 Q You would not use your objectivity ---

5 A That's correct.

6 Q --- and, therefore, you could not consider the death  
7 penalty in this case based on that, is that correct?

8 MR. SCHUSTERMAN: Objection ---

9 A That's correct.

10 THE COURT: I overrule the objection.

11 Q Thank you.

12 THE COURT: You may step down and step out in the hall  
13 just one minute.

14 What says The State?

15 MR. BRACKETT: I submit he is not qualified, Your  
16 Honor.

17 THE COURT: What says the defense?

18 MR. SCHUSTERMAN: Your Honor, I would submit that he  
19 is qualified that he is the inverse, he is the flip side  
20 of the coin to Juror Number 26, who was admitted before  
21 and maintained that he couldn't -- would give the death  
22 penalty in every situation and was evoked to say that  
23 everything is a possibility and this is one who says he'll  
24 never give it unless it was so heinous situation that ---

25 THE COURT: He went further in your questioning. He

1 said, as I understand his question, that if it was so  
2 heinous, number one, it would have to be not only heinous  
3 it would have to involve some personal relationship and  
4 then I still wouldn't do it because I know I would be  
5 acting out of rage. That's what I understood him to say.

6 MR. SCHUSTERMAN: Well, yes, he could have said that  
7 at one point, but he also several questions before that I  
8 asked him the question is it possible that a situation  
9 could, in fact, be so heinous that it would invoke your --  
10 it would trigger the possibility of you giving him the  
11 death penalty and I believe if you will go back in the  
12 transcript it will say yes, I guess that's a possibility,  
13 so I don't understand why on the one hand when someone -  
14 when a juror says that he would give the death penalty in  
15 every situation, but there's this possibility that he  
16 wouldn't that that's acceptable, but then the reverse side  
17 isn't.

18 THE COURT: Well, looking at the totality of the  
19 circumstances I find he is not qualified.

20 All right, bring Mr. Brown in.

21 Mr. Brown, we are going to excuse you. We appreciate  
22 your coming. If you will step up there, they will give  
23 you a check and you are finished with your service:

24 JUROR: Thank you for your flexibility in letting me  
25 come today.

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1 THE COURT: Okay, well, we are glad to be able to do  
2 it.

3 All right, we have got Panel E coming in at nine in  
4 the morning. It may be - we have got the other people  
5 calling in between ten and eleven, is that --

6 THE CLERK: Nine and eleven.

7 THE COURT: -- between nine and eleven. We will decide  
8 the first thing in the morning whether we need some more  
9 to come in. Right now I have thirty-two by my count, but  
10 I'm still saying that two are perhaps iffy and we can only  
11 - we have already lost one out of Panel E, that was Mr.  
12 Kedar, so we would have to have a pretty high percentage -  
13 we would have to get a pretty high percentage out of those  
14 remaining, so it may very well be that we will end up  
15 going to Panel F. If so, I'll have them come in around  
16 noon. I think maybe we might go ahead and decide now that  
17 perhaps Panel F start coming in at noon and if we don't  
18 need them, we can turn them around, but the odds are that  
19 we will need to go through at least some of Panel F. That  
20 may mean that we eat at our desk again tomorrow because we  
21 have the balance coming in at two.

22 Now even if we have to make the panel -- the pool wait  
23 a little bit, I will give counsel some break between when  
24 we get our pool and when we draw it, because I know you  
25 will want to look at the aggregate at some point and,

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1 obviously, with what we have got now, you will have to fit  
2 the other eight or so, eight to ten, if they come in. So  
3 we will give you some time to work on that tomorrow and  
4 we'll just have to adjust as we go along. We will start  
5 again at nine in the morning.

6 Anything from The State?

7 MR. POPE: I beg the court's indulgence.

8 We have reached thirty-five or whatever we have  
9 reached accounting for the two we may lose. It is my  
10 understanding that then we will strike in the normal  
11 fashion of then we will bring them in and they'll be  
12 presented in the order that they have been drawn and The  
13 State will either exercise a strike or not.

14 THE COURT: It wasn't my understanding that they would  
15 be stricken in the order they were drawn. All we are doing  
16 is getting a pool and what we will do and the reason as I  
17 understood it we did it this way was so that all  
18 thirty-five or however many are put into a tumbler and we  
19 draw at random?

20 MR. POPE: May it please the court, Your Honor, that  
21 wasn't my understanding based on the materials that we  
22 had. I thought that was the purpose of we would have one  
23 randomization and drawn them and then we would know the  
24 order in which they are proceeding.

25 MR. SCHUSTERMAN: Your Honor, the defense's position

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1 was my understanding was that we were going to take when  
2 we got thirty-five or forty names, or whatever we decided,  
3 they were then going to be put back in to re-randomize,  
4 you know, and then drawn again.

5 THE COURT: My thinking was and I am going to leave  
6 myself open and we'll talk about it more in the morning,  
7 my understanding was that we were simply getting a panel  
8 just like they draw at random if they were in a jury  
9 assembly room and I said, send me a panel, and they drew  
10 forty names and sent them upstairs and then we would put  
11 them back in the hopper and drew at random.

12 MR. POPE: You know, again, Your Honor, my  
13 understanding and, of course, as I understood the court's  
14 ruling, ---

15 THE COURT: Well, I haven't ruled; I'm just saying  
16 that's my understanding at this point.

17 MR. POPE: Well, the model procedure that I understood  
18 we were following that was outlined at the judge's  
19 conference was exactly that that the draw had been made.  
20 For the very purposes -- that's why I was concerned when  
21 you said the extra time we would need to look at the  
22 jurors that ---

23 THE COURT: Well, let me - you are talking about the  
24 model procedure. Let me look at -- see if you can show me  
25 what you are talking about.

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1 MR. SCHUSTERMAN: I didn't know we were going by a  
2 model procedure. I thought that the court - well, the last  
3 thing I remember the court asked for input on how they  
4 wanted to handle the jurors in terms of sequestration, how  
5 they wanted them pulled. I thought, and maybe it's my  
6 misunderstanding, I thought it was understood that once we  
7 got a jury panel you were going to treat it like any other  
8 General Sessions Court case and they were just going to be  
9 pulled at random by the Clerk.

10 THE COURT: That's the way I have been proceeding --

11 MR. SCHUSTERMAN: That's the way I understood it.

12 THE COURT: --- If you can show me in the morning what  
13 ---

14 MR. POPE: Yes, sir, I think Mr. Schusterman after we  
15 left your chambers that day he was in our office to get a  
16 copy of the various procedures we are talking about.

17 MR. SCHUSTERMAN: We didn't follow that procedure,  
18 Your Honor. After we did that, the court asked us what our  
19 input was in terms of how we wanted the jury sequestered,  
20 how we wanted to pull them, but it's absolutely true, he  
21 gave me a copy of the model procedure, but I didn't think  
22 we were following that.

23 THE COURT: Well, I don't even know if I am familiar  
24 with the model procedure; I'll show my ignorance, but I do  
25 want to look at it, so if you will get a copy for me in

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1 the morning and I'll let you know before we start in the  
2 morning.

3 All right, anything else?

4 MS. BRICE: Yes, Your Honor, I'm curious just out of  
5 concern the juror I don't recall her number Ms. Carey,  
6 Number 45, who came into the courtroom and talked about  
7 the unusual stress of this case. My concern was when she  
8 came into the courtroom, was she in the jury room prior to  
9 entering in the court room?

10 BAILIFF: No, she was in the judge's chambers.

11 MS. BRICE: That's the only thing. Thank you.

12 THE COURT: We will be adjourned. As usual, I will be  
13 back by a quarter 'til nine and we will start at nine.

14 SEPTEMBER 13, 1995

15 THE COURT: Let the record show that the defendant is  
16 present with counsel.

17 Is The State ready to proceed?

18 MR. POPE: The State is ready, Your Honor.

19 THE COURT: Is the defendant ready to proceed?

20 MR. SCHUSTERMAN: The defense is ready, Your Honor.

21 THE COURT: All right, Ms. Carey is here. I thought I  
22 had asked her to come in at two, but she is here, so we  
23 will deal with her situation at this time. I am going to  
24 ask that Mrs. Carey come in and I think counsel ought to  
25 know that she has been segregated from the prospective

1 jurors. She has been in the lobby in my office.

2 MARTHA CAREY (W/F)

3 FURTHER EXAMINATION BY THE COURT

4 Q Good morning again. How do you feel today?

5 A I calmed down, but I still feel the same.

6 Q All right, well, I have thought about it and I am  
7 going to excuse you. I think that in this situation, and  
8 there is no reflection on you, I mean, you are just what  
9 you are, who you are, and if we got there, you might be  
10 able to go through the whole thing, but it would a  
11 strenuous time. It's nothing like what you've seen on tv  
12 with O.J., it's not quite that dramatic, but still it's  
13 long days and a lot of testimony and so I am going to  
14 excuse you. I really appreciate your candor. You worked  
15 very hard to be candid with us and to do your civic duty,  
16 so I admire you for that.

17 A Thank you, Your Honor.

18 Q Okay. You feel free to leave. If you want to come  
19 down, they will give you a check, I believe.

20 A Thank you.

21 THE COURT: Let me just ask the Clerk. What did we do  
22 about the panel?

23 THE CLERK: I'm sorry, sir.

24 THE COURT: We have E this morning?

25 THE CLERK: Yes, sir.

1 THE COURT: And F is going to call back?

2 THE CLERK: F is coming in at twelve and from then on,  
3 they will call about one and, of course, some of those  
4 have already been coming in this morning. I told them to  
5 call back at one.

6 THE COURT: All right.

7 Is The State ready to proceed?

8 MR. POPE: The State is ready, Your Honor.

9 THE COURT: Is the defense ready to proceed?

10 MR. SCHUSTERMAN: The defense is ready.

11 THE COURT: All right, I am going to let each side. I  
12 did not ask either of you about your position on Ms. Carey  
13 prior to my ruling. Both of you had reflected yesterday  
14 your interest in having her stay. I thought through it. I  
15 had looked at her questionnaire very thoroughly and I  
16 think that had she traveled with us to York County the  
17 odds are we would end up having to use an alternate. No  
18 adverse reflection on her; that's just her makeup.

19 Anything The State wishes to put pro or con regarding  
20 my releasing Ms. Carey?

21 MR. POPE: Nothing further, Your Honor.

22 THE COURT: Anything from the defense?

23 MR. SCHUSTERMAN: Nothing further, Your Honor.

24 THE COURT: All right. Bring in I have Sean Carter.

25 MR. POPE: Your Honor, do we have any information as

SEAN CARTER

BY THE COURT

1           regards the other questionable juror?

2           THE COURT: No, we will try to check on that so we can  
3 have something later in the morning.

4           MR. POPE: My record reflects we have thirty-one now?

5           THE COURT: Yes.

6                           SEAN CARTER (W/M)

7           EXAMINATION BY THE COURT

8           Q Good morning. Come up and have a seat. How are you?  
9 Have a seat right there.

10           Mr. Carter, I am John Hayes and I am going to ask you  
11 a few questions. I want you to be relaxed. I want to  
12 remind you that you are still under oath and I am going to  
13 ask you to speak up so all of us can hear you.

14           Now are your related by blood or marriage to any of  
15 the individuals I have introduced to you who are  
16 participants in this case?

17           A No, sir.

18           Q Do you have any interest, bias or prejudice in regards  
19 to this case?

20           A No, I'm related to a juror.

21           Q One of the other jurors?

22           A Right.

23           Q Who are you related to?

24           A Kendall - Bob Kendall.

25           Q All right. Have you and he talked about this case?

SEAN CARTER

BY THE COURT

1 A No, sir.

2 Q That would not - I am glad you called that to my  
3 attention. What are you cousins?

4 A Uh-huh.

5 Q Have you formed or expressed an opinion as to the  
6 guilt or the innocence of Mr. Hughes?

7 A No, I have not.

8 Q Do you know of any reason whatsoever why you could not  
9 give The State and the defense a fair and impartial trial  
10 in this case?

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

12 Q We will get to that in a minute, but just other than  
13 that can you think of any reason why you cannot give Mr.  
14 Hughes and The State of South Carolina a fair and  
15 impartial trial?

16 A No, I do not.

17 Q Would you be able to follow under your oath the law as  
18 the trial judge charges it to you?

19 A Yes, sir.

20 Q Now I am not talking about the penalty, but let me  
21 tell you this case will be tried in two stages, one  
22 dealing with guilt or innocence and one dealing with  
23 penalty. I am going to talk to you about the penalty part  
24 in just a moment. If the evidence, facts and law  
25 warranted it, could you return a verdict of not guilty for

1 Mr. Hughes?

2 A Yes.

3 Q If the evidence and law warranted it, could you return  
4 a verdict of guilty?

5 A Yes.

6 Q All right, sir. Have you discussed this case with  
7 anyone?

8 A No.

9 Q Have you read about it or heard about it from any  
10 source whatsoever?

11 A No, sir.

12 Q Now Mr. Hughes is a black gentleman and the victim,  
13 Mr. McCants was white and it is alleged to have been  
14 employed and working in law enforcement at the time of his  
15 death. Would this in any way affect your ability to be  
16 fair and impartial?

17 A No, sir.

18 Q I am going to talk to you now about the second part,  
19 the penalty phase, and your views on the death penalty.  
20 There are no right or wrong answers to the questions. The  
21 fact that we are talking about the penalty part is no  
22 indication of the guilt or the innocence of Mr. Hughes. He  
23 is presumed innocent of these charges, all of these  
24 charges, until such time as the jury would determine his  
25 guilt beyond a reasonable doubt. So we will talk about

1 the penalty, but that's not to indicate anything about the  
2 case. Now did you review the jury sheet?

3 A Yes, I did.

4 Q Did you find yourself in one of those categories?

5 A I don't believe so.

6 Q Okay, let me ask you this then. You mentioned some  
7 concerns about the death penalty. Why don't I ask you at  
8 this time to express those.

9 A I just don't believe in it. Like the Bible says "Thou  
10 shalt not kill" whether it be a defendant or The State.

11 Q Well, the law in South Carolina is that one who is  
12 under certain circumstances is found guilty of murder may  
13 be punished by life imprisonment or by death. That's what  
14 the lawful authority of our state says. Would you be able  
15 to consider since that is the law, the death penalty is  
16 provided by law, would you be able to consider both the  
17 death penalty and life imprisonment?

18 A No, there again, the law doesn't have anything to do  
19 with the Bible, you know, there's no fine print excluding  
20 The State of South Carolina and any of the laws set by The  
21 State.

22 Q Well, I am not a theologian --

23 A It's something I believe in; I can't help that.

24 Q I'm not a theologian, so I can't talk to you much  
25 about that issue. But let me ask you this way. Would it

1 be difficult for you to return a penalty of death or would  
2 it be impossible for you to return ---

3 A Impossible. I could more than promise you that I  
4 couldn't return a verdict of the penalty of death.

5 Q I am going to ask you to answer any questions that The  
6 State or the defense has.

7 EXAMINATION BY MR. BRACKETT

8 Q Mr. Carter, good morning.

9 A How are you doing?

10 Q My name is Kevin Brackett and I am the deputy  
11 solicitor up in York and Union Counties. Seated at  
12 counsel table with me is Tommy Pope. He is the solicitor  
13 up there. We are prosecuting Mr. Hughes in this case and  
14 as you know we are seeking the death penalty.

15 A Right.

16 Q And what we are doing here is really just bringing you  
17 in to chat with you for a minute to get your views just  
18 like you have told us and it is important that you be  
19 candid with us because we need to know these things. And  
20 at the outset I want to tell you there are no right or  
21 wrong answers. This isn't a quiz; you are not going to be  
22 graded and certainly no one is going to critique your  
23 opinions or argue with you. All we need to know is how you  
24 feel. And it is my understanding after the judges  
25 questions that you could not return a verdict of death in

1 any case.

2 A Right.

3 Q Under no circumstances?

4 A No.

5 Q Is there any scenario that you could envision in which  
6 a verdict of death would be appropriate? Any  
7 circumstances?

8 A Not at this time, no.

9 Q One of the other requirements in order to have a  
10 verdict of death returned all twelve jurors must agree  
11 that that is their verdict and in addition to that, all  
12 twelve jurors must take a pen and affirm that that is  
13 their verdict by signing a verdict sheet wanting the death  
14 penalty. Could you participate in such?

15 A No.

16 Q Under no circumstances?

17 A Under no circumstances.

18 Q Would you ever sign your name?

19 A No, not for the death penalty, no.

20 Q You are convinced that there are no circumstances,  
21 there is no crime so terrible, no circumstances so  
22 horrible?

23 A At this time I could not do that, no.

24 Q And this, as I understand it, is rooted in a religious  
25 --

1 A Right.

2 Q I can certainly respect that. I know what you are  
3 saying - you have religious scruples against the taking of  
4 human life.

5 A Right.

6 Q I guess you feel that that's not the province of any  
7 court or man?

8 A Right.

9 Q It's God's province?

10 A Right.

11 MR. BRACKETT: I beg the court's indulgence for one  
12 moment.

13 Q Mr. Carter, thank you very much.

14 EXAMINATION BY MR. SCHUSTERMAN

15 MR. SCHUSTERMAN: May it please the court?

16 Q Good morning, Mr. Carter.

17 A How are you doing?

18 Q Good. My name is Steve Schusterman. I am an attorney  
19 from York County. I represent Mr. Hughes. I certainly  
20 agree with everything that Deputy Solicitor Brackett just  
21 said to you. No one wants to change your beliefs. I just  
22 want to know more about them. You indicate every time, as  
23 I understand it, that you have indicated that you could  
24 not give the death penalty it strikes me that you make  
25 some what I would call slight qualifying statement such as

1 "at this time."

2 A Right. I mean my views might change ten years from  
3 now, but at this time I could not do that.

4 Q So you don't mean at this time meaning because you  
5 have no evidence ---

6 A Right.

7 Q My understanding is that "at this time" means not this  
8 time in this trial process.

9 A Yes, sir.

10 Q And just to follow up. Understand as the judge  
11 indicated to you that in South Carolina there is a  
12 provision for a death penalty for certain circumstances.  
13 No one is going to make you give the death penalty, but  
14 you certainly have to be able to consider it and,  
15 obviously, the intent of the death penalty is that if a  
16 crime is so bad and so heinous that at some point it  
17 crosses the line between life imprisonment and death;  
18 that's just logical that's the purpose for it. And you are  
19 telling us along that logical line of thinking there is no  
20 crime in your opinion, and your opinion is the only one  
21 that matters, ---

22 A Right.

23 Q --- but there is no crime in your opinion that is so  
24 heinous not just merely murder, but what we call  
25 aggravating circumstances, things that make it even, if it

1 can be, worse ---

2 A Right.

3 Q There are no factors that are so heinous that at some  
4 point you believe that the death penalty should be  
5 imposed?

6 A No.

7 Q You do not?

8 A No.

9 Q I have no further questions. Thank you.

10 THE COURT: I am going to ask you to step outside just  
11 one minute.

12 What says The State?

13 MR. BRACKETT: I submit he is not qualified, Your  
14 Honor.

15 THE COURT: The defense?

16 MR. SCHUSTERMAN: I would for him to sit on the jury,  
17 Your Honor, but I would admit that he's not qualified.

18 THE COURT: All right, bring him in.

19 Mr. Carter, I am going to excuse you from further  
20 service with us. We appreciate your time and if you will  
21 step down there, they will give you a check.

22 All right, call in Eugene Bing, please.

23 MR. POPE: Your Honor, I have one matter before he  
24 comes in.

25 THE COURT: All right.

THE STATE VS. HUGHES

1 MR. POPE: Maybe this will help speed it up. We are  
2 under the situation such as category two that if just  
3 would focus be allowed to focus, not saying that wasn't  
4 done, but be allowed to focus just on that with the  
5 understanding we may resolve it; it would prevent us from  
6 going into issues such as signing and other issues. If we  
7 knew that we could just focus on that issue, we wouldn't  
8 ask such questions knowing that if we got past that issue  
9 we could come back, you know, on re-direct.

10 THE COURT: I understand.

11 MR. SCHUSTERMAN: Your Honor, I believe -- I thought  
12 that was what I had done.

13 MR. POPE: Well, again, I'm not in any way  
14 complaining, Your Honor, but like I say we could curtail  
15 our questioning knowing that we would have had the  
16 opportunity to come back again and ask about signing, if  
17 necessary.

18 THE COURT: I think that's a good way to do it because  
19 it does kind of -- when you go into signing, of course,  
20 you didn't ask things about psychology and all of that.

21 MR. SCHUSTERMAN: I just asked actually to see if  
22 there was a crack in ---

23 THE COURT: I understand.

24 MR. POPE: And again I'm not complaining about what  
25 Mr. Schusterman asked.

EUGENE BING

BY THE COURT

1 THE COURT: I think that's a good idea.

2 All right, bring in Mr. Bing.

3 EUGENE BING (B/M)

4 EXAMINATION BY THE COURT

5 Q Come on up and have a seat, sir, how are you this  
6 morning?

7 A Fine, how are y'all?

8 Q I am doing good. I am John Hayes and I am going to ask  
9 you some questions. I want you to be relaxed. I want you  
10 to remember that you are still under oath and I want you  
11 to speak up so all of us can hear you. First, are you  
12 related in any way to any of the individuals who are  
13 participants in this trial?

14 A No, sir.

15 Q Do you have any interest or bias or prejudice in  
16 regards to this case?

17 A No, sir.

18 Q Have you formed or expressed an opinion as to the  
19 guilt or the innocence of the defendant, Mr. Hughes?

20 A No, sir.

21 Q Do you know of any reason whatsoever why you cannot  
22 give both The State and the defendant a fair and impartial  
23 trial?

24 A Well, with the exception like I told you the other day  
25 I have a lot of mixed emotions about this because my

1 brother was murdered and the case they closed it because  
2 of no suspect and it has been seven years and I have some  
3 problems with it.

4 Q All right, well, I'll talk to you a little more about  
5 that in a moment. We will put that aside and come back to  
6 that. Now a case such as this is tried in two parts, one,  
7 dealing with whether someone is guilty or not and the  
8 second part is to the penalty, life imprisonment or death  
9 if that defendant were to be found guilty of the first  
10 part of the trial. If they were found not guilty, it would  
11 be over. There would be no second part. During the second  
12 part evidence could be introduced regarding certain things  
13 to help a jury decide what penalty would be imposed, life  
14 or death and we will talk first about that first part, the  
15 guilt part. Could you, under your oath, -- really as to  
16 both parts, the penalty and guilt phase, could you under  
17 your oath follow the law that the judge instructs you to  
18 follow?

19 A Sure.

20 Q Now as to the guilt part could you if the facts and  
21 evidence and applying the law warranted a finding of not  
22 guilty, could you find the defendant not guilty?

23 A Possibly.

24 Q Okay, could you find him guilty if that was what the  
25 evidence and the law showed?

1 A Very possible.

2 Q All right. Have you discussed this case with anyone?

3 A No.

4 Q Have you heard anything about this case?

5 A No.

6 Q Mr. Hughes is black and the victim was white and the  
7 victim was alleged to have been working as a law  
8 enforcement officer at the time of his death. Could that  
9 in any way whatsoever prevent you from rendering a fair  
10 and impartial verdict?

11 A I don't know; my brother was a law enforcement  
12 officer.

13 Q All right. I'll come back and ask you more about that  
14 in just a moment. Now lets talk about your views about  
15 the death penalty even though that's not to indicate that  
16 you would ever get to that stage I told you about, the  
17 second phase of the trial. Our talking about this is no  
18 indication and do not take it as any indication of the  
19 guilt or the innocence of the defendant. He is presumed  
20 innocent of the charges and would be so presumed until a  
21 jury found him guilty beyond a reasonable doubt. Do you  
22 understand all of that?

23 A Yes.

24 Q Now as to those three types of jurors that I have in  
25 the jury room did you fall into one of those categories?

1 A Yes, number two.

2 Q Number two would be someone that would under no  
3 circumstances ever give the death penalty no matter what  
4 the circumstances in aggravation were presented in regard  
5 to that particular case.

6 A Right, I don't believe in the death penalty.

7 Q You don't believe at all in it then?

8 A No.

9 Q Is your opposition to the death penalty so fixed that  
10 you are irrevocably committed to that thinking?

11 A Well, I believe in the Ten Commandments Thou Shalt Not  
12 Kill.

13 Q Well, would this believe and opposition could it be  
14 changed depending on what the evidence was that was  
15 presented during the trial?

16 A Sir, there's always a possibility of change.

17 Q Would you be willing, depending on what the evidence  
18 shows, would you be willing to consider the two penalties  
19 that The State provides for murder, life imprisonment or  
20 death, depending on the circumstances and the facts that  
21 developed in the trial?

22 A Yes.

23 Q All right. If you were chosen to be a juror, would  
24 that present any particular undue hardship or you other  
25 than the general usual things or problems regarding

1 someone being away from home for ten to twelve days?

2 A Other than having a child in school.

3 Q Is somebody at home to take care of that child?

4 A No, there's nobody at home to take care of him; that's  
5 the problem.

6 Q All right, one last thing. You indicated on your  
7 questionnaire that there was background information that  
8 you ---

9 A Yeah, but I don't think it would be pertinent.

10 Q I'm not going to pry, I just want to make sure that  
11 you tell me everything you felt would apply.

12 A Right.

13 Q All right, I am now going to let counsel ask you a few  
14 questions.

15 A All right.

16 EXAMINATION BY MR. SCHUSTERMAN

17 MR. SCHUSTERMAN: Thank you, Your Honor, may it please  
18 the court?

19 Q Good morning, Mr. Bing.

20 A Good morning.

21 Q My name is Steve Schusterman. I am an attorney from  
22 Rock Hill up in York County. I represent Mar-Reece Hughes  
23 along with the lady seated with the dress on, blonde hair,  
24 Ms. Brice.

25 Mr. Bing, I guess my first question just to get to the

1 meat of the matter and understand this is just an  
2 opportunity for the court, myself, the prosecutors to get  
3 to know you and certain philosophies and beliefs you have.  
4 There are no right or wrong answers. No one is quizzing  
5 you, no one is grading you. All we want is truth and  
6 honesty. You read the three types of jurors.

7 A Right.

8 Q And you indicated to the court that you felt you were  
9 a type two ---

10 A Right.

11 Q --- and that was the type who someone under no  
12 circumstances would ever give the death penalty, is that  
13 correct?

14 A Yes.

15 Q And I believe you referenced the Ten Commandments Thou  
16 Shalt Not Kill.

17 A Right.

18 Q Yet on further questioning the judge asked you would  
19 you consider the death penalty ---

20 A Right.

21 Q And you indicated to him you would consider it.

22 A Right.

23 Q Can you resolve those two statements seem to be in  
24 conflict?

25 A Considering one thing, giving ---

1 Q Giving is another.

2 A Right.

3 Q So what I think -- I am not putting words in your  
4 mouth. If I say anything wrong, you just stop me and you  
5 correct me. But what you are saying is that while you  
6 would listen to the judge and you would listen to what he  
7 said and you would do what he said, in the end under no  
8 circumstances is Mr. Hughes getting the death penalty.

9 A No, my conscious I have to make it with ---

10 Q That's what I am saying.

11 A --- to give the death penalty, so considering is one  
12 thing, but giving is another.

13 Q So then it would be ridiculous for me to even ask you  
14 whether or not you would on a sheet of paper put your name  
15 down affirming a death sentence for Mr. Hughes.

16 A Right, you could forget it.

17 Q You would not, I could forget it, you would not do  
18 that.

19 A Right.

20 Q Another question I have for you the judge asked you a  
21 couple of moments ago, he said, "Could you, considering  
22 all the facts in the case and the law as he gives it to  
23 you, could you return a verdict of not guilty?" And I  
24 believe you paused for a couple of seconds and then said,  
25 "Possibly."

1 A Right.

2 Q Was that correct?

3 A Correct.

4 Q Then when he asked you could you return a verdict  
5 based on the law and the evidence could you return a  
6 verdict of guilty to the offense you indicated "Very  
7 possibly." Did you not say "very possibly"?

8 A I don't remember saying "very possibly," but it is  
9 possible.

10 Q Based on the trauma of losing your brother back in '88  
11 and just so that I understand, was your brother the same  
12 brother who was a law enforcement officer?

13 A Right, he was a transit, a Boston, Massachusetts  
14 Transit Police.

15 Q And he was shot ---

16 A In the back.

17 Q --- in the back ---

18 A In his driveway.

19 Q --- on his way to work.

20 A Right.

21 Q Based on the fact that the allegation is that Mr.  
22 Hughes shot an officer, it is just an allegation, he has  
23 pled not guilty, but it is an allegation that he shot a  
24 police officer in the line of duty, do you believe that  
25 you could be fair and impartial to Mr. Hughes?

1 A Yes, I think I could.

2 Q Do you have any concerns about that? This is the time  
3 to tell us and I mean this in the most straight forward  
4 way, I certainly do not want you to be a member of the  
5 jury panel and then all of a sudden realize two days from  
6 now in York that you can't do this and have to come to the  
7 court and say, Your Honor, I know I tried, but I can't do  
8 this. If you have some reservation, this is the time.

9 A Yeah, well, I do have reservations.

10 Q Okay, tell me what those reservations are.

11 A I just have a problem with some of our judicial -- our  
12 judicial system. For an example, the O.J. trial and the  
13 Susan Smith trial. I looked at these two trials. I kind  
14 of kept up with them. Here is one that lasts -- it was  
15 short.

16 Q Referring to the Susan Smith.

17 A The Susan Smith. And here's the other that's going on  
18 and on and on and I have reservations about our judicial  
19 system period. I really do because I see different things  
20 from different views in my life, things that have happened  
21 in my life, things that goes on every day. I look at  
22 things and I look at things different from most people I  
23 am sure because I look at things in terms of material  
24 meaning greed and whatever that is the system to me is  
25 unfair to certain individuals.

1 Q I understand the words you are saying, but I'm not  
2 sure - how would that lack of fairness apply as it relates  
3 to court today and Mr. Hughes?

4 A Because to me I don't -- I just -- I don't trust the  
5 court.

6 Q You don't trust the court.

7 A No.

8 Q And is it that lack of trust that makes you believe  
9 that you could not be a fair and impartial juror?

10 A Right.

11 Q The requirements that the judge always has is that you  
12 are able to give a fair and impartial trial to both The  
13 State and the defendant, not just the defendant, but The  
14 State is entitled to fairness also.

15 A I understand.

16 Q And you are saying you can't do that, correct? You  
17 are saying you can't be a fair and impartial juror?

18 A Right.

19 Q Okay, obviously, that means that you have -- because  
20 of your beliefs you have some kind of bias.

21 A Possibly, yes.

22 Q Does your bias manifest itself towards anger towards  
23 The State or anger towards the defense?

24 MR. BRACKETT: Objection, Your Honor, that's --

25 THE COURT: I sustain the objection. You don't have

1 to answer that.

2 Q I have no other questions. Thank you.

3 MR. POPE: Your Honor, as the court has explored the  
4 category two juror, I reserve the right --

5 THE COURT: I am going to let you step out in the hall  
6 for just one minute.

7 EXAMINATION BY THE COURT

8 Q Well, before you go out, let me ask you one last  
9 thing. Are you telling me that it would be impossible for  
10 you to return a death penalty or would it just be  
11 difficult?

12 A Difficult.

13 Q It would be difficult ---

14 A Well, as a matter of fact I don't believe in, so it  
15 would be impossible.

16 Q Okay, all right.

17 THE COURT: All right, what says The State?

18 MR. BRACKETT: We submit he is not qualified, Your  
19 Honor.

20 MR. SCHUSTERMAN: We submit he is not qualified.

21 THE COURT: Bring him back in.

22 Mr. Bing, we appreciate your help. We are going to  
23 release you and excuse you. You can step up here and they  
24 will give you a check. Thank you.

25 JUROR: Thank you.

ROBERT CLEVINGER

1 THE COURT: Bring in Robert Clevenger.

2 ROBERT CLEVINGER (W/M)

3 EXAMINATION BY THE COURT

4 Q Come up here and have a seat. How are you this  
5 morning?

6 A Just fine.

7 Q I am John Hayes and I am going to be asking you some  
8 questions. I want you to be relaxed. I want to remind you  
9 that you are under oath, okay?

10 A I'm going to be nervous.

11 Q That's all right. Speak up so everybody can hear and  
12 we can deal with nervousness, just be honest with us,  
13 under your oath, and we will go at your pace. Are you  
14 related by blood or marriage to any of the participants in  
15 this trial?

16 A No, sir.

17 Q Do you have any bias, interest or prejudice in regards  
18 to this case?

19 A No, sir.

20 Q Have you formed or expressed an opinion as to the  
21 guilt or the innocence of Mr. Hughes?

22 A No, sir.

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

ROBERT CLEVENGER

1 A No.

2 Q Would you under your oath follow the law in this case  
3 as the trial judge charges it to you?

4 A Yes, sir.

5 Q Could you if the facts, evidence and the law warranted  
6 find the defendant not guilty?

7 A Yes.

8 Q If the facts, evidence and the law warranted, could  
9 you find the defendant guilty?

10 A Yes, sir.

11 Q Now have you talked to anybody about this case?

12 A No, sir.

13 Q Do you know anything about it from any source  
14 whatsoever?

15 A No, sir.

16 Q All right, Mr. Hughes, the defendant in this case, is  
17 a black gentleman and the victim was white and was alleged  
18 to have been working as a law enforcement officer at the  
19 time of his death. Would these factors in any way prevent  
20 you from rendering a fair and impartial trial?

21 A No, sir.

22 Q Would they affect your decision in any way whatsoever?

23 A No.

24 Q Now we are going to ask you certain questions about  
25 the death penalty and your views on it. There are no right

ROBERT CLEVENGER

1 or wrong answers. I want you to understand that the fact  
2 that we are talking about the death penalty is no  
3 indication as to whether or not -- as to the guilt or the  
4 innocence of Mr. Hughes. He is presumed innocent of the  
5 charges against him until a jury were to find him guilty  
6 beyond a reasonable doubt. This type case is done in two  
7 stages. One where he is tried as to guilt or innocence and  
8 if he were found not guilty, it's over. If he's found  
9 guilty, the case moves to a second stage where the same  
10 jury is offered an opportunity -- not an opportunity --  
11 but further evidence would be introduced and a jury would  
12 then determine the penalty, either life or death. Do you  
13 understand that?

14 A Yes, sir.

15 Q Do you have a chance to review the sheet I had with  
16 the category of jurors?

17 A Yes.

18 Q Did you find yourself in one of those categories?

19 A Three.

20 Q All right, would you as a juror be able to participate  
21 in a jury verdict recommending the death penalty if that  
22 was what the evidence and the law warranted?

23 A Yes, sir.

24 Q Could you likewise return a recommendation of a  
25 sentence for life imprisonment for murder if that was what

ROBERT CLEVENGER

1 the evidence and the law warranted?

2 A Yes, sir.

3 Q All right, now, other than the usual inconvenience of  
4 having to be away from our customary and familiar  
5 surroundings and work and those sort of things, would  
6 being on this jury for ten or twelve days being  
7 sequestered present any undue hardship for you?

8 A No, sir, I just -- well, just like everybody else.

9 Q I understand there are general inconveniences that we  
10 all are aware of.

11 A Okay.

12 Q Answer any questions that counsel may have.

13 EXAMINATION BY MR. POPE

14 MR. POPE: May it please the court?

15 Q Mr. Clevenger, I am Tommy Pope. I am the solicitor up  
16 in York County. This is Kevin Brackett, my deputy  
17 solicitor. Say you feel a little nervous?

18 A Yeah, you know, it's not even nothing that involves me  
19 - I am not a nervous person, it's just sitting here in  
20 front of all of these people.

21 Q I figured you haven't had to do this kind of thing  
22 before.

23 A No, sir.

24 Q I'll tell you the one thing you do have the advantage  
25 as far as questions - you feel like you are on trial --

ROBERT CLEVENGER

1 A Uh-huh.

2 Q --- well, one thing as far as the questions is you  
3 can't give a wrong answer because all you are doing is  
4 telling us how you feel.

5 A Opinion.

6 Q Right, exactly, and what your views are. And this is  
7 an opportunity for us and the defense to kind of get a  
8 little closer look at you, and I don't mean proximity  
9 wise, but get a little look at who -- do you go by Robert?

10 A I go by Dean.

11 Q To get, you know, a little better idea of who our  
12 potential juror is. And, again, if you feel I am trying  
13 to take you one way or take you another way as far as the  
14 death penalty or anything else, I'm not, so you straighten  
15 me back out.

16 You told the judge you understood The State has to  
17 prove its case. The defense does ever have to prove  
18 anything. Any time I talk about you considering evidence  
19 from the defense they don't ever have to put up anything,  
20 they can if they want to, but they don't have to.

21 The first stage, we are talking about guilty or not  
22 guilty, we are not even worried about the penalty at that  
23 point. Only if the defendant is found guilty, only if we  
24 have proved it beyond a reasonable doubt, then do we go to  
25 the second stage. And from what I've heard in the second

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1 stage you are the kind of juror that would want to hear  
2 everything before you make a decision, is that right?

3 A Yes.

4 Q So in other words just because somebody is convicted  
5 you are not automatically going to say life or  
6 automatically going to say death, you are going to wait  
7 and hear everything first.

8 A Yes.

9 Q Okay and, of course, that type of evidence we put up  
10 what's called evidence in aggravation, it may be bad  
11 things about the case, about the defendant, or good things  
12 about the victim in the case. The defense may put up  
13 evidence to mitigate, you know, things good about the  
14 defendant. And you said you would wait to hear all of that  
15 before you made a determination, is that fair - is that  
16 right?

17 A Yes.

18 Q In regards to operating on the jury, would you be  
19 willing to listen to the evidence and tell the other  
20 jurors what you thought and what you felt and also to  
21 listen to what they have to say and listen to their  
22 opinions too?

23 A Yes. Isn't that what it's all about? It's not just me,  
24 it's the efforts of the group.

25 Q Yes.

ROBERT CLEVENGER

1 A You discuss it and then you decide.

2 Q That's exactly right. People come from all walks of  
3 life. One thing too you come in here and we know all  
4 these different laws and all this stuff, anything you need  
5 to know as a juror the judge is going to tell you. He'll  
6 tell you the law and what you can consider and what you  
7 cannot and one thing the jury is a group, but by the same  
8 token you are your own man ---

9 A Right.

10 Q --- and you make a decision that your heart tells you  
11 is right ---

12 A Right.

13 Q --- and so, in other words, if everybody feels one  
14 way, but your convictions and your heart say the other  
15 way, you are the type of person that could stand by what  
16 you believe?

17 A Right.

18 Q You just wouldn't be so hard headed that you wouldn't  
19 ever listen to what everybody else had to say.

20 A Right.

21 Q Okay, one final thing that I would ask is as I  
22 understand it you are the type of juror that if you heard  
23 everything and you thought life was appropriate, that's  
24 what you would say, you know, in the jury room you would  
25 say life, is that correct?

ROBERT CLEVINGER

1 A Right.

2 Q In our law if the jury decides life then only the  
3 foreperson, the foreman or the forelady, the speaker for  
4 the jury, has to sign a document that says we heard  
5 everything, we have considered everything and we say life.  
6 But our laws require that if the jury decides death and,  
7 of course, it has to be unanimous in that all twelve would  
8 have to decide, if the jury decides death, then each  
9 individual juror has to sign a sheet and the purpose of  
10 signing that sheet is to attest that, yes, this is what I  
11 choose to sign, you know, so just the foreman wouldn't  
12 sign it and send it on out. If you heard the facts and the  
13 circumstances, after you know exchanging with the other  
14 jurors, you know, sticking with what you felt was proper,  
15 if you thought death was appropriate and it came time to  
16 sign it ---

17 A Would I sign it?

18 Q Would you sign it?

19 A Yes.

20 Q That's my question. And, of course, that document  
21 would be the sentence of death that would be handed to the  
22 court and if you thought that was right, you could sign  
23 it?

24 A Yes.

25 Q And if you thought it wasn't right, ---

1 A I wouldn't sign it, yes, sir.

2 Q Thank you, sir.

3 EXAMINATION BY MS. BRICE

4 Q Hi, Mr. Clevenger.

5 A Hello.

6 Q My name is Chris Brice and I, along with my co-counsel  
7 Steve Schusterman, we both represent Mr. Hughes. We are  
8 from York County. Have you ever been to York County  
9 before?

10 A I don't even know where it's at. I was going to look  
11 on the map and I never did that either.

12 Q I appreciate your candor today and the time you have  
13 taken to consider not only the questions that we are  
14 posing to you today, but also the questions that were  
15 posed to you in your questionnaire. Have you ever given  
16 the death penalty much thought prior to sitting in that  
17 chair?

18 A No, no really, I mean, not really, no.

19 Q Have you ever engaged in any kind of conversations  
20 where you talked about the death penalty?

21 A Yes, like in the Susan Smith trial, kind of like, you  
22 know, I followed that and along with that I like read one  
23 of the books and stuff like that, but that's the only  
24 thing I've been involved with in any kind of death  
25 penalty.

1 Q In your consideration of the death penalty, what did  
2 you consider about it or what did you think about the  
3 death penalty?

4 A Of her case?

5 Q In any case.

6 A There again you have -- I feel like you have to hear  
7 both sides. Like her particular case all I heard was what  
8 was on tv and you could only base your opinion on what you  
9 hear, you know, I mean you don't get to hear the real  
10 facts or things like that and I feel like you should know  
11 both sides before you make any kind of decision.

12 Q I agree that it's important to hear both sides.  
13 Before we even get to the question of the death penalty,  
14 essentially you have to decide the guilt or the innocence  
15 of Mr. Hughes before you went into the second phase. Do  
16 you believe that you could likewise listen to the facts  
17 and the circumstances in a guilt phase part of the trial  
18 and render a verdict of innocent if you felt that The  
19 State had not met its burden of proof?

20 A (No response.)

21 Q Do you understand what I mean?

22 A No, I don't understand what you mean.

23 Q Okay, that's fine - we are just talking in here.

24 A Right.

25 Q The State has the burden to prove beyond a reasonable

1           doubt that a crime has been committed and, in fact, the  
2           crime was committed by the person that has been accused of  
3           that crime.

4           A    Right.

5           Q    And if you were not convinced beyond a reasonable  
6           doubt, if you weren't convinced, if they had not provided  
7           sufficient evidence, do you believe that you could render  
8           a verdict of innocence?

9           A    I'm still - I don't understand what you are saying.

10          Q    If The State did not provide you with enough evidence

11          ---

12          A    Then -- and say I need more?

13          Q    Well, ---

14          A    Can I still go ahead and make my decision, is that  
15          what you are saying?

16          Q    My question is if The State had not provided you with  
17          enough evidence, okay, or there was some doubt in your  
18          mind as to the evidence that was presented, could you come  
19          back with a verdict of innocence? Could you decide, you  
20          know, they didn't prove their case, so I find that the  
21          defendant is innocent? Could you do that?

22          A    If it's not proven -- you are saying like in my  
23          opinion it's not proven, it's not proven to me?

