

VOLUME SEVEN OF EIGHT

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Steven H John, Circuit Court Judge

THE STATE,

RESPONDENT,

V

STEPHEN CHRISTOPHER STANKO,

APPELLANT

RECORD ON APPEAL

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**** DEFENDANT'S EXHIBITS 2-19 (NORMAL BRAIN/STANKO BRAIN)
HAVE BEEN TRANSPORTED TO THIS COURT****

MOTION TO REVIEW STATUS OF COUNSEL - JUNE 5, 2009

11

1 YOUR POST CONVICTION RELIEF APPLICATION, IS THERE ANYTHING
2 DIFFERENT BETWEEN NOW AND THE PREVIOUS TIME THAT I
3 ADDRESSED THIS MATTER WITH YOU?

4 DEFENDANT STANKO NO, SIR, THERE'S NOT
5 THE COURT ALL RIGHT, SIR, DO YOU CONTINUE TO
6 WANT TO HAVE MR DIGGS REPRESENT YOU IN THIS CURRENT
7 ACTION?

8 DEFENDANT STANKO YES, SIR, I DO
9 THE COURT ALL RIGHT, SIR, AND DO YOU FEEL THAT
10 THIS IS A FREE AND OPEN COMMUNICATION BETWEEN YOU AND MR
11 DIGGS DESPITE THE FACT THAT THE POST CONVICTION RELIEF
12 APPLICATION HAS BEEN FILED?

13 DEFENDANT STANKO YES, SIR, THERE IS
14 THE COURT AND YOU ARE ABLE TO FULLY DISCUSS
15 ALL ISSUES THAT YOU DEEM NECESSARY WITH HIM?

16 DEFENDANT STANKO YES, SIR
17 THE COURT ALL RIGHT, SIR, AND HAVE YOU FOUND
18 IN ANY WAY THAT HE IS UNRESPONSIVE TO YOU OR IN ANY WAY,
19 FOR WANT OF A BETTER WORD, HARBORING ANY ILL FEELINGS TO
20 YOU BECAUSE OF THE FILING OF THE POST CONVICTION RELIEF
21 APPLICATION?

22 DEFENDANT STANKO NOT ONLY IS HE NOT NOW BUT I
23 DO NOT BELIEVE THAT WHEN WE FILE THE SUPPLEMENTAL, WHICH IS
24 GOING TO BE FILED, AND YOU HAD ASKED ME SPECIFICALLY TO
25 HAVE MR GODFREY CONTACT YOU AND GIVE YOU A COPY OF THAT

MOTION TO REVIEW STATUS OF COUNSEL - JUNE 5, 2009

12

1 WHEN IT IS DONE AND IT WILL BE DONE SOON

2 THE COURT YES, SIR

3 DEFENDANT STANKO I DON'T THINK THERE WILL BE
4 ANY PROBLEMS AT THAT TIME

5 THE COURT ALL RIGHT, SIR

6 DEFENDANT STANKO THE ISSUES THAT WE'RE GOING
7 TO RAISE THAT HAVE HIM IN IT HAVE NOTHING TO DO WITH ANY
8 ISSUES THAT WOULD CREATE A CONFLICT OR ANY ARGUMENT OR I
9 FEEL CAUSE ANY COMMUNICATIVE PROBLEMS BETWEEN MR DIGGS AND
10 MYSELF THEY'RE MORE AT TRIAL SITUATIONS THAT SHOULD HAVE
11 BEEN OBJECTED TO, THINGS OF THAT NATURE, AND THERE IS,
12 THERE ARE TWO ISSUES BUT, SIR, I DO NOT BELIEVE THAT MR
13 DIGGS AND I ARE GOING TO HAVE ANY PROBLEMS PRESENTING THE
14 SECOND TRIAL

15 THE COURT ALL RIGHT, SIR, AND AGAIN YOU
16 CONTINUE TO WANT TO HAVE MR DIGGS TO REPRESENT YOU IN THIS
17 PARTICULAR MATTER?