24          Q    Exactly, The State has not proven it's case to you or  
25          there was some doubt in your mind, would you automatically

1 say, well, I have some doubt in mind, but, you know, The  
2 State has hit on it a little bit, but I have some doubt,  
3 but because The State has hit on it some, I'm going to  
4 come back with a verdict of guilt. How would you analyze  
5 what The State has presented to you?

6 A If they haven't given me anything?

7 Q Uh-huh.

8 A I guess it would depend on - you are just saying for  
9 The State's side, right?

10 Q They have to prove, The State - we don't have to put  
11 up anything ---

12 MR. POPE: May it please the court, Your Honor, I  
13 object at this time. I think we are asking him to make a  
14 determination of law that he has not yet been instructed  
15 on. He has a right to make that clear ---

16 MS. BRICE: Okay, I ---

17 FURTHER EXAMINATION BY THE COURT

18 Q Let me just -- if you sit on the jury, you are going  
19 to be instructed The State has the burden of proving the  
20 guilt of the defendant beyond a reasonable doubt. I sort  
21 of asked you this earlier.

22 A Right.

23 Q If The State had not proven that the defendant is, in  
24 fact, guilty beyond a reasonable doubt, could you return a  
25 verdict of not guilty?

1 A Yes.

2 THE COURT: Okay, let's move on.

3 MS. BRICE: Okay. Okay, thank you, Your Honor.

4 JUROR: I'm sorry.

5 MS. BRICE: That's okay.

6 EXAMINATION BY MS. BRICE

7 Q Likewise, do you understand that the defendant does  
8 not have to present any evidence? It's not the obligation  
9 of the defense to present evidence --

10 A Right, I understand.

11 Q Okay. I see here that you read the Augusta Chronicle  
12 occasionally?

13 A Occasionally, very seldom, but occasionally.

14 Q And have you heard about this case in the media at all  
15 whether it be on television or in the news?

16 A No.

17 Q Have you talked with anybody about this case?

18 A The only thing that has been said is they have asked  
19 me what's it about and I just said it's a murder case, but  
20 I haven't mentioned any names or anything because,  
21 honestly, I don't know his name.

22 Q Was that in general conversation or in the jury room?

23 A That was like work, when I went back to work. They  
24 were concerned what took me so long. They thought I was  
25 just going to come over here and be gone.

1 Q And do you believe that people can suffer from mental  
2 illness?

3 A Yes.

4 Q You sound kind of skeptical about it.

5 A I guess I would have to there form my opinion again on  
6 what I would hear. I don't know too much about the depth  
7 of mental illness, but it would be hard to say someone  
8 suffered from that, but I guess I could.

9 Q And do you believe in the science of psychiatry and  
10 psychology?

11 A Yes. I am not real familiar with all of that because I  
12 have never had to deal with it.

13 Q Right.

14 A But, yes, I know some people that it has helped.

15 Q And do you believe that if someone does suffer from  
16 mental illness that people can be helped by psychologists  
17 and psychiatrists?

18 A Yes.

19 Q I appreciate your time today. Thank you.

20 THE COURT: I'll ask you to step outside for just a  
21 minute.

22 What says The State?

23 MR. POPE: I submit he is qualified, Your Honor.

24 THE COURT: The defense?

25 MS. BRICE: We submit he is qualified, Your Honor.

1 THE COURT: Bring him back in.

2 All right, you can stand right there. You are  
3 qualified to be in the jury pool. That will consist of  
4 some thirty-seven to forty people. Be back at two o'clock  
5 and twelve plus two alternates will be drawn from that  
6 pool. When you come back at two o'clock, be prepared to  
7 travel to York, that is, have your bags packed and ready  
8 to go if you are chosen because we will leave immediately.  
9 Don't talk about the case to anyone and don't read  
10 anything about it, all right? We will see you at two  
11 o'clock.

12 JUROR: All right.

13 THE COURT: All right, James Harrison.

14 JAMES HARRISON (B/M)

15 EXAMINATION BY THE COURT

16 Q How are you this morning?

17 A Good morning, sir.

18 Q Have a seat right there. I am going to ask you to be  
19 relaxed. I am John Hayes and I am going to ask you a few  
20 questions. You are under oath and I am going to ask you  
21 to speak loudly so all of us can hear you, okay?

22 A Okay, sir.

23 Q Now are you related by blood or marriage to any of the  
24 participants in this trial?

25 A No, sir.

1 Q Do you have any interest, bias or prejudice in regards  
2 to this case?

3 A No, sir.

4 Q Have you formed or expressed an opinion as to the  
5 guilt or the innocence of the defendant, Mr. Hughes?

6 A No, sir.

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

10 A No, sir.

11 Q Could you under your oath follow the law in this case  
12 as the trial judge instructs you?

13 A Yes, sir.

14 Q Could you, if the facts and the evidence warranted it,  
15 applying the law to the facts and the evidence, -- let me  
16 rephrase that -- could you find the defendant not guilty  
17 if you thought that was what was warranted under the law  
18 and the facts?

19 A Say that again.

20 Q Would you be able to return a verdict of not guilty if  
21 you thought The State had not carried its burden of proof  
22 and if the law and the facts did not show the defendant to  
23 be guilty beyond a reasonable doubt? Could under those  
24 circumstances you return a verdict of not guilty?

25 A If The State didn't have the evidence you are saying?

1 Q Basically, yes.

2 A Well, I couldn't say he's not guilty if they didn't  
3 have the evidence to prove it.

4 Q If they didn't have the evidence to prove it, you  
5 could say they were not guilty or could you still say he's  
6 guilty?

7 A Well, if they didn't have the evidence to prove that  
8 he wasn't guilty, then I couldn't say he was not guilty  
9 and I couldn't say he was guilty really because I wouldn't  
10 know.

11 Q Well, if you don't know, then the law says you have to  
12 go with not guilty, that is, The State has to prove him  
13 guilty.

14 A Right.

15 Q If The State hadn't proven him guilty based on the  
16 evidence and what the judge charges the law, if The State  
17 had not carried its burden of proof and proven him guilty  
18 beyond a reasonable doubt, would be able to return a  
19 verdict that he was not guilty?

20 A The State didn't have the evidence to prove for a  
21 reasonable that he was guilty, then I would say he was not  
22 guilty, if they didn't have the evidence?

23 Q Right.

24 A Your Honor, I just don't know about that one. I  
25 couldn't say he wasn't guilty if they didn't have the

1 evidence to say that he was guilty and I couldn't say that  
2 he was not guilty because they didn't have -- that's a  
3 tough question.

4 Q Let me ask you like this. The defendant, Mr. Hughes,  
5 is presumed innocent. He doesn't have to prove his  
6 innocence. The law says he is innocent.

7 A Right, okay.

8 Q The only thing that would overcome that presumption of  
9 innocence was if The State presented a case, presented the  
10 evidence under the law ---

11 A Yes, sir.

12 Q --- which convinces a jury beyond a reasonable doubt  
13 that he was, in fact, guilty of the charge. Now if they  
14 did present that evidence, could you find that he wasn't  
15 guilty?

16 A If they had evidence that he was guilty, then it would  
17 be guilty.

18 Q All right, but what if they did not present that  
19 evidence, would you be able to say that he was not guilty?

20 A If they didn't have any evidence, then I would have to  
21 say that he was not guilty.

22 Q All right. That's what I mean. All right. Have you  
23 discussed this case with anyone?

24 A No, sir.

25 Q Have you read about it or heard about it from any

1 source whatsoever?

2 A No, sir.

3 Q Now Mr. Hughes is a black gentleman and the victim,  
4 Mr. McCants was white and it is alleged to have been  
5 working as a law enforcement officer at the time of his  
6 death. Would these facts prevent you from being fair and  
7 impartial to The State and the defendant?

8 A No, sir, I would be fair.

9 Q All right, now, I am going to talk to you a little bit  
10 about the death penalty and your views on the death  
11 penalty. This case has two parts. The first will deal  
12 with whether or not Mr. Hughes was guilty or be found not  
13 guilty by the jury. If the jury were to find in that first  
14 part that he was not guilty, the case would be over. If  
15 they found him to be guilty beyond a reasonable doubt,  
16 then we would move into a second part, a second trial, a  
17 second stage, it would be the same trial, and in that part  
18 of the trial evidence could be presented regarding  
19 aggravation and mitigation, goods things and bad things  
20 about the situation and the people involved. Now we are  
21 talking about that second part and that's not to indicate  
22 anything as to whether or not they would be a finding of  
23 guilty or not guilty by the jury. You understand that?

24 A Yes, sir.

25 Q Now did you read that sheet of the three juror types I

1 had in the jury room?

2 A Yes, sir.

3 Q Did you find yourself to fall into one of those  
4 categories?

5 A The only thing I have to say on that, Your Honor, is  
6 that he was innocent until proven guilty.

7 Q All right, that's exactly right. But one these -- let  
8 me ask it like this. Would you be able to consider life  
9 imprisonment and the death penalty in the event you as a  
10 juror had found Mr. Hughes guilty beyond a reasonable  
11 doubt as to murder? Would you under those circumstances  
12 consider life and death? Would you consider both of those?

13 A Yes, sir.

14 Q If you thought that the circumstances were such that  
15 it was warranted, could you vote for the imposition of the  
16 death penalty?

17 A That goes along with the other part that you were  
18 talking about right there?

19 Q Well, let me ask it like this. Are you -- do you have  
20 any opposition to the death penalty itself, that is, do  
21 you have any opposition to the fact that The State  
22 provides by its law that under certain circumstances one  
23 for murder may be executed, that is, put to death. Do you  
24 have any opposition to that?

25 A No, sir.

1 Q Well, if the facts of the case were such that you felt  
2 that a defendant warranted if it was the appropriate  
3 punishment for the crime, could you impose the death  
4 penalty?

5 A Yes, sir.

6 Q Could you, if you felt it was appropriate, impose life  
7 imprisonment?

8 A Yes, sir.

9 Q All right, other than the general inconveniences of  
10 being away from home for ten to twelve days of time would  
11 your serving on these jury for ten to twelve days and  
12 being sequestered present any undue hardships to you?

13 A Well, my wife, I have got a wife and a daughter, and  
14 my wife she would be the only one there at that time and  
15 she has a job in which I wouldn't be there to support her.

16 Q Well, other than that - I understand - do you have any  
17 other particular hardships?

18 A No, sir.

19 Q Okay, answer any questions Mr. Schusterman and one of  
20 the solicitors may have for you.

21 EXAMINATION BY MR. SCHUSTERMAN

22 MR. SCHUSTERMAN: May it please the court?

23 Q Good morning, Mr. Harrison.

24 A Good morning.

25 Q My name is Steve Schusterman. I am an attorney from

1 York County, Rock Hill. I represent Mr. Hughes, the  
2 defendant in this action. The lady seated next to me with  
3 the blonde hair is Ms. Christina Brice. She also  
4 represents Mr. Hughes. This is an opportunity for the  
5 court to talk to you and the prosecution and myself to get  
6 to know you, to get to know a little bit about Mr.  
7 Harrison. There are no right or wrong answers. This is  
8 just what you believe and what you believe can never be  
9 wrong, so there's no concern there.

10 Have you ever served on a jury before?

11 A No, sir, I have never been on jury duty.

12 Q Do you understand why you are in court? Do you  
13 understand the process that is going on here today?

14 A Yes, sir.

15 Q Okay. Mr. Hughes has pled not guilty to the charge. He  
16 has been charged with four counts, four different  
17 indictments to which he has pled not guilty. What we are  
18 going to do as the judge told you is we are going to  
19 divide this trial into two halves, okay? Half number one  
20 is like any other trial. That's going to determine whether  
21 Mr. Hughes is even guilty. You as one of twelve jurors are  
22 going to make a determination as to guilt or innocence.

23 A Okay.

24 Q Do you understand that?

25 A Yes, sir.

1 Q Do you understand the concept, and I think you said it  
2 even when the judge explained to you, that Mr. Hughes is  
3 innocent until proven guilty ---

4 A Yes, sir.

5 Q --- and The State, through Solicitor Pope and Deputy  
6 Solicitor Brackett, have to give you sufficient evidence  
7 to satisfy you beyond a reasonable doubt that Mr. Hughes  
8 is, in fact, guilty. Do you understand that?

9 A Yes.

10 Q Only if you and the other twelve jurors find Mr.  
11 Hughes guilty of murder would the case even go on. If you  
12 found him not guilty or innocent of murder, the case is  
13 over.

14 A Okay.

15 Q But assume you found him guilty of the murder, then  
16 you would go to the second phase, that's what the judge  
17 talked to you about, about life or death.

18 A All right.

19 Q Do you have a belief as to the death penalty?

20 A Say that question again?

21 Q Do you have a belief, an opinion, as to the death  
22 penalty?

23 A A belief?

24 Q Or an opinion? Do you have an opinion about the death  
25 penalty?

1 A I don't have a belief in the death penalty.

2 Q Okay, do you have an opinion about it?

3 A For something really a heinous crime like murder or  
4 just going around just killing people or something like  
5 that, then I think that would be appropriate.

6 Q You think it would be appropriate?

7 A Yes, you know, break in the house and kill my wife or  
8 child, okay, I would feel very strongly about that.

9 Q But assuming it is not somebody that you are related  
10 to because you wouldn't be sitting on a jury probably if  
11 it were somebody that you were related to. Do you believe  
12 that if someone murders somebody that they should be given  
13 the death penalty?

14 A That's another hard question. The reason I just said  
15 murder someone just walk up to them and kill them like  
16 that?

17 Q Obviously, there are a variety of different, you are  
18 acknowledging there are different factors. I am asking you  
19 do you think that just using the term murder the killing  
20 of somebody do you think if someone kills somebody else  
21 they should automatically get the death penalty?

22 A That's a tough question, a very tough question because  
23 one thing I don't know why he just killed him, you know,  
24 just murdered him, you know, you don't go around just to  
25 kill somebody, just to kill somebody. I have to know

1 what's what, you know, before the death penalty, I'd like  
2 to know what's what, what's happening.

3 Q So if I understand correctly what you want to do you  
4 would want to know all of the facts around the case.

5 A I would want to know something of why they murdered.

6 Q What was going on with them at the time.

7 A Right, what happened, you know, you just don't want to  
8 go around and just shoot people and just murder them just  
9 like that.

10 Q Okay. Would you be willing to listen, obviously, if  
11 you were in the part of the trial and you have to decide  
12 life or death, would you be willing to listen to all the  
13 other factors that went into the situation?

14 A I would have to.

15 Q You would?

16 A I would have to.

17 Q Could you consider a life sentence? Could you  
18 consider not putting somebody to death?

19 A I could consider it, yes.

20 Q You could?

21 A Yes.

22 Q You could consider giving somebody life without parole  
23 as opposed to death?

24 A Well, I'm not saying that now. What I am saying is I  
25 will consider it, but I also will consider the death

1 penalty, but I would like to know the facts of what  
2 happened, you know.

3 Q Let me ask you a question, sir. Do you believe that  
4 you are a strong enough person where let's say a majority  
5 of the jurors felt that the defendant was innocent of the  
6 charges, but you felt he was guilty of the charges, do you  
7 believe that you could hold out, hold to your opinion?

8 A If I thought he was guilty, that's what I would say; I  
9 would hold out for it.

10 Q Okay. How about if everybody thought he was guilty and  
11 you said, no, The State didn't prove their case, I think  
12 he is innocent. Could you hold to that opinion?

13 A I would stick to my opinion.

14 Q You would.

15 A Yes.

16 Q Would you do the seem regarding the punishment? If  
17 everybody there wanted life, but you thought Mr. Hughes  
18 should get the death penalty, would you stick to your  
19 conviction?

20 A Yes, sir, I would.

21 Q If everybody wanted death and you wanted life, would  
22 that pose any problem to you?

23 A No, sir, it wouldn't.

24 Q Sir, I notice that you are a Mason?

25 A Yes.

1 Q And that you go to the Zion Baptist Church.

2 A Yes, sir.

3 Q Are there any religious philosophies in your church  
4 that you would look to aid you in your decision of either  
5 guilt or innocence or life or death?

6 A Well, I firmly believe in Jesus Christ and he died to  
7 save us all and in anything he has come first in my life.

8 Q I certainly respect that. If it would at all, how  
9 would that affect your decision making? How would that  
10 concept affect your decision making as to sitting on a  
11 jury? If you had to decide life or death, how would you  
12 use that, if you would at all?

13 A Well, I would ask him to give me the wisdom and the  
14 knowledge to make the right decision.

15 Q What is the Zion Branch Society?

16 A That's more of a like a religious organization that  
17 deals mostly with churches and it helps the members if  
18 they are sick or lost loved ones, more of a society of  
19 that nature.

20 Q Sir, on your questionnaire, referring the court and  
21 the Solicitor's Office to question number 27, the question  
22 was asked "Have you or anyone you have known ever been  
23 shot accidentally or otherwise?" And you checked "Yes"  
24 and then it asked for an explanation or actually it said  
25 "Describe" and you left that blank. Could you tell me now

1 what that situation was where you know somebody who was  
2 shot?

3 A I believe it was a fight and it was my brother who had  
4 got shot.

5 Q Was he killed?

6 A No, he wasn't.

7 Q Was the person who shot him arrested?

8 A Yes, I believe he was.

9 Q Do you because of that incident do you hold any  
10 feelings about the shooting of another? Do you have any  
11 bias or prejudice against somebody who is accused of  
12 shooting another?

13 A Well, not because of that. I hold no prejudice or bias  
14 against that.

15 Q Do you believe in the discipline or the science of  
16 psychiatry and psychology?

17 A Yes, if it is applied right, yes, sir.

18 Q Do you believe that people can suffer from mental  
19 illnesses?

20 A Yes, sir.

21 Q And, finally, let me ask you, Mr. Harrison, I  
22 appreciate your being so honest, is there any reason, not  
23 specifically directed at me, but also the prosecution, why  
24 you think you couldn't give Mr. Hughes a fair and  
25 impartial trial and be a member of a jury doing that?

1 A Would you ask that question again?

2 Q Do you believe -- is there any reason that you would  
3 like to tell me why you believe you could not be a fair  
4 and impartial juror to give Mr. Hughes a fair trial?

5 A I think Mr. Hughes should get a fair trial. I don't  
6 know Mr. Hughes. I don't know a thing about him and I  
7 can't say anything.

8 Q Thank you. Please answer any questions Solicitor Pope  
9 may have.

10 EXAMINATION BY MR. POPE

11 Q Mr. Harrison, I am Tommy Pope. I am the solicitor up  
12 in York and Union Counties. We represent The State. This  
13 is Mr. Kevin Brackett. He's my deputy solicitor.

14 What I want to do is ask you just a few questions.  
15 Have you ever been in a situation like this being asked  
16 all this stuff?

17 A Not no time lately.

18 Q You kind of feel like you are on trial a little bit.

19 A Yes, sir.

20 Q One thing in sitting in that position you can't give a  
21 wrong answer because you are just speaking from your  
22 heart, you are just speaking the way you feel about things  
23 and, so, you know what I mean, it's not like a test where  
24 we are trying to take you towards one answer or another.  
25 And I really just got a few things I wanted to touch back

1 on. And if I ever start feeling like I am taking you one  
2 way or another that you don't want to go, you stop and  
3 tell me. Do you know what I am saying? If I am putting  
4 words in your mouth, you stop me and tell me.

5 A Okay.

6 Q As I understood when you -- do you understand that we  
7 have to prove the case, the defendant Mr. Hughes is  
8 innocent until we prove him guilty, if we can prove him  
9 guilty?

10 A Yes, sir.

11 Q You remember back when you were talking with the judge  
12 about bringing the evidence forward. We have to bring the  
13 evidence and they never have to prove anything. You know,  
14 they can put up evidence if they want to, but they don't  
15 have to. Do you understand that? We have to put it up.

16 A Okay.

17 Q And, again, all of this stuff about the law, the judge  
18 will always tell you everything you need to know to be a  
19 juror. In other words, if you were a juror, you'd say I  
20 don't know the law about this; he's going to instruct you  
21 as to what the law is. I know sometimes you kind of worry  
22 and say, man, I'm not sure about all of these questions,  
23 he will tell you what law to use. If we prove the first  
24 part, guilty or not guilty, you said you are the type of  
25 man that if we prove he's guilty, then you will say he's

1 guilty, if we prove it to you beyond a reasonable doubt.  
2 If we don't prove it, you will say he's not guilty.

3 A Yes, sir.

4 Q Okay, if we prove the case, then we go to the second  
5 part and that's the only time we go to the second part if  
6 we prove that he's guilty. And that's when you talk about  
7 penalty, we talk about life and we talk about death. And  
8 one thing that is different on a case like this is the  
9 jury decides the penalty. Normally, in any other cases  
10 the judge will decide what the penalty should be. In a  
11 death penalty situation the twelve jurors decides what the  
12 penalty should be. Okay. And as I understood what you  
13 told the judge and Mr. Schusterman you don't know what you  
14 would decide until you have heard all the facts, you don't  
15 know anything about this man, you don't know anything  
16 about this case, and you wouldn't be able to decide. If  
17 you heard the facts and you thought the right penalty was  
18 life, then you would say so. If Mr. Harrison in his heart  
19 believes that life is appropriate after hearing the facts,  
20 you would say so, is that right?

21 A That's right.

22 Q And likewise if you thought the appropriate penalty  
23 was death, you know, you talk about different things like  
24 you don't know why somebody shoots somebody or just walk  
25 up or if there's other factors, you would want to hear all

1 of those things before you made a decision as to that  
2 penalty, right?

3 A Right.

4 Q Okay. But if you heard the case and you felt like I  
5 have heard everything that's been put up and I've heard  
6 what's bad about the case and I've heard anything good  
7 that they want to put up and I've heard everything and I  
8 think death is the right sentence, you know, based on the  
9 crime, then you could give death, is that right?

10 A Yes.

11 Q Okay. One final requirement, if the jury gives life,  
12 then one person on the jury, there are twelve jurors, only  
13 one person has to sign that says we, the jury, give life  
14 and that's the foreman of the jury; they have to sign it.  
15 But if everybody decides death, then each and every juror  
16 has to sign their name. In other words, all twelve of you  
17 sitting in there would have to sign their name. If you  
18 had heard the facts and you thought that death was  
19 appropriate and you were handed a sheet of paper and the  
20 other jurors were signing it, could you write James  
21 Harrison on there to give somebody death, if you thought  
22 the facts were appropriate in a murder case? And I am not  
23 making light; it wouldn't be an easy decision, but if you  
24 thought that was right, you could do it?

25 A Yes.

JAMES HARRISON

BY MR. SCHUSTERMAN

1 Q Mr. Harrison, I appreciate your time. Thank you.

2 THE COURT: All right, I am going to ask that you step  
3 right outside for just one minute.

4 JUROR: I can go, Your Honor?

5 THE COURT: No, just step right outside. Don't leave  
6 us yet.

7 THE COURT: What says The State?

8 MR. POPE: I submit he is qualified, Your Honor.

9 THE COURT: What says the defense?

10 MR. SCHUSTERMAN: I submit he is qualified.

11 THE COURT: All right, bring him back in.

12 Mr. Harrison, you are qualified to serve as a juror.  
13 I am going to ask you to be back here at two this  
14 afternoon. You are the part of a group of about  
15 thirty-five to forty, fourteen of whom will be chosen as a  
16 jury. Those fourteen will be taken to York County later  
17 today and be there for the duration of the trial, which  
18 will be from ten to twelve days. So when you come this  
19 afternoon, come with your bag packed so that if you are  
20 chosen, you can go directly to York County. Do you  
21 understand that?

22 JUROR: Yes, sir.

23 THE COURT: And don't talk about the case with anybody  
24 or read anything or listen to any news accounts. We will  
25 see you at two o'clock. Thank you.

1 Does anybody need a short break? Okay, Eugene Ansley.

2 EUGENE ANSLEY (W/M)

3 EXAMINATION BY THE COURT

4 Q How are you this morning?

5 A Fine, how are you all doing?

6 Q Fine. I am John Hayes and I am going to ask you some  
7 questions and I am going to remind you you are under oath.  
8 I ask you to speak up so all of us can hear you. Now,  
9 first, are your related to any of the parties that are  
10 involved in this matter?

11 A No, sir.

12 Q Do you have any bias, interest or prejudice in this  
13 case?

14 A No, sir.

15 Q Have you formed or expressed an opinion as to the  
16 guilt or the innocence of the defendant, Mr. Hughes?

17 A No, sir.

18 Q Do you know of any reason whatsoever why you could not  
19 give The State and the defendant in this trial a fair and  
20 impartial trial?

21 A No, sir.

22 Q Would you under your oath follow the law in this case  
23 as the trial judge instructs you?

24 A Yes, sir.

25 Q Now could you return a verdict of not guilty as to Mr.

1 Hughes if you thought that was what was warranted at the  
2 end of the trial after you had heard all of the evidence  
3 and had the law charged to you?

4 A Yes, sir.

5 Q Could you by the same token if you felt it was  
6 appropriate find him guilty?

7 A Yes, sir.

8 Q Have you discussed this case with anyone?

9 A No, sir.

10 Q Have you read or heard about it from any source  
11 whatsoever?

12 A No.

13 Q Now in this case Mr. Hughes is a black gentleman and  
14 the victim, Mr. McCants, was white and was alleged to have  
15 been at work as a law enforcement officer at the time of  
16 his death. Would these facts in any way prevent you from  
17 rendering a fair and impartial verdict?

18 A No.

19 Q Now I am going to talk to you a few minutes about the  
20 death penalty. I want you to understand that in this type  
21 case there are two parts, one being the guilt and if a  
22 defendant is found not guilty, then the case is over. If  
23 the defendant is found guilty beyond a reasonable doubt by  
24 the jury, then we go into the second stage, the penalty.  
25 Now the defendant is presumed innocent of the charges

1           until such time as the jury finds him guilty beyond a  
2           reasonable doubt and I want you to understand that by  
3           talking about the death penalty there is no indication as  
4           to the guilt or the innocence of Mr. Hughes. That is  
5           decided by the jury, you understand that?

6           A    Right.

7           Q    We are going to talk briefly about the death penalty  
8           and your views. I want you to know there are no right or  
9           wrong answers. Did you review the jury sheet?

10          A    Yes, sir.

11          Q    Did you find yourself on one of those types?

12          A    Yes, sir.

13          Q    Which one?

14          A    The third one.

15          Q    All right, could you as a juror participate in a jury  
16          verdict recommending the penalty of death of electrocution  
17          or lethal injection for murder if the evidence and the law  
18          warranted such a verdict?

19          A    Yes, sir.

20          Q    Could you by the same token participate in a jury  
21          verdict recommending a sentence of life imprisonment for  
22          murder if the evidence and the law warranted it?

23          A    Yes, sir.

24          Q    Now other than the general inconveniences of being  
25          away from our family and loved ones and from our

1 employment for a period of time are there any particular  
2 peculiar hardships that going to York County for ten to  
3 twelve days and being sequestered would pose for you?

4 A No, sir.

5 Q All right, answer any questions counsel may have.

6 EXAMINATION BY MR. BRACKETT

7 Q Good afternoon, Mr. Ansley, my name is Kevin Brackett  
8 and I am the deputy solicitor up in York County. Seated at  
9 counsel table with me is Tommy Pope. He is the solicitor  
10 in York and Union Counties. Together we are going to be  
11 prosecuting this case for The State. I just have a few  
12 questions for you above and beyond what the judge has  
13 asked.

14 You indicated to the judge that you were a type three  
15 juror, that is, the kind of juror who would be fair and  
16 open and impartial and would listen to all of the evidence  
17 before making a decision, but that when it came time to  
18 make the decision, that you could decide for death in  
19 certain cases and you could decide for life in certain  
20 cases. Is that correct?

21 A Yes, sir.

22 Q Okay, you understand that at the outset I just want to  
23 let you know there are no right or wrong answers here. We  
24 are just talking in conversation and we just need to get a  
25 feel for what your intentions are on this matter because

1 we need to know up front rather than find a week into the  
2 trial that somebody has a problem, so just tell me exactly  
3 what you think. There are no right or wrong answers and  
4 certainly no one is going to critique or criticize or  
5 challenge your beliefs. They are yours and you are  
6 entitled to them just like everybody else. Do you  
7 understand as well, sir, that The State as the prosecuting  
8 agency bears the burden of proof throughout this case?

9 A Right.

10 Q It is our responsibility to prove to you and the other  
11 eleven jurors that Mr. Hughes is guilty just like it's our  
12 responsibility to prove to you that there are aggravating  
13 circumstances which would warrant the death penalty.

14 A Right.

15 Q It is our responsibility entirely and the defense  
16 bears no burden whatsoever. They don't have to put  
17 anything up if they don't choose to. Do you understand, of  
18 course, that the defendant is also presumed innocent until  
19 we do carry that burden of proof?

20 A All right.

21 Q In the penalty phase The State will present what's  
22 called evidence in aggravation basically showing the  
23 horrible nature of the crime, the impact of the crime, and  
24 all the circumstances that we feel the jurors needs to  
25 know in order to make an intelligent decision about the

1 sentencing and the defense is again entitled, if they  
2 choose, they are not required, to put up everything in  
3 mitigation, everything that might show you good things  
4 about the defendant or explain some of the problems that  
5 he has had or whatever to try to explain to you why this  
6 crime happened and basically tell you good things about  
7 the defendant and then you would weigh all of that and  
8 make a sentencing decision and at the end of all of that  
9 you have indicated that you could return a verdict of  
10 death, ---

11 A Yes, sir.

12 Q --- if you felt that was what you felt in your heart  
13 was appropriate.

14 A Yes, sir.

15 Q And you could return a verdict of life if that was the  
16 case?

17 A Yes, sir.

18 Q Now one of the other requirements particular to a  
19 verdict of death, not a verdict of life, if it's a verdict  
20 of life, the only person that has to sign that verdict  
21 form is the foreman. Only the foreman of the jury.  
22 However, if they return a verdict, the jury, you and the  
23 other eleven jurors sit down and discuss all the facts and  
24 say this is a case where death is appropriate, not only do  
25 you have to agree, all twelve of you if that's the case,

1           but there is a special form that would be passed around  
2           to each juror and you have to take a pen and you would  
3           have to sign it Eugene Ansley on that form. Each juror  
4           would have to do that. If that came to you and that was  
5           the decision that you made, could you sign your name on  
6           that form?

7           A    Yes, sir.

8           Q    Thank you very much, Mr. Ansley.

9           EXAMINATION BY MS. BRICE

10          Q    Good morning, Mr. Ansley.

11          A    Good morning.

12          Q    My name is Chris Brice and I am one of two attorneys  
13               who represent Mr. Hughes. I represent Mr. Hughes along  
14               with my co-counsel, Steve Schusterman. Is this your first  
15               time in a courtroom?

16          A    I have been in Petit Court, yes.

17          Q    Have you served on a jury before?

18          A    No, ma'am.

19          Q    It is kind of awkward to be answering these questions,  
20               isn't it? It is unusual for people to be posing these  
21               kinds of questions.

22          A    Right.

23          Q    Have you ever given much thought to the death penalty?

24          A    No more than the average person I wouldn't think.

25          Q    Have you ever engaged in conversations where you

1 banter back and forth where you talked about the death  
2 penalty?

3 A Talked maybe some time back.

4 Q Did you ever form an opinion about the death penalty?

5 A Well, I am open, you know, depending on the  
6 circumstances, you know.

7 Q I just have a few questions for you. Sir, do you  
8 believe that people can suffer from a mental illness?

9 A Yes.

10 Q And do you believe in the science of psychiatry and  
11 psychology?

12 A To a degree, yes.

13 Q You kind of sound a little skeptical about  
14 psychiatrists?

15 A I am not that familiar with it.

16 Q Do you believe there are professionals that can assist  
17 people with mental illnesses?

18 A Yes.

19 Q Do you come here today with any type of religious  
20 philosophies or your background that you walk into court  
21 today with that would assist you in rendering a decision  
22 as far as life and death for a defendant?

23 A I am not sure I understand that as far as the  
24 religious part of it.

25 Q All right. If you were to have to consider life or

1 death for someone, would anything in your background  
2 assist you in making that decision?

3 A No.

4 Q Have you ever been to Rock Hill before?

5 A I've been through Rock Hill.

6 Q Do you have any ties to Rock Hill now, any family or  
7 anything like that?

8 A I have family in Charlotte.

9 Q In Charlotte?

10 A Uh-huh.

11 Q Thank you very much, sir. I appreciate your time.

12 THE COURT: I am going to ask you to step outside.

13 What says The State?

14 MR. BRACKETT: I submit he is qualified, Your Honor.

15 THE COURT: The defense?

16 MS. BRICE: We will submit he is qualified, Your  
17 Honor.

18 THE COURT: Bring Mr. Ansley back in.

19 Mr. Ansley, you are qualified, sir, as a juror. You  
20 are not selected as a juror yet. We are going to draw the  
21 jury around two o'clock this afternoon, so I am going to  
22 ask you to be back at 2:00 PM and I'll ask you to be  
23 packed to go if you are chosen. The jury will be taken  
24 immediately to York County for a ten to twelve day stay  
25 while we try the case and you will be sequestered. So

JAMES YOUNGBLOOD

BY THE COURT

1 please be back at 2:00 and be ready to go. Don't talk  
2 about the case or read or receive any information about  
3 the case outside the courtroom. So we will see you back  
4 at 2:00.

5 JUROR: All right, sir.

6 THE COURT: Let's take about a two or three minute  
7 break.

8 (Recess)

9 JAMES YOUNGBLOOD (W/M)

10 EXAMINATION BY THE COURT

11 Q I am John Hayes. How are you this morning?

12 A All right.

13 Q I want you to be relaxed. I am going to remind you  
14 that you are still under oath and I am going to ask you  
15 some questions and I am going to ask you to answer loud  
16 enough so that all of us can hear you, okay?

17 A All right.

18 Q Now are you related to any of the individuals by blood  
19 or marriage who are participants in this case?

20 A No, sir.

21 Q Do you have any interest, bias or prejudice in regards  
22 to this case?

23 A No.

24 Q Do you have any opinion or have you formed or  
25 expressed any opinion as to the guilt or the innocence of

1 Mr. Hughes?

2 A No, sir.

3 Q Do you know of any reason why you could not give The  
4 State and the defendant a fair and impartial trial in this  
5 case?

6 A No, sir.

7 Q Would you under your oath follow the law in this case  
8 as the trial judge charges it to you?

9 A Yes, sir.

10 Q Could you, depending on the facts and the evidence and  
11 the law, if you thought it was warranted return a verdict  
12 of not guilty as to the defendant?

13 A Yes, sir.

14 Q Could you under similar circumstances, if you felt it  
15 was warranted, return a verdict of guilty?

16 A Yes, sir.

17 Q Have you discussed this case with anyone?

18 A No, sir.

19 Q Do you know anything about it from any source  
20 whatsoever?

21 A No, sir.

22 Q Now the defendant in this case, Mr. Hughes, is a black  
23 gentleman and the victim was white and was alleged to have  
24 been at work as a law enforcement officer at the time of  
25 his death. Would these facts influence you or in any way

1 render it impossible or difficult for you to return a  
2 verdict?

3 A No, sir.

4 Q Would you be able to return that verdict uninfluenced  
5 by those facts?

6 A Yes, sir.

7 Q Now I am going to talk to you a little bit about the  
8 death penalty now. These type cases are tried in two  
9 segments, one being the guilt and the innocence of the  
10 defendant, and the other dealing with penalty. If the  
11 defendant is found not guilty in the first part, then it's  
12 over. If he is found not guilty, it's over; if he is found  
13 guilty, then you move to the second part which is penalty,  
14 either death or life imprisonment. We are going to talk  
15 about the second part, but we are not really skipping over  
16 the first part because Mr. Hughes is presumed innocent of  
17 these charges until such time as The State would be able  
18 to prove to a jury his guilt beyond a reasonable doubt.  
19 So what we are doing is no indication as to his guilt or  
20 innocence, but rather just something we have to do, do you  
21 understand that?

22 A Yes, sir.

23 Q Now did you review the three juror types that I had in  
24 the jury room?

25 A Yes, sir.

1 Q Did you find yourself in one of those categories?

2 A The third one.

3 Q All right. Would you as a juror be able to  
4 participate in a verdict recommending the penalty of death  
5 for murder if the evidence and the law warranted that  
6 penalty?

7 A Yes, sir.

8 Q All right, could you likewise return a verdict  
9 recommending a sentence of life imprisonment for murder if  
10 that's what the evidence and the law warranted?

11 A Yes, sir.

12 Q All right, other than the fact that this would be an  
13 inconvenience and we know that, would the fact that you  
14 were sequestered for ten to twelve days with us on this  
15 case, would that present any undue hardships for you?

16 A No, sir.

17 Q All right, answer questions posed by counsel.

18 EXAMINATION BY MS. BRICE

19 Q Good morning, Mr. Youngblood.

20 A Good morning.

21 Q Is this your first time in court?

22 A Yes, ma'am.

23 Q Don't be nervous. My name is Chris Brice and I along  
24 with Steve Schusterman we both represent Mr. Hughes. We  
25 are from York County. Have you ever been to York County

1 before?

2 A No.

3 Q So we are going to engage in a little bit of a  
4 conversation, there's no pressure on you, there's no right  
5 or wrong answers, just tell me what your opinions are  
6 about different things or what your beliefs are, okay?

7 A All right.

8 Q This is just basically an idea for us to become  
9 familiar with what your opinions are, so there's no right  
10 or wrong answers. As the judge has already instructed or  
11 basically told you that The State has the burden to prove  
12 that Mr. Hughes beyond a reasonable doubt that there's  
13 enough evidence to render a verdict of guilt. Do you  
14 understand that concept?

15 A Yes.

16 Q Essentially, a person is innocent until proven guilty.  
17 Do you understand --

18 A Yes.

19 Q Do you believe in that concept?

20 A Yes.

21 Q And if you believed that Mr. Hughes was innocent, do  
22 you believe that you could hold fast in that belief or  
23 conviction if everybody else were of the opinion that he  
24 was guilty?

25 A Yes, if I make my mind up on something, I pretty much

1 will stick with it.

2 Q And likewise if you believed that he was innocent if a  
3 sentence of life was appropriate under the circumstances  
4 of the particular case, if you believed that, do you  
5 believe that you could hold likewise steadfast in your  
6 conviction?

7 A Yes.

8 Q Prior to coming here today or answering the  
9 questionnaire as well, have you ever given much thought to  
10 the death penalty?

11 A Yes, I have.

12 Q What are your thoughts about it?

13 A I figured if you do the crime, you have to pay for it.

14 Q And do you believe that if someone has murdered  
15 somebody that they should be sentenced to death?

16 A There's different circumstances I reckon --

17 Q So that -- I'm sorry, go ahead.

18 A Go ahead, I'm through.

19 Q Well, I'm not trying to lead you in one direction or  
20 another. You tell me if this is an accurate statement.  
21 You would listen to the facts in the case and if you felt  
22 like it warranted it, then you might likely be the type of  
23 person that would impose either a sentence of death or a  
24 sentence of life depending on the circumstances?

25 A Yes.

1 Q Have you ever engaged in conversations with friends or  
2 ever considered the death penalty yourself?

3 A Just talking about it?

4 Q Right.

5 A Yeah.

6 Q And what was your conviction about it?

7 A It's, well, ---

8 MR. BRACKETT: You Honor, I am going to object. That's  
9 been asked.

10 THE COURT: I sustain the objection.

11 Q I notice from your questionnaire you don't think too  
12 much of psychiatrists and psychologists.

13 A Not too much.

14 Q Have you ever had any experience with them?

15 A Well, I have with one.

16 Q Could you tell me about that?

17 A Yeah, I'll tell you about it. It was my daughter's --  
18 well, one of my daughters we had a little trouble with  
19 her, so she said she wasn't going to stay home no more, so  
20 I told her, "If you are not going to stay here, I'll take  
21 you somewhere and they will find somewhere to put you," so  
22 I took her to the County Jail House and they sent her to a  
23 psychologist over there. She talked with her about an hour  
24 and then brought me back there and the trouble is she was  
25 fourteen years old, she wanted to date an eighteen year

1 old boy, so the psychiatrist told me, "To solve this  
2 problem, you just let her date that eighteen year old boy  
3 and you won't have no more trouble out of her." So what I  
4 wrote on that paper there, that's what I told him and I  
5 left.

6 Q So you don't think too much of their opinion?

7 A Not too much.

8 Q And that's fine, I mean --

9 A That's the only time I had any dealings with them and  
10 me and her didn't see eye to eye.

11 Q Do you believe that people can suffer from mental  
12 illnesses?

13 A Yes.

14 Q And do you believe that psychiatrists or psychologists  
15 can help people with mental illnesses or based on your  
16 experience are you skeptical about it?

17 A Yeah; they can help them if they are in a hospital  
18 somewhere.

19 Q Sir, as the judge has already instructed, the jurors  
20 are the ones who impose the sentence of death essentially,  
21 the collective body of you would decide whether or not  
22 death or life would be an appropriate sentence in a  
23 particular case. And if the jurors collectively decided  
24 that the death penalty was an appropriate penalty, each  
25 juror will have to sign their names to for lack of a

1 better word a death warrant. Would you be able to sign  
2 your name to that statement?

3 A Yes.

4 Q Thank you, sir, for answering my questions.

5 EXAMINATION BY MR. BRACKETT

6 Q Good afternoon, Mr. Youngblood, my name is Kevin  
7 Brackett. I am the deputy solicitor over in the Sixteenth  
8 Circuit up in York and Union Counties.

9 A Yes, sir.

10 Q Seated at counsel table with me is Tommy Pope. He is  
11 the solicitor up there and together Mr. Pope and I are  
12 going to be prosecuting Mr. Hughes in this case.

13 A All right.

14 Q And I've heard all the answers and I just have a  
15 couple of quick questions.

16 A All right.

17 Q I understand that you know we bear the burden of proof  
18 in this case; we have got to prove to you and eleven other  
19 jurors that Mr. Hughes is guilty and then if we carry that  
20 burden of proof, only then do we go to the penalty phase.  
21 And in the penalty phase we have to prove again to you and  
22 the eleven other jurors that there are aggravating  
23 circumstances and we would bring forth all the evidence to  
24 show what a terrible crime and the circumstances  
25 surrounding the crime and the defendant will be given the

1 opportunity to show, they don't have to, but if they chose  
2 to, to present evidence telling you all the good things  
3 about Mr. Hughes and that sort of thing. And you would  
4 listen to all of that evidence before you made up your  
5 mind as to whether the death penalty would be an  
6 appropriate verdict.

7 A Yes, sir.

8 Q And if they presented evidence, you would give their  
9 evidence a fair hearing just like you would give ours I am  
10 sure, is that right?

11 A Yes, sir.

12 Q Okay. And Ms. Brice has already asked you, but do you  
13 understand that if you did return a verdict of death, they  
14 would pass a sheet around and in order to affirm that  
15 verdict, to make sure that that is the verdict of the  
16 jury, each juror has to sign on that sheet attesting that  
17 that is the verdict. And you wouldn't have any problem  
18 doing that?

19 A No, I'd sign it.

20 Q Okay, thank you very much, Mr. Youngblood.

21 THE COURT: I am going to ask you to step outside the  
22 door for just a minute.

23 What says The State?

24 MR. BRACKETT: I submit he is qualified, Your Honor.

25 THE COURT: The defense?

BETTY FURTICK

BY THE COURT

1 MS. BRICE: We will submit he is qualified, Your  
2 Honor.

3 THE COURT: Bring him back in.

4 Mr. Youngblood, I have found that you are qualified to  
5 be part of the jury pool. I am going to ask that you be  
6 back at two o'clock this afternoon. There will be  
7 thirty-five to forty of you fourteen of whom will end up  
8 being on the jury. The fourteen, if you are chosen, will  
9 go directly to York County, so come with your bags packed  
10 for a ten to twelve day stay and don't discuss the case  
11 with anyone and don't read or get any news accounts of it  
12 outside the courtroom. So we will see you back at two and  
13 be ready to go if you are chosen.

14 JUROR: All right, sir.

15 THE COURT: Thank you.

16 All right, just briefly before we get to Ms.  
17 Furtick, my count is by having let Ms. Carey go is we have  
18 thirty-five and we have two -- three who have indicated  
19 some interest in being unqualified after having been found  
20 qualified. Is that everybody's understanding? All right,  
21 Betty Furtick.

22 BETTY FURTICK (W/F)

23 EXAMINATION BY THE COURT

24 Q Please come up here and have a seat, Ms. Furtick. How  
25 are you this morning?

1 A A little nervous.

2 Q Well, don't be. I am John Hayes and we will not try to  
3 do anything that would cause you to be nervous. We are  
4 just going to go over some matters with you, the sheet  
5 that was in the room and some other things, okay?

6 A Okay.

7 Q Now just be relaxed and I'll remind you you are under  
8 oath and I'm going to ask you to speak up so everybody can  
9 hear you.

10 Now are you related to any of the parties in this  
11 case?

12 A No.

13 Q Do you have any bias, prejudice or interest in this  
14 case?

15 A No.

16 Q Have you formed or expressed any opinion as to the  
17 guilt or the innocence of the defendant, Mr. Hughes?

18 A No.

19 Q Do you know of any reason whatsoever why you could not  
20 give both The State and the defendant a fair and impartial  
21 trial?

22 A No.

23 Q Could you and would you under your oath follow the  
24 law in this case as the trial judge instructed you?

25 A Yes.

1 Q Now could you find a defendant and particularly this  
2 defendant not guilty if the facts and the evidence and the  
3 law indicated that that was the appropriate verdict?

4 A Could I find him not guilty? No.

5 Q You could not find him not guilty?

6 A Oh, oh, you say the facts, yes.

7 Q Let me rephrase it. You are not the first one this is  
8 hard for me to ask, I'm afraid. Maybe I should restructure  
9 my question because a lot of people has had confusion with  
10 this. What I am asking you The State has the burden of  
11 proof. The State has to prove him guilty beyond a  
12 reasonable doubt before he can be convicted. If the  
13 evidence was such that they had not carried that burden of  
14 proof and had not by the facts under the law proven his  
15 guilt, could you return a verdict of not guilty?

16 A Yes.

17 Q If on the other hand they had proven his guilt beyond  
18 a reasonable doubt, could you return a verdict of guilty?

19 A Yes.

20 Q Have you discussed this case with anyone?

21 A No.

22 Q Do you know anything about it from any source  
23 whatsoever?

24 A No.

25 Q Now, Mr. Hughes, the defendant, is a black gentleman

1 and the victim, Mr. McCants, was white and it was alleged  
2 Mr. McCants was functioning as a law enforcement officer  
3 at the time of his death. Would these factors prevent you  
4 from rendering a fair and impartial verdict?

5 A No.

6 Q Would they influence your verdict in any way?

7 A No.

8 Q We are going to talk about the death penalty. We have  
9 talked a little bit about the guilt phase and this case is  
10 tried, it will be tried in two phases, guilt or innocence  
11 of the defendant. The defendant is presumed innocent of  
12 these charges and he is until a jury were to convict him  
13 by finding him guilty beyond a reasonable doubt. The  
14 second phase - if he were found not guilty, of course, it  
15 would be over. If he were found guilty of murder, the case  
16 would go further for a penalty trial. It would be the same  
17 jury, additional evidence would be presented by both  
18 sides, if they chose, and at that time the issue would be  
19 whether the defendant would receive life imprisonment or  
20 the death penalty. Now I am going to talk to you about  
21 your views on the death penalty, but that is in no way to  
22 indicate anything about whether or not Mr. Hughes is, in  
23 fact, guilty or not guilty. Do you understand all of that?

24 A Yes.

25 Q Now there are no right or wrong answers to these

1 questions. Have you reviewed the juror types?

2 A Yes.

3 Q Do you find yourself therein?

4 A Yes.

5 Q Which category?

6 A Three.

7 Q Could you as a juror be able to participate in a jury  
8 verdict recommending the penalty of death for murder if  
9 the evidence and the law warranted such a verdict?

10 A Yes.

11 Q Could you as a juror participate in a jury verdict  
12 recommending a sentence of life imprisonment for murder if  
13 the evidence and the law warranted that verdict?

14 A Yes.

15 Q All right, other than the general inconveniences of  
16 being away from our home and family, would serving for ten  
17 or twelve days on a trial and being sequestered pose any  
18 undue hardship for you?

19 A I have three children and the youngest is seven and  
20 I'm responsible for taking them to school in the mornings.

21 Q Do you have a spouse at home?

22 A I have a spouse that works, you know, he has to be at  
23 work at seven, so I had to tell them this morning that I  
24 possibly, you know ---

25 Q Well, it might be a nice break.

1 A A little tears, you know.

2 Q Well, I can certainly identify with that. But other  
3 than that ---

4 A No.

5 Q All right, I am going to let you now, if you would,  
6 answer the questions by counsel.

7 EXAMINATION BY MR. POPE

8 Q Ms. Furtick, my name is Tommy Pope. I am the solicitor  
9 up in York and Union Counties. Mr. Kevin Brackett he's my  
10 deputy solicitor. And when we talk about The State, we  
11 represent The State in this case. You said when you came  
12 in you were a little nervous?

13 A Right.

14 Q A lot of people feel like sometimes you are trial  
15 because you are the one having to answer all of the  
16 questions. One thing I tell you you are in a good position  
17 in that you can't give a wrong answer because all you are  
18 doing and this is giving us an opportunity to see is for  
19 you to speak your heart, you know, and so, you know, you  
20 keep thinking well, why -- they just asked me that  
21 question, why are they asking this again. And there's no  
22 trick question to it and I'm not going to try to take you  
23 one direction or another. If I start doing that or seeming  
24 like I am putting words in your mouth, you stop me and  
25 straighten me, you probably would anyway, ---

1 A Right.

2 Q --- but you straighten me back out. You told the  
3 judge that as far as the penalty that you would be the  
4 type that you would want to hear everything before you  
5 made a decision, is that correct?

6 A Right.

7 Q And you understood from what he explained that well,  
8 first, it's a two part trial and the first trial we have  
9 to prove the case before we ever even worry about the  
10 second part. If we don't prove the case beyond a  
11 reasonable doubt, the defendant not having to prove  
12 anything, we will never even get to the second part. Do  
13 you understand that?

14 A I understand that.

15 Q In that second part then you would hear the evidence  
16 at least we would put it up evidence in aggravation.

17 A Uh-huh.

18 Q And, again, at that point guilt has been determined  
19 and we are looking at what the penalty should be and we  
20 would put up evidence in aggravation, why we say this is a  
21 crime that deserves the death penalty. The defense. if  
22 they chose to do so, they never have to put up anything,  
23 could put up evidence in mitigation, things that they say  
24 why life should be appropriate and why this is a lesser  
25 crime or good things about the defendant. And as I

1 understand, you are the type person that would want to  
2 hear both sides of it. You wouldn't jump in the jury box  
3 and as soon as somebody is convicted say well, I will give  
4 death and I will give life. You would want to wait and  
5 hear everything, is that right?

6 A That is correct.

7 Q And if you heard all of the facts and you thought that  
8 the appropriate sentence in your heart based on everything  
9 you heard was life, you could say so in the jury room?

10 A Yes, I could.

11 Q And, of course, the twelve jurors and the judge will  
12 instruct you you are allowed to discuss the evidence and  
13 hear other views and be open to that and you would take  
14 that into consideration too, is that correct?

15 A Yes.

16 Q You would speak your conscience. Because this is  
17 serious you would speak what you ultimately felt.

18 A Most definitely.

19 Q If a jury were to return, and I say a jury, twelve  
20 jurors acting both individually and collectively,  
21 determined that death was appropriate, in other words, you  
22 have heard the good, you have heard the bad, and you said  
23 well this is a case that sounds like death, and one thing  
24 that is a little bit different is that each juror must  
25 sign their name. Of course, it has to be unanimous.

1 Twelve jurors have to determine death and then they have  
2 to sign their name to a form. And what that does, it does  
3 several things, one it attests, yes, I as an individual  
4 this is my verdict and it also says to the court that we  
5 as a jury have found this to be the verdict or the  
6 penalty, the appropriate penalty. If you felt in a given  
7 case that the appropriate penalty was death and it came  
8 time for twelve signatures to go on that sheet, could you  
9 sign Betty Furtick to that sheet to give someone death?

10 A Yes, I could I believe if I felt in my heart that was  
11 right.

12 Q Exactly and again ---

13 A It would be hard for me to do.

14 Q But again I want to make clear it's easy for me to  
15 jump up here and say life or death, it is truly a life and  
16 death decision, but if you thought that was appropriate  
17 you could do that?

18 A Uh-huh.

19 Q Thank you, ma'am.

20 A Uh-huh.

21 THE COURT: Ms. Brice will now ask you some questions.

22 EXAMINATION BY MS. BRICE

23 Q Ms. Furtick, my name is Chris Brice and I along with  
24 my co-counsel who is standing over here we both represent  
25 Mr. Hughes. I just want to thank you. We all appreciate

1       your candor today. I know these are very difficult  
2       questions that are being posed to you. I am not going to  
3       go back and go over the questions that have already been  
4       asked. Essentially, I want to ask you about your  
5       questionnaire. I appreciate your time you have spent on  
6       that. I just noted that one of the questions that you  
7       said someone that was close to you had suffered from  
8       depression. Can you tell me who that was?

9       A     That was me.

10      Q     And do you believe that that illness would affect your  
11      ability to serve as a juror?

12      A     Probably not now, but it would cause me a lot of  
13      stress, which it already has.

14      Q     Would that stress for lack of a better word and  
15      anxiety --

16      A     Uh-huh.

17      Q     --- would that prevent you from being fair to Mr.  
18      Hughes?

19      A     No.

20           MS. BRICE: I beg the court's indulgence.

21      Q     That's all the questions I have. Thank you very much.

22      EXAMINATION BY THE COURT

23      Q     Ms. Furtick, are you taking any types of medications  
24      for depression at this time?

25      A     No, not now.

1 THE COURT: I am going to let you step outside just a  
2 minute, please.

3 What says The State?

4 MR. POPE: I submit she is qualified, Your Honor.

5 THE COURT: The defense?

6 MS. BRICE: We would say that she is qualified, Your  
7 Honor.

8 THE COURT: All right, please call her back in.

9 Ms. Furtick, I am finding that you are qualified to  
10 serve with us as a juror. That does not mean that you will  
11 be on the panel, but at two o'clock we are going to ask  
12 thirty-five or forty of you who are qualified to return  
13 and from that we will draw fourteen jurors. Those fourteen  
14 will travel thereafter to York. I am going to ask you to  
15 be back at two and I am going to ask that you be back and  
16 ready to go in the event you are chosen. I am going to  
17 ask you not to discuss the case with anyone and not to  
18 read about it in the newspaper or tv or see anything  
19 about it. All right?

20 JUROR: Be back here at two?

21 THE COURT: Two o'clock.

22 JUROR: Am I one of the thirty-five now?

23 THE COURT: Yes.

24 All right Carol Wagner.

25 CAROL WAGNER (W/F)

EXAMINATION BY THE COURT

1

Q I am John Hayes ---

2

A Hello.

3

Q --- and I believe you and I chatted a little the other day a little bit?

4

A Yes, sir.

5

Q Well, I am going to go over some questions with you now. I want you to be relaxed and answer loudly so that everyone can hear. I remind you that you are under oath.

6

Now are you related to anybody involved in these proceedings?

7

8

A No, sir.

9

Q Do you have any interest, bias or prejudice in regards to this case?

10

11

A No, sir.

12

Q Have you formed or expressed an opinion as to the guilt or the innocence of Mr. Hughes?

13

14

A No, sir.

15

Q Do you know of any reason whatsoever why you could not give The State of South Carolina and the defendant, Mr. Hughes, a fair and impartial trial?

16

17

A No, sir.

18

Q Would you under your oath follow the law in this case as given to you by the trial judge?

19

20

A Yes, sir.

21

22

23

24

25

1 Q If the evidence and law so indicated could you return  
2 a verdict for the defendant of not guilty?

3 A Yes, sir.

4 Q By the same token if the evidence and the law so  
5 indicated could you return a verdict of guilty?

6 A Yes, sir.

7 Q Have you discussed this case with anyone?

8 A No, sir.

9 Q Have you read or heard anything about it from any  
10 source whatsoever?

11 A No, sir.

12 Q Mr. Hughes, the defendant, is a black gentleman and  
13 the victim, Mr. McCants, was white and it is alleged that  
14 Mr. McCants was working as a law enforcement officer at  
15 the time of his death. Would these factors prevent you  
16 from rendering a fair and impartial verdict?

17 A No, sir.

18 Q Would they influence your decision in any way  
19 whatsoever?

20 A No, sir.

21 Q Now I am going to talk to you a little about the death  
22 penalty. I want you to understand that that is not to  
23 indicate anything as to the guilt or the innocence of the  
24 defendant. A case of this type is tried in two parts. The  
25 first is guilt ---

1 A Uh-huh.

2 Q --- and the defendant is presumed innocent and before  
3 he would be deemed guilty, he would have to be found  
4 guilty by a jury beyond a reasonable doubt. Do you  
5 understand that?

6 A Yes, sir.

7 Q If he were found not guilty, the case would be over  
8 and if he were found guilty, we would proceed to the  
9 second phase regarding the penalties of death or life  
10 imprisonment. Do you understand that?

11 A Yes, sir.

12 Q And certain evidence could if they so choose be  
13 presented in that second phase. Now we are going to talk  
14 about the second phase and, again, that's not any  
15 indication of his guilt or innocence, do you understand?

16 A Right.

17 Q And do you find yourself as one of those juror types?

18 A Yes, sir.

19 Q Which one?

20 A I would say number three.

21 Q All right, would you then as a juror be able to  
22 participate in a verdict returning a verdict recommending  
23 the penalty of death for murder, if that was what the  
24 evidence and the law warranted?

25 A Yes.

1 Q Could you by the same token participate in a jury  
2 verdict recommending a sentence of life imprisonment if  
3 that's what the evidence and law warranted?

4 A Yes, I could.

5 Q Other than the general inconvenience of being away  
6 from home, would the service by you with us as a juror for  
7 ten to twelve days and being sequestered present any undue  
8 hardships other than the ones we have already discussed?

9 A No, sir.

10 Q All right, I am going to ask you to answer questions  
11 posed by counsel.

12 EXAMINATION BY MR. SCHUSTERMAN

13 Q Good morning, Mrs. Wagner.

14 A Good morning.

15 Q My name is Steve Schusterman and I am an attorney from  
16 York County, Rock Hill. I represent Mr. Hughes in this  
17 matter along with Ms. Brice who is seated next to me in  
18 the navy dress.

19 This is an opportunity for the court, myself, the  
20 prosecution to get to know you and your beliefs regarding  
21 the death penalty and this type case. There are no right  
22 or wrong answers. We are only looking for truth and  
23 honesty and how you really feel.

24 Mrs. Wagner, I assume that you understand and accept  
25 the principle that someone is innocent until proven

1 guilty?

2 A Definitely.

3 Q And you understand that even though Mr. Pope read out  
4 those indictments on Monday that Mr. Hughes was charged  
5 with he has entered a plea to the court of not guilty of  
6 any of the charges and that shifts the burden to The State  
7 to prove him guilty beyond a reasonable doubt. You accept  
8 those principles?

9 A Yes.

10 Q You believe in those principles?

11 A I do.

12 Q This is known as a bifurcated trial, two separate  
13 phases to it. In the first phase you don't even think  
14 about life or death because this is just a determination  
15 of guilt or innocence.

16 A Right.

17 Q If The State did not give you, you specifically, one  
18 of the twelve jurors, enough evidence that you felt Mr.  
19 Hughes was guilty, then the mere fact that he was charged  
20 with murder would that cause you to render a guilty  
21 verdict?

22 A No, I think I am a fairly impartial and fair person  
23 when it comes to listening to both sides of an issue.

24 Q Do you understand that while I appreciate your  
25 impartiality and that you would listen to both sides you

1 understand that the defendant has no burden whatsoever in  
2 this case ---

3 A Right.

4 Q --- whether we choose to present evidence or not, if  
5 we don't present evidence, that can't be taken against Mr.  
6 Hughes.

7 A I understand that's how the system works.

8 Q Okay, do you not necessarily agree with that?

9 A I believe it's your choice as to whether you choose to  
10 present any evidence you have or not and that's just the  
11 way the system is. I don't have any argument one way or  
12 the other with it. I just accept it.

13 Q Well, let me ask you this way. Are you saying that if  
14 the court instructed you not to take into account if Mr.  
15 Hughes chose not to testify that you would have a  
16 difficult time overcoming that that instruction?

17 A No.

18 Q If the jury decided unanimously that Mr. Hughes was  
19 guilty, only then would we move on to a second phase.

20 A Right.

21 Q Assuming that the jury did not unanimously decide  
22 guilt as to the murder charge, we basically go home, the  
23 trial is over, we don't move to a second phase. But if we  
24 do move to that second phase of the trial, as I understand  
25 it as a type three juror you want to hear both the good

1 and the bad.

2 A Right.

3 Q You would be willing to listen to The State as to what  
4 they think were particular heinous aspects of the crime,  
5 but you'd also be willing to listen to the defense about  
6 what we call mitigating or good things about Mr. Hughes.

7 A Sure, certainly.

8 Q If Ms. Wagner had a belief either in the guilt phase  
9 of the trial or the punishment phase of the trial and was  
10 in the minority either the minority of one or more than  
11 that, but still a minority, do you believe that you are  
12 steadfast enough in your convictions that you could hold  
13 them in spite of the will of the majority?

14 A Honestly, probably not. I would probably if I was the  
15 last person or one of a couple of people left, I would  
16 probably tend to go along with what everybody else felt.

17 Q Have you ever thought about the death penalty prior to  
18 being thrown into this situation?

19 A Yeah, I have had discussions with people, you know, on  
20 sort of a random basis.

21 Q Tell me what is your position regarding the death  
22 penalty.

23 A It's a very serious punishment for something that I  
24 feel is only for a very serious crime and I try to believe  
25 that most people don't deserve to die because of something

1 they did, however, I don't feel that they should  
2 necessarily be kept in prison for the rest of their life  
3 and I don't think the taxpayers should be paying for all  
4 of that for the rest of their lives if it is a serious  
5 enough crime. I've gotten a little more conservative as I  
6 have gotten older.

7 Q Not to put words in your mouth, but as I understand it  
8 from you there is nothing automatic about the decision ---

9 A No.

10 Q --- I mean upon conviction it's not a matter of we are  
11 going to give him life or the man dies if he is convicted?

12 A No, again, I would want to hear, you know, the  
13 circumstances from both sides as to whether, you know, the  
14 death penalty is deserved or not.

15 Q I understand you obtain your news from the newspaper  
16 The August Chronicle.

17 A Yes.

18 Q Have you read the paper in the last several days?

19 A I haven't read the paper for about two weeks.

20 Q Have or haven't?

21 A Haven't. I only read it generally on Sundays when I  
22 go to the store and pick it up.

23 Q Do you hold any bias or prejudice as it relates to  
24 race?

25 A I don't think so.

1 Q Okay. How about any other topic? Is there a  
2 particular bias that you have in your life that, and let  
3 me qualify that statment, that you believe would be  
4 relevant to this trial?

5 A I think I am a fairly open-minded person about most  
6 things and as long as people aren't pushing their beliefs  
7 on me, I am satisfied with that.

8 Q You indicated in the questionnaire that you were  
9 robbed once I believe in college, was it?

10 A Yes.

11 Q -- in your dorm?

12 A Yes, it was an apartment building.

13 Q An apartment building. Did they ever catch the  
14 person?

15 A No, they never did. We had suspicions as to who it  
16 was, but there was never any proof that they did it or  
17 friends of theirs did it.

18 Q Ms. Wagner, the fact that you were the victim of a  
19 crime ---

20 A Uh-huh.

21 Q --- and Mr. Hughes is on trial and one of the four  
22 charges is a robbery that they are alleging, which, like I  
23 said, we pled not guilty to, but still it is alleged,  
24 would that cause you any problem, any prejudice, you know,  
25 because it would be under the common umbrella of the

CAROL WAGNER

1 concept of robbery?

2 A No, I try to look at individual circumstances as they  
3 merit.

4 Q I understand from your answer again further that you  
5 do believe in the practice of the science of psychology  
6 and psychiatry?

7 A I believe it can be helpful in some cases.

8 Q In some cases. You believe that people do at times  
9 suffer from mental illnesses and mental defects?

10 A At times it's possible.

11 Q Okay. Last question. In the second phase of the  
12 trial, if we get that far, the law of South Carolina is  
13 such that you are never going to be ordered, the judge is  
14 never going to tell you, that you must find the death  
15 penalty or you must not find the death penalty. That's the  
16 decision of the twelve, you and the eleven other jurors,  
17 if you are on the jury. If the jury votes for life, then  
18 only the foreperson of the jury has to sign the verdict  
19 form, but if the jury unanimously decides on the death  
20 penalty, the law requires that you sign a form, each one  
21 of you, one at a time, sign it affirming that you agree  
22 that the death penalty is appropriate, in effect, it  
23 becomes the death warrant for Mr. Hughes. Would you have  
24 the ability when passed around to put your name on the  
25 line sentencing Mr. Hughes to death?

CAROL WAGNER

1 A I think it would be difficult, but I think I could  
2 probably do it.

3 Q And it should be difficult, there's nothing wrong with  
4 that, it's a pretty serious decision.

5 A I don't feel like I'm God here.

6 Q You had indicated I believe on Monday you were waiting  
7 to hear about a job?

8 A Yes.

9 Q Has that situation changed at all since Monday?

10 A Well, I have received the papers for the physical to  
11 get that done. I received those yesterday, so I need to  
12 schedule that and make arrangements to move.

13 Q Thank you. Ms. Wagner, please answer any questions  
14 for the prosecution.

15 EXAMINATION BY MR. POPE

16 Q Ms. Wagner, I am Tommy Pope, the solicitor up in York  
17 and Union Counties. Mr. Kevin Brackett is my deputy  
18 solicitor. We represent The State in this case. As I sat  
19 and listened to your answers and heard Mr. Schusterman's  
20 questions I don't know that I have really been left much  
21 to ask you. I know you feel like you are being quizzed  
22 sometimes.

23 A Sometimes.

24 Q Your last question Mr. Schusterman talked about  
25 signing and he says the death warrant and the bottom line

1 is what the jury says is the verdict it will be carried  
2 out and whatever we call that particular thing it does  
3 certify the sentence of death. What they always say, you  
4 know, from the time you walked in here you have heard life  
5 and death, life and death, and we are saying it in so many  
6 words as a theory, but, you know, obviously, you know, we  
7 allege there has been a crime committed and a man is on  
8 trial for his life also and so one thing I want to say is  
9 I know you will take it seriously and certainly we take it  
10 seriously. But any time, you know, we say, well, can you  
11 sign, can you do this, we are not being flippant about it  
12 because this is a grave decision from guilt right on  
13 through. But as I understood what you said, I mean, with  
14 this type juror you would be the type you wouldn't make up  
15 your mind one way or another until you had heard  
16 everything?

17 A Right.

18 Q And then you would be willing to go in the jury room  
19 and to voice your opinion and to listen to the opinions of  
20 others and make a determination on all of that, is that  
21 correct?

22 A Yes, sir.

23 Q And as difficult as it would be if in your heart you  
24 felt like that was the appropriate sentence, then you  
25 could put Carol Wagner down on that line, is that correct?

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A Yes.

Q All right. Thank you, ma'am.

THE COURT: I am going to let you step outside just for a minute.

What says The State?

MR. POPE: We submit she's qualified, Your Honor.

THE COURT: The defense?

MR. SCHUSTERMAN: We submit she's qualified.

THE COURT: Bring her back in. I am going to ask you to be back at two o'clock. You are qualified and are part of the jury pool. That does not mean that you will be on the jury. When you come at two, come prepared for a ten to twelve day stay in York, that is, with your bags packed and ready to go if you are chosen and don't talk about the case with anyone. That would not be proper. And don't let yourself see anything in the newspaper or outside the courtroom about the case and we will see you back at 2:00 this afternoon.

JUROR: Is there anything I am not allowed to bring like a laptop computer or a Walkman or something like that.

THE COURT: I don't have any problems with -- or why don't you step outside. Nobody has asked that yet.

JUROR: Well, my job is computers.

THE COURT: All right, what says The State about

1 Walkman and laptops?

2 MR. POPE: I don't have any objection I think if it  
3 allows her to work on her work or whatever it was as long  
4 as she wouldn't have any modem connections.

5 THE COURT: I would say no Internet.

6 All right, what does Mr. Schusterman say?

7 MR. SCHUSTERMAN: Just her having a laptop computer?

8 THE COURT: Yes.

9 MR. SCHUSTERMAN: I certainly don't have a problem  
10 with that.

11 THE COURT: Walkman.

12 MR. SCHUSTERMAN: Is it a Walkman radio or Walkman  
13 tape player? I mean, if it is a radio, it is going to be  
14 subject to news and all of that. If it is just a tape  
15 player, I certainly have no problem with that.

16 THE COURT: All right, bring her back in.

17 All right, certainly you can bring your laptop. The  
18 concern we would have about the Walkman, does it just play  
19 tapes or does it have a radio on it?

20 JUROR: It's just a CD player.

21 THE COURT: All right, yes, you can bring the CD  
22 player, but I am going to instruct you what news you  
23 receive is going to be limited during this and I would not  
24 - we have taken the tvs out of the rooms.

25 JUROR: This one just plays CDs.

1 THE COURT: Okay. All right.

2 ANN SMYTHE (W/F)

3 EXAMINATION BY THE COURT

4 Q How are you this afternoon?

5 A Fine, Your Honor.

6 Q Well, it's not afternoon yet. How are you this  
7 morning. I am John Hayes and I am going to be asking you  
8 some questions. I remind you that you are under oath and I  
9 want you to be relaxed. You were in Rock Hill I see in  
10 '62 and '63.

11 A Yes, sir.

12 Q And what were you doing in Rock Hill?

13 A I worked at the college for a while.

14 Q Okay, well, I went to the training school right across  
15 the street and I graduated in '63, so we may have crossed  
16 paths at the Good Shoppe or somewhere.

17 A Correct.

18 Q First, are you related to anyone involved in these  
19 proceedings?

20 A No, sir.

21 Q Do you have any interest, bias or prejudice in  
22 connection with this case?

23 A Not that I know of.

24 Q Have you formed or expressed any 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 fair and impartial  
4 trial in this case?

5 A No.

6 Q Would you under your oath follow the law in this case  
7 as instructed by the trial judge?

8 A To the best of my ability.

9 Q All right, if the evidence and the facts and the law  
10 indicated that the defendant was entitled to a verdict of  
11 not guilty, would you return a verdict of not guilty?

12 A Yes, sir.

13 Q If those things indicated that the appropriate verdict  
14 would be one of guilty, could you return a verdict of  
15 guilty?

16 A Yes, sir.

17 Q Have you discussed this case with anyone?

18 A No, sir.

19 Q Do you know anything about it?

20 A No, sir.

21 Q Have you heard from any source, news or otherwise,  
22 about it?

23 A No, sir.

24 Q Mr. Hughes in this case, the defendant, is a black  
25 gentleman and the victim, Mr. McCants, is white and it is

1       alleged acting as a law enforcement officer at the time of  
2       his death. Would these factors in any way prevent you from  
3       rendering a fair and impartial verdict?

4       A    No, sir.

5       Q    Would that influence your verdict in any way as to  
6       guilt or innocence or a verdict in any way?

7       A    No, sir.

8       Q    Now we are going to talk now about your views on the  
9       death penalty. These type cases are tried in two segments  
10      or two phases, one is as to the guilt or the innocence of  
11      the defendant. If the defendant is found not guilty, in  
12      that first phase, then it's over. If The State has proven  
13      the guilt of the defendant beyond a reasonable doubt,  
14      which they must because the defendant is presumed innocent  
15      until The State were to prove his guilt beyond a  
16      reasonable doubt, if the trial jury did return a verdict  
17      of guilty, then we move into the second phase where the  
18      jury would have the opportunity to hear official evidence  
19      if either side or both chose and then make a choice  
20      between two penalties, life imprisonment or death. Now the  
21      fact that we are talking about the death penalty is no  
22      indication as to the guilt or the innocence of Mr. Hughes.  
23      Do you understand all of that?

24      A    Yes, sir.

25      Q    Did you look at the juror types I had in the jury

1 room?

2 A Yes, sir.

3 Q Did you find yourself in one of those types?

4 A Yes, sir.

5 Q Which one?

6 A I think it was the third one, but I'm not real sure.

7 Q Well, the third type was the type of juror who, in  
8 essence, has no preconceived opposition against or in  
9 favor of the death penalty, but would listen to all of the  
10 facts and listen to all of the circumstances, make a  
11 decision, and weigh and consider and be capable of,  
12 depending on what the circumstances was, imposing either  
13 penalty. Is that what you are telling me you are?

14 A Yes, sir.

15 Q Well, let me ask you this way then. Could you if you  
16 were on the jury 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, sir.

20 Q Could you likewise recommend a sentence of life  
21 imprisonment for murder if that's what the evidence and  
22 the law warranted?

23 A Yes, sir.

24 Q Now other than the general inconvenience of being away  
25 from our usual environs and things and people we are

1 familiar with, would being sequestered for ten or twelve  
2 days for the duration of the trial in York County present  
3 for you any undue hardships?

4 A It would be kind of rough. I have an 84 year old  
5 mother that I am the principal caregiver for.

6 Q Is there someone else around who could assist while  
7 you are --

8 A I'm married, but I don't know how my husband feels  
9 about taking care of his mother-in-law for ten or twelve  
10 days during the evenings.

11 Q Oh, he'd probably love it. Let me let you answer any  
12 questions counsel may have.

13 EXAMINATION BY MR. BRACKETT

14 Q Good morning, Ms. Smythe.

15 A Good morning.

16 Q My name is Kevin Brackett. I am the deputy solicitor  
17 up in the 16th Circuit, York County, and I, along with the  
18 solicitor, Tommy Pope, who is seated at counsel table,  
19 will be prosecuting this case on behalf of The State.

20 Let me just say at the outset that none of the things  
21 I am asking you are anything more than my chance to get  
22 your opinion on various subjects. There is no critiquing  
23 on what you are going to say, nobody is going to challenge  
24 your opinions. They are your opinions; you are entitled to  
25 them. We just need to know them now ---

1 A Right.

2 Q --- because these are weighty issues and if you have a  
3 problem with anything that's going to happen or going on  
4 here, we need to find out now rather than a week from now  
5 when we are in the middle of the trial. So all we need is  
6 just your opinion on these subjects and, like I said, no  
7 one is going to challenge you.

8 At the part when the judge asked you what your opinion  
9 was or what category you fell in, one, two or three, you  
10 said "Three, I think." Is that because they weren't fresh  
11 in your mind or was that because you are having some  
12 reluctance or grappling ---

13 A They weren't fresh in my mind really. I was trying to,  
14 you know, categorize it as to one, two or three.

15 Q Okay, well, as you have read, one of them, number one,  
16 was always give the death penalty if you find murder.  
17 Number two was never give the death penalty under any  
18 circumstances and, three, would depend on the facts and  
19 circumstances.

20 A Right.

21 Q And you are in category three?

22 A Yes, sir.

23 Q Okay, you understand I am sure that The State bears  
24 the burden of proof throughout the entire proceeding.

25 A Yes.

1 Q We have to prove that Mr. Hughes is guilty beyond a  
2 reasonable doubt in the guilt phase and only if we have  
3 satisfied the jury on that issue do we proceed to the  
4 second phase, which is the penalty phase.

5 A Right.

6 Q And then in that phase again we bear the burden of  
7 proof in proving to the jury that this is the type of  
8 crime which would warrant a sentence of death or a  
9 sentence of death would be allowed under the law. We have  
10 that burden in that phase as well. In both phases the  
11 defense is not required to do anything. There is a  
12 presumption of innocence that attaches to the defendant  
13 from the very beginning of any criminal proceeding. He is  
14 totally innocent until we have proved him guilty and carry  
15 our burden.

16 A Yes, sir.

17 Q Okay. You could I believe you've indicated you are  
18 the type of juror that would be fair and open minded and  
19 wait until the end of the evidence in both cases whether  
20 it would be from us or the defense, if they choose, before  
21 you make up your mind in the guilt phase and before you  
22 make up your mind in the penalty phase.

23 A Yes, sir.

24 Q In the penalty phase there are two possible verdicts,  
25 obviously, if you find him guilty, the jury can sentence

1 him to life or sentence him to death. If the jury decides  
2 collectively, all twelve jurors, had found we think that  
3 life imprisonment would be the appropriate penalty in this  
4 case, then the only person that would sign the verdict  
5 form is the foreman or the forelady, whoever the  
6 foreperson is, of the jury. That's the only person that  
7 will be required to sign. However, if the jury decides  
8 collectively that death is the appropriate sentence, a  
9 verdict sheet is passed around among the jurors and each  
10 juror must sign that sheet attesting to the fact that a  
11 sentence of death was their recommendation to the court  
12 and that would be, of course, the sentence that the court  
13 would carry out upon the recommendation. So if that sheet  
14 came to you and when the sheet was placed in front of you  
15 and a pen placed in your hand, do you believe that you  
16 could sign Ann Smythe on that sheet of paper?

17 A I think so.

18 Q I just have a couple of questions. You have an uncle  
19 who is a Federal probation officer?

20 A He's deceased, yes, sir.

21 Q Okay, he was a Federal probation --

22 A Right.

23 Q Would the fact that he was in a law enforcement type  
24 position affect your ability to be a fair and impartial  
25 juror?

1 A No, sir

2 Q Okay, "any member of your family or close friend ever  
3 applied for a job in law enforcement?" "Yes." You put  
4 "police officer, current counselor at South Carolina  
5 Department of Corrections."

6 A That's my brother-in-law.

7 Q Your brother-in-law, okay. Where does he work?

8 A He works at I believe it's Trenton ---

9 Q I'm sorry?

10 A --- Trenton at the Department of Corrections facility  
11 that was in Aiken and has now moved to Trenton, it's a new  
12 facility.

13 Q Okay, is that a youthful offender division?

14 A No.

15 THE COURT: Trenton, it's new.

16 Q What does he do there?

17 A I think he's a counselor there.

18 Q Would that affect your ability to be fair and  
19 impartial juror?

20 A No, sir.

21 Q The fact that you had your house an attempted break in  
22 in Columbia in 1970 did they ever catch the person that  
23 did that?

24 A No.

25 Q Does anything surrounding that incident affect your

1 ability to be fair and impartial?

2 A No.

3 Q The last book you read was Finnigan's Week?

4 A Yes, sir, I read books, current books, and novels.

5 Q That's not too current?

6 A No.

7 Q I appreciate your candor, ma'am. Thank you very much.

8 Please answer any questions defense counsel may have.

9 EXAMINATION BY MS. BRICE

10 Q Hi, Ms. Smythe.

11 A How are you?

12 Q Good; good morning to you. Have you ever been in  
13 court before?

14 A Yes.

15 Q For what? In this kind of situation?

16 A No. I have been to court as an expert witness. I have  
17 been to traffic court. I think I went to say a good word  
18 about a neighbor that was involved with a domestic.

19 Q Uh-huh, I know how that is. When you were talking  
20 about as an expert that was because of your field in  
21 microbiology, is that right?

22 A Yes, that was due to my work with The State.

23 Q What work do you have with The State?

24 A Pardon?

25 Q What work do you have with The State?

1 A When I went to court on that I was working as a  
2 chemist. I worked as a microbiologist.

3 Q And your testimony was in regards to --

4 A Analysis of samples.

5 Q And you stated that was The State?

6 A Yes, ma'am.

7 Q The State of South Carolina?

8 A Yes, ma'am.

9 Q What kind of action was that? Was it a criminal  
10 action, a civil action?

11 A I guess it was civil. Somebody went to a fast food  
12 pantry type place and got an icee, but they had been out  
13 looking at cars and was real hot, so they went and got  
14 something real cold and they said it made them sick and we  
15 couldn't find anything to that effect.

16 Q So it was more than likely a civil suit.

17 A I think so.

18 Q Mr. Brackett did such an effective job asking you all  
19 the right questions I have very little to ask you, but,  
20 you know, as His Honor has stated, this is basically a  
21 casual conversation that is taking place at the time to  
22 get to know you a little bit and your opinions and  
23 certainly the questions that are being ask you are very  
24 serious by nature. Have you ever had to consider these  
25 questions before in regards particularly to the death

1 penalty?

2 A No.

3 Q Have you ever engaged in a conversation where the  
4 death penalty arose?

5 A Oh, yes.

6 Q And what is your opinion in regard to the death  
7 penalty?

8 A You know, if you are found guilty of taking somebody's  
9 life, I'm kind of in favor of the death penalty, but you  
10 have to take into consideration the circumstances.

11 Q So you wouldn't consider the death penalty is always  
12 appropriate when there has been a murder?

13 A Not necessarily. You know, you have to look at the  
14 facts of the case.

15 Q So in some situations when there has been a murder, it  
16 wouldn't be appropriate?

17 A Right.

18 Q Just let me review your questionnaire briefly. Do you  
19 have -- do you believe that people can suffer from a  
20 mental illness?

21 A Yes.

22 Q And do you believe in the science of psychiatry and  
23 psychology?

24 A Yes, where it is necessary or where people feel it is  
25 needed.

1 Q And can you describe that a little bit for me?

2 A I think some people, you know, need the help with  
3 their mental problems just like some people need a doctor  
4 and what have you. You know, if it helps you, fine.  
5 Where, for instance, if you have a back problem or  
6 something and some people don't believe in chiropractors.  
7 I say, you know, go for it, it's not going to do any harm.

8 Q Do you bring with you any type of preconceived  
9 opinions or prejudices regarding someone's race, gender or  
10 religion?

11 A No.

12 Q And obviously every person who comes in here bring  
13 with them their experiences in life and, certainly, that's  
14 what the jury system is all about. Would you in rendering  
15 a decision in regards to a penalty of life or death do you  
16 have any philosophies that you would bring into this  
17 courtroom that would help you render a decision based upon  
18 life or death?

19 A Most likely I probably would.

20 Q And what's that?

21 A That's kind of a generalization. I mean, you know, I  
22 have a religious belief.

23 Q What is that religious belief?

24 A Well, I believe in giving everybody their fair share  
25 and I am a humanitarian type person; I have done volunteer

1 work with EMS for ten years. I think everything enters  
2 into, you know, your thought process.

3 Q Exactly. What your experiences are make you the kind  
4 of person you are today.

5 A Right.

6 Q I really appreciate your time. Thank you very much.

7 THE COURT: I am going to ask you to step into the  
8 hall just one minute, Ms. Smythe.

9 What says The State?

10 MR. BRACKETT: We submit she is qualified.

11 THE COURT: The defense?

12 MS. BRICE: Yes, sir, Your Honor, we submit she is  
13 qualified.

14 THE COURT: Bring Ms. Smythe back in.

15 Ms. Smythe, you are qualified to serve with us as a  
16 juror. I am going to ask you to be back at two o'clock and  
17 be prepared if you are chosen, we will have about  
18 thirty-five to forty, and from that fourteen will be  
19 chosen, twelve jurors and two alternates. Those that are  
20 chosen will leave this afternoon for York County for ten  
21 to twelve days, so be packed and prepared if you are  
22 chosen to go. And over this break, it's not long, but do  
23 not discuss the case with anyone and if you see anything  
24 in the paper or hear about it from any news or just people  
25 on the street, don't listen to anything or read anything

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1 about it, all right?

2 JUROR: Yes, sir.

3 THE COURT: All right, we will see you back at two  
4 o'clock. Thank you.

5 That concludes Panel E and we have Panel F coming in  
6 at twelve. This will give us a few minutes to cover a  
7 couple of things. First, I want to go over very briefly  
8 where we are. I have us with thirty-seven.

9 MR. SCHUSTERMAN: I have thirty-eight, Your Honor.

10 THE CLERK: We had thirty-nine and disqualified one.

11 THE COURT: Oh, I missed my count then, all right,  
12 we'll say we have thirty-nine and we have two or three who  
13 are requesting to ---

14 MR. SCHUSTERMAN: We have thirty-eight, Your Honor.

15 THE COURT: That's what I've got. All right, we are  
16 going to go over them all in just a second. We will go  
17 over them all in just a second. Why don't we do that now?  
18 I am going to read them out and the law clerk will check  
19 them off and I'm sure everybody else will too.

20 Duane Heyward; William Mislivits, Ruby Howie ---

21 MR. SCHUSTERMAN: Your Honor, could I ask you do you  
22 have the juror number in front of you?

23 THE COURT: Well, they are on the list and I am trying  
24 to do this in the interest of time. I am going straight  
25 down starting with A. I do.

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1 MR. SCHUSTERMAN: The reason I say that, Your Honor,  
2 is we have doing it not by name, but by number.

3 THE COURT: I'll do both.

4 MR. SCHUSTERMAN: All right, thank you.

5 THE COURT: Duane Heyward 110; William Mislivits 156;  
6 Ruby Howie 116; Patricia Goad 87; Julie Cauthen 48;  
7 Timothy Wright 248; Ann Keller 132; Bobby Wiley 241; Byron  
8 Kelley 166; Eleanor Baugh 17; Arnold Tompkins 225; Michael  
9 Fulmer 80; Ted Martin 148; Laurie Frazier 76; William Hall  
10 100; Lana Hodson Carter 112; Jane Petersen 177; Willie Key  
11 134; Adrena McCollum Mills 149; Richard Jeffords 121;  
12 Herbert Bright 33; Belmont Rogers 193; Martha Carey is  
13 out; Linda Perry 176; Paul Zeh 250; T. J. Boatwright 26;  
14 Lashona Issac 118; Eileen Hartman 106; Virginia Kitchens  
15 135; Ruben Lee 141; Diane Mangiante 147; Elouise Taylor  
16 219; Robert Clevenger 54; James Harrison 104; Eugene  
17 Ansley 6; James Youngblood 249; Betsy Furtick 81; Carol  
18 Wagner 233; Ann Smythe 209.