18 DEFENDANT STANKO YES, SIR, I DO

19 THE COURT ALL RIGHT, THANK YOU VERY MUCH

20 DEFENDANT STANKO AND BEFORE I END THIS,
21 THOUGH, I WOULD LIKE TO MAKE ONE THING CLEAR AND ---

22 THE COURT YES, SIR

23 DEFENDANT STANKO --- I FEEL THAT MR HUMPHRIES
24 IS KIND OF, AND THIS IS JUST MY THOUGHTS, BUT HE'S ALSO HAD
25 LIKE HE SAID HE HAS TO PREPARE FOR POSSIBLE APPEALABLE

MOTION TO REVIEW STATUS OF COUNSEL - JUNE 5, 2009

13

1 ISSUES LATER ON IN THE FUTURE AND I WANT TO CLARIFY ONE
2 THING, TOO, IN THE INSTANCE THAT I DO RAISE AN ISSUE
3 AGAINST MR DIGGS IF IT DOES END UP BEING A MERITABLE ISSUE
4 THAT COULD LATER BE REVERSED, REVERSE THAT CASE, THAT DOES
5 NOT MEAN THAT IN THIS TRIAL HE WILL NOT BE EFFECTIVE
6 COUNSEL FOR ME I WANT TO MAKE THAT CLEAR BECAUSE I DON'T
7 WANT WAIVE HIS ATTEMPTS AT CLARING, DECLARING THAT I'M
8 WAIVING THINGS I'M NOT DECLARING THAT THERE WEREN'T
9 MISTAKES MADE IN THAT CASE BUT THAT DOES NOT MEAN THAT I
10 DON'T TRUST MR DIGGS 100 PERCENT IN THIS UPCOMING CASE

11 THE COURT ALL RIGHT, SIR, AND YOU ARE
12 EXPRESSING TO ME THAT YOU DO ---

13 DEFENDANT STANKO I JUST WANT TO MAKE THAT
14 RECORD CLEAR ALSO

15 THE COURT RIGHT, THAT YOU DO, THAT YOU DO
16 TRUST AS FAR AS HIS ABILITY TO PROPERLY REPRESENT YOU IN
17 THIS ACTION?

18 DEFENDANT STANKO ONE HUNDRED PERCENT

19 THE COURT VERY GOOD, THANK YOU VERY MUCH, SIR,
20 YOU CAN HAVE A SEAT

21 DEFENDANT STANKO YES, SIR

22 THE COURT YES, SIR?

23 MR HUMPHRIES VERY BRIEFLY, IN MY MIND WE'VE
24 ACCOMPLISHED WHAT, AT LEAST WHAT THE STATE FELT LIKE NEEDED
25 TO BE DONE TODAY IN FAIRNESS WE HAVE HAD AT LEAST TWO

MOTION TO REVIEW STATUS OF COUNSEL - JUNE 5, 2009

14

1 HEARINGS IN CONNECTION WITH THIS ISSUE BUT IN NEITHER OF
2 THOSE TWO PARTICULAR HEARINGS DID WE ADDRESS THE WAIVER OF
3 ATTORNEY/CLIENT PRIVILEGE SPECIFICALLY THAT'S WHY WE
4 RAISED IT TODAY AND HAVING DONE THAT WE'VE ACCOMPLISHED
5 WHAT WE INTENDED

6 THE COURT ALL RIGHT, SIR, AND I APPRECIATE
7 THAT AND I BELIEVE WE ARE ALL CLEAR ON WHAT THE FACT AND
8 THE FACT HAS NO AFFECT ON, ON THIS PARTICULAR TRIAL

9 DEFENDANT STANKO YOUR HONOR?

10 THE COURT I'M SORRY, TALK TO YOUR ATTORNEYS
11 AND SEE IF THERE IS ANYTHING THAT THEY WOULD LIKE TO
12 PRESENT TO ME

13 ALL RIGHT, AT THIS POINT IN TIME AGAIN AS THE
14 COURT HAS PREVIOUSLY INDICATED AND I APPRECIATE THE NEW
15 INFORMATION THAT HAS BEEN BROUGHT TO, TO THE COURT'S
16 ATTENTION AND RECOGNIZE THAT WHILE THE SIXTH AMENDMENT TO
17 THE CONSTITUTION OF THE UNITED STATES DOES NOT CONFER AN
18 ABSOLUTE RIGHT TO A DEFENDANT TO BE REPRESENTED BY THEIR
19 PREFERRED COUNSEL OF THEIR CHOICE, THE COURT IS MINDFUL OF
20 THE MANDATES TO THAT AMENDMENT, THE U S SUPREME COURT
21 DECISIONS AND THE S C SUPREME COURT DECISIONS THAT THIS
22 COURT'S OBLIGATION IS TO SAFEGUARD THE INTEGRITY OF THE
23 PROCEEDINGS AND TO ENSURE TRIALS ARE CONDUCTED ACCORDING TO
24 ETHICAL STANDARDS BALANCING THAT WITH OBVIOUSLY THE SIXTH
25 AMENDMENT RIGHTS GRANTED TO THE DEFENDANT