19 THE CLERK: That's thirty-eight qualified, Your Honor.

20 THE COURT: All right. And of those there are two or  
21 three who are requesting post-qualification dismissal. We  
22 will have to deal with those. My proposal is that we go  
23 back with Panel F at twelve and at least go through the  
24 first three or four to see if we can pick up two or three  
25 more before we get into this afternoon.

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1           Now let me go over what I have as far as what has  
2 happened to those that are not qualified. I am going to go  
3 kind of slow. If anybody differs with any of these, please  
4 stand at the time and Mr. White will stop me. He is going  
5 to watch you and I am going to watch my papers.

6           All right, I have Michael Graham that was not  
7 qualified as he said he would never vote for the death  
8 penalty, but the defendant objected to his being found not  
9 qualified.

10          Brian Besson said he would always vote for death. It  
11 was agreed he was not qualified.

12          Sandra Reed said she would never vote for death and it  
13 was agreed that she was not qualified.

14          Denise Bush said she would never be for the death  
15 penalty. Defendant objected to her being found not  
16 qualified.

17          Marvin Patterson has a criminal record.

18          Clytie Ross said she was never for the death penalty.  
19 It was agreed she was not qualified.

20          Alan Clingan, always for death. It was agreed he was  
21 not qualified.

22          Danny Chavous, never for death. It was agreed he was  
23 not qualified.

24          Kedar Brown, said he was never for death. Defendant  
25 objected to him being found not qualified.

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1 Sean Carter, said he was never for death. It was  
2 agreed he was not qualified.

3 Eugene Bing, said he was never for death and it was  
4 agreed he was not qualified.

5 Is that an accurate reflection of your records, Mr.  
6 Solicitor?

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

8 THE COURT: Yours for the defense?

9 MR. SCHUSTERMAN: Yes, it is, Your Honor.

10 THE COURT: Now I qualified three over objection: Ruby  
11 Howey was qualified over the objection of the defendant.  
12 She indicated at one time that she may have some racial  
13 prejudice; she changed that to being opinionated. I found  
14 her qualified and the defendant objected. Is that correct?

15 MR. SCHUSTERMAN: That's correct, Your Honor.

16 THE COURT: Eleanor Baugh indicated she had difficult  
17 with the penalty, difficulty with signing the death  
18 verdict. The State objected to her being found to be  
19 qualified.

20 Mr. Pope, is that correct?

21 MR. POPE: Yes, sir.

22 THE COURT: LaShonia Isaac vacillated and had, of  
23 course, when I say these things I say are things that were  
24 called to my attention by the side objecting. When I said  
25 difficulty with penalty and signing with Eleanor Baugh,

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1 that was what was called to my attention by The State as a  
2 ground for objection.

3 As to LaShonia Isaac, The State objected indicating  
4 she vacillated, had trouble understanding and she was  
5 found qualified over the objection. Is that correct?

6 MR. POPE: That is correct, Your Honor.

7 THE COURT: Martha Carey was dismissed because of some  
8 emotional strain. The counsel for The State had initially  
9 objected. I don't know, they have not said one way or the  
10 other this morning, I presume their objection to my  
11 releasing her still stands?

12 MR. POPE: That's Ms. Carey?

13 THE COURT: Yes.

14 MR. POPE: Yes, sir.

15 THE COURT: All right, how about as to the defense?

16 MR. SCHUSTERMAN: Regarding Ms. Carey?

17 THE COURT: Yes.

18 MR. SCHUSTERMAN: No, Your Honor, I would withdraw my  
19 objection.

20 THE COURT: All right.

21 MR. SCHUSTERMAN: Thank you, sir.

22 THE COURT: Now I hesitate to look at my numbers since  
23 I have already messed them up once, but this will be close  
24 and I have thirty-four females -- I'm sorry, that's not  
25 right -- nineteen females and -- eighteen females and

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nineteen males by my count.

MR. SCHUSTERMAN: Have you finished what you believe were the objections to jurors?

THE COURT: Yes, were there others? Let's do it this way. Solicitor, do you have any other jurors that I qualified that you objected to - qualified over objection? If so, what was your objection thereto?

MR. POPE: I beg the court's indulgence.

Your Honor, from the records I have before me I don't indicate any others. I reserve the right if I do come across one, but at this point, I don't have any.

THE COURT: The defense?

MR. SCHUSTERMAN: Yes, sir, Your Honor, I don't believe it was mentioned -- Your Honor, Juror Number 26, he was the third juror in group D. I believe his name was Boatwright, T. J. Boatwright.

THE COURT: T. J. Boatwright, yes. What was your objection?

MR. SCHUSTERMAN: My objection, Your Honor, was that he indicated to you on your questioning that he was a category one, that he held fast to that, and that the only semblance of rehabilitation as I recall the evidence being was that Mr. Brackett got him to finally admit that under a horrible scenario, I believe his phrase exactly was "Anything is possible" and based on that the court decided

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1 that he was an appropriate juror and I will take exception  
2 to that.

3 THE COURT: All right.

4 MR. SCHUSTERMAN: Thank you, sir.

5 THE COURT: Now we are going to have a short break  
6 before we have the others to begin at twelve. Now I am  
7 going to review this and ask if you be thinking about  
8 this. Before we actually draw the jury at two, I want to  
9 make sure that each side has the opportunity to put on the  
10 record after all the panel, after all of whom were chosen,  
11 any concerns or objections that we haven't already gone  
12 over to the qualification process. By that I mean if there  
13 any concerns that either side has that if there is going  
14 to be anything that could be addressed, we need to do it  
15 actually before we draw the jury. So I am going to give  
16 everyone an opportunity to make those observations after  
17 we have the whole jury qualified or have a panel pool  
18 qualified.

19 Does The State understand that?

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

21 THE COURT: The defense?

22 MR. SCHUSTERMAN: The defense understands. I just have  
23 -- I'm sorry --

24 THE COURT: No, go ahead.

25 MR. SCHUSTERMAN: One other matter I would like for the

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1 court if the court could help and rule regarding to how we  
2 are going to select the jury. I know we only have three or  
3 four other people.

4 THE COURT: That's my next issue.

5 MR. SCHUSTERMAN: Thank you, Your Honor.

6 THE COURT: Let me hear from The State. Did you find  
7 -- I looked through what material I had and I found  
8 something entitled "A Model Procedure," which I believe  
9 was prepared by Judge Richter and I did not find this  
10 particular matter addressed. Did you find what you were  
11 referring to so I could look at it?

12 MR. POPE: Yes, sir. Judge, could we have a few  
13 minutes on that ---

14 THE COURT: Once you find it, make sure counsel for  
15 the defense has a copy. Bring it to me in chambers and by  
16 the same token if counsel for the defense has anything,  
17 notes, et cetera, or exchange of letters, memos, faxes, or  
18 anything that would indicate anything different, please  
19 provide those with me now and we will take a break until  
20 twelve. That's about seven or eight minutes.

21 Mr. Pope, if you have something to hand up, I'll look  
22 at it while we are --

23 MR. POPE: Yes, sir, it is my understanding you said  
24 you do have a copy. I have not made a copy. If it is the  
25 same procedure that the defense ---

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1 THE COURT: I don't know; that's why I am asking  
2 because I just don't know.

3 MR. POPE: I'll hand it up, the procedure, in light of  
4 yesterday, obviously, it may have been my misunderstanding

5 ---

6 THE COURT: Yes, that's the one I have. All right.  
7 All right, anything from the defense regarding the method  
8 of drawing the jury?

9 MR. SCHUSTERMAN: Yes, sir, Your Honor. Can we be  
10 heard?

11 THE COURT: Yes.

12 MR. SCHUSTERMAN: Your Honor, I will tell you I have  
13 some information being faxed to the Clerk's Office that  
14 should be here within ten minutes, so I assume within the  
15 next minute or two I should be hearing something. Your  
16 Honor, maybe this is my misunderstanding - I recall that  
17 we had one, maybe two, meetings in Chambers discussing the  
18 jury selection. It was my understanding that we were  
19 either going to strike jurors as we go, as they were  
20 qualified, and then sequester them or we were going to  
21 qualify a panel and then I believe the phrase was used and  
22 I can't say by who that we were going to pull a jury like  
23 we would do in any other case in General Sessions Court.  
24 We have been operating on that. If I am mistaken and that  
25 is not correct, so be it. I would say though that this is

1 truly, it's -- this is almost no different than striking  
2 them one at a time as they are qualified. If we were going  
3 to go in order as they were qualified, I can assure you  
4 that if the choice was to have them qualified as a panel  
5 in order and not have them sequestered and qualify them as  
6 we go one at a time as they are qualified and sequestered,  
7 then if that was the choice, I clearly would have picked  
8 the former.

9 THE COURT: Well, the only difference would be ---

10 MR. SCHUSTERMAN: You look at the whole panel at one  
11 time; I understand that, sir, and there's some strategy to  
12 that. Like I say, all I can tell you is what my  
13 understanding was. If it was an incorrect understanding,  
14 then that's my fault.

15 THE COURT: Well, I am going to take a look at it and  
16 if you have anything from the fax --

17 MR. SCHUSTERMAN: I'll approach the Bench and give it  
18 to you.

19 THE COURT: All right.

20 We have next Panel F. Willie Battles.

21 WILLIE BATTLES (B/M)

22 EXAMINATION BY THE COURT

23 Q Come over and have a seat, Mr. Battles. How are you  
24 this morning?

25 A Fine, sir.

1 Q I am John Hayes and I am going to be asking you some  
2 questions and I want to remind you that you are under oath  
3 and I want you to answer these questions loud enough so  
4 that all of us can hear, all right?

5 A Yes, sir.

6 Q Are you related to any of the individuals involved in  
7 this case?

8 A Not that I know of.

9 Q Do you have any interest, bias or prejudice in regards  
10 to this case?

11 A No, sir.

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, sir.

15 Q Do you know of any reason whatsoever why you cannot  
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 given to you by the trial judge?

21 A Yes, sir.

22 Q Now could you find the defendant not guilty if that's  
23 what the evidence and the law so indicated?

24 A Yes, sir.

25 Q Could you, if the law and facts indicated, find the

1 defendant guilty?

2 A Yes, sir.

3 Q Now have you discussed this case with anyone?

4 A No, sir.

5 Q Do you know anything about this case from any source  
6 whatsoever?

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 to have been working as a law enforcement officer at the  
11 time of his death. Would this prevent you from rendering  
12 a fair and impartial verdict?

13 A No, sir.

14 Q Would it influence your decision?

15 A No, sir.

16 Q Now I am going to ask you some questions about your  
17 views on the death penalty. There are no right or wrong  
18 answers to these questions. Now the way a death penalty  
19 case is handled is that there is first a trial on the  
20 guilt or the innocence part, that is, a trial held wherein  
21 the jury will determine whether the finding of guilty or  
22 not guilty will be returned. If the jury returns a  
23 finding of not guilty, then the case is over. If the jury  
24 returns a finding of guilty of murder, then the case will  
25 fall to a second stage to determine whether or not a

1 penalty of death or a penalty of life imprisonment will be  
2 imposed. Do you understand that?

3 A Yes, sir.

4 Q Now as to Mr. Hughes there is no indication since we  
5 are talking about the death penalty of anything about his  
6 guilt or innocence. He is presumed innocent of these  
7 charges until he were to be found guilty. Do you  
8 understand that?

9 A Yes, sir.

10 Q Now I have put in the jury room a sheet on which three  
11 juror types were outlined. Did you find yourself in one of  
12 those types?

13 A Yes, sir.

14 Q Which type?

15 A The third.

16 Q Then would you be able based on the evidence and the  
17 law to sit as a trial juror and return a verdict, if you  
18 felt it was warranted, for death for murder?

19 A Yes, sir.

20 Q Could you likewise return a sentence of life  
21 imprisonment if you felt like the evidence and law  
22 warranted such a verdict?

23 A Yes, sir.

24 Q All right, other than the general inconvenience of  
25 being away from your home and from your work, is there any

1 other thing that would cause you any undue hardship to  
2 serve on this jury for a period of ten to twelve days?

3 A Could you repeat that, please?

4 Q The jury in this case will be taken to York County for  
5 ten to twelve days and house in a hotel or motel and  
6 sequestered. I know this presents a problem for anybody to  
7 be away from their work and their loved ones and those  
8 sorts of things. Other than that, would it create any  
9 undue hardships for you?

10 A No, sir.

11 Q Answer any questions that The State or the defense may  
12 have.

13 EXAMINATION BY MR. SCHUSTERMAN

14 Q Good afternoon, Mr. Battles.

15 A Good afternoon.

16 Q How are you, sir?

17 A I'm doing all right.

18 Q Good. My name is Steve Schusterman and I am an  
19 attorney from York County. I represent Mr. Hughes. Seated  
20 next to me the lady with the blonde hair is Ms. Brice. She  
21 also represents Mr. Hughes.

22 I noticed on your questionnaire that you filled out  
23 that you were born in Queens, New York.

24 A Right.

25 Q We have a common birth place.

1 A Right.

2 Q How long have you lived here in Aiken?

3 A I was moved down here when I was two years old.

4 Q You have been here most of your life.

5 A Correct.

6 Q Okay. You indicated that you were a type three juror,  
7 one who could give the death penalty, but could also give  
8 life.

9 A Right.

10 Q Is that correct?

11 A Correct.

12 Q Do you believe in the death penalty?

13 A Yes, sir, if -- it's all according to the law of the  
14 case that was heard.

15 Q Okay, but you understand that the court will never  
16 tell you you have to give death under a certain situation.

17 A Yes, sir, I understand that.

18 Q It would be your choice to give life or death and you  
19 can give life for no reason or any reason at all. Do you  
20 understand that?

21 A Yes, I think I do.

22 Q What I am saying is that it is your decision; the  
23 court is not going to tell you what to do. The court is  
24 not going to say go back there and give Mr. Hughes life or  
25 go back there and give the death penalty to Mr. Hughes.

1 They are not going to do that. It is going to be your  
2 province.

3 A Right.

4 Q All right, is there any reason why you don't think you  
5 could be a fair or impartial juror?

6 A No, sir.

7 Q Do you have any ties to law enforcement?

8 A No, sir.

9 Q Do you understand that Mr. Hughes has pled innocent to  
10 the charges, so while there's a lot of talk about life or  
11 death, we are talking about a situation first of guilt or  
12 innocence.

13 A I understand.

14 Q Do you understand that?

15 A Yes, sir.

16 Q And Mr. Hughes had pled not guilty to that - to the  
17 charges, so it is going to be incumbent upon The State  
18 first to deal with guilt or innocence and if you and the  
19 eleven other jurors don't believe that he's guilty, we  
20 don't even get to a life or death situation. If you render  
21 a verdict of not guilty to the charges, the charge of  
22 murder, we don't go forward. We go home. The trial is  
23 over. Do you understand that?

24 A Yes, sir.

25 Q Do you have any religious beliefs that would prevent

1 you from -- let me rephrase that. Do you have any  
2 religious beliefs that you would use to help you or aid  
3 you in rendering a decision of guilt or innocence or life  
4 or death?

5 A As far as being fair about it, I would say yes, but  
6 not due to the fact to where you would go as far as an eye  
7 for an eye or something like that.

8 Q Do you believe in -- am I to understand, sir, that you  
9 believe in a concept of an eye for an eye --

10 A No --

11 Q --- or are you saying you don't believe it.

12 A Right, that's what I'm saying I don't.

13 Q You don't believe in that concept.

14 A No.

15 Q And, basically, what you are saying is that and all  
16 that means and I am not putting words in your mouth, there  
17 are no right or wrong answers, but I think what you are  
18 saying is that you would want to hear -- each case will  
19 stand for itself and you will hear the good and the bad  
20 and based on that, you will make a decision.

21 A Right.

22 Q It's not going to be an eye for an eye if he is  
23 convicted of murder, he's automatically going to die or if  
24 he is convicted of murder, that you are automatically  
25 going to give him life - you are not going to consider

1 anything else.

2 A Correct.

3 Q Is that right?

4 A Correct.

5 Q Basically, you are open minded ---

6 A Yes.

7 Q --- in that regard. Is that correct?

8 A Yes.

9 Q I notice from this questionnaire that you didn't fill  
10 out the whole thing. There are some empty questions,  
11 questions that you didn't answer.

12 A Yes.

13 Q Was there a reason for that?

14 A Yes.

15 Q Can I ask what that reason was?

16 A I'd have to see the questions.

17 Q Okay. It appears that you just stopped at question  
18 28. You answered all of those and you stopped there.

19 Is that you?

20 A Yes.

21 Q So it is you.

22 A Let's go through the questions.

23 Q I am not going to ask all of these questions again,  
24 but the question was -- one of the questions, how do you  
25 feel about psychiatry and psychology?

1 A What do you mean about how do I feel about psychiatry  
2 and psychology?

3 Q Do you believe people have mental illnesses, that  
4 there are people with mental illnesses?

5 A Yes.

6 Q Do you believe that psychiatrists and psychologists  
7 can help people with mental illnesses?

8 A Do you want a yes or no answer to that question?

9 Q I want an answer that you feel. You don't have to give  
10 me a yes or a no. If you can explain it, you can tell me  
11 your viewpoint, anyway you want to do it.

12 A In a sense I don't think they can fix it, but I think  
13 they can make it better or bearable to live with.

14 Q Have you ever served on a jury before?

15 A No, sir.

16 Q Is this a new experience for you?

17 A I wouldn't say a new experience, it's the first time I  
18 actually served on one - you can say that, yes.

19 Q I don't want to say that now. I want to know what you  
20 are talking about. Tell me what you mean.

21 A I mean I watch a lot of tv and I read books, but I  
22 have never actually served on one before.

23 Q This is the first time in a courtroom?

24 A Just the other day when I come up here.

25 Q Okay, would Monday have been your first day in a

1 courtroom?

2 A Yes, sir.

3 Q It was?

4 A Yes.

5 Q One last thing, if, in fact, after we get past guilt  
6 or innocence and you and the eleven other jurors  
7 determined that Mr. Hughes is guilty, we go into the  
8 second part of the trial. Are you with me?

9 A Yes.

10 Q Okay, now we are in the second part of the trial. If,  
11 in fact, you are back there and you and the eleven other  
12 jurors determine that death is appropriate, that death is  
13 the right thing, the law in South Carolina requires that  
14 you take a piece of paper and basically it says on the top  
15 of "we as the jury agree that death is the proper  
16 sentence" and then you have to sign that, each juror has  
17 to sign that. Would you have the ability to take a pen and  
18 put your name Willie Battle on a paper that would in  
19 essence be a death warrant for Mr. Hughes?

20 A If it was agreed after hearing the case in court, you  
21 know, if that's what it warranted.

22 Q All right. The last question, if you have a belief  
23 after all of the evidence in the first part of the trial,  
24 you believed Mr. Hughes is innocent and the eleven other  
25 jurors believed he is guilty, what are you going to do?

1 A What will I do?

2 Q Yes.

3 A I would hold to my belief.

4 Q Would you hold to your belief?

5 A Oh, god, yes, you are talking life or death here.

6 Q Thank you for your honest, Mr. Battles. Please answer  
7 any questions the prosecution may have.

8 EXAMINATION BY MR. BRACKETT

9 Q Good afternoon.

10 A Good afternoon.

11 Q I am Kevin Brackett; I am the deputy solicitor. I work  
12 up in York County in the 16th Circuit. That gentleman  
13 seated at the table right there is Tommy Pope. He is the  
14 solicitor up there. He and I are going to prosecute this  
15 case for The State. I just wanted to cover ---

16 A What did you say his name is?

17 Q Tommy Pope. He is the solicitor up there in York and  
18 Union Counties. He and I are going to prosecute the case  
19 together, okay? I want to discuss a couple of quick  
20 things with you and Mr. Schusterman touched on it briefly,  
21 but I want to reiterate there are no right or wrong  
22 answers here. Just want to know what you think. You are  
23 entitled to your opinion and that's all we need to know.  
24 You indicate you are a type three juror, you could give  
25 life, you could give death; it depends on the facts and

1           circumstances. And Mr. Schusterman asked you the last  
2           question. If you were the lone hold out for life or not  
3           guilty or for guilty or one way or the other, you would  
4           stick to your guns, and hold the course and maintain your  
5           position, if you believed that was right.

6           A     That belief would be based on the evidence.

7           Q     Of course, you have heard all the evidence. Now that  
8           doesn't mean you wouldn't listen to the other jurors,  
9           would it, you wouldn't just turn your chair around and  
10          face the wall and got that's it; you would talk to the  
11          other jurors.

12          A     Of course.

13          Q     It is a deliberation. That's why they tell you to  
14          retire to deliberate and that means you all talk and you  
15          share ideas and you give your viewpoints and listen to  
16          their viewpoints and that sort of thing.

17          A     Yes.

18          Q     So you could listen and participate in the jury  
19          deliberation and all of that sort of thing.

20          A     Yes.

21          Q     And if you all decided to give life, you could give  
22          life and if you all decided to give death, you could give  
23          death.

24          A     Yes.

25          Q     And if you give life, only the foreman has to sign.

1 The foreman needs to sign for life. But if you have given  
2 death, they are going to pass a piece of paper around the  
3 room with twelve lines on it and each juror has to sign  
4 their name attesting that that is, in fact, their verdict.

5 A Right.

6 Q Assuming that we ever reach that point in this case,  
7 if that piece of paper comes in front of you and the pen  
8 is in hand, you are not going to have any problems with  
9 putting Willie Battles down on the piece of paper if  
10 that's what you think is right?

11 A Right.

12 Q Okay. Mr. Schusterman also asked you if you believed  
13 in the concept of an eye for an eye and you said, "No."  
14 But you would agree that sometimes an eye for an eye is  
15 appropriate, isn't that right, it depends on the facts and  
16 circumstances, just like in this case.

17 A Correct.

18 Q You have got to wait to see what we have got.

19 A Correct.

20 Q Mr. Battles, thank you very much.

21 THE COURT: I'll ask you to step out the door just one  
22 second, just stand out in the hallway.

23 What says The State?

24 MR. BRACKETT: I submit he is qualified, Your Honor.

25 THE COURT: What says the defense?

1 MR. SCHUSTERMAN: I submit he's qualified.

2 THE COURT: Bring him back in.

3 Mr. Battles, I find that you are qualified. I am  
4 going to ask that you be back at two o'clock. You will be  
5 part of the jury pool. That does not mean that you will be  
6 on the jury. We are going to have thirty-five to forty  
7 people and from that fourteen jurors, twelve jurors and  
8 two alternates, will be drawn. Those fourteen people will  
9 be taken immediately to York County to be sequestered  
10 while we try this case for ten to twelve days. So when you  
11 come back at two, have a bag packed and be ready to go in  
12 case you are chosen. Do you understand all of that?

13 JUROR: Yes, sir.

14 THE COURT: And don't talk about the case with anybody  
15 or receive any news coverage of this case at any point.  
16 Understand?

17 JUROR: Yes, sir.

18 THE COURT: Be back at two o'clock and be ready, if  
19 you are chosen, to go to York County with us. Thank you.

20 All right, Ronald Brissey.

21 RONALD BRISSEY (W/M)

22 EXAMINATION BY THE COURT

23 Q I am John Hayes, good afternoon.

24 A Good afternoon.

25 Q I am going to be asking you questions and I ask you to

1 speak up very loudly so we can all hear. I remind you  
2 that you are under oath.

3 A Yes, sir.

4 Q Now are you related to any of the individuals who are  
5 involved in this case?

6 A No, sir.

7 Q Do you have any interest, bias or prejudice in regards  
8 to this case?

9 A No.

10 Q Have you formed or expressed an opinion as to the  
11 guilt or the innocence of the defendant?

12 A No, sir.

13 Q Now do you know of any reason whatsoever why you could  
14 not give both The State and the defendant a fair and  
15 impartial trial in this case?

16 A No, sir.

17 Q Would you under your oath follow the law in this case  
18 as instructed by the trial judge?

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, return a verdict  
22 and find the defendant not guilty?

23 A Explain that again.

24 Q All right. Could you return a verdict of not guilty if  
25 The State did not carry its burden of proof and prove the

1 defendant guilty beyond a reasonable doubt, that is, if  
2 you felt that the evidence based on the law as you would  
3 be instructed warranted a finding of not guilty, could you  
4 return a verdict of not guilty?

5 A Yes, sir.

6 Q By the same token if you felt it was warranted could  
7 you return a verdict of guilty?

8 A Yes, sir.

9 Q Have you discussed the case with anyone?

10 A No, sir.

11 Q Do you know anything about this case from any source  
12 whatsoever?

13 A Not until the other day when you told us.

14 Q All right. In this case the defendant, Mr. Hughes, is  
15 a black gentleman and the individual who was killed was  
16 white and it is alleged to have been at work as a  
17 policeman at the time of his death. Would these facts  
18 influence you in any way whatsoever in regards to the  
19 guilt or the innocence of the defendant?

20 A No.

21 Q Would it prevent you from rendering a fair and  
22 impartial trial?

23 A No.

24 Q All right, cases of this type are tried in two parts,  
25 one being the guilt or the innocence of the defendant and

1 once a jury had determined a verdict of not guilty, then  
2 the case would be over with. If the jury returned a  
3 verdict of guilty, then you would move into the second  
4 phase where The State and the defendant could if they  
5 wished present additional evidence. Now the defendant in  
6 this case is presumed innocent of this charge and is so  
7 presumed until such time as a jury were to find him guilty  
8 beyond a reasonable doubt. Now we are going to talk a  
9 little about the death penalty, but I want to emphasize to  
10 you by doing that that is no indication as to the guilt of  
11 the innocence of Mr. Hughes, do you understand all of  
12 that?

13 A Yes.

14 Q Did you review the juror type sheets?

15 A Yes, sir.

16 Q Did you find yourself thereon?

17 A Type three.

18 Q Under type three. Then I ask you would you be able as  
19 a juror to participate in a jury verdict recommending the  
20 penalty of death for murder if that's what the evidence  
21 and law warranted?

22 A Depending on the circumstances.

23 Q All right depending on the circumstances, if the  
24 circumstances were such if based on that that the evidence  
25 and the law the judge charges you you determine that the

1 correct recommendation was a penalty of death for murder,  
2 would you be able to so recommend?

3 A I believe so. It's hard.

4 Q I understand. It is difficult. There's no question  
5 about that. Would you likewise be able to recommend a  
6 sentence of life imprisonment if that's what the law and  
7 the evidence warranted?

8 A Yes.

9 Q I know it is difficult, but what I am asking you  
10 basically is not whether it would be difficult or not and  
11 I know it would, but would it be possible or impossible  
12 for you to return a verdict of death based upon what the  
13 circumstances show? Possible or impossible?

14 A Possible.

15 Q All right, I am going to ask you to answer the  
16 questions that The State or the defense may have.

17 EXAMINATION BY MR. BRACKETT

18 Q Mr. Brissey, good afternoon. I am deputy solicitor  
19 Kevin Brackett. He is the solicitor for the 16th circuit,  
20 York and Union Counties up in the northern part of the  
21 state just out of Charlotte. We are going to be  
22 prosecuting this case together against Mr. Hughes who is  
23 seated over there behind counsel table. And I just have a  
24 few questions for you. At the outset let me preface this  
25 by saying there are no right or wrong answers. All we

1 need to know is your opinion and in getting your opinion  
2 from you no one is going to challenge or question your  
3 opinion or argue with you today. You are entitled to your  
4 opinion and all we need to know is what that opinion is.  
5 So feel free to tell me, you know, shoot from the hip,  
6 tell me what you think.

7 You indicated when the judge asked you could you give  
8 the death penalty and you said, "I think so" and I think  
9 we will concede this is not an easy issue. You would  
10 agree that there are circumstances and there are cases  
11 involving murder that are of such a nature that the death  
12 penalty is warranted, would you agree with that?

13 A Yes, sir.

14 Q And that there are some cases involving murder again  
15 where the circumstances are such that life is appropriate.

16 A Yes.

17 Q And you were saying you are the type of juror that  
18 can't really say whether he'd give life or death in a  
19 given case until he's heard all the evidence and all of  
20 the facts in the case.

21 A Right.

22 Q You understand, of course, that Mr. Pope and I bear  
23 the responsibility in this case of presenting that  
24 evidence to you. That's our burden and it's called the  
25 burden of proof and it is ours and the defense doesn't

1 have to prove anything, they don't have to say word one,  
2 they can just sit there with their arms folded and never  
3 say a thing. They are entitled to say something if they  
4 want to, but they don't have to. Mr. Pope and I bear the  
5 burden of proof.

6 A Yes.

7 Q Now you have indicated that you are a type three juror  
8 and you could give the death penalty and you could give  
9 life. If you were on the jury and the jurors all sat down  
10 and agreed that a life sentence was appropriate, then the  
11 only person that has to sign that verdict form is the  
12 foreman of the jury; however, if all the jurors sit down  
13 and after hearing all of the facts and evidence and they  
14 sit down and deliberated and say this case is of such a  
15 nature it warrants the death penalty and that was your  
16 verdict, they have a sheet with twelve lines on it that is  
17 passed around in the jury room and each juror would have  
18 to sign because the court has to know that that is, in  
19 fact, the verdict of each juror, each individual juror,  
20 and the only way we can know that is if each juror attests  
21 to that verdict by placing their signature on that page.  
22 If at some point in the future if that page were placed in  
23 front of you and you thought that it was the right thing  
24 to do, could you take the pen and sign your name on that  
25 sheet?

1 A I believe I could if I thought that was the right  
2 thing after hearing --

3 Q Of course, after hearing all of the evidence and so  
4 forth. I beg the court's indulgence for one moment. Mr.  
5 Brissey, thank you very much. I appreciate your candor.  
6 Please answer any questions Ms. Brice may have for you.

7 EXAMINATION BY MS. BRICE

8 Q Good afternoon, Mr. Brissey. My name is Chris Brice  
9 and I am one of two co-counsels that are working to assist  
10 Mr. Hughes. I, myself, along with Steve Schusterman, who  
11 is seated at the desk over there we are both from York  
12 County. Have you ever been to York County?

13 A I've been to Rock Hill.

14 Q Do you have friends that live in Rock Hill?

15 A My boy boxes.

16 Q He does?

17 A And they have boxing tournaments.

18 Q I saw that on your questionnaire. Do you have family  
19 that live in Rock Hill or York County?

20 A No.

21 Q As Solicitor Brackett has already told you this is  
22 just basically an opportunity for us to exchange  
23 conversation to kind of get a feeling of what your  
24 opinions are in regards to certain topics. I believe most  
25 everything has been touched on pretty thoroughly with you,

1 but I just have a few questions for you.

2 The process of jury selection is each person brings in  
3 with them their own experiences and that's what makes a  
4 jury system so unique. Everyone has their own perspective  
5 and it is brought into the courtroom basically their life  
6 experiences. In rendering or considering a verdict of  
7 death or life do you bring with you any teachings or  
8 principles or background that would help you make a  
9 decision between life or death?

10 A Not really. I've never been put in this situation  
11 before.

12 Q Have you ever considered the death penalty before you  
13 had to come and sit in that chair today?

14 A I have thought about it; it depends on the  
15 circumstances.

16 Q So as I understand it based upon the type of  
17 circumstances, what type of factual scenario would present  
18 itself to you and that is what would justify a life  
19 sentence or death sentence, is that right?

20 A Yes, ma'am.

21 Q Do you believe that people suffer from mental illness?

22 A Yes.

23 Q And do you believe in the science of psychology and  
24 psychology?

25 A I've never really had much dealings with it.

1 Q Do you believe that people with mental illnesses or do  
2 you believe that psychiatrists and psychologists can  
3 assist people with mental illnesses?

4 A I have never had any dealings with them, but I have  
5 heard of situations where it has helped in and some that  
6 hadn't.

7 Q So you just have to have personal experience with it,  
8 you might be a little skeptical unless you had personal  
9 knowledge, would that be accurate? Don't let me put words  
10 in your mouth I'm not trying to answer it for you.

11 A Not that I always have to have personal experience ---

12 Q Right.

13 A --- I would always be skeptical though.

14 Q Right. You would just take it on a piece by piece  
15 basis something like that?

16 A Yes.

17 MS. BRICE: Bear with me just one moment, Your Honor.

18 Q Thank you very much.

19 THE COURT: Why don't you just step outside for just a  
20 moment.

21 What says The State?

22 MR. BRACKETT: I submit he is qualified, Your Honor.

23 THE COURT: The defense?

24 MS. BRICE: We would submit that he is qualified, Your  
25 Honor.

1 THE COURT: Ask him to come back in.

2 Mr. Brissey, I find that you are qualified to serve  
3 as a juror, but that does not mean that you are on the  
4 panel yet. We will have from thirty-five to forty  
5 individuals and out of that we will draw a jury of  
6 fourteen, twelve plus two alternates. We are going to do  
7 that at two or as close thereto as we can. I am going to  
8 ask that you be back at two o'clock. I am going to ask you  
9 to be prepared at that time to travel with us to York  
10 County if you are chosen, that is, once we have drawn the  
11 jury, we will as quickly as possible transport the jury to  
12 York County where you will remain from ten to twelve days.  
13 Please over this break, it won't be a long one for you,  
14 but between now and two don't discuss this case with  
15 anyone outside the courtroom and do not listen to or read  
16 anything about it in news coverage if there is any. We  
17 will see you back at two o'clock. Thank you.

18 All right, Judy Moorehead.

19 JUDY MOOREHEAD (W/F)

20 EXAMINATION BY THE COURT

21 Q How are you this afternoon?

22 A All right.

23 Q I am John Hayes and I am going to be asking you some  
24 questions. I want you to be relaxed.

25 A I don't know about that.

1 Q Well, we don't bite, at least I don't, I can't speak  
2 for everybody, but I don't think they will. I remind you  
3 that you are under oath and I am going to ask you to speak  
4 up so all of us can hear you. First, are you related to  
5 any of the parties to this case?

6 A No.

7 Q Do you have any interest, bias or prejudice in regards  
8 to this case?

9 A No.

10 Q Have you formed or expressed an opinion as to the  
11 guilt or the innocence of Mr. Hughes?

12 A No.

13 Q Do you know of any reason whatsoever why you could not  
14 give both The State of South Carolina and the defendant a  
15 fair and impartial trial in this case?

16 A No.

17 Q Would you under your oath follow the law in this case  
18 as instructed by the trial judge?

19 A Yes.

20 Q Now the case would be tried in two parts, that is, one  
21 dealing with the guilt or the innocence of the defendant  
22 and one as to penalty. I will cover the penalty in a  
23 moment. If you were on this jury and were in the first  
24 part of this case and you heard the evidence and the law,  
25 could you, if you felt that the evidence and facts and law

1 warranted that the defendant be found not guilty, could  
2 you return a verdict of not guilty?

3 A If the evidence found that, yes.

4 Q All right and if the evidence found that the verdict  
5 should be one of guilt, could you -- and applying the law,  
6 could you return a verdict of guilty?

7 A Yes.

8 Q Have you heard anything about this case from any  
9 source whatsoever?

10 A No.

11 Q Discussed it with anyone whatsoever?

12 A No.

13 Q Now this defendant, Mr. Hughes, is a black gentleman  
14 and the victim was white and it is alleged that the victim  
15 was employed and working as a law enforcement officer at  
16 the time of his death. Would this influence your decision  
17 in any way?

18 A No.

19 Q Would this prevent you from rendering a fair and  
20 impartial verdict?

21 A No, I don't think so.

22 Q All right, now as I told you the first part of this  
23 trial will deal with whether or not the defendant will be  
24 found guilty or innocent of the charge of murder and he is  
25 presumed innocent of that charge and the other charges

1           until such time as The State were to be able to prove to  
2           that jury his guilt beyond a reasonable doubt. Now we are  
3           going to talk about the second, that is, the death penalty  
4           part and the life imprisonment, those two options, in just  
5           a moment, but I want you to understand that that in no way  
6           indicates the verdict the jury should return or anything  
7           about the guilt or the innocence of Mr. Hughes, do you  
8           understand that?

9           A    Yes.

10          Q    The fact we are talking about this in no way reflects  
11          on the defendant's innocence because he is presumed  
12          innocent. Do you understand that?

13          A    Yes.

14          Q    I want you to understand there are no right or wrong  
15          answers to these questions.

16          A    (Nodded)

17          Q    Say yes or no because this lady is taking it down.

18          A    Yes, sir.

19          Q    Now did you review that juror list?

20          A    Yes, I did.

21          Q    Did you find yourself in one of those categories?

22          A    Yes.

23          Q    Which one?

24          A    The third.

25          Q    Would you if you were a juror be able to participate

1 in a jury verdict recommending the sentence of death for  
2 murder if that's what you felt the evidence and the law  
3 warranted?

4 A Yes.

5 Q Could you also if you felt the evidence and law  
6 warranted participate in a jury verdict recommending a  
7 sentence of life imprisonment?

8 A If the evidence warranted it.

9 Q Now other than the general inconvenience and hardships  
10 that it would impose on anyone to be away from their  
11 family, their work and other things for ten or twelve days  
12 would your service on the jury and being sequestered for  
13 that period of time pose any particular hardships for you?

14 A No, just being away from my family.

15 Q Answer any questions posed by counsel.

16 EXAMINATION BY MR. SCHUSTERMAN

17 Q Mrs. Moorehead,

18 A Yes.

19 Q --- good afternoon.

20 A Hi.

21 Q My name is Steve Schusterman and I am an attorney from  
22 York County. I represent Mar-Reece Hughes along with Ms.  
23 Christina Brice who is seated next to me. This is an  
24 opportunity for the court, myself and the prosecution to  
25 get to know you given that this case is somewhat unique,

1 the unique aspect being that The State is seeking the  
2 death penalty. And so we want to get your feelings, your  
3 beliefs, just find out some general things about you.  
4 There are no right answers, there are no wrong answers,  
5 strictly your views.

6 I notice from your questionnaire, your answer to the  
7 last question, where you indicate there's nothing else you  
8 want us to know because we had asked enough questions. I  
9 got the hint. This will be very quick.

10 Do you understand as the judge said this is a  
11 bifurcated trial. There are two aspects to this trial. The  
12 first aspect is guilt or innocence and we are not just  
13 going to skip over that because Mr. Hughes to the four  
14 charges against him has pled not guilty. So he is  
15 innocent until The State can prove him guilty beyond a  
16 reasonable doubt. Do you understand that?

17 A Yes.

18 Q Do you accept that as a principle of law?

19 A Yes.

20 Q Okay. Only upon a finding of guilt do we even get to  
21 the second part of the trial. If you and the other eleven  
22 jurors could not unanimously agree that Mr. Hughes was  
23 guilty of murder we won't have a second phase of the  
24 trial, we will go home. Do you understand that?

25 A Yes.

1 Q If, in fact, we do make it to the second part, I  
2 understand you are a type three juror, which indicates  
3 that you would consider the death penalty and you would  
4 consider life, but you want to hear everything about it.  
5 You want to hear the things that make this from The State  
6 to make this an aggravating situation, the bad things, ---

7 A Yes.

8 Q --- and you would listen to what the defense would put  
9 up in terms of good things about Mr. Hughes, is that  
10 correct?

11 A Yes.

12 Q You would keep an open mind?

13 A Yes.

14 Q Do you believe in the death penalty?

15 A Yes.

16 Q Do you believe that it is appropriate in certain  
17 circumstances?

18 A Yes.

19 Q You have indicated you have nothing against  
20 psychiatrists, is that correct?

21 A That's right.

22 Q Do you believe in the science or the discipline of  
23 psychiatry or psychology?

24 A To some degree.

25 Q To some degree.

1 A Uh-huh.

2 Q Okay, that answer implies to me there is some  
3 qualification on that.

4 A Yes.

5 Q Could you please tell me what that qualification is?

6 A You know, on everything I don't agree. I just can't be  
7 specific off hand, but just everything I don't agree on  
8 everything they would say. I think there's a leeway both  
9 ways.

10 Q All right. You indicate that your niece was shot and  
11 killed by her husband?

12 A Uh-huh.

13 Q How long was that?

14 A A year ago.

15 Q I can tell it's an emotional problem for you?

16 A (Indicated in the affirmative.)

17 Q I think in the questionnaire it was an accidental  
18 shooting?

19 A No.

20 Q It was intentional?

21 A It was murder.

22 Q It was murder. Was he prosecuted for it?

23 A He shot himself and died.

24 Q Obviously it was a very traumatic event for you.  
25 Given that she was murdered and because of his committing

1 suicide was never brought to justice ---

2 A Right.

3 Q That's correct?

4 A That's right.

5 Q --- never brought to justice, would you have  
6 difficulty in being a fair and impartial juror for someone  
7 who The State was attempting to bring to justice?

8 A No, because this is a different case.

9 Q You don't come in with any preconceived ideas about  
10 that?

11 A No.

12 Q Are you concerned at all I should say just by the mere  
13 mention the questioning about this has induced an  
14 emotional reaction ---

15 A Uh-huh.

16 Q --- the fact that we certainly anticipate The State  
17 bringing evidence in regarding the death of somebody, my  
18 client has pled not guilty to it, but someone really has  
19 died ---

20 A Yes.

21 Q --- is that going to be emotional, are you going to be  
22 able to deal with that?

23 A I hope, you know, I can't say a hundred percent that I  
24 could ---

25 Q Of course, there are no hundred percent answers, but

1 do you have any concern about that?

2 A Maybe to a slight ten percent maybe.

3 Q Okay. Please answer any questions Mr. Pope may have.

4 EXAMINATION BY MR. POPE

5 Q Mrs. Moorehead, my name is Tommy Pope. Again in  
6 reading your questionnaire I want to also make this brief.  
7 This is Mr. Kevin Brackett, my deputy solicitor, and we  
8 represent The State. There is no doubt that there's a lot  
9 of sensitive issues and a lot of difficult issues that we  
10 are talking about both as far as your situation and as far  
11 as the case in general. And my understanding from what  
12 you told Mr. Schusterman, you know, obviously, independent  
13 of what's happened in your life, this would be a difficult  
14 decision to make and one you would take seriously.

15 A Yes.

16 Q But you have put yourself in the category of the type  
17 person that would not make up their minds until they have  
18 heard both sides.

19 A No I would not.

20 Q And you would give the defense a fair trial and you  
21 would give The State a fair trial.

22 A Yes, I would try.

23 Q To the best of your ability.

24 A Yes.

25 Q Okay. My final question as part of the second phase,

1 if we ever reach the second phase because we have to prove  
2 the case, as part of the second phase the question of life  
3 or death comes up and, of course, The State puts up  
4 evidence in what's called aggravation, bad things, good  
5 things about the victim; the defense would put up good  
6 things about the defendant, if they chose to. If the jury  
7 determines life is appropriate, like you said every case  
8 stands on its own merits, and after hearing everything if  
9 they say life is appropriate, the foreperson, the foreman  
10 or the forelady of the jury, one person would sign saying  
11 you the jury considered everything and we think life is  
12 appropriate and he or she would sign. However, in the  
13 death penalty there is an additional requirement in our  
14 law that says each juror must sign because of the  
15 seriousness of the decision to make sure each individual  
16 had made their decision.

17 A Right.

18 Q If you heard the facts and you thought that death was  
19 appropriate hearing the good and the bad and everything  
20 and you determine that death was appropriate along with  
21 the eleven other jurors, could you sign Judy Moorehead to  
22 a document that says we feel death is appropriate?