MOTION TO REVIEW STATUS OF COUNSEL - JUNE 5, 2009

15

1 IN THIS PARTICULAR MATTER I FIND THAT MR STANKO
2 HAS MORE THAN ONCE EXPRESSED FULL AND COMPLETE CONFIDENCE
3 IN THE ABILITIES OF MR DIGGS THERE IS A FREE AND OPEN
4 COMMUNICATION BETWEEN THE DEFENDANT AND MR DIGGS HE HAS
5 RAISED NO ISSUES THAT WOULD IMPACT MR DIGGS ABILITY TO
6 PROPERTY REPRESENT MR STANKO IN THE UPCOMING TRIAL AND,
7 THEREFORE, I FIND THAT MR DIGGS MAY CONTINUE TO REPRESENT
8 MR STANKO IN THE PROCEEDINGS THAT WILL BE FORTHCOMING IN
9 NOVEMBER IN THIS ACTION OF 2005-GS-26-2927

10 ANYTHING FURTHER FROM THE STATE AT THIS POINT IN
11 TIME?

12 MR HUMPHRIES NOTHING FROM THE STATE, YOUR
13 HONOR

14 THE COURT MR DIGGS, ANYTHING FURTHER FROM THE
15 DEFENSE ON THIS ISSUE OR ANY OTHER ISSUES THAT YOU NEED TO
16 BRING TO MY ATTENTION?

17 MR DIGGS YOUR HONOR, I HAVE ONE OTHER ISSUE
18 I'D LIKE TO BRING TO THE COURT'S ATTENTION IN CHAMBERS
19 MAYBE OR UNDER THE STATUTE IN AN EX PARTE FASHION

20 MR HUMPHRIES I OBVIOUSLY DON'T MIND IT
21 ACTUALLY IN THE COURTROOM

22 THE COURT ALL RIGHT, SIR, VERY GOOD

23 MR HUMPHRIES THANK YOU, YOUR HONOR

24 THE COURT ALL RIGHT, THANK YOU VERY MUCH

25 ALL RIGHT, MR DIGGS, WHAT IS IT THAT YOU'D LIKE

MOTION TO REVIEW STATUS OF COUNSEL - JUNE 5, 2009

16

1 TO BRING TO THE COURT'S ATTENTION AT THIS TIME?

2 MR DIGGS YOUR HONOR, WE HAD GONE OVER SOME
3 ISSUES LAST TIME WITH THE COURT AND I PROMISED YOU I WAS
4 GOING TO GET YOU SOME PROPOSED ORDERS

5 THE COURT YES, SIR

6 MR DIGGS I WAS GOING TO DO THAT AND THEN MY
7 COMPUTER SYSTEM WENT DOWN, IT WAS OUT FOR AN ENTIRE WEEK,
8 AND THEN ONE THING LED TO ANOTHER AND I DIDN'T GET THEM TO
9 YOU BUT I DO HAVE SOME I'D LIKE TO HAND UP TODAY THEY
10 COVER BASICALLY THE SAME INDIVIDUALS THAT I WENT THROUGH
11 LAST TIME WITH THE COURT ---

12 THE COURT RIGHT

13 MR DIGGS --- AND WHAT WE WOULD PROPOSE THEY
14 DO IN THE CASE I WANT TO MAKE SURE I'VE GOT THE CORRECT
15 ONE HERE

16 THE COURT I HAVE EXECUTED THE ORDER FOR EXPERT
17 SERVICES WHICH COVERS THOMAS H SACHY, JOSEPH C WU, MARK
18 P EINHORN, J W THRASHER, JR , AND RUBEN GUR I HAVE
19 EXECUTED THAT ORDER I FIND THAT THE INFORMATION CONTAINED
20 ALONG WITH YOUR PREVIOUS FILINGS REGARDING THOSE
21 INDIVIDUALS ALONG WITH THE INFORMATION PROVIDED AT THE
22 PROPER HEARING TO BE ADEQUATE FOR THE COURT TO EXECUTE THAT
23 ORDER FOR EXPERT SERVICES

24 REGARDING THE ORDERS FOR BERNARD ALBINIAK, JAMES
25 EVANS AIKEN, AND EVELYN CALIFF, I DID NOT FIND ANYTHING IN

MOTION TO REVIEW STATUS OF COUNSEL - JUNE 5, 2009

17

1 THOSE PARTICULAR ORDERS YOU HAD PREVIOUSLY REGARDING THE
2 ONES THAT I SIGNED YOU HAD GIVEN ME BACKGROUND INFORMATION
3 AS TO THOSE INDIVIDUALS AND THE COURT WAS AWARE OF THEIR
4 EXPERTISE THAT YOU HAD SET FORTH REGARDING THOSE
5 INDIVIDUALS IN THE PRIOR HEARINGS AND I WAS AWARE OF ALL
6 THAT INFORMATION ALONG WITH THE MONETARY COSTS THAT HAD
7 BEEN EXPENDED PREVIOUSLY AS WELL AS THEIR SERVICES BUT I
8 DON'T FIND ANY OF THAT INFORMATION

9 MR DIGGS YOUR HONOR, I CAN CERTAINLY
10 SUPPLEMENT THAT AND UNLIKE THE LAST TIME I'LL MAKE SURE I
11 GET THAT TO YOU PROBABLY BY ---

12 THE COURT EXPEDITIOUSLY?

13 MR DIGGS YES, SIR

14 THE COURT ALL RIGHT, VERY GOOD SO IF YOU CAN
15 JUST GET ME AND IT CAN BE FIND IF IT COULD JUST BE IN A, IN
16 A ---

17 MR DIGGS I UNDERSTAND

18 THE COURT --- SUPPLEMENTAL AFFIDAVIT OR
19 SOMETHING REGARDING THESE THAT CAN BE ATTACHED TO THESE
20 ORDERS THAT WILL BE GOOD, BUT LET ME GIVE YOU THE OTHER
21 ORDER THAT I DID EXECUTE REGARDING THE, THOSE EXPERT
22 SERVICES, ALL RIGHT

23 MR DIGGS YES, SIR, THANK YOU VERY MUCH

24 HE COURT ALL RIGHT, THANK YOU ALL RIGHT, MR
25 DIGGS, ANYTHING ELSE ON BEHALF OF MR STANKO AT THIS POINT

MOTION TO REVIEW STATUS OF COUNSEL - JUNE 5, 2009

18

1 IN TIME THAT YOU'RE AWARE OF?

2 MR DIGGS YOUR HONOR, WE MAY HAVE A COUPLE OF
3 ADDITIONAL EXPERTS THAT WERE ASSOCIATED WITH THE CASE LAST
4 TIME THAT WE WOULD ASK THE COURT TO APPROVE AT THIS TIME
5 I HAVEN'T PUT ANYTHING BEFORE THE COURT YET WITH RESPECT TO
6 THOSE INDIVIDUALS

7 THE COURT ALL RIGHT

8 MR DIGGS WOULD IT BE ACCEPTABLE TO
9 SUPPLEMENT, WHEN I SUPPLEMENT WHAT WE'VE HANDED THIS
10 MORNING TO GO AHEAD AND ADD A COUPLE OF ADDITIONAL NAMES?

11 THE COURT YOU CAN AS LONG AS THE, YOU KNOW,
12 THE AFFIDAVITS INFORMATION SETS FORTH THE NECESSARY
13 BACKGROUND QUALIFICATIONS, EXPERTISE, THE MONETARY REQUESTS
14 I'LL BE GLAD FOR YOU TO SEND IT TO ME IN WRITING I DON'T
15 HAVE ANY PROBLEM WITH THAT AT ALL

16 MR DIGGS THANK YOU VERY MUCH, YOUR HONOR

17 THE COURT ALL RIGHT, MS WILLIAMS, ANYTHING
18 THAT YOU'RE AWARE OF AT THIS POINT IN TIME?

19 MS WILLIAMS NOTHING ELSE AT THIS POINT, YOUR
20 HONOR

21 THE COURT ALL RIGHT, VERY GOOD,

22 MR DIGGS WELL, YOUR HONOR?

23 THE COURT YES, SIR

24 MR DIGGS THESE ARE SEALED, CORRECT, THEY'RE
25 NOT AVAILABLE FOR PUBLIC ---

MOTION TO REVIEW STATUS OF COUNSEL - JUNE 5, 2009

19

1 THE COURT THEY ARE NOT WHAT I, WHAT YOU CAN
2 DO AT THAT POINT RIGHT NOW AT THIS POINT IN TIME IS IF YOU
3 WOULD LIKE YOU CAN USE THE ORDER TO EMPLOY THE INDIVIDUALS
4 AT THE TIME OF FILING WHEN YOU SEND THESE SUPPLEMENTS TO ME
5 IF YOU WANT TO SEND AN ORDER FOR THESE TO BE SEALED DURING
6 THE PENDENCY OF THE ACTION OBVIOUSLY AFTER THE ACTION
7 THEY WOULD BE UNSEALED BUT DURING THE PENDENCY OF THE
8 ACTION THEY WOULD, THEY WOULD BE SEALED