23 A I think I could.

24 Q All right, again, it would be difficult, but you could  
25 do it if you thought that was right?

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1 A Yes.

2 Q Thank you, Mrs. Moorehead.

3 A Uh-huh.

4 THE COURT: You may step outside.

5 JUROR: Thank you.

6 THE COURT: What says The State?

7 MR. POPE: I submit she's qualified, Your Honor.

8 THE COURT: The defense?

9 MR. SCHUSTERMAN: Your Honor, I submit she's  
10 qualified; however, I do have a concern regarding her  
11 emotional state. She went through her cousin being  
12 murdered ---

13 THE COURT: Niece.

14 MR. SCHUSTERMAN: Niece, I'm sorry, her niece being  
15 murdered by her husband and then he commits suicide. It  
16 happened approximately a year ago. The court saw the  
17 emotional reactions just upon questioning regarding it. I  
18 have got a concern about her emotional stability. I don't  
19 contest the fact that statutorily she meets the  
20 qualifications to sit on a jury, but I am concerned once  
21 again about the emotional aspect of this case.

22 THE COURT: I find she's qualified. I think she has  
23 the emotional stability to participate.

24 Bring Mrs. Moorehead in.

25 Mrs. Moorehead, you are qualified as one of the jurors

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1 of the panel. We are going to draw the jury at two  
2 o'clock. That does not mean you are on the jury. I am  
3 going to ask you to be back at two and I am going to ask  
4 you to be packed in the event you are chosen because we  
5 will as promptly as we can head for York County for ten to  
6 twelve days.

7 JUROR: Today be packed?

8 THE COURT: Yes, ma'am, two o'clock. We are not like  
9 the airlines we are not going to restrict your luggage,  
10 but I think you have time between now and two.

11 JUROR: One hour? Are you kidding?

12 THE COURT: I have confidence.

13 JUROR: I'll try.

14 THE COURT: We will see you back at two.

15 JUROR: Okay.

16 THE COURT: Be ready to go if you are chosen and don't  
17 discuss this case and don't see or hear anything about it  
18 from any source including the news media. Be sure you are  
19 back at two.

20 JUROR: Thank you.

21 THE COURT: Thank you.

22 Now by my count I have forty-one. We are going to  
23 stop now so we can take care of anything else we need to  
24 and give everybody some time to eat some lunch. Now as of  
25 this morning when we met earlier I did not find anyone not

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1 qualified and I believe with the exception of Mrs.  
2 Moorehead the other two were agreed to be by counsel  
3 qualified. Mrs. Moorehead was not contested that she was  
4 qualified, but rather a concern expressed by the defense  
5 was as to her emotional state and the court did not find  
6 that that affected her qualifications. Is that correct?

7 MR. SCHUSTERMAN: Correct, Your Honor.

8 THE COURT: Is there anything regarding the  
9 qualification process and the procedure we have been  
10 following while we have been here in Aiken and preparatory  
11 thereto anything regarding that that The State wishes to  
12 call to the court's attention or comment on or place on  
13 the record?

14 MR. POPE: No, sir. As far as the qualification  
15 process the only issue that we have brought up the  
16 question before the court is about the drawing of the  
17 jurors. Again, I think we expressed that yesterday and,  
18 obviously, we had two different understandings and maybe  
19 two or three different understandings as to what our  
20 conversations have been. That would have been our only  
21 concern in the way that we proceeded. I would withdraw  
22 that objection, Your Honor, I will be willing to proceed  
23 as the court had indicated previously. My reason for that  
24 being to keep as clean a record as possible and also,  
25 obviously, what we can prepare during this hour, you

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1 know, to use whatever time we have knowing now how the  
2 jury will be drawn.

3 THE COURT: All right, anything regarding those issues  
4 I have just gone over, the preparatory, the process we  
5 have done, any objections to qualification, which are not  
6 already on the record, anything whatsoever that needs to  
7 be called to the court's attention at this point regarding  
8 the jury qualification to this point?

9 MR. SCHUSTERMAN: No, sir, Your Honor, as to the  
10 qualification process the defense has no objection.

11 THE COURT: All right. Well, we will go forward with  
12 the general striking method. The counsel for The State has  
13 withdrawn any objection to it and I apologize. I've looked  
14 at Judge Richter's and he does indicate there will be only  
15 one draw. I did not notice that in my review in preparing  
16 for this and had thought that at least in my mind that we  
17 would treat this as a pool and draw therefrom, so I  
18 apologize for any confusion that I may have caused, but we  
19 are now apparently on the same song sheet, maybe  
20 reluctantly on the same song sheet, but we are. So what we  
21 will do is first we will prepare a box with the forty-one  
22 names. Now keep in mind that she may wish to hold out the  
23 three who have some particular requests. Those again were  
24 Ms. Baugh, Ms. Mills and Mr. Fulmer. The two females are  
25 child situations; Mr. Fulmer is work related and he will

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1 be here at two with his boss. The two females will be here  
2 and we will discuss their situations. Don't put them in  
3 with the draw as of yet. We will reconvene at two and take  
4 care of those issues. This will give you an hour. I know  
5 that's a lot of work to do in an hour. The jury panel may  
6 or may not all come in at two. I hope we don't have any  
7 stragglers. We are going to have some flexibility. We  
8 might if it's 2:10 before we feel comfortable starting,  
9 then it will be 2:10. I don't want it to be 2:30 or 2:45,  
10 but both sides can have a ten or fifteen minute leeway  
11 before we crank up.

12 MR. POPE: Your Honor, like I say now that we will  
13 have this opportunity and now that we now understand --  
14 The State now understands how we are going to pull this  
15 jury I would request that the court at least consider that  
16 at the point we get to the alternates, obviously, at that  
17 point then the court consider giving an every so brief  
18 recess in essence for us to regroup ---

19 THE COURT: Sure.

20 MR. POPE: I just ask you to consider it.

21 THE COURT: Sure, just remind me. I grant that  
22 request, but I sometimes get on that speeding train and I  
23 have trouble stopping, so you stop me.

24 MR. POPE: Thank you, sir.

25 MR. SCHUSTERMAN: Your Honor, let me ask when we pull

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1 the jury just procedurally at two o'clock I assume we are  
2 going to do the way we traditionally do it in General  
3 Sessions Court, they will call out the juror number and  
4 they will come and step up before us? Is that how we are  
5 going to do it?

6 THE COURT: Yes, that's the way I think we'll do it. I  
7 am toying with that because it is sort of superfluous to  
8 have them come stand up here. You've already interrogated  
9 them and that sort of thing and I mean that in the  
10 interrogation at its best - that's not ---

11 MR. SCHUSTERMAN: Well, they could just stand where  
12 they are ---

13 THE COURT: Well, but this way we can just go ahead  
14 and have them seated up here and it will just help us.  
15 They have got to come up here anyway. Once they are drawn  
16 I want them sitting in the box, so they got to make this  
17 path anyway, so let's do it that way.

18 MR. SCHUSTERMAN: Yes, sir.

19 THE CLERK: Are we going to put a message on the  
20 machine for the jury panels that are left?

21 THE COURT: Tell them thank you ---

22 THE CLERK: And that we will mail them a check.

23 THE COURT: --- that you will mail them a check and we  
24 appreciate their help and that we have our pool from which  
25 we are going to draw. You can excuse these. Tell them

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1 thanks very much from York County.

2 THE CLERK: I sure will.

3 THE COURT: Thank you.

4 (Recess.)

5 THE COURT: Let the record show that the defendant is  
6 present and counsel is present. Now we have a couple of  
7 things to deal with before we actually start drawing the  
8 jury panel. I am going to ask that we first have juror  
9 number 17, Eleanor Baugh, brought in.

10 ELEANOR BAUGH

11 BY THE COURT

12 Q How are you today?

13 A I'm fine.

14 Q How did you do with help?

15 A The only person I could get she drove a school bus and  
16 because my baby is two years old and has to be in a car  
17 seat, they do not have seat belts and I don't have anybody  
18 to keep him.

19 Q Under the provisions of The South Carolina Code  
20 Section 14-7-860 I find that Ms. Baugh has the duty of  
21 care and desires to be excused and she cannot provide  
22 adequate care while performing jury service, so I'll  
23 excuse you. I appreciate your trying.

24 A Thank you. Thank you so much.

25 THE COURT: All right, Ms. Mills.

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ADRINA MILLS

BY THE COURT

Q Hi, Mrs. Mills, how are you?

A Fine.

Q Were you unable to find anybody to adequately take care of your children?

A Yes, sir.

Q Well, I appreciate your trying. You did exactly what I asked, you tried, and you were unable to find someone, so I find under the provisions of Section 14-7-860 Ms. Mills has legal custody and duty of care of children under the age of seven; she needs to be excused; and she is not able to provide adequate care during the time while she is performing jury service. So I am going to excuse you, but I appreciate your trying to help us. Thank you.

A Thank you, sir.

Q Step up here and they will give you a check?

THE COURT: All right, Mr. Fulmer.

MICHAEL FULMER

BY THE COURT

Q You can just stand right there. Mr. Friedman, who I believe is present, has asked that we reconsider. You were found qualified to serve.

THE COURT: Mr. Friedman, if you want to step over and I'll be glad to hear from you. All right.

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1 MR. FRIEDMAN: Thank you. Michael Fulmer is the only  
2 mechanic that we have here in town and it is absolutely  
3 critical that he perform his duties at this time and I  
4 understand it is a civic duty, but it is absolutely  
5 critical that he be there and I just respectfully request  
6 that he attend his job.

7 THE COURT: Well, unfortunately, jury duty, which is a  
8 civic responsibility, does interfere. What do you do when  
9 he goes on vacation or does he not get vacation?

10 MR. FRIEDMAN: We close the plant for the week he  
11 takes a vacation. Our whole plant shuts down at that time,  
12 sir.

13 THE COURT: All right, well, I appreciate your  
14 concern, but I'm not going to be able to excuse him. He  
15 will remain with us, but I appreciate your coming and  
16 expressing your concern.

17 MR. FRIEDMAN: Thank you.

18 THE COURT: Thank you.

19 Is The State ready to proceed?

20 MR. POPE: The State is ready, Your Honor.

21 THE COURT: The defense?

22 MR. SCHUSTERMAN: The defense is ready, Your Honor. Do  
23 both sides consent to the Clerk drawing the jury?

24 MR. POPE: The State consents, Your Honor.

25 MR. SCHUSTERMAN: The defense consents.

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1 JUROR NO. 87 PATRICIA GOOD (brought in by The Clerk.)

2 THE COURT: You have a death in the family?

3 MS. GOOD: Yes, sir.

4 THE COURT: And this was who?

5 MS. GOOD: My aunt.

6 THE COURT: Does she live here?

7 MS. GOOD: She lives in Marietta and she is going to  
8 be buried in Augusta and I am the niece that lives in the  
9 Augusta area and our family is going to be coming down to  
10 the area on Friday.

11 THE COURT: All right, well, I am going to excuse you  
12 from serving then since you have had a death in the  
13 family, so I will excuse you from serving any further.  
14 Thank you.

15 JUROR GOOD: Thank you very much.

16 THE COURT: Now it's thirty-eight. Am I correct? We  
17 had forty-one.

18 All right, bring in the jury panel and have them  
19 seated on the right hand side of the courtroom.

20 (Panel brought in.)

21 Is Mr. Wright present? Did Mr. Wright ever show up?

22 JUROR: Here.

23 THE COURT: Okay, thank you.

24 All right, members of the jury panel, the way we are  
25 going to draw the jury is that all of your names have been

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1 put into a container and the Clerk will at random draw a  
2 name. If your name is drawn, please come forward and I'll  
3 as the bailiff to stand by this podium. If you will just  
4 come and stand by this podium and if you will just face  
5 the table where the Solicitor's office is seated, they  
6 will say either excuse the juror or present the juror. If  
7 they say excuse the juror, please just return to your  
8 seat. Don't leave yet, but just return to your seat. If  
9 you hear the word present the juror, then turn to where  
10 the defense counsel is seated and one of those attorneys  
11 will either say swear the juror or excuse the juror. If  
12 you heard the words swear the juror, please come and have  
13 a seat in the jury box. And if you hear the words excuse  
14 the juror, you may be excused only to return to your seats  
15 because I have to keep all of you together until we  
16 complete this whole process. So if you are excused, that  
17 doesn't mean to leave right then. Also, after we draw the  
18 initial twelve jurors, we are going to take a short break  
19 before we draw the two alternates. Again, those of you  
20 who weren't chosen even if your name has been pulled and  
21 you were not chosen, you are still going to have to stay  
22 through that. So I want everybody to understand that until  
23 I dismiss all of you, which will be some time later, until  
24 our panel is seated and sworn, you will have to remain  
25 with us.

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1 All right, Madam Clerk.

2 THE CLERK: Yes, Your Honor. Are the strikes five and  
3 ten, Your Honor?

4 THE COURT: Yes, ma'am.

5 THE CLERK: Juror Number 100 William Hall (W/M).  
6 Please come forward.

7 What says The State, Mr. Solicitor?

8 MR. POPE: Present Mr. Hall.

9 THE CLERK: What sayeth the defense?

10 MR. SCHUSTERMAN: Please excuse Mr. Hall in this case.

11 THE CLERK: Return to your seat, please, sir.

12 Juror 104 James Harrison (B/M).

13 What sayeth The State, Mr. Solicitor?

14 MR. POPE: Present Mr. Harrison.

15 THE CLERK: What sayeth the defense?

16 MR. SCHUSTERMAN: Please swear Mr. Harrison.

17 THE CLERK: Have a seat in the jury box to your left,  
18 please, sir.

19 Juror number 225 Arnold Tompkins (B/M).

20 What sayeth for The State, Mr. Solicitor?

21 MR. POPE: Present Mr. Tompkins.

22 THE CLERK: What sayeth the defense?

23 MR. SCHUSTERMAN: The court's indulgence?

24 (Granted.)

25 Please swear the juror.

THE STATE VS HUGHES

1 THE CLERK: Have a seat in the jury box to your left,  
2 please, sir.

3 Juror 147 Diane Mangiante (W/F).

4 What sayeth for The State, Mr. Solicitor?

5 MR. POPE: Present the juror.

6 THE CLERK: What sayeth for the defense?

7 MR. SCHUSTERMAN: Please excuse the juror in this  
8 case.

9 THE CLERK: Return to your seat, please.

10 Juror 250 Paul Zeh (W/M).

11 What sayeth for The State, Mr. Solicitor?

12 MR. POPE: Present Mr. Zeh.

13 THE CLERK: What sayeth for the defense?

14 MR. SCHUSTERMAN: Please excuse the juror in this  
15 case.

16 THE CLERK: Return to your seat, please, sir.

17 Juror 249 James Youngblood (W/M).

18 What sayeth for The State, Mr. Solicitor?

19 MR. POPE: Present Mr. Youngblood.

20 THE CLERK: What sayeth the defense?

21 MR. SCHUSTERMAN: Please excuse the juror in this  
22 case.

23 THE CLERK: Return to your seat, please, sir.

24 Juror 112 Lana Hodson Carter (W/F).

25 The State has exhausted no strikes, the defense four.

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1           What sayeth The State, Mr. Solicitor?

2           MR. POPE:   Present Ms. Carter.

3           THE CLERK:   What sayeth the defense?

4           MR. SCHUSTERMAN:   Please swear the juror.

5           THE CLERK:   Have a seat in the jury box to your left,  
6 please, ma'am.

7           Juror 110 Dwayne Heyward (W/M).

8           What sayeth The State, Mr. Solicitor?

9           MR. POPE:   Present Mr. Heyward.

10          THE CLERK:   What sayeth the defense?

11          MR. SCHUSTERMAN:   Please swear the juror.

12          THE CLERK:   Have a seat in the jury box to your left,  
13 please, sir.

14          Juror 156 William Mislivets (W/M).

15          What sayeth for The State, Mr. Solicitor?

16          MR. POPE:   Present Mr. Mislivets.

17          THE CLERK:   What sayeth for the defense?

18          MR. SCHUSTERMAN:   Please excuse the juror from this  
19 case.

20          THE CLERK:   Return to your seat, please, sir.

21          Juror 134 Willie Key (B/M).

22          What sayeth for The State, Mr. Solicitor?

23          MR. POPE:   Please excuse Mr. Key.

24          THE CLERK:   Return to your seat, please, sir.

25          Juror 54 Robert Clevenger (W/M).

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1 THE CLERK: What sayeth for The State, Mr. Solicitor?

2 MR. POPE: Present Mr. Clevenger.

3 THE CLERK: What sayeth for the defense?

4 MR. SCHUSTERMAN: Please excuse the juror in this  
5 case.

6 THE CLERK: Return to your seat, please, sir.

7 Juror 241 Bobby Wylie (B/M).

8 What sayeth for The State, Mr. Solicitor?

9 MR. POPE: Present Mr. Wylie.

10 THE CLERK: What sayeth for the defense?

11 MR. SCHUSTERMAN: Please swear Mr. Wylie.

12 THE CLERK: Have a seat in the jury box to your left,  
13 please, sir.

14 Juror Number 16 Willie Battles (B/M).

15 What sayeth for The State, Mr. Solicitor?

16 MR. POPE: Present Mr. Battles.

17 THE CLERK: What sayeth for the defense?

18 MR. SCHUSTERMAN: Please swear Mr. Battles.

19 THE CLERK: Have a seat in the jury box to your left,  
20 please.

21 Juror 135 Virginia Kitchins (B/F).

22 What sayeth for The State, Mr. Solicitor?

23 MR. POPE: Present Ms. Kitchins.

24 THE CLERK: What sayeth the defense?

25 MR. SCHUSTERMAN: Please swear the juror.

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1 THE CLERK: Have a seat in the jury box, please,  
2 ma'am.

3 Juror 166 Byron Neeley (W/M).

4 What sayeth for The State, Mr. Solicitor?

5 MR. POPE: Present Mr. Neeley.

6 THE CLERK: What sayeth the defense?

7 MR. SCHUSTERMAN: Please swear Mr. Neeley.

8 THE CLERK: Have a seat in the jury box, please, sir.

9 Juror 118 Lashonia Isaac (B/F).

10 What sayeth for The State, Mr. Solicitor?

11 MR. POPE: Please excuse Ms. Isaac.

12 THE CLERK: Return to your seat, please, ma'am.

13 Juror 116 Ruby Howie (W/F).

14 What sayeth The State?

15 MR. POPE: Present Ms. Howie.

16 THE CLERK: What sayeth for the defense?

17 MR. SCHUSTERMAN: Has the defense used six strikes, is  
18 that correct?

19 THE CLERK: Yes.

20 MR. SCHUSTERMAN: Please swear the juror.

21 THE CLERK: Have a seat in the jury box, please,  
22 ma'am.

23 Juror 248 Timothy Wright (W/M).

24 What sayeth for The State, Mr. Solicitor?

25 MR. POPE: Present Mr. Wright.

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1 THE CLERK: What sayeth for the defense?

2 MR. SCHUSTERMAN: Please excuse the juror in this  
3 case.

4 THE CLERK: Return to your seat, please, sir.

5 Juror 157 Judy Morehead (W/F).

6 The State has exhausted two strikes, the defense  
7 seven.

8 What sayeth for The State, Mr. Solicitor?

9 MR. POPE: Present Ms. Morehead.

10 THE CLERK: What sayeth for the defense?

11 MR. SCHUSTERMAN: Please excuse the juror in this  
12 case.

13 THE CLERK: Return to your seat, please, ma'am.

14 Juror 141 Reuben Lee (B/M).

15 What sayeth for The State, Mr. Solicitor?

16 MR. POPE: Present Mr. Lee.

17 THE CLERK: What sayeth for the defense?

18 MR. SCHUSTERMAN: Please swear the juror.

19 THE CLERK: Have a seat in the jury box, please, sir.

20 Juror 193 Belmont Rogers (W/M).

21 What sayeth for The State, Mr. Solicitor?

22 MR. POPE: Please excuse Mr. Rogers from this case.

23 THE CLERK: What sayeth for the defense? I'm sorry,  
24 excuse me. Return to your seat, please.

25 MR. SCHUSTERMAN: That would be his third strike, is

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1 that correct?

2 THE CLERK: Yes, the defense eight.

3 Juror 26 T. J. Boatwright (W/M).

4 What sayeth for The State, Mr. Solicitor?

5 MR. POPE: Present Mr. Boatwright.

6 THE CLERK: What sayeth for the defense?

7 MR. SCHUSTERMAN: Please excuse the juror in this  
8 case.

9 THE CLERK: Return to your seat, please, sir.

10 Juror 106 Eileen Hartman (W/F).

11 What sayeth for The State, Mr. Solicitor?

12 MR. POPE: Present Ms. Hartman.

13 THE CLERK: What sayeth for the defense?

14 MR. SCHUSTERMAN: Please swear the juror.

15 THE CLERK: Have a seat in the jury box, please,  
16 ma'am.

17 Juror 121 Richard Jeffords (W/M).

18 What sayeth for The State, Mr. Solicitor?

19 MR. POPE: Please excuse Mr. Jeffords.

20 THE CLERK: Return to your seat, please, sir.

21 The State has exhausted four strikes, the defense  
22 nine.

23 Juror 132 Ann Keller (W/F).

24 What sayeth for The State, Mr. Solicitor?

25 MR. POPE: Present the juror.

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1 THE CLERK: What sayeth for the defense?

2 MR. SCHUSTERMAN: Please swear the juror.

3 THE CLERK: Have a seat in the jury box, please,  
4 ma'am.

5 Your Honor, there are twelve.

6 THE COURT: All right, we are going to take a break at  
7 this time. We have the twelve jurors. We still have to  
8 draw the two alternates. I am going to let you go to the  
9 jury room back here and if you will follow the bailiff.  
10 Don't start discussing anything yet. You are a part of the  
11 jury, you haven't been sworn in, but you still can't start  
12 - it will be a long time before you can discuss the case,  
13 but just relax.

14 And those of you who are still in the pool I will let  
15 you go to the jury assembly room. Don't anybody leave yet  
16 though because we may still need you, but I am going to  
17 let you take about a five minute break. So you can go to  
18 the jury room. The bailiffs will assist you.

19 I am just going to let the twelve that has been drawn  
20 stay in there for the time being. Does anybody object to  
21 that?

22 MR. POPE: No objection.

23 MR. SCHUSTERMAN: No objection.

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

25 These draws will be for the alternates. The first

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1 alternate.

2 THE CLERK: Yes, Your Honor. The strikes will be one  
3 for The State and two for the defense per alternate.

4 Juror Number 34 Ronald Brissey (W/M).

5 What sayeth for The State, Mr. Solicitor?

6 MR. POPE: Present Mr. Brissey.

7 THE CLERK: What sayeth for the defense?

8 MR. SCHUSTERMAN: Please swear the juror.

9 THE CLERK: Have a seat in the jury box, please, sir.

10 Juror Number 6 Eugene Ansley (W/M).

11 What sayeth for The State, Mr. Solicitor?

12 MR. POPE: Present Mr. Ansley.

13 THE CLERK: What sayeth for the defense?

14 MR. SCHUSTERMAN: Please excuse the juror in this  
15 case.

16 THE CLERK: Return to your seat, please, sir.

17 Juror 148 Ted Martin (W/M).

18 What sayeth for The State, Mr. Solicitor?

19 MR. POPE: Present Mr. Martin.

20 THE CLERK: What sayeth the defense?

21 MR. SCHUSTERMAN: Please excuse the juror in this  
22 case.

23 THE CLERK: Return to your seat, please, sir.

24 The State has exhausted no strikes, the defense two.

25 Juror 76 Lori Frazier (W/F).

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1           What sayeth for The State, Mr. Solicitor?

2           MR. POPE:   Present Ms. Frazier.

3           THE CLERK:   What sayeth for the defense?

4           MR. SCHUSTERMAN:   Please swear the juror.

5           THE CLERK:   Have a seat in the jury box, please,  
6           ma'am.

7           THE COURT:   You will be our two alternates and I am  
8           going to let you if you would they will escort you back to  
9           the jury room at this time. Those of you who are not  
10          chosen we are not quite completely done. I am going to let  
11          you go to the jury assembly room, hopefully, for the last  
12          time. Please go and follow the bailiff to the jury room  
13          while we take up a couple of matters of law and then we  
14          will be back with you.

15          So, bailiffs, escort them back to the jury assembly  
16          room.

17          Anything from The State before the jury is sworn?

18          MR. POPE:   Yes, sir, I would ask that they not be  
19          sworn until we finish taking up the other pretrial  
20          matters. If you want to give them instructions, ---

21          THE COURT:   Anything before I dismiss the rest of the  
22          panel?

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

24          THE COURT:   Anything from the defense?

25          MR. SCHUSTERMAN:   Nothing from the defense, Your

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1 Honor.

2 THE COURT: If the SLED agents will please come  
3 around, those who are going to be participating.

4 (Complied.)

5 The Clerk will administer an oath.

6 THE CLERK: Raise your right hands, please. You shall  
7 well and truly keep every person sworn of this jury in  
8 your care. You shall not speak to them or allow anyone to  
9 speak to them concerning this case, so help you God.

10 (Each agent answered in the affirmative.)

11 COURT REPORTER: I need their names.

12 THE COURT: All right, would you please each of you  
13 give us your name, just give it to the court reporter.

14 Bobby Counts C-o-u-n-t-s; Jerry Sloan; Russell  
15 Feaster; Elizabeth Cooke C-o-o-k-e.

16 All right, if there is nothing else, I am going to  
17 bring the panel in and release them. Bring in the panel.

18 (Panel returns to courtroom.)

19 We are through with you and we want to thank you for  
20 your courtesies, it's not an easy endeavor for any of us.  
21 I appreciate your cooperation. I appreciate your candor; I  
22 appreciate your timeliness. I am from York County and you  
23 have been very, very kind down here and certainly we  
24 wouldn't mind coming back. I don't know that I will see  
25 you all ever again, but thank you an awful lot and we do

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1 have your pay. If you want to get paid, go back to the  
2 jury assembly room and you will be given a check. If you  
3 don't, well, I don't understand it, but -- so go to the  
4 jury assembly room and thank you an awful lot.

5 (Panel exits courtroom.)

6 The State and the defense, I am going to bring in the  
7 jury. We will not administer the oath to them. I will  
8 instruct them that that will be done. I will appoint a  
9 foreman tomorrow. I will get everybody started on their  
10 way. Anything before I do that?

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

12 THE COURT: Anything from the defense?

13 MR. SCHUSTERMAN: No, sir, Your Honor.

14 THE COURT: Bring in the jury.

15 Just sit anywhere for right now. When you get to  
16 York County, the two alternates will have certain seats  
17 and the foreman, who I will appoint tomorrow will have a  
18 certain seat, so the rest of you can sit anywhere. I am  
19 going to give you a few preliminaries. We will be  
20 traveling to York now in just a few minutes. I hope all of  
21 you are packed. The SLED agents will talk to you about  
22 your car situations, if any of you have cars that are here  
23 that you need to have elsewhere or if you want to park  
24 them here. Those of you some has expressed a concern about  
25 having the ability to exercise during this period of time.

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1 I don't know whether where you all are staying have a  
2 health room or whatever. If it does, I am sure the SLED  
3 agents will help you make access to that. Somebody -- I  
4 don't know if anybody on this panel had expressed an  
5 interest in jogging. I think those things can be taken  
6 care of. You are not going to be confined in a room, but  
7 you are going to be sequestered. You are not to receive  
8 any information about this trial from anyone or any source  
9 outside the courtroom. You are not to receive any  
10 information about it through radio, tv, newspaper, any  
11 other fashion whatsoever.

12 I am going to try not to abuse your time. I am going  
13 to try to make this go as fast as possible. We will work  
14 on Saturday. We will work at least a half of a day on  
15 Sunday. I do like to let people have Sunday morning off  
16 and we sometimes make arrangements for services or at  
17 least some way to have some interchange for those who wish  
18 to in regard to Sunday. Now, you won't be completely  
19 isolated arrangements will be made so you can keep in  
20 contact with your family. Your family will be given - you  
21 will provide you with emergency numbers if somebody has an  
22 emergency so they can call and get in touch with you  
23 through us, but, again, there will be the availability for  
24 you to keep up with your folks back home.

25 Now tomorrow we still have two or three preliminary

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1 matters that I must take up with the attorneys outside  
2 your presence, so we are not going to actually start with  
3 you until one o'clock and, again, this is not going to be  
4 like what you have seen on tv. You will be in the  
5 courtroom almost constantly with some exceptions because  
6 there are some things that we have to do outside of your  
7 presence, but I assure you we are going to move this along  
8 as fast as we can without abusing the rights of anybody,  
9 hopefully, including those of you.

10       So with that said I am not going to have them  
11 administer the oath to you at this time. We will do that  
12 tomorrow, but you are this jury. So while you actually  
13 haven't been sworn in, you are a juror and you have to  
14 abide by the rules. You cannot discuss the case among  
15 yourselves, you really don't know what it's about,  
16 although you know more than some jurors do at this stage  
17 because of the enhanced voir dire we have in these  
18 matters, but you don't know enough to discuss the case and  
19 you don't know enough to try to make up your own mind.  
20 There will be a point in the trial when I instruct you to  
21 deliberate and I will instruct all of you to jointly  
22 discuss the case and render a unanimous verdict. Prior to  
23 that time you are not equipped, you don't have a tool as I  
24 call it to make a reasonable decision, so do not try. If  
25 you have to communicate with me, please, when you are in

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1 the courthouse, let one of the bailiffs know. More than  
2 likely I am not able to discuss matters with you outside  
3 the presence of the attorneys, that is, if we have  
4 anything to talk about, we have to do it perhaps not in  
5 open court, but at least where the attorneys can be  
6 present and where the court reporter can make a record.

7 Now with that said I am going to let you go to the  
8 jury assembly room -- is that where -- just back here --  
9 just to the jury room and, Mr. Counts, one of the SLED  
10 agents who will be working with you all, will talk to you  
11 all at this time.

12 (Jury exits courtroom at 3:15 PM)

13 Anything before we dismiss?

14 MR. POPE: Nothing from The State, Your Honor.

15 THE COURT: Anything from the defense?

16 MR. SCHUSTERMAN: Nothing from the defense, Your  
17 Honor.

18 THE COURT: All right, our schedule tomorrow will be  
19 -- did I say 9:00 or 9:30?

20 MR. POPE: 9:30.

21 THE COURT: We will start at 9:30. We have some  
22 in-camera motions, we will have the jury coming over at  
23 1:00. Hopefully, my opening tomorrow should not take but  
24 ten to fifteen minutes. Each of you will have then the  
25 opportunity, of course, the defense will not have to take

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1 advantage of that opportunity, but the Solicitor and the  
2 defense will have the opportunity to make their opening  
3 statements and then we will start with whatever witnesses  
4 are available tomorrow. We will plan to go until around  
5 5:30 or 6:00, not later than 6:30. We may go a little over  
6 6:00 on each day. We do plan to start late on Sunday, that  
7 doesn't mean three o'clock in the afternoon, it probably  
8 means around Noon or maybe twelve-thirty or one at the  
9 latest.

10 MR. POPE: Your Honor, as to tomorrow that may be the  
11 only day towards the end of the day witness-wise that we  
12 would slow down. Certainly, I will make calls, but I kind  
13 of anticipate that, but I assure you that, you know, if we  
14 finish up at five or something tomorrow, we can certainly  
15 be prepared after that to always to go later. I don't  
16 think that is going to be a problem, but I call that to  
17 the court's attention at this time.

18 THE COURT: All right, any matters for the record by  
19 The State?

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

21 THE COURT: Any by the defense?

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

23 THE COURT: All right. Thank all of you; it has been  
24 three hard days. I appreciate the way everybody has  
25 handled themselves and I thank the SLED agents; I

BETH ANN JAYNE (IN CAMERA)

DIRECT

1 particularly thank Ms. Godard and her fine staff for all  
2 of their help and, of course, Mrs. Nicholson. So we will  
3 see you all back in York County tomorrow.

4 MR. SCHUSTERMAN: Thank you, sir.

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6 THE COURT: Let the record show that Mr. Hughes and  
7 counsel are present. We have, of course, have the jury  
8 panel. They have not been sworn. They have been instructed  
9 in regard to certain matters on the record. They will be  
10 here at 1:00. We still have some in-camera matters to  
11 conclude this morning. I am going to call on the Solicitor  
12 to move forward.

13 MR. POPE: May it please the court, Your Honor, The  
14 State would call Ms. Beth Ann Jayne, please.

15 BETH ANN JAYNE, being duly sworn,  
16 testified as follows (in camera):

17 DIRECT EXAMINATION

18 BY MR. POPE

19 Q If you would, state your name and spell it for the  
20 court reporter, please.

21 A Beth Ann Jayne - B-e-t-h A-n-n J-a-y-n-e.

22 Q Ms. Jayne, how old are you?

23 A Twenty-three.

24 Q And where do you go to school?

25 A I am in medical school.

1 Q I take you back now to September 25, 1992, were you in  
2 school then?

3 A Yes, I was.

4 Q Where was that at?

5 A Davidson College in North Carolina.

6 Q And did something unusual happen to you on the night  
7 of September 25, 1992?

8 A Yes, it did.

9 Q Would you relate to the court what that was, please?

10 A I was held up at gun point and my car and wallet were  
11 taken.

12 Q Could you relate to the court the specifics of how you  
13 became to be held up, where you were going and what  
14 occurred?

15 A I and my boyfriend at the time had decided to go out  
16 for dinner. We had pulled into the parking lot of the  
17 restaurant that we finally selected and at that time two  
18 men came to us and separated in front of the car. One man  
19 came up to me and another one went over to Sean and I was  
20 on the passenger side of the car for a time and taken  
21 around to the driver's side where I saw Sean face down on  
22 the ground with a gun to the back of his head.

23 Q Ms. Jayne, when you say the car, what car was that?

24 A That would have been my car.

25 Q Okay, could you relate for us and the judge what type

1 of car that was?

2 A 1986 Buick Century, four doors, gray.

3 Q Ms. Jayne, I'll show you what has been marked as  
4 State's Exhibit 33, 34 and 35 for the purpose of this  
5 hearing. I will ask you to take a look at this and see if  
6 you can identify it, please, ma'am.

7 A Those are pictures of my car, the car that I had then.

8 Q Okay, do you still have that car?

9 A Yes, I do.

10 Q Could you relate for the court what the license, how  
11 that car was licensed?

12 A A New York State plate EMF313.

13 Q And how long had you had that car at that time?

14 A How long had I had it? Since we purchased it in 1986.

15 Q Okay and have you been able to determine the  
16 approximate value of that car?

17 A At that time?

18 Q At that time.

19 A About Five Thousand Dollars. I have spoken with my  
20 father and that's the best estimate we could come up with.

21 Q The night when you went to the restaurant in Charlotte  
22 did you first go to another restaurant?

23 A Yes, we had intended to go to the Cajun Queen  
24 Restaurant, which was in the area. We weren't quite sure  
25 where it was. By the time we got there, it was parents

1 weekend at Davidson College, so it was very crowded. It's  
2 a popular restaurant among the students there and the wait  
3 was too long so we decided to return to a restaurant we  
4 had seen previously.

5 Q Okay, and what restaurant was that?

6 A Bellissimo Restaurant.

7 Q And when you return to Bellissimo, who was driving?

8 A Sean was driving.

9 Q Would you describe to the judge approximately what  
10 time this would have been that evening?

11 A The time we had arrived at the restaurant?

12 Q Yes.

13 A It was probably about a quarter after eight in the  
14 evening.

15 Q Could you describe the lighting there in the parking  
16 lot at the Bellissimo?

17 A It was a well lit parking lot.

18 Q When you say "well lit," were there street lights or  
19 what kind of --

20 A There were street lights on the street. There were  
21 also lights in the parking lot itself.

22 Q You were relating to the court that two gentlemen  
23 appeared - two males appeared?

24 A Yes.

25 Q Would you describe for the judge what you recall how

1 they were dressed?

2 A One of them was dressed in red and the other was  
3 dressed in dark navy or black clothing.

4 Q Okay. And if you could just take it step by step and  
5 relate to the judge what occurred when you pulled up into  
6 the parking lot as far as you and Mr. McMillan exiting the  
7 car and what you saw. If you could relate that to the  
8 judge, please.

9 A We sat in the car for a second debating about whether  
10 or not I should take a jacket in with me if it was going  
11 to be cold after we finished eating. Sean got out of the  
12 car and he closed his door and I was getting out of the  
13 car and about to close my door and there were two men  
14 approaching us from about two and a half car lengths away.  
15 And the two men separated at the front corner passenger  
16 side corner of the car. One came directly to me and the  
17 other went around the hood of the car to the driver's  
18 side.

19 Q The one that came directly to you how was he dressed?

20 A In the dark navy or black clothing.

21 Q Okay and as you were standing on the passenger side  
22 the other individual, the individual in the red, went  
23 around to where Mr. McMillan was?

24 A Yes, sir.

25 Q What did the man in the dark clothing, the man that

1 approached you, what did he say or do?

2 A He told me repeatedly not to look at him. He said,  
3 "Don't look at me" and he repeated that twice more.

4 Q Prior to him saying that had you seen him?

5 A Yes.

6 Q Okay, so where did he stand and where were you located  
7 when he came to that side of the car?

8 A I had just finished closing the passenger door and he  
9 came face toward me and stood between myself and the back  
10 of the parking lot, so, basically, I just crossed my arms  
11 and leaned up against the car that had parked next to me.

12 Q Okay, how close was he to you when he told you not to  
13 look at him anymore?

14 A Probably about two feet.

15 Q Okay, so right - even closer than you and I?

16 A Yes.

17 Q Okay, once you were standing there you said you were  
18 looking down, what did you do next or what occurred next?

19 A He stayed there for a few moments and then he took me  
20 around the hood of the car to the driver's side where I  
21 saw Sean on the ground with a gun to the back of his head.

22 Q Okay and the man in the red was the one that had Sean  
23 down, is that correct?

24 A Yes.

25 Q And so the man in the darker clothing brought you

1 around to the other side where those two were?

2 A Yes.

3 Q All right, once you were brought around to the other  
4 side, what occurred then?

5 A I was handed a set of keys by the man dressed in the  
6 red clothing and told to open the lock of the driver's  
7 side door.

8 Q Where did the keys come from?

9 A From Sean's person.

10 Q And did you, in fact, open that door?

11 A No, they were Sean's set of keys. They did not fit my  
12 car and, obviously, I couldn't open the door, so Sean  
13 directed him toward the correct set of keys in his pocket  
14 and he obtained those and gave those to me to open the  
15 door with.

16 Q At the time that the keys were being retrieved from  
17 Sean he was on the ground?

18 A Yes, he was.

19 Q And the man with the red coat or red jacket was over  
20 him?

21 A Yes.

22 Q Okay, where was the man with the dark colored jacket,  
23 where was he at?

24 A He was standing just over my left shoulder.

25 Q Okay, and you say he was standing over your left

- 1 should, what were you doing at that time?
- 2 A Fumbling with the keys.
- 3 Q Okay, trying to get the keys in?
- 4 A Yes.
- 5 Q And so he would have been standing -- if you were  
6 facing the car, he would have been standing here, is that  
7 correct?
- 8 A Yes.
- 9 Q Now you said earlier that you were told not to look  
10 and I believe you looked down, is that correct?
- 11 A I looked at my arms that were crossed in front of me.
- 12 Q That's when you were on the other side?
- 13 A On the passenger side of the car, yes.
- 14 Q When you walked around, were you able to see one or  
15 two of the individuals?
- 16 A I was able to see the individual who was with Sean on  
17 the ground.
- 18 Q All right, what took place after you got the door  
19 open?
- 20 A After I had opened the door, the individual, who had  
21 been on the ground with Sean, got into the driver's side  
22 of the car, made some threats, put the gun under the seat,  
23 and the other individual went around the back of the car  
24 and couldn't get in because the passenger side door was  
25 locked. The man who had gotten into the driver's side

1 seat recognized that fact, leaned over, and unlocked the  
2 door.

3 Q Okay and again for the court's clarification the one  
4 that got in the driver's side at that time would have been  
5 the one in the red, the same one that was over Sean?

6 A Yes.

7 Q Okay and the one that had originally come to you got  
8 in the passenger side at that time, is that correct?

9 A Yes.

10 Q What, if any, opportunity did you have to look at the  
11 individuals once they began to get in the car when all  
12 this activity took place, the unlocking of the car and the  
13 walking around?

14 A I looked directly at both of them.

15 Q Okay and what happened once the one in the driver's  
16 side let the other one in? What did they do then?

17 A The one in the driver's side rolled down the window  
18 threatening our lives again and they pulled out of the  
19 parking lot.

20 Q Did you see any indication that the one in the  
21 driver's side, the one with the red that had the pistol,  
22 was in any way forcing the other individual, the one that  
23 was guarding you, forcing him to be involved?

24 A No, they seemed to act together.

25 Q After they left with the car, Ms. Jayne, what did you

1 do next?

2 A We ran into the restaurant and called 911 to report  
3 the car stolen.

4 Q And you spoke to law enforcement there in Charlotte,  
5 is that correct?

6 A Yes, the owners of the restaurant tried to calm us  
7 down while we waited for the police to arrive and then an  
8 officer came to take our statements.

9 Q Some time later did you have an opportunity to come  
10 down to Rock Hill in reference to the recovery of your  
11 car?

12 A Yes, I did.

13 Q Would you describe that to the judge how that  
14 occurred?

15 A By the time we finally got back to Davidson College it  
16 was late and one of the Davidson Campus police officers  
17 came to me to let me know that my car had been used in  
18 conjunction with a homicide and that I needed to go down  
19 to the Charlotte Police Department. He took us there. Once  
20 we were there, a Charlotte police officer took us down to  
21 Rock Hill and once there we gave statements and were shown  
22 photo lineups.

23 Q This now would have been on into the morning of the  
24 26th, is that correct?

25 A Yes.

1 Q And let me ask you during the time that you spent  
2 before getting to Rock Hill with law enforcement you said  
3 like the campus police call and then you went to  
4 Charlotte, did anybody indicate who you should pick in any  
5 lineups or did they give you any type of description or  
6 suggest who you should pick or identify?

7 A Not at all, no.

8 Q Now once you got down to Rock Hill were you given the  
9 opportunity to view a computer screen and ultimately a  
10 computer printout of a series of photographs?

11 A Yes.

12 Q I'll show you State's Exhibit 6 and ask you to take a  
13 look at that. See if you recognize that series of  
14 photographs.

15 A Yes, I do.

16 Q And was that the series of photographs you were shown  
17 that evening?

18 A Yes.

19 Q And I'll ask you were you able to identify anybody in  
20 that series of photographs?

21 A Yes.

22 Q Who were you able to identify?

23 A This individual here.

24 Q And that would be top right hand corner?

25 A Yes.

1 Q Did you have an opportunity to designate or indicate  
2 somehow on another sheet who you would actually pick?

3 A Yes.

4 Q I'll show you State's Exhibit 9 and ask if you will  
5 take a look at that and tell me if you can identify that.

6 A Yes.

7 Q And what is that?

8 A Those are my initials, the date and time.

9 Q Okay, was that in indicating the individual you had  
10 picked?

11 A They asked me to identify the photograph that I had  
12 selected, yes.

13 Q Did anyone tell you in looking at this that  
14 necessarily the people who had stolen your car would or  
15 would not be in these pictures?

16 A No, they did not.

17 Q Did they tell you who to pick or in anyway suggest who  
18 you picked?

19 A No.

20 Q And the individual that you picked from these  
21 photographs how did you know to identify him, where had  
22 you seen him before?

23 A I had seen him earlier that evening.

24 Q And was that in reference to the ---

25 A The incident of my car being stolen.

1 Q Okay and which one was he, was he the one in the red  
2 or the one in the dark?

3 A In the dark clothing.

4 Q Okay and so was he the one that you had the most  
5 direct dealings with?

6 A Yes.

7 MR. POPE: Your Honor, I would like the record reflect  
8 State's Exhibit 9 and State's Exhibit 6 have previously  
9 been indicated as the photo lineup of the defendant.

10 Q Ms. Jayne, do you see the man that confronted you at  
11 the side of that car, do you see him in the courtroom here  
12 today?

13 A Yes, I do.

14 Q And could you indicate him to us?

15 A He is the man sitting behind the defense table in the  
16 white shirt.

17 MR. POPE: Let the record reflect that she has  
18 indicated the defendant Hughes.

19 Q Ms. Jayne, could you tell the court why you are  
20 identifying him as such, is it based on just the fact that  
21 he is behind the defense table?

22 A No, I remember his face.

23 Q And you remember his face from what incident?

24 A From the car jacking and robbery.

25 THE COURT: I beg the court's indulgence.

1 Q Ms. Jayne, one final question, on the vehicle that you  
2 identified, was that a straight drive or an automatic?

3 A It is an automatic.

4 Q Answer any questions the defense may have.

5 CROSS EXAMINATION

6 BY MS. BRICE

7 Q Ms. Jayne, my name is Chris Brice. I am an attorney  
8 representing Mr. Hughes and I just have a few questions  
9 that I would like to ask you today.

10 What evening was it? Do you recall the date?

11 A September 25, 1992.

12 Q And I want to go back in time to that evening. I don't  
13 want to go over your statements too much, but tell me I  
14 believe that you had gone to Cajun Queen originally, is  
15 that correct?

16 A Yes.

17 Q And had you seen the suspects prior to going to Cajun  
18 Queen?

19 A Yes -- well, I don't remember if it was prior to the  
20 Cajun Queen or after having been to the Cajun Queen. We  
21 weren't very certain where it was located so we had driven  
22 around for a little bit and had asked some directions.

23 Q And if you would, tell me what you recollect about  
24 that.

25 A I just remember two men walking down the street. I was

1 sitting on the passenger side and I generally look out the  
2 window.

3 Q What street was that?

4 A I don't remember; I was lost, didn't know where I was,  
5 probably Monroe Road.

6 Q So to the best of your recollection you recall them  
7 walking on Monroe Road?

8 A Yes.

9 Q Do you recall specifically where they were walking on  
10 Monroe Road?

11 A No, I'm not familiar with the area of Charlotte.

12 Q And from the time that you originally thought you saw  
13 two black fellows walking on Monroe Road, how long was it  
14 between the time that you saw them and the time you  
15 actually parked your car at the Bellissimo Restaurant?

16 A I don't really recall.

17 Q At that time do you recall if you went to the Cajun  
18 Queen immediately after that point?

19 A I don't recall if I saw them before arriving at the  
20 Cajun Queen or afterwards.

21 Q So you are not sure what type of time frame it was  
22 from the time you saw them walking down a road to the time  
23 you were parked at the Bellissimo Restaurant?

24 A No, I don't recall.

25 Q And do you recall if it was, in fact, the suspects Mr.

1 Hughes and Mr. Forney or could it have been anybody  
2 walking on the road?

3 A It could have been anyone, the clothing was similar.

4 Q So as I understand it it was probably just more of a  
5 passing glance of someone ---

6 A Just saw two men walking down the sidewalk.

7 Q So you get to the Bellissimo Restaurant finally after  
8 going to the Cajun Queen, is that correct?

9 A Yes.

10 Q All right and as I recall I believe that you were --  
11 why don't you tell me where you were parked.

12 A Where we were parked?

13 Q The car was parked.

14 A The restaurant faces the street ---

15 Q Right.

16 A --- and the parking for the restaurant is  
17 perpendicular to the street and we pulled up in a spot  
18 that was pretty much straight on with the sidewalk that  
19 led to the front door of the restaurant.

20 Q So I am going to use the jury box here as the front  
21 door of the Bellissimo Restaurant and there is -- so how  
22 was the parking, was it coming out this way ---

23 A No.

24 Q --- or was it coming this way?

25 A If this is the front of the restaurant here, the

1 parking would have been this way.

2 Q So coming this way, side to side ---

3 A Yes.

4 Q Okay. And I believe -- so you came into the parking  
5 lot and around and parked in the front?

6 A The entrance to the restaurant would have been located  
7 here.

8 Q I think there are two entrances you could in either  
9 way, but what you are saying you came in from ---

10 A We came in from there and pulled in.

11 Q Okay, so your car the front door would have been we'll  
12 say right here ---

13 A Uh-huh.

14 Q --- and your car was parked right here?

15 A No, farther behind you, there wasn't any parking in  
16 front of the restaurant property, it was beside the  
17 restaurant.

18 Q So you were to the side parking lot - I think there is  
19 some shrubbery there?

20 A I wasn't noticing the topo of the area at the time.

21 Q I'm trying to get a picture of where you were  
22 approached. I believe the front of the restaurant is here  
23 and there is some parking in the front and there is a huge  
24 parking lot to the side, ---

25 A Yes.

1 Q --- so what you are testifying to is that you were  
2 parked on the side?

3 A Yes.

4 Q And I believe your testimony was that you were parked  
5 relatively close to the street?

6 A No, we were parked close to the front corner of the  
7 restaurant.

8 Q Okay, all right. So if this was the side right here  
9 of the restaurant, you were parked more so over here?

10 A We were parallel with the front plane of the  
11 restaurant.

12 Q Okay. But on the side?

13 A Yes.

14 Q Is that right, I don't want to testify, I'm just  
15 trying to get a mental picture.

16 A Uh-huh. If you can see where the woman in blue is,  
17 that's where we were parked in reference if this  
18 microphone was the front door of the restaurant.

19 Q All right, thank you. Okay, and the two of you were  
20 sitting in the car; tell us what happened then.

21 A I asked Sean should I bring a jacket into the  
22 restaurant if it would be cold by the time we finished  
23 eating and he got out of the car, closed his door, I  
24 reached for my jacket from the back seat and was getting  
25 up out of the car and I was about to close my door and I

1 noticed two men approaching me or the car.

2 Q And where were they approaching the car?

3 A About -- when I first noticed them they were probably  
4 two and a half car lengths down the row toward the front  
5 of the car.

6 Q Were they coming from behind the restaurant?

7 A I don't know where they came from; I just saw them  
8 there and they were walking.

9 Q Were they coming from behind the car or from in front  
10 of the car?

11 A They were walking in front of the hoods of the cars.

12 Q In the front of the hoods of the cars.

13 A Uh-huh.

14 Q Okay. And Mr. McMillan was already out of the car at  
15 this time?

16 A Yes.

17 Q And I believe you were still in the car getting your  
18 jacket?

19 A I was getting out of the car when I first saw them.

20 Q And the car door was unlocked or locked at the time?

21 A Locked.

22 Q Tell me what happened then.

23 A I got out of the car, closed the door, and by that  
24 time they had reached about the front corner of my car and  
25 they divided at that point.

1 Q So you were out of your car, I guess you locked the  
2 door and closed the door?

3 A No, I had already locked it before I started to get  
4 out.

5 Q How could you get out if had locked the door?

6 A The door was open and while sitting in the car, I ---

7 Q I got you, okay, all right. So you get out of the car  
8 and they approached you.

9 A Yes.

10 Q And tell me what happened next?

11 A They separated at the front of the passenger side  
12 corner of the car. One person came to me and the other one  
13 went to the driver's side of the car.

14 Q And tell me what happened? What did Mr. Hughes say to  
15 you at this time?

16 A He said, "Don't look at me, don't look at me, don't  
17 look at me."

18 Q I think in one of your statements you also said that  
19 he said several times to you something about taking your  
20 time.

21 A That was afterwards, after he had taken me around to  
22 the driver's side of the car.

23 Q But he said, don't look at you, don't look at you and  
24 then you've already seen him by this point was your  
25 testimony, correct?

1 A Yes.

2 Q Tell me what happens next?

3 A We stood there for a few minutes. I leaned up against  
4 the car that had parked right next to us and I just waited  
5 to see what was going to happen. He took me around the  
6 hood of the car to the driver's side.

7 Q How much time had passed while you were standing I  
8 guess you said you were standing leaning back against ---

9 A It was like this (demonstrating).

10 Q How long did you -- I guess it seemed like an  
11 eternity, but how long do you believe that you were  
12 leaning against the back of the car?

13 A I honestly could not give you a very accurate time,  
14 probably less than a minute, maybe a minute. I'm not sure.

15 Q That's fine. And while you were leaning against the  
16 car with your arms folded, where was Mr. Hughes, was he  
17 off to your left?

18 A He was standing to my front left straight on.

19 Q And was there a conversation that was taking place  
20 between Mr. Hughes and Mr. Forney?

21 A Not at that time, no.

22 Q So, basically, what kind of conversation was taking  
23 place? Was anybody talking?

24 A I couldn't hear if there was anything going on on the  
25 other side of the car or not.

1 Q But you don't recall Mr. Hughes saying anything at  
2 this time other than just "Don't look at me, don't look at  
3 me"?

4 A Correct.

5 Q But you don't recall any conversation going on between  
6 Mr. Hughes and Mr. Forney?

7 A No.

8 Q And there wasn't other than just what he was saying,  
9 you know, "Don't look at me, don't look at me," there were  
10 no conversations going on between you and Mr. Hughes?

11 A No.

12 Q Tell me what happened next.

13 A He took me around the front of the car to the driver's  
14 side.

15 Q Did he say go around front or what did he say to you?

16 A He just walked me over.

17 Q Okay and you go around to the front of the car and  
18 what happened next?

19 A I was handed a set of keys by the other man and told  
20 to unlock the driver's side door.

21 Q What did you say at that time?

22 A I said, "These are the wrong keys."

23 Q And what did you see?

24 A I saw Sean face down on the ground with the man over  
25 him.

1 Q How was he, was he straddle him?

2 A He had a knee in his back and a gun to the back of his  
3 head.

4 Q Can you show me exactly where that gun was to the back  
5 of his head?

6 A Pointing right here right at the base of his skull.

7 Q Basically, the nape of your neck, ---

8 A The base of his skull.

9 Q And that was the man who had the sweat suit, Mr.  
10 Forney?

11 A Yes.

12 Q What happened next? You got the keys to the car?

13 A I was handed the right set of keys. I said, "These are  
14 the wrong keys" I handed them back to him. Sean at that  
15 time was telling him where to find the proper set of keys.  
16 He found them, handed them to me, and I was fumbling with  
17 them and Sean was yelling it's the square GM key, which is  
18 for the ignition, and I was trying to stick that in the  
19 hole and it didn't fit and I was very nervous and at that  
20 time Mr. Hughes told me to take my time several times.

21 Q And do you recall Mr. Hughes saying anything to Mr.  
22 Forney at this time?

23 A I wasn't listening.

24 Q Okay, but you do recall him saying just take your  
25 time, take your time with the key?

- 1 A Not in that manner, but yes.
- 2 Q Can you tell me what kind of manner it was?
- 3 A He was very anxious, but at the same time directive.
- 4 It's hard to describe it. He wasn't gentle.
- 5 Q Would you tell me then what happened next?
- 6 A I finally figured out which key to use, unlocked the
- 7 door and handed the keys back to the man in the red. He
- 8 got up off the ground and into the driver's seat, pointed
- 9 the gun at me and made some threats. At that time the
- 10 other man went behind me around the back end of the car
- 11 over to the passenger side and couldn't get into the car
- 12 because it was locked. The man in the driver's side
- 13 recognized that fact, leaned over and unlocked the door,
- 14 he got in, the man on the driver's side rolled down the
- 15 window, made some more threats. Previous to that he had
- 16 asked me if I had any money twice and took my wallet.
- 17 Q And who did that?
- 18 A The man in the red.
- 19 Q Did Mr. Hughes ever ask you for any money?
- 20 A No.
- 21 Q So, basically, all that Mr. Hughes ever said to you
- 22 during this event that evening was "Don't look at me,
- 23 don't look at me, don't look at me" and "Take your time,
- 24 take your time" or "Take your time, take your time"?
- 25 A Yes.

1 Q And is it your testimony that Mr. Hughes went around  
2 to the other side, the passenger side, fumbled with the  
3 door a couple of times? Was it Mr. Forney who unlocked the  
4 door?

5 A Yes, it was.

6 Q And they left the Bellissimo Restaurant?

7 A Yes.

8 Q When -- I believe it was your testimony on direct that  
9 you went inside the Bellissimo, they called 911, and I  
10 believe an officer responded, is that correct?

11 A Yes.

12 Q So you didn't go to the police station then?

13 A I couldn't get to the police station; I had no car: I  
14 waited there for someone to come.

15 Q The police officer came. Did you give the police  
16 officer a statement at the Bellissimo or did you go to --

17 A We gave a statement in the parking lot of the  
18 Bellissimo.

19 Q Okay. And at the time that you gave a statement what  
20 did you say about being able to identify the suspect?

21 A I told the officer that I wasn't sure if I could  
22 identify anyone or not.

23 Q When you got to Rock Hill -- tell me the circumstances  
24 that led to your getting to Rock Hill.

25 A I was contacted by Davidson police officer and told

1 that my car had been recovered, but it had been used in a  
2 homicide and that I needed to go down to Charlotte. He  
3 drove myself and Sean McMillan down to Charlotte. From  
4 there we were taken by a Charlotte police officer to Rock  
5 Hill.

6 Q And so you knew that the car had been used in a  
7 homicide, is that right?

8 A Yes, I did.

9 Q And did you know what type of homicide?

10 A I was informed by the Davidson police officer that it  
11 had been a law enforcement officer.

12 Q So you were informed on your way from Davidson to Rock  
13 Hill that it was a law enforcement officer?

14 A Yes.

15 Q When you got to the police station, what happened  
16 next?

17 A Which one?

18 Q Rock Hill, I'm sorry.

19 A In Rock Hill we were taken into a conference room and  
20 asked to tell what had happened to us that evening. The  
21 two of us related the incident to the people in that room  
22 and we were taken separately into rooms to give our  
23 statements and we were taken separately into rooms to go  
24 through a photo lineup.

25 Q And when -- did they give you any indication as to who

1 you were identifying as far as not a description of anyone  
2 certainly, but did they give you any indication as to who  
3 you were picking out of this lineup?

4 A No.

5 Q Did they give you any indication as to what reason you  
6 were making a photo ID?

7 A No, they did not, no.

8 Q Did they say to you we would like you to identify who  
9 robbed you that evening? What did they exactly -- why did  
10 you think that you were trying to look at photographs?

11 A Well, I had my own ideas, no one ever said anything.  
12 I, obviously, didn't think I was going to identify one of  
13 my college professors, but they just showed me the photo  
14 lineups and said, "Do you recognize anyone in these  
15 pictures."

16 Q And you did recognize someone in the picture that  
17 evening?

18 A Yes.

19 Q And who was that?

20 A That was the picture that I picked out, the man in the  
21 dark clothing from earlier that evening.

22 Q I am going to show you State's Exhibit 6. Can you show  
23 me on there who you picked out?

24 A Yes, this man right here.

25 Q Okay and do you recall if those were the clothes he

1 was wearing that evening?

2 A I don't recall, they are of similar color, but I don't  
3 recall if that is what he was wearing.

4 Q Do you recall if he was wearing short sleeves or long  
5 sleeves that evening?

6 A I believe he was wearing long sleeves, but I'm not  
7 certain. I believe that is what he was wearing, but I'm  
8 not certain.

9 MS. BRICE: I beg the court's indulgence for just one  
10 moment.

11 THE COURT: Certainly.

12 Q Ms. Jayne, did either of the suspects at that time did  
13 either of them have a ball cap on or any type of clothing  
14 like that?

15 A I recall someone wearing a cap, yes, it's been a few  
16 years. Yes.

17 Q Do you recall what color it was?

18 A No, I don't.

19 Q Do you recall who had the ball cap on whether or not  
20 it was Mr. Forney, who was standing over Mr. McMillan, or  
21 Mr. Hughes?

22 A At this time, no, I don't recall.

23 Q Can you - I think it was your testimony that -- you  
24 tell me -- when you went around the car, can you tell me  
25 how Mr. Hughes led you around the car?

1 A He physically started me walking and then just  
2 remained behind me until we got around to the driver's  
3 side.

4 Q Did he direct you, I mean, what kind of physical  
5 contact did you have?

6 A As far as I remember just placing his arm on my  
7 shoulder and moving forward.

8 Q When he placed his arm on your shoulder and moved you  
9 forward, was he constantly pushing you forward, was he  
10 aggressive and pushing you or was he just -- did he grab  
11 you by the shoulder and then you walked to the front of  
12 the car?

13 A He was firm and directive, but it wasn't pushy, pushy.

14 Q I believe it was your testimony that when you got  
15 around to the other side of the car you saw Mr. McMillan  
16 face down by the car, is that correct?

17 A Yes.

18 Q Was he in between two cars or was it just --

19 A In between two cars.

20 Q It was between two cars?

21 A Yes.

22 Q And he was down on the ground and you saw Mr. Forney I  
23 think you said he had one knee to the back and a gun to  
24 the back of his head, is that correct?

25 A Yes.

1 Q And at that time did Mr. Forney make any threats to  
2 you?

3 A During that time he did.

4 Q What did he say?

5 A He said that if Sean moved he would kill me, if I  
6 moved he would kill me.

7 Q This is while he was standing over -- you saw him  
8 actually with a gun at that time?

9 A Yes.

10 Q And were his threats about shooting someone continual?

11 A They were interspersed throughout the whole event.

12 Q Can you describe that for me?

13 A I don't know what you mean.

14 Q Well, ---

15 A When he was down on top of Sean, ---

16 Q Right.

17 A --- that was, "If you move, I'll kill you" in  
18 reference to Sean. Once he got up into the driver's --  
19 sitting in the driver's seat, Sean was no longer a target,  
20 so the gun was pointed at me. The threat was made to Sean  
21 "If you move, I'll kill her" - other words were used.

22 Q When he shouted that, was the window rolled down?

23 A After he got into the car, he rolled the window down,  
24 after he got into the car and closed the door, but prior  
25 to that he made threats to me and asked me if I had any

1 money and took my wallet and then once the car was  
2 started and they were ready to pull out the window was  
3 rolled down and the threats were repeated.

4 Q So at that time Mr. Forney was driving the car from  
5 the scene ---

6 A Yes.

7 Q --- that you recall?

8 A Yes.

9 Q Thank you very much, Ms. Jayne.

10 MS. BRICE: I have no further questions, Your Honor.

11 REDIRECT EXAMINATION

12 BY MR. POPE

13 Q Ms. Jayne, Ms. Brice had asked you and I kept talking  
14 about the guy in the dark and the guy in the red. The guy  
15 in the dark, the man that approached you that you  
16 identified in the courtroom today and on lineups, that was  
17 Mr. Hughes, is that correct?

18 A Yes.

19 Q You now know that.

20 A I now know that, yes.

21 Q Also, I believe that evening you were not able to  
22 identify Mr. Forney. He was the one on the other side with  
23 Sean McMillan, is that correct?

24 A Yes.

25 Q But at some point later you did, in fact, were able to

1 identify him too?

2 A Yes, I was.

3 Q And that was Dwayne Eric Forney that you identified?

4 A Yes.

5 Q Ma'am, is there any doubt in your mind these  
6 individuals that you identified are the ones that took  
7 your car and robbed you that night?

8 A No, I don't.

9 Q Thank you.

10 THE COURT: Recross?

11 MS. BRICE: No, sir.

12 THE COURT: Please step down.

13 MR. POPE: The State would call Sean McMillan.

14 MR. SCHUSTERMAN: Before we do that, Solicitor, this  
15 might be a time to put on the record to address the issue  
16 of the subpoena that Miss Jayne is under and talk about  
17 the continuing subpoena, that we will not be releasing her  
18 from that subpoena.

19 THE COURT: I understood she was going to testify  
20 later.

21 MR. SCHUSTERMAN: She is, but I thought when she  
22 testifies later it's going to be in front of the jury and

23 --

24 THE COURT: Ms. Jayne, you are subject to a subpoena  
25 and here by virtue of a subpoena, are you not?

1 MS. JAYNE: Yes, I am.

2 THE COURT: All right, you have completed your  
3 testimony today and even though you will be free to leave  
4 to go back to school, you will be subject to that subpoena  
5 throughout the course of the trial and subject to recall,  
6 do you understand that?

7 MS. JAYNE: Yes, I do.

8 THE COURT: Okay, thank you.

9 MR. POPE: Your Honor, I have explained to Ms. Jayne  
10 and I also would like to put on the record that I am more  
11 than willing to stipulate and I understand the defense may  
12 not wish to accept that stipulation, but based on her  
13 situation with medical school I am certainly willing to  
14 stipulate to any testimony that would be properly drawn  
15 from any of her statements.

16 THE COURT: All right, thank you.

17 MR. SCHUSTERMAN: Thank you, sir.

18 THE COURT: Call your next witness.

19 SEAN MCMILLAN, being duly sworn, testified  
20 in camera as follows:

21 DIRECT EXAMINATION

22 BY MR. POPE

23 Q Mr. McMillan, if you could, state your name, please,  
24 and spell it for the court reporter.

25 A Sean McMillan S-e-a-n M-c-M-i-l-l-a-n.

1 Q And how old are you, Mr. McMillan?

2 A Twenty-three.

3 Q You are currently a student?

4 A Yes, I am.

5 Q And where is that?

6 A The University of Florida College of Medicine.

7 Q And back in 1992 were you a student at that time?

8 A Yes, I was at Davidson College.

9 Q And I want to bring your attention back to September  
10 25th of 1992. If you could, relate to the court what, if  
11 anything, unusual happened to you on that evening.

12 A My girlfriend and I, Beth Ann, had gone into Charlotte  
13 for dinner and we were robbed at gun point and our vehicle  
14 was taken.

15 Q Could you describe for the judge in specifics from the  
16 time you left the college, what your plans were and what,  
17 in fact, occurred.

18 A We had tentatively planned to go to the Cajun Queen  
19 Restaurant; it was our first time; we were going to try  
20 that for the first time. We got there and it was crowded  
21 and there was an unusually long wait, so we decided to try  
22 somewhere else. We originally got a little bit lost trying  
23 to find it and we had seen a place a little further down  
24 the road that we decided we would go back and try there.  
25 We overshot it when we went to try to find it again,

1 turned around in a parking lot, and came back to it and we  
2 parked along the side of the building where the parking  
3 was.

4 Q Who was driving the vehicle?

5 A I was.

6 Q And whose car were you in?

7 A Beth Ann's.

8 Q And what type car was that?

9 A An '86 Buick Century, four door sedan, gray.

10 Q And so you said you parked along the side of the  
11 building. Could you relate to the court what the lighting  
12 was in that area?

13 A The parking lot area was lit. There was a street light  
14 and the parking spaces are sort of at an angle coming off  
15 the road on the side of the building. We parked right at  
16 the corner pretty much of the building where we were  
17 facing where the front door opened to the sidewalk and  
18 when we got out -- do you want me to proceed?

19 Q Yes.

20 A We sat in the car for just a moment trying to decide  
21 if she was going to keep her jacket with her or leave it  
22 in the car and at that point I got out, stepped out of the  
23 car, locked the door and shut it and she had her door open  
24 and was reaching for her coat and at that point I noticed  
25 two gentlemen step out from behind the back of the

1 building and where the light, the lit area was.

2 Q Let me ask you, again, if we use this jury box as the  
3 building and roughly the door would be somewhere --

4 A The door was on the front. It would be if you could  
5 drawn an imaginary line along where this jury ends to that  
6 wall, the door was on that end of that wall.

7 Q If this is the front, therefore, the door was right  
8 here; if this is the front, then you were parked ---

9 A Exactly. The door would have been on this end and the  
10 parking was long that side over there.

11 Q So, again, if this is the front and you were parked on  
12 the side, when you said they came from around the back of  
13 the building, it would have been from around that way?

14 A Exactly, from the back along that side of the  
15 building.

16 Q What, if anything, drew your attention to them?

17 A When I stepped out, as I said we were at a slight  
18 angle and when I closed my door I was facing toward the  
19 rear sort of of the building. When they stepped into the  
20 light is when I noticed them.

21 Q And what were they doing at that time?

22 A They were just walking along the sidewalk that the  
23 sidewalk that lay at the front of where the parking spaces  
24 were there, they were walking toward us at that point.

25 Q Could you give me a rough idea of the distance between

1 when you first saw them?

2 A Maybe thirty feet maximum from where I was standing.

3 Q If you could tell the court ---

4 A Farther away, probably back about where your file box  
5 is on the floor.

6 Q Okay, that's when you first saw them?

7 A That's when I first noticed them.

8 Q Okay, what took place then? Were you paying any  
9 attention to them?

10 A Yes, I had noticed them; I was paying attention - Beth  
11 Ann sort of turned and was reaching in the back seat for  
12 her coat and I was watching them and I shut my door and at  
13 that point is when they got to about the front of the car  
14 and they split, one fellow went to her side of the car and  
15 the one that was later identified as Dwayne Eric Forney  
16 came to my side of the car.

17 Q Okay, so you saw when they split and then you  
18 primarily dealt with Mr. Forney?

19 A Exactly. Once they split my attention was on him more  
20 than anyone.

21 Q Okay and once they split what, if anything, did Mr.  
22 Forney do?

23 A When he got about to the -- well, he came around the  
24 front of the car to the driver's side and took a few more  
25 steps and he brought up the gun and he put it into my

- 1 chest.
- 2 Q When that occurred, were you looking at him?
- 3 A When he pulled the gun?
- 4 Q Yes.
- 5 A At that point I focused my attention on the gun.
- 6 Q Prior to the gun ---
- 7 A Prior to that just before they started to split, when
- 8 he split off is when I took notice of Mr. Forney.
- 9 Q What proximity was he to you when he drew the gun?
- 10 A It was very close, probably maybe a step and a half or
- 11 so, much closer than you are now.
- 12 Q And he was approaching you prior to that, is that
- 13 correct, once he split off?
- 14 A Right; once he split off, right, he continued on in
- 15 front of the car and then turned up the passenger side
- 16 toward me.
- 17 Q So you would be facing him as you and I are now?
- 18 A Exactly.
- 19 Q Okay. And what occurred once he got to you - of
- 20 course, at this time you are focused on what's occurring
- 21 on your side of the car ---
- 22 A Uh-huh.
- 23 Q --- you weren't able to observe the other side.
- 24 A Right.
- 25 Q What occurred once he came up to you with the pistol?

1 A He brought the pistol up from I think it was his left  
2 side and put it in my chest and about in one motion he  
3 told me that he wanted my money and to get on the ground,  
4 so I turned about 180 and went down on the ground and at  
5 that point he was on top of me frisking me for whatever he  
6 could find.

7 Q At that time Forney is frisking you?

8 A Right, just went through my pockets and, you know,  
9 patting me down and seeing what he could find.

10 Q Did he take some items from you and ultimately from  
11 Ms. Jayne?

12 A Right, Forney -- Mr. Forney in particular took my  
13 watch, a gold tone watch and a wallet and a couple of  
14 pairs of keys. I did have her set of keys with me since I  
15 was the driver.

16 Q Okay, was there a time, and, again, realizing that you  
17 are down with I presume the gun stuck to your head, was  
18 there a time when you were aware that Ms. Jayne and the  
19 other defendant were brought around.

20 A Right, I don't know exactly at what point. I was on  
21 the ground when they were brought around. She was on that  
22 side of the car.

23 Q What did that involve? What was going on once she was  
24 brought around to the other side?

25 A Once he got the keys and everything out of my pockets

1 I don't know if they were passed up or whatever, but there  
2 was some discussion as to getting the car door open and in  
3 my haste in trying to be helpful I was telling him one  
4 key, it's a two key car, and so Beth Ann evidently was  
5 fumbling with which key to open the door and so eventually  
6 it got resolved; I don't know exactly how it happened.

7 Q You were down on the ground?

8 A Right, I just overheard.

9 Q All right, prior to going down, did you have an  
10 opportunity to observe the gun?

11 A Yes, I did.

12 Q Probably a very good opportunity.

13 A Yes.

14 Q Would you relate to the court what you recall about  
15 the weapon?

16 A It was a black gun. It was certainly not a revolver -  
17 my family has - we have guns in the house. I didn't know  
18 exactly what kind of clip action gun it was, but it was of  
19 that nature. It was square, boxy.

20 Q So it was a semi-automatic type as opposed to a  
21 revolver?

22 A Right; definitely not a revolver. I didn't know what  
23 type of clip action gun, but one of those style guns.

24 Q Okay, once the car whatever it was resolved as far as  
25 the keys and you were still on the ground what took place

1 next?

2 A I was on the ground still and once the keys had been  
3 used to get the door open I assume they got in the car. I  
4 know the car was backed up. I don't know who was on what  
5 side or anything of that nature. Before he got in the car  
6 he told me that if I moved he would kill me. This was Mr.  
7 Forney. He backed the car up and then another threat was  
8 made to Beth Ann that if I moved then they would kill my  
9 whore and then they drove off.

10 Q Were you able to see them driving off?

11 A I saw them after they pulled out of the parking lot  
12 and were headed away from down the road toward the Cajun  
13 Queen is at.

14 Q When you say "they," did you see two individuals in  
15 the car?

16 A Yes, I did. I saw the silhouettes of two individuals.

17 Q At some point after that were you asked to come down  
18 to Rock Hill to try to make identification?

19 A Yes.

20 Q Now were you told anything about this picture will  
21 contain somebody who had robbed you or anything of that  
22 nature?

23 A No, sir.

24 Q Did anybody suggest to you who you were to pick out or  
25 anything like that?

1 A No.

2 Q Okay, when you were shown a lineup that contained Mr.  
3 Forney, State's Exhibit 7, and, again, Mr. Forney was the  
4 one with the red jacket that was dealing with you on your  
5 side of the car, is that right?

6 A Exactly.

7 Q And I show you State's Exhibit 7 and ask that you take  
8 a look at that for a second to see if you can identify  
9 that.

10 A Yes.

11 Q What is that?

12 A This is one of the photographic sheets I was shown at  
13 the time and asked to identify.

14 Q Okay and you were able to identify somebody in the  
15 pictures?

16 A Yes, sir, the top right, Mr. Forney.

17 Q And did you ultimately, State's Exhibit 8, sign a  
18 sheet that indicated your pick and the time of that pick?

19 A Yes, date and signature.

20 Q And is that your signature on the back?

21 A Yes.

22 Q Mr. McMillan, as far as the identification of Mr.  
23 Forney in that picture, did you ever pick anybody else out  
24 in that picture other than Mr. Forney?

25 A No.

1 Q And I believe that he was the only identification you  
2 were able to make. You didn't make an identification of  
3 Mr. Hughes.

4 A That's right, I wasn't certain on Mr. Hughes; I didn't  
5 make an identification.

6 Q And Mr. Forney - each individual dealt with one of the  
7 two of you primarily, is that correct?

8 A Right.

9 Q And so Mr. Forney is the one that dealt primarily with  
10 you?

11 A Yes.

12 Q Mr. McMillan, at any time during the process I realize  
13 once it was over you called the police and then the  
14 Davidson police called and you went to Charlotte. Did  
15 anybody ever suggest who to pick or even tell if there was  
16 anybody to pick?

17 A No.

18 Q And the one that you picked, Mr. Forney your  
19 identification, what did you base that on?

20 A I based it on what best I could recall the person  
21 looked like. It was instant. I didn't have to think about  
22 it when I saw the picture.

23 Q And that was what he looked like the night you were  
24 car jacked and robbed?

25 A Exactly.

1 Q Is there any doubt in your mind that Mr. Forney was  
2 the man that robbed you?

3 A No doubt at all.

4 Q Answer any questions that the defense may have,  
5 please, sir.

6 CROSS EXAMINATION

7 BY MS. BRICE

8 Q Good morning, Mr. McMillan. My name is Chris Brice and  
9 I and Mr. Schusterman represent Mr. Hughes. I have a few  
10 questions to ask you in regards to that night. I  
11 understand your testimony in regards to where you were  
12 parking on that evening at the Bellissimo. Do you recall  
13 -- I think your testimony was you saw them come up from  
14 behind the restaurant?

15 A Right, as best I could tell. It's dark at the end of  
16 the restaurant ---

17 Q Uh-huh.

18 A --- it appeared to be from behind -- the parking lot  
19 seemed to go on in behind the restaurant.

20 Q And were you parked in between two cars?

21 A To the best of my recollection, there was certainly a  
22 car on Beth Ann's side and I believe -- yes, there was one  
23 on my side also, so we were between two cars with sidewalk  
24 leading to the front door right at the nose where our  
25 parking space was.

1 Q Okay, so my understanding is you unlocked the door,  
2 got out of the car and you had kind of a visual ---

3 A Exactly, since the parking spaces were somewhat  
4 angled, my view point was toward the rear of the  
5 restaurant when I closed my door.

6 Q And what exactly did you see?

7 A Well, first, I mean, they sort of approached from the  
8 darkness into the street light, so at that point I noticed  
9 there were two men walking along the sidewalk in front of  
10 the other vehicles that were parked there.

11 Q And tell us how they approached you?

12 A They were just walking along the front, you know, you  
13 take note of people, but I was hoping nothing more would  
14 come of it.

15 Q Right. And I believe it was your testimony that they  
16 split up?

17 A Right.

18 Q At what point did they split up?

19 A At the right front - the passenger's front side,  
20 fender basically, the front of the car.

21 Q And tell me what happened next again.

22 A The other gentleman went to Beth Ann's side; Mr.  
23 Forney into my side and he pulled a gun and I went down to  
24 the ground.

25 Q Tell me where he pulled the gun out from. I think you

1 said the left side, but I ---

2 A Right. He pulled it from his left, so it would have  
3 been my right when I was looking at him. It was sort of  
4 like this, sort of in one motion, he had a hooded sweat  
5 shirt on that was a zipper type and he just had this hand  
6 kind of like this draped over and he pulled it from like  
7 this right here (demonstrating).

8 Q And when he pulled the gun out, you were already out  
9 of the car at this time, is that correct?

10 A Yes.

11 Q Was your car door closed at that time?

12 A Yes.

13 Q And so you see the gun come out, right?

14 A Uh-huh.

15 Q And what did he say to you?

16 A He told me he wanted my money and to get on the  
17 ground.

18 Q Okay, did you get the money out first ---

19 A No, I was on the ground first. As he was approaching  
20 me he never stopped when he brought the gun up, it was  
21 motion, he brought the gun up into my chest "Get on the  
22 ground."

23 Q It was kind of like one motion and then down?

24 A Well, a little bit slower than that, it was bring out  
25 the gun and then "I want your money, get on the ground."

1 Q Did he push you down on the ground or --

2 A It wasn't a push, it was just sort of a guide at that  
3 point, as I went down he was right with me and then  
4 immediately on top of me.

5 Q And was his hand on your back at the time you were  
6 going down, do you recall?

7 A I don't think -- it was more that he was sort of with  
8 his body was guiding my body down at that point.

9 Q To make sure you were getting down?

10 A Right, also to wind up so he was right on top of me  
11 with his knee sort of against my back so he had one free  
12 hand to pat me down and sort of find what he could. The  
13 other hand had the gun.

14 Q Okay, so he had the gun pointed at you at this time?

15 A As far as I know it was ---

16 Q Right.

17 A --- as far as I know it was; I didn't feel it or  
18 anything.

19 Q Right. And was your head looking at your car or the  
20 other car when you were lying down, do you recall?

21 A I don't recall which side of my face I was.

22 Q That's fine. And when you laying face forward on the  
23 ground, where was his knee?

24 A I don't know which one of his knees it was, but one of  
25 his knees was on me and basically I had one hand back and

1 it was sort of on that to restrain and then he had the gun  
2 in his right hand and was patting me down with his left  
3 hand.

4 Q So you had one of your arms behind you as well and he  
5 had a knee applied to your back?

6 A Yes and his weight was --

7 Q His weight was on you?

8 A Uh-huh.

9 Q And with his free hand he was searching?

10 A Exactly.

11 Q And I think it was your testimony that his search  
12 ended up with the removal of a watch and a wallet, I  
13 believe?

14 A A wallet, watch and a couple of pairs of keys.

15 Q Okay. And at this time do you know where the gun was  
16 located?

17 A No, I assume it was in his right hand since his left  
18 hand was patting me down and his knee was holding my - I  
19 could feel his knee, the pressure was in the front of his  
20 knee, his weight on my back.

21 Q Okay and could you feel the gun at this time?

22 A I couldn't, no.

23 Q At any time while you were face down on the ground did  
24 you feel the location of that gun?

25 A I don't recall, I really don't.

1 Q You don't know where it was directed whether it was at  
2 your back or where?

3 A No.

4 Q What did Mr. Forney say to you when he was on top of  
5 you, do you recall him saying anything to you?

6 A I don't recall him saying a word until he got off and  
7 told me that if I moved he would kill me and that was the  
8 first time I had heard him say anything that I remember.  
9 He may have said something when he got the keys, when I  
10 handed things around, but I don't recall anything.

11 Q The first thing you recall him saying was "If you  
12 move, I'll kill you"?

13 A He just said -- I was down and he said, "If you move,  
14 I'll kill you." Right.

15 Q And did he threaten you with your life on more than  
16 one occasion?

17 A That's the only time I remember him saying anything.

18 Q Okay, that's fine. And did you stand up at one point  
19 or another or --

20 A After they had left, after they had gone out of the  
21 parking lot and headed down the street, that's when I  
22 stood up, that's when I was mad, the fear, I was angered,  
23 I just stood up in a hurry and that's when I noticed they  
24 were driving off.

25 Q Do you recall them saying anything at that point?

1 A They said something before they left the parking lot.  
2 They had just backed up and they were getting ready to  
3 pull out of the parking lot, they said, you know, "Don't  
4 move, we will kill your whore."

5 Q Who said that? Did they both say that?

6 A I don't know which would said it; I couldn't tell you  
7 who said it.

8 Q But prior to that Mr. Forney told you that if you  
9 moved he would kill you?

10 A Right.

11 Q And when they were leaving the parking lot, you heard  
12 "If you move, I'll kill your whore," but you are not sure  
13 who said that?

14 A No, I am not sure who said that.

15 Q Do you recall Mr. Hughes saying anything to you that  
16 evening?

17 A I don't recall him saying - I don't remember him  
18 saying anything at this time. It's been some time now.

19 Q So you don't recall him having direct contact or  
20 direct conversation with you?

21 A He didn't have any direct conversation with me, no.

22 Q Did he touch you at all?

23 A No, not that I recall; I don't believe so.

24 Q That's all the questions I have. Thank you.

25 THE COURT: Redirect?

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

2 THE COURT: All right, you may step down. I understand  
3 you are going to be possibly testifying again late today  
4 and then we are going to allow you to return to school;  
5 however, the subpoena under which you are here is going to  
6 continue in existence and you would be subject to perhaps  
7 recall later on. Do you understand that?

8 MR. MCMILLAN: Yes.

9 THE COURT: All right.

10 MR. POPE: Again, for the record I have explained to  
11 Mr. McMillan that I am willing to stipulate to certain  
12 items Mr. McMillan may testify to in light of his school  
13 situation, of course, that's in the defense's discretion.

14 THE COURT: All right.

15 MR. POPE: Your Honor, as far as the Lyle testimony  
16 that coupled with the prior indictments that have been put  
17 in evidence would be the Lyle testimony and that would  
18 also finish up the identification testimony. I know it  
19 has been somewhat disjointed, but you recall the officer  
20 that actually created the lineup and showed the lineups  
21 has previously testified.

22 THE COURT: Does the defense have any witnesses on  
23 these issues?

24 MR. SCHUSTERMAN: No, sir, we do not.

25 THE COURT: All right, a brief five or so minutes

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1 argument by each side. Solicitor, you get to go -- Well,  
2 it is your Motion to Suppress; you may go first.

3 MR. SCHUSTERMAN: Thank you, Your Honor, may it please  
4 the court? Your Honor, we submit that under Lyle that  
5 this evidence should not come in. As I understand the rule  
6 in Lyle, the rules coming out of Lyle, there are basically  
7 five factors that the court is going to look to to  
8 determine whether a crime, a previous crime, should come  
9 in to prove the crime that the person is charged with.  
10 Certainly, the fact that this person has never been  
11 convicted, never been tried for this charge, it's  
12 certainly particularly important for the court to look at  
13 the factors of that so that my client is not prejudiced by  
14 statements that are made for alleging an armed robbery  
15 which he has never been to court for or convicted of.  
16 Your Honor, as I understand it, the five factors the court  
17 looks to is motive, intent, the absence of mistake or  
18 accident, a common scheme or plan embracing the commission  
19 of two or more crimes so related to each other that proof  
20 of one tends to establish the others, and, lastly, the  
21 identity of the person charged with the commission of the  
22 crime on trial. Your Honor, if I may make the argument  
23 that certainly number one it does not provide anything of  
24 any value towards motive, that the only - Mr. Hughes is  
25 on trial for for the murder of Brent McCants; the armed

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1 robbery that he's on trial for actually it was mentioned I  
2 believe last week on Thursday or Friday, the armed robbery  
3 actually would have occurred post shooting, not prior to  
4 the shooting. I believe that the armed robbery is tied to  
5 the taking of the Walkie Talkie, which I believe to be  
6 evidence as such that that occurred after or the facts  
7 that the Solicitor would bring forth occurred after  
8 Officer McCants had already been wounded and he was laying  
9 on the ground. So we would argue, Your Honor, that this is  
10 not an indicator of motive.

11 Intent, by all testimony Mr. Hughes did not have a  
12 weapon that day and thus the intent to commit murder and  
13 the intent to participate in the robbery in our opinion  
14 don't necessarily jive. Your Honor, we don't need it to  
15 establish identity. Certainly identity can be established  
16 by a variety of other means in this trial.

17 In conclusion, Your Honor, I just would like to put on  
18 the record a portion of Lyle. Reading from it it indicates  
19 "If it is logically pertinent and that it reasonably tends  
20 to prove the material fact in issue, it is not to be  
21 rejected merely because it incidentally proves the  
22 defendant guilty of another crime, but the dangerous  
23 tendency of this leading probative force of this class of  
24 evidence require that its admission should be subjected by  
25 the courts to rigid scrutiny." Your Honor, we would submit

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1 that all of the factors being taken into account that once  
2 we get down to the ultimate issue it is our position that  
3 the prejudicial effect that this would have upon Mr.  
4 Hughes far outweighs any probative value of the fact that  
5 he was in a particular car. That can be established by  
6 other means and thus we would ask that this evidence be  
7 excluded. Thank you very much, sir.