9 MR DIGGS THANK YOU, YOUR HONOR

10 THE COURT JUST SEND ME A SUPPLEMENTAL ORDER TO
11 THAT AFFECT, ALL RIGHT

12 MR DIGGS YES, SIR

13 THE COURT ANYTHING ELSE?

14 MR DIGGS THAT'S IT

15 THE COURT ALL RIGHT, THANK YOU VERY MUCH,
16 COUNSEL

17 MR DIGGS THANK YOU VERY MUCH

18 END OF REQUESTED TRANSCRIPT
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED BRENDA R BABB, OFFICIAL COURT REPORTER THE SOUTH CAROLINA COURT ADMINISTRATION, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR HORRY COUNTY, SOUTH CAROLINA

I DO FURTHER CERTIFY THAT I AM NEITHER KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO

April 16, 2010

Brenda R. Babb
BRENDA R BABB, CVR

OFFICIAL REPORTER

STATE OF SOUTH CAROLINA) THE COURT OF GENERAL SESSIONS
COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT
05-GS-26-2927

State of South Carolina,)
) Plaintiff,)
) -VS-) TRANSCRIPT OF RECORD
) Stephen Christopher Stanko,)
) Defendant)
_____)

August 24, 2009
Conway, South Carolina

B E F O R E

HONORABLE STEVEN H JOHN, Circuit Judge

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Dixie Cox Eubank
Official Reporter

I N D E X
(SW) STATE'S WITNESS
(DW) DEFENSE WITNESS

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E X H I B I T I N D E X

Court 1	STATEMENT REGARDING ATTORNEY GENERAL	7

MOTIONS

3

1 THE COURT All right, we are here now on the case
2 of 2005-GS-26- -- and I believe it to be -- is it 2927?

3 MR HUMPHRIES It's -- I believe it's 25- -- I
4 thought it was 2527 I may be wrong about that 29,
5 I'm sorry

6 THE COURT 2927, is that right?

7 MR HUMPHRIES Yeah I've got it captioned
8 wrong

9 MS WILLIAMS It is, Your Honor

10 THE COURT 2927 I was looking at the back of
11 the Indictment and it kind of got cut off All right,
12 very good Whereby, that is the State of South Carolina
13 versus Stephen C Stanko, an Indictment for murder and
14 armed robbery The State having previously served
15 notice on the defendant with notice to seek the death
16 penalty in this case, we are here today, as I understand
17 it, that the State has a matter regarding its evidence
18 in aggravation, is that correct?

19 MR HUMPHRIES Yes, Your Honor

20 THE COURT All right, Solicitor, I'll be glad to
21 hear from you

22 MR HUMPHRIES If it please the Court, Your
23 Honor, we'd like to accomplish three things by way of
24 housekeeping today The first, obviously by statute
25 we're required to serve our notice of evidence in

1 aggravation upon the defendant no later than forty-five
2 days before the call of the case for trial

3 For the record, Your Honor, we did serve Mr Diggs,
4 counsel for Defendant Stanko, on July 21st, 2009, by
5 letter with the notice of evidence in aggravation I
6 will provide him another copy at this time

7 THE COURT All right, very good

8 (Mr Humphries hands document to Mr Diggs)

9 THE COURT And, Mr Diggs, as indicated by the
10 Solicitor, you had received that earlier by U S Mail?

11 MR DIGGS Yes, sir

12 THE COURT All right, very good Thank you, sir

13 MR HUMPHRIES The other two matters, if you
14 would like, at this point, Your Honor, to take up in
15 regard to basically notice issues, we may very well have
16 arraigned Defendant Stanko in this case, but quite
17 frankly, I'm not aware -- I'm not able to determine that
18 from my records, so just as a matter of being more
19 cautious than not, we'd like to go through with a brief
20 arraignment at this time

21 THE COURT All right, sir You may proceed

22 MR HUMPHRIES If it please the Court, if the
23 defendant and his counsel would please stand

24 (Mr Diggs and Mr Stanko stand)

25 MR HUMPHRIES And I will ask Defendant Stanko

MOTIONS

5

1 and his counsel, do you waive reading of the Indictment?

2 MR STANKO Yes, sir

3 MR HUMPHRIES This is Indictment Number 2005-GS-
4 26-2927 It's an Indictment, State versus Stephen C

5 Stanko It's an Indictment for count one, murder, count
6 two, armed robbery, and I will ask the defendant at this
7 time as to count one, murder, how do you plead?