8 THE COURT: Solicitor?

9 MR. POPE: May it please the court, Your Honor? I will  
10 be brief. The court has the Brief that we had submitted  
11 previously in this case on the Lyle issue. Your Honor,  
12 the first requirement before the court can even consider  
13 Lyle evidence would be clear and convincing evidence that  
14 it, in fact, had taken place. It is not a requirement that  
15 there be a conviction. I would submit that the testimony  
16 coupled with the indictments that were presented that has  
17 been true billed by the Grand Jury would rise to the level  
18 of clear and convincing evidence. As we look at each  
19 aspect of Lyle, I would submit that this particular case  
20 falls in almost every aspect of Lyle. The common thread  
21 throughout this entire case, Your Honor, that brings the  
22 Charlotte robbery and Brent McCant's death together is  
23 EMF313, that the car was stolen. The stolen vehicle  
24 provided proof of identity in that the car ties the  
25 individuals that had stolen the car to the crime scene and

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1 ultimately to their capture in a short distance away from  
2 the crime scene. So the car, the closeness in time of the  
3 events, the closeness of the geographical proximity of the  
4 events all indicates that this would assist the jury in  
5 making a determination as to identity.

6 Your Honor, as to the other factors in Lyle, the proof  
7 of a motive. What we have now given the facts and the  
8 circumstances as related by the two witnesses is that a  
9 vehicle has been stolen. What we are looking to is motive  
10 as to the other crimes that we have involved in this case.  
11 As the vehicle had been stolen their motive becomes more  
12 apparent than a standard citizen just being stopped in a  
13 car. They are being stopped in a stolen vehicle, that had  
14 previously committed crimes, this now gives them the  
15 additional motive or the additional reason to try to  
16 disable or ultimately kill Brent McCants in an effort to  
17 prevent their capture. Your Honor, the motive there again  
18 was to prevent their apprehension from the call-in that  
19 Brent McCants would have made on the radio.

20 Your Honor, again, as far as state of mind, absence of  
21 mistake or accident, again, it shows that they have set  
22 into effect a serious, continuing criminal act that,  
23 again, begins with the stealing of this car and the  
24 evidence we have they both were working and operating  
25 together as a common scheme and plan to work together to

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1 move forward, but the vehicle was then used ultimately in  
2 the death of Mr. McCants. For these reasons, Your Honor,  
3 I would state that it hits on all five points of Lyle and  
4 the other cases, therefore, should be admissible in this  
5 case.

6 THE COURT: All right. I find that the evidence  
7 regarding the episode in Charlotte involved Witnesses  
8 McMillan and Jayne, they being accosted by two individuals  
9 who used a pistol in that episode and the taking of the  
10 car, the statements made by the individuals and the  
11 identity by them of those individuals is I find that  
12 evidence to be clear and convincing as to that episode  
13 based on their testimony and also testimony of Witnesses  
14 Jayne and McMillan and also on the indictment of the  
15 defendant for offenses associated and connected with that  
16 episode. I find that that evidence is admissible in the  
17 trial of Mr. Hughes in regard to the death of Brent  
18 McCants. I find that it is competent to prove the crime  
19 charged - all crimes charged against the defendant  
20 regarding the death of Brent McCants as they tend to  
21 establish all five of the Lyle and Rule 404(b) matters  
22 under which this type testimony may be admitted, that is,  
23 they tend to establish motive, intent, the absence of  
24 mistake or accident, a common scheme or plan embracing the  
25 commission or two or more crimes which are related to each

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1 other such that the proof of one tends to establish the  
2 other and to establish the identity of the person charged,  
3 that is, Mr. Hughes with the commission of the crime for  
4 which he is on trial, that is, the death of Brent McCants.  
5 Those are actually exclusive - the Lyle requirement as I  
6 understand it would not require that there be but one of  
7 those five, but I find that this testimony is competent to  
8 prove each of the five with perhaps the weakest being  
9 three, that is, the absence of mistake or accident, but I  
10 still find that it does tend to establish that element  
11 along with the other four.

12 All right, now that's as to the Motion in Limine  
13 regarding Lyle. What about the ID testimony. Is that not  
14 the only other pre-trial Motion pending, the question of  
15 the identification of the photo-lineup - the photo-lineup  
16 identification?

17 MR. SCHUSTERMAN: Yes, sir, I'd like to read - I do  
18 need to just take a moment to go through those.

19 THE COURT: We will take a break after we take care of  
20 this and you can remind me if we have any.

21 MR. SCHUSTERMAN: To my knowledge there is nothing  
22 else pending after disposing of the line-up  
23 identification.

24 MR. BRACKETT: Your Honor, the only other thing would  
25 be we did just give them the notice of intention to use

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1 his prior convictions to impeach him should he choose to  
2 testify and I listed those items out and we gave him that,  
3 and a fresh copy, they didn't have it handy, a fresh copy  
4 of his RAP sheet and if there is to be any discussion of  
5 that.

6 THE COURT: It might not hurt for the court to have  
7 copies of those also. While you are bringing those up,  
8 let me hear the defense's position on the photo-lineup  
9 identification suppression.

10 MR. SCHUSTERMAN: Your Honor, we would suggest that  
11 for several factors that the photo-lineup is suggestive.  
12 First of all, we have a situation, Your Honor, where in  
13 both photo-lineups the defendants are placed in the upper  
14 right hand corner. Police testified that they have the  
15 ability to move pictures around and yet on everyone in  
16 that identification within minutes of one another, in  
17 fact, I believe that it was either Michelle or Crystal  
18 Ayers who testified that they didn't even leave the room  
19 while the police officer changed the photo-lineups on a  
20 computer and so we have two people both who identified  
21 both of within a period of I believe it was four minutes,  
22 I believe it was 1:00 and 1:04, in the exact same  
23 position. I find that to be very suggestive, Your Honor.  
24 And, secondarily, the fact that Mr. Hughes is the only  
25 person in the photo-lineup who appears to be wearing a

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1 jail, a Detention Center, top on. And for those reasons,  
2 Your Honor, we would submit that the lineups are  
3 suggestive and would presuppose the witnesses to pick a  
4 particular person. Thank you.

5 THE COURT: The State?

6 MR. POPE: May it please the court, Your Honor? The  
7 first thing the court in reviewing the exhibits, State's  
8 Exhibit 6 and 7, they are in evidence, you will note that  
9 the individuals -- Officer Duke came and explained how  
10 they were set up, they were like ages and characteristics.  
11 Your Honor, from hearing the witnesses the fact that the  
12 photos were in a particular position had no bearing that  
13 we could hear from the testimony or indicating any  
14 suggestiveness in that particular incidence. As far as  
15 the jail shirt, Your Honor, again, Mr. Schusterman calls  
16 it a jail shirt, but I think we have had various testimony  
17 from some indicating it was, some indicating they didn't  
18 have it. There is no indication in the pictures themselves  
19 that would give any indication that that is any  
20 significance to that type of shirt. In fact, if you look  
21 at the co-defendant Forney he has on street clothes and so  
22 no weight could be somehow designed to, well, we are going  
23 to have the witnesses somehow pick the people in a jail  
24 shirt. Your Honor, I would not concede that it is  
25 suggestive, but even if the court were to find that it is

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1 suggestive, the issue is whether it was impermissibly  
2 suggestive as to give rise to a very substantial  
3 likelihood of mis-identification. The court is well aware  
4 of the factors you consider in that would be the  
5 opportunity of the witness to view the defendant, the  
6 degree of the attention that the person had and to have an  
7 opportunity to view, the prior description given by the  
8 witness and the level of certainty the witness had. Your  
9 Honor, in these various factors each witness had a unique  
10 opportunity beginning with the people in Charlotte of  
11 dealing one on one with the people that they identified.  
12 You have well lit conditions to have their attention  
13 heightened in that regard by virtue of the armed robbery.  
14 The two young ladies at the Cinema had well lit conditions  
15 and had the opportunity to observe the defendants not in a  
16 crowd of people, but in there in a unique situation by  
17 themselves. And Mr. Tim Sanders had an opportunity when  
18 he observed the defendant he was in the position of  
19 actively searching based on the information he knew  
20 regarding the fact that Mr. McCants being shot. So, again,  
21 at that point his attention was heightened and again I  
22 believe his testimony was that the area was well lit. For  
23 that reason, I would submit that all identifications  
24 should be admitted into evidence.

25 THE COURT: All right. I find - first, I will say I

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1 have listened to the testimony of Witnesses Sanders,  
2 Michelle Ayers, Crystal Ayers, Beth Ann Jayne, Sean  
3 McMillan and I have reviewed the exhibits, State's Number  
4 7 and State's Number 6, and I find that the identification  
5 process by use of a computer generated photos in this case  
6 was not so unnecessarily suggestive and it was not  
7 conducive to irreparable mistake in identification so as  
8 to deny Mr. Hughes due process of law nor were they so  
9 unnecessarily suggestive that it give rise to a very  
10 substantial likelihood of misidentification.

11 Additionally, I have considered the identification is  
12 reliable based on the testimony and a review of the  
13 exhibits and the consideration of the witness' opportunity  
14 to view the criminal at the time of the crime, the  
15 witness' degree of attention at that time, the level of  
16 certainty of the witness at the confrontation, that is,  
17 the view of the photo-lineups and the minimal length of  
18 time between the crime and the confrontations. I find this  
19 as to identification by each of the following witnesses:  
20 Witness Sanders, Witness Jayne, Witness McMillan, Witness  
21 Michelle Ayers and Witness Crystal Ayers.

22 Anything else?

23 MR. SCHUSTERMAN: Nothing by the defense, Your Honor.

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

25 THE COURT: The jury is coming in at 1:00 and

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1 and that gives us plenty of time to have lunch or do  
2 whatever and get prepared and be ready to crank up right  
3 at one o'clock.

4 MR. BRACKETT: Your Honor, my understanding is there  
5 is no objection to our use of these crimes of moral  
6 turpitude.

7 MR. SCHUSTERMAN: No objection, Your Honor.

8 THE COURT: I will be here probably until around close  
9 to Noon and then I probably will go get something to eat,  
10 so you have anything to pop up between now and then, I'll  
11 be right back.

12 All right, yes, ma'am.

13 MS. BRICE: Your Honor, I just want to clear up one  
14 thing for the record. The Motion that was decided on  
15 Friday in regards to the seeking by the defense counsel to  
16 suppress evidence of the second murder that was a Motion  
17 to Continue or in the Alternative for a Suppression of  
18 that evidence. I know that the suppression was denied, but  
19 I think there needs to be a ruling in regards to that.

20 THE COURT: The Motion of Continuance is likewise  
21 denied.

22 MS. BRICE: Thank you.

23 MR. POPE: Your Honor, as in previous trials, we would  
24 attempt if we can with the court reporter to pre-mark the  
25 evidence where possible and certainly for identification,

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1 but to speed up the process, we will try to work that out.

2 MR. SCHUSTERMAN: And, again, I think we want to  
3 address these exhibit issues.

4 THE COURT: As to exhibits, I think we talked about  
5 this last week, they are not to be exhibited to the jury  
6 until such time as they are admitted. Now I understand  
7 there are certain things that the jury will have to see  
8 like a vest unless we had some sort of screen up between  
9 the jury and if it's not identified and not placed into  
10 evidence, I will certainly instruct the jury to disregard  
11 such exhibit, but they are not to be openly displayed or  
12 referred to or the witnesses questioned about the exhibits  
13 until they have been actually placed into evidence other  
14 than the identification process obviously.

15 MR. POPE: Okay, I think that clears up my question.  
16 Some things we may not put the final chain witness up  
17 until near the end, but, obviously, they will be discussed  
18 throughout - they just would not be able to go back to the  
19 jury at that point.

20 MR. SCHUSTERMAN: Something such as the vest certainly  
21 Mr. Pope has to bring it out and people will refer to it,  
22 but when he is done, there is no reason why he cannot take  
23 it and put it in a place where the jury ---

24 THE COURT: I think your concern is - the defense's  
25 concern is, if I understand what they are saying is, until

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1 such time even though it's shown to witnesses and they  
2 identify - until such time as it is actually placed into  
3 evidence, that once it's identified, it should not be left  
4 out where it can be seen.

5 MR. POPE: If I understand it, we are talking more of  
6 logistics than anything. We don't to lay a pile of  
7 evidence out here ---

8 MR. SCHUSTERMAN: Exactly.

9 MR. POPE: No problem. We can -- as a matter of fact,  
10 we can work with Madam Court Reporter.

11 MR. SCHUSTERMAN: That's all I'm saying; I just don't  
12 think that a jury -- I don't want the jury staring at a  
13 bullet ridden vest when it's not in evidence for a week  
14 trial.

15 MR. POPE: Your Honor, with that in mind our evidence  
16 custodian, Mr. Williams, and I think we did the same thing  
17 last time, will be available to be in the courtroom in  
18 essence to manage to keeping that out. He would be a  
19 witness to some minor issues, but the defense doesn't have  
20 an objection, we could have him present. Again I think we  
21 did have him here the last time to, in essence, manage  
22 that and keep it back here.

23 MR. SCHUSTERMAN: I have no problem with that.

24 THE COURT: In essence what we would be doing would be  
25 relieving Mr. Williams from the sequestration order.

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1 MR. POPE: That will be correct.

2 MR. SCHUSTERMAN: Just for the record before you rule  
3 on that is it my understanding that Mr. Williams' role is  
4 nothing but an evidence custodian, he has no ---

5 MR. POPE: He did recover items; he would authenticate  
6 the diagram and say, yes, this is the City and I did get  
7 the City to help -- you know, I assisted in drawing these  
8 diagrams. If I understand right off the top of my head,  
9 he located or recovered the Walkie Talkie. There was,  
10 obviously, another witness that found it, but he recovered  
11 and located that. He recovered the Walkie Talkie clip  
12 under the seat and so everything his involvement to the  
13 best of my knowledge is evidence related.

14 MR. SCHUSTERMAN: As opposed to a conclusion ---

15 THE COURT: That is correct.

16 MR. SCHUSTERMAN: Then I think in balancing that I  
17 would much rather have Mr. Williams in here managing the  
18 evidence and keeping it out of jury sight.

19 THE COURT: I think it would help keep the evidence  
20 out of jury sight until such time as it is appropriate and  
21 also for expediency rather than having the Solicitor or  
22 someone who is not familiar with it having to thumb  
23 through and spend several minutes. Hopefully, it will make  
24 the whole process go smoothly, so I am going to relieve  
25 Mr. Williams - his first name?

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1 MR. POPE: Mike Williams.

2 THE COURT: Who?

3 MR. POPE: Mike.

4 THE COURT: Mike Williams from the sequestration order  
5 with consent of counsel for the defendant.

6 MR. SCHUSTERMAN: Thank you, Your Honor.

7 THE COURT: We will be at ease until one o'clock.

8 (Recess)

9 Let the record show that the defendant, Mr. Hughes,  
10 is present in the courtroom with counsel.

11 Anything from The State before we get the jury in?

12 MR. POPE: Your Honor, the only thing we have brought  
13 this second table in for the purposes of the 911 play back  
14 machine. I was thinking this is kind of a logistics thing  
15 that once we have used it certainly we can remove the  
16 machine and with the evidence that I anticipate putting in  
17 today would not be any of the larger evidence, it may be  
18 some photos, before we use it and it might be that we can  
19 eliminate it.

20 THE COURT: Sure, let's don't have it up unless we use  
21 it. You can put it right behind here.

22 MR. POPE: It is my understanding we are going to use  
23 this for the evidence (referring to table).

24 THE COURT: Anything else before we get the jury in?

25 MR. POPE: The State is ready, Your Honor.

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1 THE COURT: The defense?

2 MR. SCHUSTERMAN: The defense is ready too, Your  
3 Honor.

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

5 Mr. Neeley, I am going to ask you to take the  
6 foreman's seat. I am going to appoint you foreman. Just  
7 have a seat right there.

8 All of you just remain standing when you come in  
9 because the Clerk is going to administer the oath to you.

10 If you will remain standing, if you will raise your  
11 right hand, the Clerk will administer the oath.

12 THE CLERK: You shall well and truly try and true  
13 deliverance make between The State of South Carolina and  
14 the defendant at the bar whom you shall have in charge and  
15 a just verdict issue according to the evidence and the law  
16 so help you God.

17 (Each juror responded in the affirmative.)

18 THE COURT: You may be seated. Those of you who were  
19 not in the first few that came in, I have appointed Mr.  
20 Neeley as foreman of the jury. He will be your liaison  
21 with me, that will be the person with whom you communicate  
22 if you have things you need to call to my attention,  
23 communicate with me through Mr. Neeley and he can let the  
24 bailiff know if he needs to talk to me.

25 As I think I may have told at least one person, who is

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1 not on this jury, but I am going to tell all of you that  
2 when I have a conversation with any of you, I have to have  
3 it in the presence of counsel and on the record. So if we  
4 have to talk about anything, we will probably, except for  
5 maybe some unusual exigency, it will have to be done with  
6 the others present, perhaps not in public depending on the  
7 nature of it, but at least with an awareness and  
8 participation by the parties.

9 Now the defendant, Mr. Hughes, is present with  
10 counsel. I have already introduced him to you and I want  
11 to remind you that the charges against Mr. Hughes are as  
12 follows. They all pertain to an incident that occurred  
13 here in York County on or about September 25th, 1992. Mr.  
14 Hughes is accused of murder of one James Brent McCants,  
15 armed robbery of certain items from James Brent McCants,  
16 the possession of a firearm during the commission of that  
17 armed robbery, criminal conspiracy in regard to the murder  
18 and armed robbery of Mr. McCants and possession of a  
19 stolen vehicle.

20 Now to these charges, to each and every charge, the  
21 defendant, Mr. Hughes, has entered a plea of not guilty.  
22 Now I am later going to explain to you and tell you the  
23 elements, that is, what constitutes these particular  
24 charges. I will tell you those at a later time, but I want  
25 you to understand at this time a couple of things

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1 regarding these charges. First, these indictments that you  
2 will have in the jury room with you are not evidence. They  
3 are the allegations against Mr. Hughes. They are not  
4 evidence against Mr. Hughes. They also constitute paper  
5 work by which this case is processed through our court  
6 and, Mr. Foreman, they ultimately will be perhaps with  
7 some variations that I will talk to you about at an  
8 appropriate time the place you will sign the verdict and  
9 wherein the verdict will be enrolled the unanimous verdict  
10 of the jury.

11 Now to each charge Mr. Hughes, as I said, entered a  
12 plea of not guilty. This plea of not guilty places on The  
13 State the burden of proving each of the essential elements  
14 of each charge in each indictment beyond a reasonable  
15 doubt before you as the trial jury in this case could  
16 convict and find Mr. Hughes guilty.

17 Now in just a moment the Solicitor will have an  
18 opportunity to make before you what is known as an opening  
19 statement. This will not be an argument. It will not be  
20 evidence. The attorneys are advocates. They are not  
21 witnesses. Nothing that the attorneys say in this case  
22 can be considered by you as evidence. Just as the  
23 indictments cannot, nothing the attorneys tell you can be  
24 considered as evidence. What the Solicitor will do will  
25 give you what I call a blueprint of the trial. He will

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1 sort of outline for you what this case is about. The  
2 defendant has a right, but is not required, to make an  
3 opening statement also and tell you whatever through he or  
4 his attorney tell you their outline of this matter. At  
5 this point they, as I say, are just making statements.  
6 They are not making arguments or summations. At a later  
7 point in the trial they will have an opportunity after you  
8 have heard and received the evidence to come before you  
9 and present arguments and use their abilities of  
10 persuasion to tell you why you should reach a certain  
11 decision. Now as I told you what the attorneys say is not  
12 evidence. Of course, what I say is not evidence. The  
13 evidence will come in this case through live witnesses  
14 who, under oath, will testify here in this witness stand.  
15 It will come also the second way by way of exhibits, that  
16 is, physical things that you may take with you, perhaps  
17 photographs, perhaps sketches, perhaps any tangible items  
18 you can take back with you and have with you to look at,  
19 hold, read, if it is something readable. Those will be  
20 exhibits. A third way that evidence can come into the  
21 case will be by way of stipulations. A stipulation is  
22 simply where both parties agree that a fact is true. I  
23 tell you just in a moment, but you are the judges of the  
24 facts and you have to determine whether facts are true;  
25 however, where the parties stipulate, agree, that a fact

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1 is true for the purposes of this trial, you can consider  
2 it is true, you don't to wrestle with whether that fact is  
3 true or not or was that fact a true one or not, the  
4 parties agree that it will be true.

5 Now I have sort of three jobs in a trial such as this.  
6 The first is what I would call is sort of a wagon master.  
7 By that I mean I am the logistics person. I try to make  
8 sure that we start on time. I try to make sure that we  
9 take appropriate breaks. I try to make sure that things  
10 are not blocking your view and that you can hear. That's  
11 my job. Another job I have is I am the sole of the  
12 evidence in this case. If one side thinks certain  
13 evidence should be able to come into this record for your  
14 consideration and the other side objects to it or says it  
15 should not, then it's up to me to make a determination as  
16 to whether that evidence can come into the record or  
17 whether the evidence can be considered by you. And once I  
18 have ruled on a piece of evidence it is binding on the  
19 witnesses, the attorneys and on you. If something is said  
20 or something is shown to you and I later tell you to  
21 disregard it and act as if you had not heard it and act as  
22 if you had not seen it under your oath you must disregard  
23 it.

24 Now in regard to objections on occasion an attorney  
25 may rise and say I object, Your Honor, or may rise and say

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1 I have a matter of law to take up outside the jury's  
2 presence. At that time I am called upon to rule upon  
3 evidence. Quite often I have to allow you to leave the  
4 courtroom and go to the jury room and take that matter up  
5 outside of your presence. Do not hold that against the  
6 attorneys. They are not trying to delay the trial, they  
7 are not trying to do anything other than protect their  
8 particular side's rights. They have a right to do it, they  
9 are doing their job. Do not consider that in any way  
10 regarding your verdict in this case.

11 My third job is that I am the sole judge of the law in  
12 this case. You must take, accept and apply the law just as  
13 I charge it to you. If you think I charged you the law in  
14 error or if you think the law should be different than  
15 that which I tell you it is, you must disregard your  
16 thoughts on the law. Your oath requires you and we each  
17 told you this when we talked in Aiken earlier that you  
18 would, in fact, follow the law just as I charge it to you  
19 and you are also required. I am not giving you some legal  
20 principles. I will throughout the trial perhaps give you  
21 some legal principles. At the end of the trial I will give  
22 you a concise and comprehensive charge on the law that you  
23 are to apply and consider in this case.

24 And you are the sole judges of the facts in this case.  
25 It is solely up to you as trial jury to determine the

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1 facts. Just as you cannot differ with me on the law, I  
2 cannot differ with you on the facts. It is up to you to  
3 evaluate the evidence and give the evidence the effect,  
4 the value, the weight and the truth you believe it should  
5 have. Doing this you will use your common sense, your  
6 sense of logic, your sense of reason, your experiences in  
7 life. You can believe one witness as opposed to several,  
8 you can believe several witnesses as opposed to one and  
9 you can believe all, part or none of a witness' testimony.

10 As judges of the facts you are of necessity the judges  
11 of the credibility. That's a legal word for believability  
12 of the witnesses who will testify. It's up to you to  
13 determine where the true lies. In assessing credibility  
14 or believability you can take into consideration certain  
15 factors, you can consider the demeanor of a witness, that  
16 is, the way a witness acts when they testify on the stand.  
17 Are they hesitant, are they straightforward in answering  
18 questions? Is their testimony consistent or inconsistent  
19 with their own testimony or with that of others? You can  
20 consider the opportunity a witness has to know the things  
21 about which the witness testified. You can consider any  
22 bias or prejudice a witness might have, that is, whether a  
23 witness would wish to help or hurt one side or the other.  
24 All of these things you can consider in determining where  
25 the truth lies and that is what is being asked of you. You

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1 may not consider anything outside the courtroom. I have  
2 asked and instructed you earlier and I reinstruct you that  
3 you are not to receive any information outside the  
4 courtroom concerning this case. You are not to read about  
5 it, you are not to watch television about it, you are not  
6 to listen to the radio. Now that's going to be probably  
7 easy for you to do because we are not letting you do those  
8 things, but if you happen to be somewhere and overhear a  
9 radio or tv while walking through a lobby or at a  
10 restaurant or something if you hear anything whatsoever  
11 about this case, somehow stop up your ears or close your  
12 ears or remove yourself to a place where you cannot hear  
13 about it because you cannot receive information outside  
14 the courtroom about this case. If anyone tries to talk to  
15 you about this case, tell them you cannot as you are  
16 serving as a juror. If they persist in trying to discuss  
17 this case with you, remind them again that you cannot  
18 discuss it and report to whoever is accompanying you at  
19 that time, whether it be a bailiff or a SLED agent, and  
20 report back to the court that someone has tried to talk to  
21 you about the case and try if you could, if that occurs  
22 and I hope it won't, but if it were to occur, try to  
23 report back to the court who that individual or some  
24 identification of that individual so that appropriate  
25 steps can be taken with someone trying to discuss the case

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1 with a sitting juror.

2 Now, as I've told you, you are not I think I've  
3 mentioned this to you earlier this week also, you are not  
4 to discuss the case among yourselves until I instruct you  
5 to deliberate. You should not even try to make up your own  
6 mind until I instruct you to deliberate. Prior to that  
7 time you won't have all the tools you need to make a fair  
8 and reasonable decision until you've heard all of the  
9 evidence, until you've heard the arguments of the  
10 attorneys and until you've heard the judge's charge on the  
11 law, you don't have as I call them all the tools to make a  
12 fair and reasonable decision. Do not discuss the case  
13 among yourselves and do not try to start formulating ideas  
14 and opinions about the resolution of this case in your  
15 mind until you have all that you need to function with.

16 I am going to ask you not to take notes. I am going to  
17 ask you to pay close attention and I am going to tell you  
18 now a little bit about our scheduling. We are going to  
19 try to start about 9:30 every morning. I usually like to  
20 start at 9:00 as you know we did in Aiken, but I think  
21 since all of you are together and to get meals taken care  
22 of and everybody on sort of one schedule it might work  
23 better to start at 9:30. We will take about an hour  
24 somewhere between an hour and an hour and a half for  
25 lunch, depending on how long it takes to get us all fed,

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1 and we will try to stop no later than six. We might stop a  
2 little earlier than six; we might go a little later than  
3 six, but that's what we are shooting for is to not keep  
4 you here later in the evening even though I know all of  
5 you would like to get this case concluded as promptly as  
6 possible, all of us would, but there is a fatigue factor  
7 that comes into play if we work late into the evening on  
8 these cases and that would not be fair to you, The State  
9 or the defendant if we let that occur. We try to take a  
10 break about every hour and a half. I don't know if any of  
11 you smoke, but if you do, we will make arrangements for  
12 you to smoke. You can't smoke in this building, but we  
13 will make smoking arrangements for you.

14 Now I know we can't all be on an hour and a half  
15 schedule, we all have different comfort levels and it is  
16 hard to pay attention if you are not comfortable. I assure  
17 you that if I become uncomfortable, I am going to call for  
18 a break. Well, I am going to give you the same break. Any  
19 time any of you need a break, just raise your hand and  
20 with no questions asked we will take a break. We want to  
21 move this case along as I have already told you as  
22 promptly as possible, but we do not want to do it to the  
23 discomfort of any of you and I call to counsel's attention  
24 that if they or Mr. Hughes need a break, if you will let  
25 us know, we will take one, no questions asked. If you

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1 cannot hear, let me know. It's not fair to ask you to be  
2 the judge of the facts in this case and prevent you from  
3 hearing what is said. If you will cup your ear or give me  
4 a voice raising gesture, I will require whoever it is  
5 including myself to speak louder if you cannot hear  
6 something. If you cannot see, if someone or something is  
7 blocking your view, let me know that and I will require  
8 that it be moved or the person to move so that you can see  
9 what you need to see and that includes any witness because  
10 it is important, as I have just told you, that the way a  
11 witness acts is one of the things that you can consider.  
12 If you can't see a witness, let me know. I can monitor  
13 that pretty good from where I sit in this particular  
14 courtroom, but I can't always tell when you can't see. If  
15 somebody is showing something fairly close to the jury box  
16 and those of you on the back row are having trouble, if  
17 you can stand up and see, that doesn't bother me at all.  
18 If you need to stand up in order to get a better view of  
19 something, please feel free to do it.

20 Now I think that pretty much covers my preliminary  
21 remarks. You won't hear a lot from me during the trial  
22 other than as I stated to do the mechanical and logistic  
23 things. I want you to know I don't want you to feel that  
24 the people in York County are the rudest people you have  
25 ever run into, but the bailiffs cannot talk to you about

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1 this case either. All they can do so don't - if you ask a  
2 bailiff a question and they say I'm sorry, I can't talk to  
3 you about that, they are not being rude; they are just  
4 doing their job and they know that. They cannot do  
5 anything in escorting you other than make sure you are  
6 comfortable or to make sure that you coming, those sort of  
7 mechanical things again. So for their benefit you should  
8 know you shouldn't be asking them anything and for their  
9 benefit so you won't think they are being rude they know  
10 they can't talk to you.

11 Now before I turn it over to the attorneys I will ask  
12 if there is anything else counsel for the defense wishes  
13 me to cover in these preliminary remarks?

14 MR. SCHUSTERMAN: I have nothing.

15 THE COURT: How about The State?

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

17 THE COURT: All right. Solicitor?

18 MR. BRACKETT: May it please the court?

19 On September 25, 1992, James Brent McCants, a deputy  
20 sheriff working here in York County, was on routine patrol  
21 on Dave Lyle Boulevard in the City of Rock Hill. He saw a  
22 vehicle being operated on Dave Lyle Boulevard without any  
23 headlights on. The time was about 10:30 in the evening. He  
24 activated his blue lights, turned around on the vehicle  
25 and sped to catch with it. It was a gray Buick. As the

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1 vehicle yielded to his blue lights and turned over, he  
2 pulled in behind it and called into the York County  
3 Dispatch that he pulled the vehicle over and asked them to  
4 run a license check. Echo Mike Foxtrot 313, New York tag,  
5 Echo Mike Foxtrot 313. He did not know that that would be  
6 the last radio transmission he was ever going to make from  
7 his car. He did not know that the car he had just pulled  
8 had been stolen two and a half hours before in Charlotte,  
9 North Carolina from two college students at gunpoint by  
10 the occupants of that vehicle, Dwayne Eric Forney and the  
11 defendant, Mar-Reece Hughes. He did not know as he exited  
12 that vehicle that his life would end on the side of the  
13 road that night of being shot six times by the occupants  
14 of that vehicle. Some moments after he made that stop two  
15 citizens were driving down the road and they saw two  
16 individuals hunched down over the prone body of Deputy  
17 McCants who was face down in the dirt. She saw them  
18 tugging at the body, pulling something on the body. They  
19 apparently observed her, stopped for a second, got up, got  
20 back into the gray Buick Century and drove off. They got  
21 out to start to render some assistance to the deputy. It  
22 was too late. He had been shot in the side, he had been  
23 shot in the head. They got a partial tag number from the  
24 vehicle as it left. One of the ladies ran over to the  
25 policeman's vehicle and called in a Mayday. Immediately,

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1 law enforcement throughout the county began searching for  
2 that vehicle. Private citizens began searching for that  
3 vehicle when they heard the emergency distress call over  
4 their scanners. One private citizen, Tim Sanders, drove  
5 through the parking lot of the Holiday Inn about a mile  
6 away and saw the vehicle parked in the parking lot of the  
7 Holiday Inn. The search began and eventually in a wooded  
8 area adjacent to the Holiday Inn Dwayne Eric Forney was  
9 arrested and Mar-Reece Hughes was arrested some two hours  
10 later. Mr. Hughes was charged with possession of a stolen  
11 vehicle. He was charged with armed robbery and possession  
12 of a firearm during the commission of a violent crime. He  
13 was charged by this indictment with the offense of murder.  
14 He's charged by this indictment with the offense of  
15 criminal conspiracy. These are charges Mr. Pope and  
16 myself intend to prove in this courtroom. We intend to  
17 bring forth the evidence to meet our burden of proof that  
18 Mar-Reece Hughes is guilty of murder, he's guilty of armed  
19 robbery, he's guilty of possession of a stolen vehicle and  
20 possession of a firearm during the commission of a violent  
21 crime and he's guilty with conspiring with one Dwayne Eric  
22 Forney to do these things. We will bring forward the  
23 evidence. We will bring forward the evidence of the people  
24 who were robbed in Charlotte. We will bring forward  
25 evidence from people who were on the scene where Brent

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1 McCants' body lay. We will bring forward evidence of the  
2 man who found the car and convince you beyond a reasonable  
3 doubt that he is guilty. That is all we are going to do in  
4 this phase of the trial. In this phase of the trial we are  
5 not concerned with penalty. All we are concerned about is  
6 guilt or innocence.

7 In making your determination I want to arm you to some  
8 extent with a little bit of law and explain to you one  
9 concept of the law that will be applicable in this case  
10 perhaps, that is, the theory called accomplice liability.  
11 Accomplice liability simply put means that when two people  
12 much the same as the charge of criminal conspiracy -  
13 conspiracy is nothing more than two people getting  
14 together to commit some criminal act, agreeing to commit a  
15 criminal act, and work together to do it. Accomplice  
16 liability is corollary to that and all it means is that  
17 when two people get together to do some criminal act each  
18 is as responsible for the other, the acts of one become  
19 the acts of all, the hand of one is the hand of all.

20 This is not going to be easy. Mr. Pope and I and I am  
21 sure the defense and the defendant all appreciate the  
22 sacrifice you are making being away from your family, your  
23 jobs and your homes. We will move through this as  
24 expeditiously as justice will allow. I promise you that  
25 the State of South Carolina will meet the burden in each

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1 of these cases. We will satisfy you Mr. Hughes is guilty  
2 of murder, armed robbery, conspiracy, possession of a  
3 stolen vehicle and use of a firearm during the commission  
4 of a violent crime. I ask you to keep your minds open.  
5 Give The State and the defendant a fair trial. Listen to  
6 the evidence. Use the common sense God has given you that  
7 you have derived from many, many years of experience. Your  
8 collective wisdom must be brought to bear on this question  
9 and a true verdict render as you all promised under your  
10 oath. I am convinced each one of you will do that. I want  
11 to thank you in advance for your attention.

12 MR. SCHUSTERMAN: May it please the court, Your Honor?

13 Good afternoon, Mr. Foreman, Ladies and Gentlemen of  
14 the Jury.

15 I have met some of you during the questioning phase of  
16 the trial. For those I haven't met my name is Steve  
17 Schusterman and I am an attorney practicing here in Rock  
18 Hill and York County and along with Chris Brice, my  
19 co-counsel, we represent Mar-Reece Hughes.

20 As a young man I used to sit at my father's knee and I  
21 would come to him with problems. He used to tell me that  
22 when I would come to him with some traumatic event that  
23 had happened as a young man, ten, eleven or twelve years  
24 old, something traumatic had happened in my life that to  
25 resolve any problem it is impossible in the human mind to

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1 think with your mind while you are feeling with your  
2 heart, that your intellect and your emotion cannot work at  
3 the same time.

4 James Brent McCants was murdered on September 25th.  
5 There is no doubt about that and I grieve for that and as  
6 people here of compassion we all grieve for that and  
7 that's the right thing to do. We have to grieve. He was  
8 absolutely in his law enforcement capacity, he was serving  
9 people of York County and he was brutally slain. And  
10 there's no doubt about that. And after we take a moment  
11 to reflect upon that, we now have to come into this  
12 courtroom and look at the case factually and analytically.  
13 My client did not shoot Brent McCants. My client did not  
14 participate with Dwayne Eric Forney in the murder of Brent  
15 McCants, did not. And so as Mr. Brackett says we are here  
16 today and we are looking at only the guilt or the  
17 innocence of the case. And because of the formality of  
18 polling of a jury in Aiken County, we spent days doing  
19 that, there is this perception that we are foregoing guilt  
20 or innocence and this is a mere formality until we get to  
21 the real part of the trial, which would be life or death.  
22 That is absolutely, unequivocally incorrect. My client  
23 has tendered a not guilty plea. He did not murder Brent  
24 McCants. And we as the defense did not have to go through  
25 this step. We could have entered a plea to the murder and

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1 had the same jury come to you and say we need you only to  
2 decide life or death. But we didn't do that because we  
3 are not guilty of the offense.

4 Now Mr. Brackett spoke to you about the concept of  
5 accomplice liability, two people acting in consort to  
6 perpetrate a crime. Let me tell you the flip side of  
7 that. The flip side of that is that mere presence, merely  
8 being present at the scene of a crime does not impede  
9 guilt. Was Mar-Reece Hughes there that night? Yes, he  
10 was. Yes, he was. He had absolutely no intention of any  
11 harm come to Brent McCants. Why then is it so important  
12 that The State tell you in their opening statement about  
13 accomplice liability? The reason is because at not time  
14 that night from Charlotte through the time that both  
15 suspects were apprehended can they ever put the murder  
16 weapon in Mar-Reece Hughes' hand. Never. And that's very  
17 important because I submit to you the philosophy of the  
18 prosecution is that some crimes are so heinous they are so  
19 wrong that we lose sight of the fact that possibly only  
20 one person committed it. So now the logical question and  
21 both The State and the defense chose you jurors, we  
22 believed that you were the fourteen people who could hear  
23 this case and decide it the most fairly. So the question  
24 becomes why is Mr. Hughes here. Who is Mr. Hughes. He  
25 didn't shoot him, but yet The State is going to bring it

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1 here. The State is going to try him, intertwine him in it.  
2 Mr. Hughes is a twenty-nine year old, black gentleman. He  
3 is, I submit to you, the profile of the black youth in  
4 trouble. I would love to be sitting here and telling you  
5 that I have Mother Teresa, Martin Luther King, and the  
6 Pope wrapped up all in one in my client in Mar-Reece  
7 Hughes. I do not. I do not. Mar-Reece Hughes is a thief.  
8 Mar-Reece Hughes that night, earlier that night,  
9 participated in armed robbery. This is the point at which  
10 you, you as jurors, must step back, take away your values,  
11 the stable homes you live in, the families you come from,  
12 the love you derive from social interaction, and begin to  
13 attempt to comprehend what the lie of Mar-Reece Hughes has  
14 been like. He grew up on the streets. He lives in ---

15 MR. BRACKETT: Your Honor, I am going to object at  
16 this point. I don't believe that is proper.

17 THE COURT: I sustain the objection.

18 MR. SCHUSTERMAN: Thank you.

19 Mar-Reece Hughes should be judged by his  
20 participation, by his participation that evening. Even  
21 when you listen to the evidence regarding the armed  
22 robbery, listen to who the primary actor in it was. The  
23 State, I submit, is going to contend that if he was  
24 willing to participate in an armed robbery, he's surely  
25 kill a cop or participate in it. And I am telling you and

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1 submit to you that is untrue. That is untrue. The State  
2 has the burden. That's why Mr. Hughes is absolutely  
3 innocent until proven guilty. Can you imagine in a case  
4 like Mr. Brackett just spoke to you about if we presumed  
5 Mr. Hughes guilty and we have to prove his innocence, it  
6 would be virtually impossible. I ask you in judging Mr.  
7 Hughes not to necessarily judge him by the standard of the  
8 life you led and you lead today, but a young man who was a  
9 victim of his circumstances. The killer in this case was  
10 Dwayne Eric Forney. That's who murdered Brent McCants.  
11 That's who had the gun. That's who had the propensity for  
12 violence. Don't take my word for it. Listen to the  
13 evidence. I submit to you that merely because you  
14 acknowledge that Mr. Hughes is not a Saint and he's not,  
15 there is a line, there is a line between stealing and  
16 killing and Mr. Hughes had no intention of participating  
17 in that that night, had no intention of it, absolutely  
18 none.

19 Throughout this trial I submit you are going to hear  
20 that a possible motive behind this murder was race, it was  
21 racially manifested, that Mr. Hughes had a hatred for  
22 whites. That I tell you is absolutely untrue because on  
23 top of all the comments I have made about Mar-Reece  
24 Hughes, about all the problems he's had, Mar-Reece Hughes  
25 is a very sick man, a very sick man. He suffers from a

1 major mental illness and you will hear in the course of  
2 this trial medical testimony regarding Mr. Hughes. Mr.  
3 Hughes is a paranoid schizophrenic. I submit to you ---

4 MR. BRACKETT: Your Honor, I am going to object.

5 THE COURT: I sustain the objection.

6 MR. SCHUSTERMAN: Thank you, Your Honor.

7 In the end it's going to come down to your  
8 understanding of the facts, your understanding of the  
9 defendant, your understanding of what occurred and coming  
10 full circle, stepping out of the emotions of the loss of a  
11 person, the loss of a law enforcement officer, and  
12 stepping into the intellectual world of deciding that  
13 somebody should pay and somebody has paid, but it  
14 shouldn't be Mar-Reece Hughes because he didn't do it and  
15 thus I believe that when this is all over, you will be  
16 convinced that Mar-Reece Hughes is not guilty of the  
17 murder and we do not even get to the second phase of the  
18 trial. I thank you.

19 THE COURT: Call your first witness.

20 MR. POPE: The State would call Beth Ann Jayne to the  
21 stand.

22 BETH ANN JAYNE, being duly sworn,  
23 testified as follows:

24 DIRECT EXAMINATION

25 BY MR. POPE

1 Q Ms. Jayne, if you would, state your name for the jury,  
2 please, ma'am.

3 A Beth Ann Jayne.

4 Q Ms. Jayne, how old are you?

5 A I'm twenty-three.

6 Q Are you in school now?

7 A Yes, I'm in Medical School.

8 Q What year are you in Medical School?

9 A I'm a first year student.

10 Q I am going to take you back to September 25, 1992.  
11 Were you in school back then?

12 A Yes, I was.

13 Q Would you tell the jury where that was?

14 A I was a junior at Davidson College in North Carolina.

15 Q Did you have the opportunity to go into Charlotte for  
16 dinner on Friday evening of the 25th?

17 A Yes, I did.

18 Q Could you relate to the jury who you were with and  
19 how that took place?

20 A I was with my boyfriend at the time, Sean McMillan,  
21 and we had decided to go to a place that he had heard of  
22 called the Cajun Queen. Neither one of us was quite sure  
23 where it was, so we had some general direction. He stopped  
24 along the way to get more specific directions, finally  
25 found our way to the place. It was Parent's Weekend at

1 the college that weekend and it's a very popular  
2 restaurant among the students there, so there was about a  
3 twenty minute wait. He's somewhat impatient and decided  
4 not to wait, so we ended up going back to a restaurant we  
5 had seen while we were trying to find the Cajun Queen, the  
6 Bellissimo Restaurant, and we ended up there.

7 Q And what vehicle were you riding in?

8 A My car.

9 Q And could you describe your car to the jury?

10 A It's a gray Buick, 4-door, Century, 1986.

11 Q Do you recall the State and the license tag?

12 A A New York State tag, EMF313.

13 Q And who was driving the car at that time?

14 A Sean was driving the car.

15 Q Let me ask you did you have an opportunity to  
16 ascertain the vehicle -- you said it was a gray Buick, had  
17 you had that in the family for a while?