8 MR STANKO Not guilty

9 MR HUMPHRIES And as to count two, armed
10 robbery, how do you plead?

11 MR STANKO Not guilty

12 MR HUMPHRIES And how do you wish to be tried?

13 MR STANKO By God and my country

14 MR HUMPHRIES At this time I will serve upon
15 both Defendant Stanko and his counsel certified true
16 copies of the Indictment

17 THE COURT All right, Mr Diggs, is there any
18 matters regarding the Indictment that you wish to bring
19 to the Court's attention at this time?

20 MR DIGGS Your Honor, not from myself at this
21 time

22 THE COURT All right, very good

23 All right, and you indicated there was another
24 matter, Solicitor?

25 MR HUMPHRIES Your Honor, there is one other

1 matter, ---

2 THE COURT Y'all can have a seat Thank you very
3 much

4 MR HUMPHRIES --- and that is this And I place
5 a formal statement in the record barring the objection
6 by the defendant, but in any event, as the Court is well
7 aware, in the first case, Stanko one, arising out of
8 Georgetown County, there is pending a post conviction
9 relief matter That's before the Honorable J Michael
10 Baxley

11 Again, in an abundance of caution, after having
12 spoken with Assistant Attorney General Anthony Mabry,
13 who is handling that case for the State, there has been
14 disagreement and that is this Presently there is a
15 scheduling order in that matter which will not have that
16 case being heard any earlier than late December, perhaps
17 in January, which obviously is after our projected trial
18 date, and the Attorney General, through Assistant
19 Attorney General Mabry, has stated that they will not
20 have any contact with counsel for Defendant Stanko from
21 the first trial until this case is resolved in November

22 The only caveat to that, Your Honor, is if for any
23 reason should our case be continued and their case not
24 be continued, obviously at that point they would have to
25 have some contact with the attorneys in order to

1 appropriately present their case at post conviction

2 I have a document, which I will provide to
3 Defendant Stanko and his counsel and would ask that it
4 be filed with the Clerk, and that would be Court's
5 Exhibit 1 for today's purposes, and I will read it into
6 the record, Your Honor

7 STATEMENT REGARDING ATTORNEY GENERAL MARKED

8 AS COURT'S EXHIBIT NUMBER 1

9 THE COURT All right

10 Now, the Court has, I believe, on two occasions
11 gone over the issue regarding the representation with
12 the defendant, Mr Stanko, and with his counsel in this
13 particular matter, and it has been made clear by Mr
14 Stanko that he wishes his current counsel in this
15 particular case to continue Is there any change in
16 that since the last two times that we addressed this
17 matter, Mr Diggs?

18 MR DIGGS Your Honor, there's no change from my
19 perspective

20 THE COURT All right

21 Mr Stanko, is there any change in that?

22 MR STANKO No, sir The only thing I would like
23 to ask, Judge, is can my PCR attorney not -- there's
24 been no change, Your Honor

25 THE COURT All right

1 MR STANKO Can my PCR attorney not be present
2 for some of these situations whenever items such as this
3 where the Solicitor ---

4 THE COURT The attorney that you are ---

5 MR STANKO Mr Godfrey

6 THE COURT That represents you in the post
7 conviction relief application?

8 MR STANKO Yes, sir

9 THE COURT Okay

10 MR STANKO I mean, I don't know that he's been
11 apprised of these because I did not -- I only found out
12 myself last night

13 THE COURT All right

14 MR STANKO And I don't know if he was apprised
15 of this meeting, and if Mr Humphries intends to serve
16 me with notices like this wherein agreed-upon contracts
17 are going to be violated in other events, shouldn't Mr
18 Godfrey be present and understanding of all this?

19 THE COURT All right, sir, and I appreciate that,
20 Mr Stanko Thank you

21 What I'd have you do, Solicitor, is if you would,
22 if you'd make a copy of this and forward it on to the
23 post conviction relief counsel of Mr Stanko, but -- and
24 I appreciate you bringing this matter to the Court's
25 attention, but Judge Baxley covered this issue with Mr

MOTIONS

9

1 Stanko I've covered it twice with him He has
2 remained steadfast in his position and has agreed upon
3 that today, that he wants Mr Diggs to represent him in
4 this matter in Horry County There has been no change
5 in that position during the entirety of this time, as to
6 when Judge Baxley had it initially, and now that I have
7 this particular case, and I appreciate the matter being
8 raised by the State, but it has been addressed and
9 covered by the Court

10 Mr Diggs understands the situation Mr Stanko
11 understands the situation Both of them have expressed
12 the complete ability to cooperate and to properly
13 present the defense of Mr Stanko in this matter, and
14 Mr Stanko wants Mr Diggs to stay on the case, and so I
15 believe that issue has and continues to be resolved, and
16 it really is not an issue in this particular case unless
17 in some circumstance it is raised by the Defense, but
18 unless it is raised by the Defense in the future, that
19 issue has been addressed It has been concluded, and
20 for the purposes of this Court, it has been resolved

21 MR HUMPHRIES No question, and this ---

22 THE COURT All right, and I appreciate this, but
23 I take this more as a matter of information, and I would
24 just have you forward a copy of that on to his counsel
25 in the PCR case so they can be aware of it just as a

1 matter of courtesy, all right?

2 MR HUMPHRIES Certainly Thank you

3 THE COURT All right, anything else from the
4 State?

5 MR HUMPHRIES No, Your Honor

6 THE COURT All right, counsel, I'll take this
7 opportunity then, though I had previously communicated
8 with you about this, but to make sure that y'all are
9 aware that the juror questionnaire form that we had
10 previously reviewed and that I had forwarded to counsel,
11 y'all had what the Court considered more than a lengthy
12 opportunity to review it, that that juror questionnaire
13 has been adopted by the Court, has been forwarded to the
14 Clerk of Court without objection by the State or without
15 objection by the Defense, to be used in this particular
16 matter, and that was forwarded on to the Clerk of Court
17 for their use, that juror questionnaire form of fifty
18 questions to be answered by the potential jurors in this
19 particular case, obviously prior to the selection
20 process, so that the information contained in that juror
21 questionnaire would be available to all parties when we
22 ultimately come to the selection process in this
23 particular matter

24 Anything else regarding that juror questionnaire
25 matter from the State?

MOTIONS

11

1 MR HUMPHRIES No, Your Honor We had no
2 objection to the ---

3 THE COURT All right From the Defense?

4 MR DIGGS Your Honor, there was the names in one
5 of the questions, and I can't remember which one ---

6 THE COURT And we -- we forwarded a communication
7 to you after you did that ---

8 MR DIGGS Okay

9 THE COURT --- indicating to both of y'all, Mr
10 Diggs and Ms Williams, that we appreciated your
11 notation, and we changed that I believe that, if I'm
12 looking at it correctly, was Question 42, and we
13 corrected that before it was forwarded on to the Clerk
14 of Court, but after your notice to us, after your review
15 of it, and that was the one thing that y'all noted, we
16 did communicate back with both of your offices to let
17 you know that we did do that before we forwarded it on
18 to the Clerk of Court Anything else other than that?

19 MR DIGGS No, Your Honor

20 THE COURT All right, thank y'all very much

21 All right, now, is there anything else at this
22 point in time from the State of any matter regarding the
23 State of South Carolina versus Stephen C Stanko that we
24 need to review at this point in time?

25 MR HUMPHRIES Not at this time, Your Honor

1 THE COURT All right Anything else from the
2 Defense, Mr Diggs, Ms Williams?
3 MR DIGGS Not at this time, Your Honor
4 THE COURT Thank you very much
5 (Conclusion of Transcript of Record)
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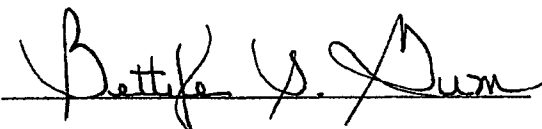
1 STATE OF SOUTH CAROLINA)

2 COUNTY OF HORRY)

3
4 I, the undersigned Bettye S Gum, Certified Court
5 Reporter and Notary Public in and for the State of South
6 Carolina, do hereby certify that the foregoing is a
7 true, accurate and complete Transcript of Record of all
8 the proceedings had and evidence introduced in the
9 hearing of the captioned case, as taken by Dixie Cox
10 Eubank, Official Reporter, and transcribed by me,
11 relative to appeal, in the Court of General Sessions for
12 Horry County, South Carolina

13 I do further certify that I am neither of kin,
14 counsel, nor interest to any party hereto

15
16
17 June 14, 2010

18 
19

20 BETTYE S GUM, CCR-CVR-CM

21 Certified Court Reporter and
22 Notary Public for South Carolina

23 My Commission Expires 7/13/14
24
25

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

THE COURT OF GENERAL SESSIONS
FIFTEENTH JUDICIAL CIRCUIT
05-GS-26-2927

State of South Carolina,)
)
Plaintiff,)
)
-VS-)
)
Stephen Christopher Stanko,)
)
Defendant)
_____)