18 A Yes, we purchased it in 1986 when it was new and we've  
19 had it since.

20 Q And you had it there in college with you?

21 A Yes, I did.

22 Q Have you been able to ascertain the value of that  
23 vehicle back at that time?

24 A In '92 it was probably around Five Thousand Dollars.

25 Q I show you what's been marked State's Exhibit 1, 2, 3

1 for identification. I ask you if you would take your time  
2 and look at those and tell me if you can identify them.

3 A These are all pictures of the car I described, my car.

4 Q And that's the way it would have appeared that evening?

5 A Yes.

6 MR. SCHUSTERMAN: Your Honor, may we be heard later on  
7 one concern. No objection.

8 MR. POPE: Your Honor, the witness has identified  
9 State's Exhibits 1, 2 and 3, her vehicle that evening, I  
10 would move them into evidence at this time.

11 THE COURT: Let the record show they be received.  
12 Counsel for defense had one concern about one photograph,  
13 which we will put on the record later and I admit them  
14 over that concern.

15 (State's Exhibits 1, 2 and 3 marked and filed.)

16 Q Ms. Jayne, again these pictures will be available to  
17 the jury to see them at the appropriate time. You said  
18 you have a New York tag?

19 A Yes, that's correct.

20 Q Is that where your family is from or where you are  
21 from?

22 A Yes.

23 Q Okay; and describe the vehicle, obviously, again, the  
24 jury would have the pictures, what type is it? Is it an  
25 automatic, straight drive or what?

1 A It's an automatic.

2 Q Could you tell the jury where the gear shift is?

3 A The gear shift is on the right side just behind the  
4 steering wheel.

5 Q So you would have to handle that gear shift in order  
6 to engage the car?

7 A Yes.

8 Q You were relaying to the jury that you went to -- or  
9 trying to go to Cajun Queen and it was too crowded and you  
10 came back to the Bellissimo, I believe, is that correct?

11 A Yes, that's correct.

12 Q And could you relate to the jury what, if anything,  
13 unusual happened then?

14 A Well, we parked the car and I was debating about  
15 whether or not to take a jacket in with me and if it was  
16 going to be cold that evening by the time we finished  
17 eating and Sean got out of the car and closed the door and  
18 as I was getting out of the car, I looked up and I saw two  
19 men approaching us.

20 Q What was the lighting in the area where you were at?

21 A It was fairly well lit.

22 Q So the parking lot is it adjacent to the building?

23 A Yes, it is.

24 Q You say that as you got out of the car, you saw -  
25 could you relate to the jury approximately what distance

1 the two men were from you?

2 A About as far as you are to me right now when I first  
3 noticed them.

4 Q Okay, if you could relate to the jury what happened  
5 then.

6 A I recognized that two men were approaching us about  
7 2-1/2 car lengths away at the front of the cars and at the  
8 front passenger corner of the car they divided and one  
9 came to me on the passenger side and the other one around  
10 the hood to the driver's side of the car.

11 Q And Mr. McMillan, your boyfriend at that time, was out  
12 on the driver's side, is that correct?

13 A Yes, he was.

14 Q And did you have an opportunity to observe these  
15 individuals before they got to you - you said you saw them  
16 walking, you saw them as they split, is that correct?

17 A Yes.

18 Q Approximately what time was this, do you recall?

19 A It was around a quarter after eight in the evening.

20 Q And as they split what did you focus on then?

21 A The individual that came toward me.

22 Q Okay, do you recall what type clothing he had on or  
23 anything --

24 A He had on dark clothing, I wasn't sure if it was navy  
25 or black, but it was dark colored clothing.

1 Q Okay, and the other individual before they split do  
2 you recall --

3 A He had on a red sweat shirt.

4 Q Once the individual who came toward you approached  
5 you, what occurred, if you could relate that to the jury.

6 A As he approached me, he told me several times, he  
7 said, "Don't look at me, don't look at me, don't look at  
8 me" and so I had my jacket over my arms and I just looked  
9 down at my arms and leaned up against the car that was  
10 parked right next to mine.

11 Q Did you attempt to flee or anything from him?

12 A There was no where to go. No, I didn't.

13 Q Why was that?

14 A His physical presence was intimidating.

15 Q And he told you not to look at him, but, of course,  
16 you had already seen both of them prior to him getting to  
17 you to give that instruction, is that correct?

18 A Yes.

19 Q I ask at this time as he approached you, you say they  
20 split at the front of the car, so he approached you,  
21 roughly half the length of the car?

22 A Yes.

23 Q How close was he ultimately to you?

24 A About two feet from me, closer than you and I.

25 Q A little bit closer than you and I?

1 A Yes.

2 Q And that was when he instructed you not to look?

3 A From about four feet away until he got as close as two  
4 feet he told me not to look at him.

5 Q All right, what occurred, you say you were looking  
6 down, what occurred at that time?

7 A I stood there for a few moments and then after a while  
8 he just kind of directed me by my shoulder around the hood  
9 of the car to the driver's side.

10 Q So the one in the dark clothing took you around the  
11 front of the car to the other side?

12 A Yes.

13 Q What, if anything, occurred or what did you see when  
14 you got to the other side?

15 A When I got to the other side, I saw Sean face down on  
16 the ground with a man on his back and a gun to the back of  
17 his head and the man had his arm pinned up behind him and  
18 he was searching through his pockets.

19 Q Okay, now the man that had the gun, that was the man  
20 in the red sweat shirt, is that correct?

21 A Yes.

22 Q And when you were brought around to the other side of  
23 the car by the man in the dark sweat shirt, what was the  
24 purpose? What did you do on that side of the car?

25 A As soon as I was brought around to the driver's side,

1 I was handed a set of keys by the man in the red and I was  
2 instructed to open the door, which had been locked, and he  
3 had handed me Sean's set of keys, which did not fit my car  
4 at all, and I fumbled with the keys, recognized that they  
5 weren't mine, said, "These are the wrong set of keys" and  
6 handed them back to him. And during the time Sean was  
7 telling him where my set of keys were in his pocket and he  
8 obtained my set of keys, handed them to me, and, again,  
9 repeated that I should open the door.

10 Q So the man in the red coat that's over Sean is handing  
11 you the keys, is that correct?

12 A Yes.

13 Q At this point where is the man in the dark clothes  
14 that brought you around to the other side of the car?

15 A Right over my left shoulder.

16 Q You would be facing to the right of the car?

17 A I was facing the car, the car door, he was right over  
18 my left shoulder.

19 Q How close was he to you there?

20 A Pretty close about two or three feet.

21 Q Did you ultimately get the car door open?

22 A Yes.

23 Q And what took place then?

24 A After I opened the car door, I handed the man the keys  
25 again and sat down into the driver's seat, asked me if I

1 had any money, and took my wallet. So the other man  
2 proceeded around the back end of the car to the passenger  
3 side and the door was locked, he couldn't get in, and the  
4 man that was sitting in the driver's seat recognized that  
5 fact, leaned over and unlocked the door. The other man got  
6 in.

7 Q So once they were getting into the car and the other  
8 man got around and was let into the other side of the car,  
9 the man in the dark clothes was let into the passenger  
10 side, is that correct?

11 A Yes.

12 Q While that was all occurring, you were once again able  
13 to look at their faces?

14 A Both of them, yes.

15 Q The man that had Sean on the ground, and it is my  
16 understanding that the man that had Sean on the ground was  
17 the man with the red coat, you were later at some point  
18 able to identify him as Mr. Forney, is that correct, the  
19 man with the red coat?

20 A Yes.

21 Q So Mr. Forney was the one that was on the side with  
22 Sean. Mr. Forney was the man that had the pistol at that  
23 time, is that correct?

24 A Yes.

25 Q When Mr. Forney got into the car, what, if anything,

1 did you see him -- well, first, you said you saw the  
2 pistol. Could you describe - do you know much about  
3 pistols?

4 A I'm afraid I don't. I know it wasn't a revolver, but I  
5 don't know what kind of gun it was. I couldn't tell you  
6 the make or anything. I could probably describe it to  
7 you, but --

8 Q If you could just briefly describe it.

9 A It was just long and blunt and black. It didn't have a  
10 handle like a revolver would or something that you would  
11 cock it back with that I noticed. It was just - I'm not  
12 very good, I don't really know much about them.

13 Q From what you do know it was not a revolver?

14 A Right.

15 Q And when Mr. Forney got in your car, what, if  
16 anything, did you see him do with that weapon?

17 A Well, he had to put it on the seat so that he could  
18 turn the car on and, you know, use the gear shift.

19 Q Your car the front seat is it bucket seats or --

20 A No, it's a bench, bench seat all the way across.

21 Q So the last time you saw that pistol it would have  
22 been where?

23 A On the seat.

24 Q And that was at the same time that he was letting the  
25 individual in the dark clothes into the car, is that

1 correct?

2 A Yes.

3 Q Once they both got in the car, what took place then?

4 A After they drove away we ran into the restaurant and  
5 called 911.

6 Q And did law enforcement come at some point?

7 A Yes, they did.

8 Q What law enforcement - that was in Charlotte, is that  
9 correct?

10 A Yes.

11 Q Did you have some opportunity - after you talked to  
12 them, where did you go?

13 A After -- well, we had to call someone back at school  
14 for a ride back to the campus and once we finally got  
15 ahold of someone each of us went to our respective rooms,  
16 called our parents, had credit cards and things like that  
17 cancelled and then we both watched some television for a  
18 while; we were really shaken up about everything and  
19 couldn't sleep, obviously, so we just watched television  
20 for a while.

21 Q Is there a time when you were contacted by the campus  
22 police?

23 A Yes, later on that evening probably about an hour and  
24 a half after we got back one of the Davidson College  
25 police officers phoned my room and said that they had

1 found my car and that it had been used in conjunction with  
2 a homicide and that I needed to go down to the Charlotte  
3 police station.

4 Q Did they go with you to the Charlotte police station?

5 A The officer that had called me drove both of us down  
6 to Charlotte.

7 Q And from there when you got to Charlotte, where did  
8 you go?

9 A From Charlotte an officer met us and drove us to Rock  
10 Hill to the police department there.

11 Q Law Enforcement was carrying you to all of these  
12 different places; you didn't have a vehicle --

13 A Right.

14 MR. SCHUSTERMAN: Objection, leading the witness.

15 THE COURT: I sustain the objection.

16 MR. SCHUSTERMAN: Thank you.

17 Q I'm sorry, Ms. Jayne, why was law enforcement carrying  
18 you everywhere?

19 A I had no car.

20 Q Once you got to Rock Hill, did you have an opportunity  
21 to observe some pictures or a photo-lineup that was  
22 developed?

23 A Yes, I did.

24 Q When you talked the officers at the campus or when you  
25 talked to the officers in Charlotte and, of course,

1 finally, the officers in Rock Hill, did anyone in any way  
2 suggest that there would be a picture that you should pick  
3 out or in any way indicate that these pictures even  
4 contained someone that had been involved in any situation  
5 that you dealt with?

6 A None at all, no.

7 Q If you could, describe to the jury how you observed  
8 these pictures? Was it in the police station?

9 A It was in a room in the police station. I was shown a  
10 computer screen that had a series of pictures on it and  
11 then it had a printout of that computer screen that they  
12 set in front of me as well.

13 Q Ms. Jayne, once you saw the computer screen, were you  
14 able to pick someone out?

15 A Yes, sir.

16 Q And did you make an indication or a designation on a  
17 printed out copy of that screen?

18 A Yes, sir.

19 Q I show you what's been marked as State's Exhibit 4 for  
20 identification and 5 for identification and I'd ask you to  
21 look at each of those and tell me once you have looked at  
22 them if you can identify them.

23 A Well, the one in color is a printout that I was shown  
24 of the computer screen and then I believe they made a  
25 photocopy of this and had me initial above the picture

1 that I had selected.

2 Q And which picture did you select?

3 A The upper right.

4 Q You said these are your initials?

5 A Yes, they are.

6 MR. POPE: Your Honor, at this time I move State's  
7 Exhibit 4 and 5 for identification into evidence.

8 MR. SCHUSTERMAN: Without objection.

9 THE COURT: Received without objection.

10 (State's Exhibit 4 and 5 marked and filed.)

11 Q Ms. Jayne, I am going to ask if you could to step down  
12 and if you could indicate to the jury on the color picture  
13 which picture you indicated? You can step down here,  
14 please.

15 A I selected the picture up here in the top right  
16 corner. I have my initials above it in the photocopy.  
17 (Demonstrating.)

18 Q Have a seat. Ms. Jayne, I was asking you earlier, did  
19 anybody in law enforcement tell you to pick somebody on  
20 that lineup?

21 A No, they did not.

22 Q And what was the basis for you picking somebody on it?  
23 What event were you drawing back to to try to identify  
24 somebody?

25 A I just recognized the face that I had seen earlier

1 that night as the face of someone who was there in the  
2 parking lot and stood over me telling me not to look at  
3 him and eventually drove off in my car.

4 Q And so that would be, in essence, my question. The  
5 identification you were making was based not necessarily  
6 on what happened down at Dave Lyle, but was based on what  
7 happened at the Bellissimo, is that correct?

8 A Yes.

9 Q Okay and this individual that you have identified was  
10 this the one that was on your side of the car?

11 A Yes, he was.

12 Q The one with the dark jacket on, I believe you said.

13 A Yes.

14 Q And you had the opportunity prior to him telling you  
15 not to look at him to be as close as I think you said 1.2  
16 feet, is that correct?

17 A Yes.

18 Q Is there any doubt in your mind that the individual  
19 that you indicated on that particular picture is the  
20 individual that was involved with the armed robbery of  
21 your car that night?

22 A No, there's not.

23 Q Okay and I further ask you do you see the individual  
24 that confronted you beside your car that night, do you see  
25 him here in the courtroom?

1 A Yes, I do.

2 Q Well, could you indicate?

3 A The man in the white shirt behind the defense table.

4 MR. POPE: Your Honor, let the record reflect that she  
5 has identified Mar-Reece Hughes.

6 Q Ms. Jayne, could you tell the jury when you identified  
7 Mr. Hughes as the man that night, what is the basis for  
8 that identification?

9 A Seeing him that evening.

10 Q Did you have the opportunity when you come down -- you  
11 have identified in State's Exhibit 1, 2 and 3, the  
12 pictures of your vehicle, -- did you have the opportunity  
13 to see that vehicle when you came down to Rock Hill that  
14 evening?

15 A That evening?

16 Q Yes, ma'am.

17 A No.

18 Q At some later point?

19 A Yes.

20 Q And the vehicle that you saw in Rock Hill City that  
21 was, in fact, your car?

22 A Yes, it was.

23 Q Now going back to your identification of Mr. Hughes,  
24 as far as speaking to you you said that he told you  
25 several times not to look at him, is that correct?

1 A Yes, he did.

2 Q Okay, other than that did he speak to you at any other  
3 time?

4 A Yes, he did.

5 Q Okay, would you tell the jury about that, please?

6 A When I was finally handed the correct set of keys to  
7 open my car, Sean was on the ground yelling that it's the  
8 square key, which is the one that fits the ignition, not  
9 the one that fits the door, so I had the square key in my  
10 hand and I was trying to get it into the key hole and it  
11 wouldn't fit and I was very nervous and I was fumbling  
12 with the keys and I finally figured out that I had the  
13 wrong key in my hand and he just told me, you know, "Take  
14 your time." He told me twice, he said, "Take your time."

15 Q Did it appear in any way that Mr. Hughes was being  
16 forced to either guard you or move you around in front of  
17 the car or anything like that by Mr. Forney?

18 A No, not at all.

19 Q What did it appear -- what did you observe as far as  
20 their interaction, their working together?

21 A Well, it seems that they had a plan ---

22 MR. SCHUSTERMAN: Objection.

23 THE COURT: I sustain the objection. Don't go into  
24 what it seemed like.

25 Disregard what it seemed like.

1 Q You can't tell what it seemed like, but tell what you  
2 observed that indicated --

3 A They were acting in concert.

4 MR. SCHUSTERMAN: Objection.

5 THE COURT: I sustain the objection.

6 MR. SCHUSTERMAN: Thank you.

7 THE COURT: She can testify to what she observed, but  
8 she cannot make conclusions about those type things.

9 Q When you say "they were acting in concert," don't  
10 give---

11 MR. SCHUSTERMAN: Objection.

12 Q --- your opinion, ---

13 MR. SCHUSTERMAN: Objection.

14 MR. POPE: I'm trying ---

15 MR. SCHUSTERMAN: Well, but I mean you ruled, Your  
16 Honor, that the conclusion acting in concert was  
17 objectionable and then the Solicitor goes and asks well,  
18 you concluded that ---

19 THE COURT: No, he wasn't asking -- I think he was  
20 trying to ---

21 MR. POPE: Avoid ---

22 THE COURT: --- formulate a question wherein he could  
23 avoid that, so I overrule that objection.

24 MR. SCHUSTERMAN: Thank you.

25 Q Ms. Jayne, when you first saw them they were coming

1 around the front of the building, is that correct?

2 A No, ---

3 Q --- or, you don't know ---

4 A I don't know where they were coming from; I just saw  
5 them walking together about two and a half car lengths  
6 down the row of cars.

7 Q When you first saw them they were together?

8 A Yes, they were.

9 Q Okay and at what point did they split up?

10 A They split right at the front corner of my car, the  
11 front passenger.

12 Q Did you see where each of them went when they split  
13 up?

14 A I saw one come toward me and I saw the other one just  
15 barely turn the corner, out of the corner of my eye I saw  
16 him turn the corner to the driver's side. I didn't see  
17 what happened on the other side of the car after that  
18 until I was taken around.

19 Q Okay. One final question, Ms. Jayne, as far as your  
20 car you said it has been in your family since it was new?

21 A Yes.

22 Q Did you or did Mr. McMillan smoke? Did you all smoke?

23 A No, never.

24 Q Did you all smoke in that vehicle that night?

25 A No one is allowed to smoke in that car.

1 Q Did you use the ashtray in that car?

2 A For change.

3 MR. POPE: Your Honor, I wish permission to publish  
4 State's 1, 2 and 3.

5 THE COURT: All right.

6 Q Answer any questions the defense may have.

7 CROSS EXAMINATION

8 BY MS. BRICE

9 Q Hi, Ms. Jayne. I am just going to ask about the  
10 questions you have already been asked in regards to the  
11 police and the incident. It was your testimony if I  
12 understand it correctly that two suspects approached the  
13 front of the vehicle, is that correct?

14 A Yes.

15 Q And it's my understanding that one was wearing -- what  
16 was one wearing?

17 A One was wearing dark navy or black clothing and the  
18 other was wearing red.

19 Q Okay and I believe it is your testimony that the  
20 defendant was wearing the dark clothing, is that correct?

21 A Yes.

22 Q And could you describe the dark clothing for me? Was  
23 it a long sleeved shirt, was it a jacket, what kind of  
24 articles was he wearing?

25 A I didn't take note of what he was wearing other than

1 it was dark clothing.

2 Q And the other suspect was wearing I red outfit?

3 A A red sweat shirt.

4 Q He had on a sweat shirt?

5 A Uh-huh.

6 Q And that suspect was Mr. Forney, is that correct?

7 A Yes.

8 Q And the two suspects, Mr. Forney and the defendant,  
9 approached your car and split up, is that correct?

10 A Yes.

11 Q And I believe it was also your testimony that you were  
12 on the inside of your car and you were grabbing your  
13 jacket, is that correct? You had opened the door and was  
14 outside the door?

15 A I was out of the car by the time they had reached - I  
16 was out of the car by the time they were two and a half  
17 car length away or so, about two cars away.

18 Q Okay and describe the lighting if you would for me.

19 A It seemed well lit to me for a parking lot.

20 Q And who was the person that approached you?

21 A The man in the dark clothing.

22 Q So the defendant approached you.

23 A Yes.

24 Q Okay and what did he say to you?

25 A He said, "Don't look at me" and he repeated that twice

1 more.

2 Q Okay, basically, "Don't look at me. don't look at me."

3 A "Don't look at me."

4 Q All right, but you did look at him or you had already  
5 looked at him?

6 A I had already looked at him. You know, if someone is  
7 walking toward me, I look at them.

8 Q Did you notice any type of facial markings on him?

9 A No.

10 Q Were there any facial characteristics that stood out  
11 in your mind?

12 A I just noticed his face. I just saw two men  
13 approaching.

14 Q Did you get a good look at his face?

15 A Good enough to pick him out later on, so I guess, yes,  
16 I did.

17 Q Did you see any cuts or bruises on his face?

18 A Not that I recall.

19 Q And going back when you said he told you don't look at  
20 him and then what did you do?

21 A I looked down at my arms that were crossed in front of  
22 me and just leaned up against the car that was parked next  
23 to mine.

24 Q And where was Mr. Hughes while you were leaning at the  
25 car that was next to you?

1 A I couldn't see him, but once I was brought around the  
2 front of the car I found out that he was down on the  
3 ground with Sean at the other side.

4 Q So as you were looking down ---

5 A I'm confused, did you say Mr. Forney or Mr. Hughes?

6 Q Mr. Hughes.

7 A Oh, he was standing right in front of me to the side,  
8 to the left side in front of me.

9 Q So as you were standing with your arms crossed leaning  
10 against the car, you were looking down, but you could  
11 visually see him to your side?

12 A I could see his chest.

13 Q And he had on dark clothing, is that correct?

14 A Yes.

15 Q And as you were waiting there how much period of time  
16 elapsed before you approached the front of the car?

17 A I'm really not sure, I don't know; not very long  
18 probably about a minute, not even that long.

19 Q And Mr. Hughes I believe it was your testimony led you  
20 around the front of the car?

21 A He was behind me, he didn't really lead me, but he  
22 directed me around the front of the car.

23 Q During the time that you were standing against the car  
24 did you hear Mr. Forney and Mr. Hughes exchanging any  
25 conversation?

1 A I really wasn't aware of anything. I wasn't really  
2 listening.

3 Q And as you were around in the front of the vehicle I  
4 believe it was your testimony that he directed you to the  
5 front of the vehicle, what did you observe then?

6 A I saw Sean face down on the ground with a man kneeling  
7 on his back with one knee and a gun to the back of his  
8 head.

9 Q And who was that man?

10 A The man in the red.

11 Q Mr. Forney?

12 A Yes.

13 Q Tell me again exactly what you saw Mr. Forney doing to  
14 Mr. McMillan.

15 A He was searching through his pockets for I guess the  
16 keys.

17 Q And how was he over Mr. McMillan?

18 A He had his right knee in his back and his right hand  
19 resting or I don't know if it was resting, but it was in  
20 the middle of his high back and the gun was directed to  
21 the back of his head, the base of his head.

22 Q And you saw Mr. Forney with the gun to the back of Mr.  
23 McMillan's head?

24 A Yes.

25 Q And did you hear Mr. Forney say anything to Mr.

- 1 McMillan?
- 2 A Yes.
- 3 Q And what did he say?
- 4 A He said, "If you move, I'll kill you."
- 5 Q He said, "If you move, I'll kill you"?
- 6 A Yes.
- 7 Q Did Mr. Forney say anything to you?
- 8 A Yes, he directed me to open the door twice after I  
9 received the right set of keys.
- 10 Q And during this time did Mr. Hughes say anything to  
11 you?
- 12 A He told me to take my time while I was fumbling with  
13 the keys.
- 14 Q Okay. Then what happened next?
- 15 A I opened the driver's side door and Mr. Forney got  
16 into the driver's seat and the other man walked around  
17 behind the car to the passenger side and couldn't get in  
18 because it was locked.
- 19 Q So you observed Mr. Forney with his knee to the back  
20 of Mr. Forney -- to Mr. McMillan with a gun to the back of  
21 Mr. McMillan's head telling him he would kill him, is that  
22 correct?
- 23 A He said if he moved.
- 24 Q Did Mr. Forney also threaten you?
- 25 A Yes.

1 Q And what threats did he make to you?

2 A Once he was sitting in the driver's seat he couldn't  
3 really aim the gun at Sean who was behind him on the  
4 ground, so he threatened me -- well, he threatened Sean  
5 that if Sean moved he would kill me.

6 Q And Mr. Forney, I believe you testified, got into the  
7 driver's seat of the vehicle, is that correct?

8 A Yes.

9 Q And did he have the gun pointed at you at this time  
10 still?

11 A Not once he got into the vehicle. He put it on the  
12 seat next to him.

13 Q Was the window of the car rolled up or rolled down?

14 A It was up and he rolled it down after he got in.

15 Q Did he shout anything to you or did you hear him shout  
16 anything to you as he was leaving in the vehicle?

17 A He just repeated the threat.

18 Q And what exactly did he say?

19 A Verbatim? He shouted to Sean, "If you move, I'll kill  
20 your whore."

21 Q I believe it was your testimony that after Mr. Forney  
22 and the defendant drove away in the vehicle you went to  
23 the Bellissimo and called 911, is that correct?

24 A Yes.

25 Q And I believe an officer responded at the Bellissimo?

1 A Yes.

2 Q Do you remember in your statement whether or not you  
3 informed the officer whether or not you could make an  
4 identification of the suspects?

5 A He asked for a description, a physical description and  
6 asked me if I could individuals later on and I said I  
7 didn't know if I could or not.

8 Q This is the photograph of the lineup that you  
9 identified Mr. Hughes, is that correct?

10 A Yes, it is.

11 Q Do you recall seeing the bumps or bruises on his face  
12 at the time of the incident up in Charlotte?

13 A I don't recall; I recognized the facial features, but  
14 I wasn't scrutinizing for any facial flaws.

15 Q So you don't recall seeing bruises or marks upon his  
16 face at that time up in Charlotte?

17 A I wasn't looking for them, so I really didn't notice  
18 any.

19 Q In this photograph do you recall his eyes being  
20 swollen like that in Charlotte?

21 A I don't really know what to say, they don't look  
22 terribly swollen here. Some people have different styles  
23 of eyes and I am not really sure.

24 Q Just that your testimony was that he had dark clothes  
25 on up in Charlotte, is that correct?

1 A Yes.

2 Q And I believe in this photograph he is wearing a blue  
3 shirt. I believe it was your testimony that he was either  
4 wearing a black or dark blue, is that correct?

5 A That's correct.

6 Q and in that photograph he is wearing perhaps a blue  
7 shirt?

8 A Yes.

9 Q Ms. Jayne, I would just like to pose some true/false  
10 questions to you, which I would request that you could  
11 answer in true or false.

12 A Okay.

13 Q Did Mar-Reece Hughes -- Mar-Reece Hughes never  
14 presented a weapon that evening.

15 A That's true.

16 Q That's true. Mr. Hughes never exhibited any violence  
17 towards you that evening.

18 A Not outward violence.

19 Q Other than directing you to the front of the vehicle,  
20 was there any other violence directed to you that evening?

21 A Yes, there was a gun pointed at me.

22 Q Mr. Hughes never had that gun, did he?

23 A Not in my presence.

24 Q You never saw Mr. Hughes with that gun, did you?

25 A No.

1 Q And Mr. Forney was in possession of that weapon at all  
2 times, true or false?

3 A False, he put it on the seat next to him.

4 Q Did Mr. Hughes, true or false, ever have possession of  
5 that weapon?

6 A Not in my presence.

7 Q True or false, he never had possession of that weapon.

8 A No.

9 Q True or false, Dwayne Eric Forney threatened to kill  
10 Mr. McMillan.

11 A For Forney?

12 Q Yes, ma'am.

13 A Yes.

14 Q So it's true. At no time did Mr. Hughes make threats  
15 to you or Mr. McMillan.

16 A Not verbal.

17 Q So it's true Mr. Hughes made no verbal threats to you  
18 that evening.

19 A No verbal threats.

20 Q In fact, he never made any physical threats to you  
21 that evening, did he?

22 A His physical presence was threatening to me.

23 Q But he did not beat you, he did not cause you any  
24 bodily harm that evening, did he?

25 A No.

1 MS. BRICE: I beg the court's indulgence one moment,  
2 please.

3 Q That's all the questions I have. Thank you, Ms. Jayne.

4 THE COURT: Redirect.

5 REDIRECT EXAMINATION

6 BY MR. POPE

7 Q Ms. Jayne, when they split up and Mr. Hughes was on  
8 one side and Mr. Forney was on the other you were  
9 confronted by Mr. Hughes.

10 A Yes.

11 Q Were you free to go on in the restaurant and have  
12 dinner?

13 A No.

14 Q Were you free to retain possession of your vehicle?

15 A No.

16 Q Were you free just to leave and go get law  
17 enforcement?

18 A No.

19 Q So Ms. Brice had asked you true or false questions  
20 about threats and you said not verbal, but physical. Could  
21 you relate to the jury what you mean when you say that?

22 A Well, it didn't feel I could really go anywhere or do  
23 anything. He was standing right there. Basically, I was  
24 leaning up against the car and he was right here; I didn't  
25 have anywhere to go and once I went around to the driver's

1 side on one side of me was the man with the gun and the  
2 other side was the man standing right here, so I couldn't  
3 have gone anywhere; I didn't want to try to.

4 Q Did you choose to go around the front of the car to  
5 the other side?

6 A No.

7 Q Who directed you to do that?

8 A Mr. Hughes.

9 Q And when your vehicle was stolen and it left the  
10 parking lot, who got in the car?

11 A Both Mr. Forney and Mr. Hughes.

12 Q Thank you, ma'am.

13 THE COURT: Recross?

14 RE CROSS EXAMINATION

15 BY MS. BRICE

16 Q Did Mr. Hughes ever make any verbal threats to you?

17 A No, no verbal threats.

18 Q In fact, he told you to take your time on more than  
19 one occasion, is that not true?

20 A Yes, he did.

21 Q And there was also no physical threats by Mr. Hughes,  
22 he did not shove you or push you or cause you any physical  
23 harm whatsoever, did he?

24 A Well, he firmly directed me via my arm and shoulder to  
25 the other side of the car, but, no, he did not harm me.

1 Q That's all the questions I have.

2 MS. BRICE: Thank you, Your Honor.

3 MR. POPE: Your Honor, I ask that this witness be  
4 excused.

5 THE COURT: All right, subject to recall if necessary  
6 she can be excused.

7 You may step down. Thank you. Appreciate your time.

8 THE COURT: Mrs. Hartman, do you have your letter with  
9 you today?

10 MRS. HARTMAN: No, it's at the motel.

11 THE COURT: Would you bring it in the morning so that  
12 we can call down there. What we plan to do is call and  
13 tell them you are coming and we are going to have you  
14 brought down there so that you can be processed as  
15 promptly as possible.

16 MRS. HARTMAN: Okay, Yes, I'll do it first thing.

17 THE COURT: We are going to do that. But if you bring  
18 the letter we will know who to call.

19 MRS. HARTMAN: Okay, I'm so sorry.

20 THE COURT: That's okay; I didn't tell you to do it.  
21 Bring it in the morning.

22 All right, we will take about a ten minute break.

23 (Recess.)

24 MR. POPE: I may very well have resolved with Ms.  
25 Brice the minor issue of one objecting and another

1 directing situation. I think Mr. Schusterman was doing the  
2 objections, Ms. Brice was doing the directing. I think  
3 they are going to take care of it --

4 THE COURT: Mr. McMillan, why don't you just sit back  
5 down there just for a second.

6 I have already gotten a note from the jury foreman. It  
7 states "Are we allowed to make personal notes in the jury  
8 room?" I guess what they want to do when they go back is  
9 write down - I told them they couldn't make notes here.  
10 What is The State's position on that?

11 MR. POPE: Your Honor, I have had trials both ways  
12 have had judges hand out pads, then take them up, and I  
13 really have no position one way or the other. If they  
14 would like to take notes through the whole thing, I do not  
15 have any opposition to that.

16 THE COURT: How about the defense?

17 MR. SCHUSTERMAN: So I'll be clear, are you asking me  
18 can they make notes in the courtroom or --

19 THE COURT: They want to know about the jury room, but  
20 I've already told them they couldn't in the courtroom, but  
21 I don't have any real problem with them taking them in the  
22 courtroom to be honest with you. I have a little  
23 instruction I give them at that time, which I am going to  
24 give them at this time also. I am asking as to both.

25 MR. SCHUSTERMAN: My feelings that in the courtroom I

1 would prefer that they not take notes because I think it  
2 would take their attention away from the testimony. I  
3 certainly have no problem with them taking notes -  
4 certainly, the court breaks more often when we get the  
5 jury, going back and taking notes.

6 THE COURT: All right.

7 MR. SCHUSTERMAN: My concern would be and I don't know  
8 how the court feels about this about sitting down and  
9 turning to your fellow juror and saying did someone say so  
10 and so?

11 THE COURT: I tell them their notes are for their  
12 personal use, that no one's notes would take precedence  
13 over anyone else's recollection. So I think I cover that  
14 in my usual instruction.

15 MR. SCHUSTERMAN: I guess that my concern is not that  
16 once deliberation begins, but they go back now and one  
17 juror turns to another and says ---

18 THE COURT: I understand; I'll take care of that.

19 MR. SCHUSTERMAN: Thank you, sir. Then I have no  
20 objections to taking personal notes.

21 THE COURT: Bring in the jury.

22 MR. SCHUSTERMAN: Very quickly, I don't think that  
23 they should be allowed to take those notes back to the  
24 motel with them at night.

25 THE COURT: All right.

1 MR. POPE: I know we are about to bring the jury in  
2 and I know we are making a mountain out of a mole hill,  
3 but my only concern with going back - if we are going to  
4 have some controls, suddenly they end up slipping over  
5 what you are telling them not to do is talk about the  
6 case. Now, you know, I understand Mr. Schusterman said,  
7 you know, keeping it to yourself so everybody don't go  
8 back basically deliberating on it.

9 (Jury returns to courtroom.)

10 THE COURT: You can be seated. Mr. Foreman, I have  
11 your note and the answer to it is yes. I am will tell you  
12 about that in just a minute. Let me just tell you there  
13 are two reasons we don't usually like jurors to take  
14 notes. Some judges actually give out pads and give you the  
15 opportunity to take notes, but one is that it takes away  
16 from your listening sometimes while writing down what was  
17 just said, you might miss what is next said. Of course,  
18 I've told you you can't discuss the case among yourselves,  
19 so you couldn't go back in the jury room and say I was  
20 busy writing down statement A - what did he say next. I  
21 missed it, so that's one reason I don't like to take  
22 notes. Most of us aren't stenographers or shorthand  
23 people, so that's one reason. The other reason is that it  
24 could potentially be a problem for people to take notes in  
25 that later they would try to use those notes that were

1 taken and other people didn't to make those notes as the  
2 gospel so to speak. that is, if eleven other people say  
3 Witness X testified to this, somebody had written it down,  
4 and says no, I have it in writing we have got to go by  
5 what I wrote down because I wrote it down and the other  
6 jurors even though their memory is that wasn't what was  
7 said perhaps thinking if they had written it down, it must  
8 be right. That's another reason. However, I am going to  
9 provide the opportunity for you to write your own personal  
10 notes in the jury room. I am going to have fourteen pads  
11 brought, fourteen pencils and fourteen manilla envelopes.  
12 What I am going to ask you to do at the end of the day  
13 rather than take those notes back to the motel, put your  
14 pad, write your name on -- you don't have to if you don't  
15 want to, but if you want to take notes, put that pad in  
16 that manilla envelope, you don't have to lick it and seal  
17 it, but close it each night and designate a place, there  
18 are shelves in there or whatever where you could leave  
19 them at the end of the day to use the next day. But,  
20 again, they are personal notes. When you deliberate, you  
21 are not to say again that your notes override anybody  
22 else's or anybody's recollection and don't let anybody's  
23 notes override yours or your recollection. The last caveat  
24 that I have is when you go back, these are personal notes.  
25 Just as I talked about a minute ago. You can't discuss the

1 case. You can't say what did somebody say. You go back  
2 and write down your recollection and I emphasize be  
3 accurate as you can because these are very serious matters  
4 and it's good to keep notes in this way if you think that  
5 will help you with your recollection. When you get back  
6 there today, tomorrow or the next day and you can't  
7 exactly recall whether somebody said a certain thing, you  
8 can't discuss the case, you can't turn to your neighbor or  
9 one of the other jurors and say help me with my notes or  
10 what did somebody say. You can't do that until you are  
11 told to deliberate. So with those caveats we are going to  
12 at the next break provide you with a pad, if you run  
13 through that one, we will get you another one and a folder  
14 for each one of you to write your name on it, if you wish,  
15 so you can leave those here over night. But I appreciate  
16 your sending out the note. That's what I want when you  
17 have a question. Thank you.

18 All right, you may proceed.

19 MR. POPE: The State calls Sean McMillan to the stand.

20 SEAN MCMILLAN, being duly sworn, testified  
21 as follows:

22 DIRECT EXAMINATION

23 BY MR. POPE

24 Q Mr. McMillan, if you would, state your name for the  
25 jury, please.

- 1 A Sean McMillan.
- 2 Q And how old are you. Mr. McMillan?
- 3 A Twenty-three.
- 4 Q Do you attend school?
- 5 A Yes, sir, I do.
- 6 Q Where is that?
- 7 A University of Florida College of Medicine.
- 8 Q What are you studying there?
- 9 A To be a physician.
- 10 Q And what year are you in in college?
- 11 A First year.
- 12 Q I call your attention back to September 25, 1992, were  
13 you in school then?
- 14 A Yes, sir, Davidson College.
- 15 Q And that's up in North Carolina?
- 16 A Yes, sir.
- 17 Q In particular back on September 25, 1992, did you have  
18 an opportunity to go with Miss Beth Ann Jayne down to  
19 Charlotte for dinner on Friday evening?
- 20 A Yes, that Friday evening we were going to tentatively  
21 go to Cajun Queen Restaurant and it was a bit busy, so we  
22 went to another restaurant, Bellissimo Restaurant, just up  
23 the street.
- 24 Q Would you tell the jury how you came to go down there  
25 as far as how you were riding and what, if anything,

1 unusual occurred.

2 A As I say, we were originally going to go to Cajun  
3 Queen and we weren't real sure how to get there; it was  
4 our first time going. So we got a little bit lost and we  
5 had to stop and ask directions. We had passed it and gone  
6 further up the road and that's when we stopped and got  
7 some directions, went back to it. The wait was long,  
8 there was I guess some special - anyway it was busy and I  
9 don't like to wait, so we decided to go back up to the  
10 Bellissimo, which we had passed when we made a wrong turn  
11 in the first place.

12 Q When you got to the restaurant, do you recall about  
13 what time it was?

14 A We turned around in the parking lot and it was about  
15 ten or fifteen after eight when we made the turn around it  
16 was pretty much across the street, just up from the  
17 restaurant, so it was about a quarter after eight.

18 Q Could you describe to the jury -- now, you were in Ms.  
19 Jayne's car, is that correct?

20 A That's correct.

21 Q Could you tell the jury what type car that was?

22 A A 1986 Buick Century 4-door, gray.

23 Q I believe you were driving?

24 A That's right.

25 Q Could you tell the jury once you were parked what, if

1 anything, unusual occurred?

2 A Well, we pulled up and we parked on basically the  
3 front of the building. There's no windows on the side, but  
4 there was a sidewalk from the parking space that we parked  
5 in that runs directly to the front door. We pulled in.  
6 The parking spaces are somewhat angled along the side of  
7 the building and from the back of the building it was  
8 darker, out of the reach of the street light, two men were  
9 approaching.

10 Q I'm sorry, you said, "Out of the reach of the street  
11 light." The back of the building was or where you parked?

12 A Right, the back of the building. We were underneath  
13 the light where we had parked, but due to the angle the  
14 perspective that I had when I get out of the car was  
15 looking sort of toward the back of the building.

16 Q Out of the darkness of the back of the building what  
17 did you see?

18 A Well, two men were approaching and at the time they  
19 weren't talking, they weren't carrying on, so it was a  
20 little bit more worrisome than two people walking together  
21 - anyway, given the scenario of the night it was a little  
22 bit intimidating, but ---

23 Q I'm sorry and I don't want to put words in your mouth.  
24 I want to make sure I understand. You noticed something  
25 unusual or drew your attention as far as the way they were

1 approaching, is that what you were saying?

2 A Well, in that situation it was night time and two  
3 people came from the back of the building in the darkness,  
4 they weren't saying anything, they were just walking  
5 toward that direction, so, I was looking in that direction  
6 anyway, I had taken note of them and I just continued to  
7 take note of them.

8 Q Once they had come from the back of the building, you  
9 say it was lit then in that area?

10 A Right.

11 Q If you could tell the jury what you observed.

12 A Well, I had just gotten out of the car and I had  
13 looked the door, so it was shut and Beth Ann, my  
14 girlfriend, was debating on whether or not to take her  
15 coat with her into the building, so she had reached in the  
16 back seat and I believe she was pulling it out. I glanced  
17 over and saw that she was doing that and these two men  
18 kept approaching. When they got to the front of the  
19 vehicle, no words, no gestures, just split up.

20 Q When you got out of the car and you said the angle of  
21 the car automatically directed your attention toward the  
22 back just the way --

23 A Right. If the front of the jury box were the side of  
24 the building that we parked against, they came from the  
25 direction you are in along the side of the building in

1 front of the other cars that were marked along the spaces  
2 on the side of that building.

3 Q There was a sidewalk?

4 A There's a sidewalk that runs exactly.

5 Q And you pulled in and parked?

6 A Right, so my orientation was faced in that direction  
7 anyway.

8 Q About how far back were they coming?

9 A About where you are with the gentleman seated behind  
10 you is roughly.

11 Q And that is when you first noticed them?

12 A That's when I first noticed them.

13 Q And at what speed were they approaching?

14 A A little -- walk a little faster - about like that.

15 Q And were they staying together or were they separated  
16 before they got to you?

17 A Well, the sidewalk is maybe so wide, so they were not  
18 single file, but yet not side by side either.

19 Q And then what occurred? You are seeing them the whole  
20 time from the time they came out of the darkness.

21 A Right, except the time I glanced - at the time I  
22 noticed them coming, as I said, it was sort of an  
23 intimidating situation I glanced to see what Beth Ann was  
24 doing to see kind of if we were going to be able to kind  
25 of get on in the building, but she had turned around to

1 pull her coat out.

2 Q And what happened then? What did you notice then?  
3 What occurred then?

4 A Okay, she was doing that, I was watching them come on  
5 toward us and when they got to the front of the car, they  
6 didn't break stride, one went to her side, Mr. Forney, who  
7 was later identified, came to my side of the car.

8 Q Mr. Forney was the one I believe had the red, is that  
9 correct?

10 A That's correct.

11 Q And what did the other individual have on, do you  
12 recall?

13 A I really don't recall. Most of my attention was  
14 focused from the point they split really on Mr. Forney  
15 since he was coming more toward me.

16 Q At the point they split, you say that was in front of  
17 the car you were in?

18 A Right.

19 Q How close was Mr. Forney to you when they split, do  
20 you know?

21 A When they split, he was at the passenger's right  
22 front, so right in front of the car maybe about this far  
23 from --

24 Q And you were looking at his face?

25 A At that point I was looking more at him, right.