TRANSCRIPT OF RECORD

October 8, 2009
Conway, South Carolina

B E F O R E

HONORABLE STEVEN H JOHN, Circuit Judge

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Official Reporter

I N D E X

(SW) STATE'S WITNESS
(DW) DEFENSE WITNESS

Motions

3

Certificate of Reporter

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E X H I B I T I N D E X

(No Exhibits Marked)

1 THE COURT All right, we are here in the matter
2 of State of South Carolina versus Stephen Christopher
3 Stanko, Indictment 2005-GS-26-2927, based upon filed
4 motions by the defendant in this particular matter

5 All right, is the Defense ready to proceed with its
6 motions?

7 MS WILLIAMS Your Honor, if I may at this point,
8 my client would like to be able to take his notes while
9 he goes through the trial, but if he sits here
10 handcuffed, he can't, and they've informed me that only
11 upon the direct order from Your Honor can they
12 unhandcuff him in open Court If I may ask that so that
13 he could take notes

14 THE COURT Is there an objection to that from the
15 State?

16 MR HEMBREE No, Your Honor

17 THE COURT All right If y'all do not mind,
18 please Thank you

19 Who is going to argue the motions?

20 MR DIGGS Your Honor, I am going to ---

21 THE COURT All right, very good

22 MR DIGGS --- because ---

23 THE COURT We will take them in the order that
24 they were presented I've got here Defendant's Pre-
25 trial motion number 1, motion to declare Section 17-24-

1 10 unconstitutional, Conclusive Presumption 1 I'll be
2 glad to hear from you

3 MR DIGGS All right Your Honor, what we're
4 doing with this, if I could have just a second to get my
5 bearings The problem that we see with this particular
6 statute, and I'm discussing right now 17-24-10, which
7 says it's an affirmative defense to a prosecution for a
8 crime At the time of the commission of the act
9 constituting the offense, the defendant as a result of
10 mental disease or defect lacked the capacity to
11 distinguish moral or legal right from moral or legal
12 wrong or to recognize the particular act charged as
13 morally or legally wrong

14 The problem that we have is in reading this we see
15 that there's a conclusive presumption that's contained
16 within the statute that says if you are able to make
17 this distinction in one part of the brain at any
18 particular time, that you are able to do so in a way
19 that the brain functions coherently and, therefore,
20 because of that you're able to make this distinction
21 between legal or moral right and wrong

22 THE COURT What it says is it's an affirmative
23 defense to the prosecution for a crime that at the time
24 of the commission of the act, at the time the act was
25 committed ---

1 MR DIGGS Right

2 THE COURT --- that constitutes the offense the
3 defendant as a result of a mental disease or defect
4 lacked the capacity to distinguish moral or legal right
5 from moral or legal wrong or to recognize the particular
6 act charged as morally or legally wrong, so it's very
7 clear, at the commission of the act did he have a mental
8 disease or defect that caused him not to be able to
9 distinguish moral or legal right from moral or legal
10 wrong or to recognize the particular act charged as
11 morally or legally wrong, very clear, very precise, but
12 I don't see -- what is your issue?

13 MR DIGGS The issue is that the decision-making
14 process is complex, consisting of different areas of the
15 brain functioning in concert, each carrying out their
16 own respective jobs, and one area of that brain might be
17 able to communicate in a manner that's consistent with
18 good health, good mental health, and the other area
19 might not be, and we're looking at the overall act, and
20 what I'm saying here is that if we tend to focus on one
21 particular area of the brain where this executive
22 analysis is occurring, for example

23 THE COURT It's not focusing on anything

24 MR DIGGS Well, ---

25 THE COURT It's saying did the defendant have a

1 mental disease or defect at that time or lacked the
2 capacity to distinguish between moral or legal right
3 from moral or legal wrong or to recognize the particular
4 act charged as morally or legally wrong As from what
5 you're indicating, you're saying there was something
6 wrong with his brain, so I'm assuming you'd have an
7 expert that says because there's something wrong with
8 his brain, he can't distinguish between ---

9 MR DIGGS Moral and legal ---

10 THE COURT --- moral or legal right from moral or
11 legal wrong or to recognize the particular act charged
12 was morally or legally wrong

13 MR DIGGS Right Let me give you an example
14 Let's say you've got an individual who has a missing
15 leg He might recognize how to carry out the functions
16 of walking but not be able to because there's something
17 missing there that's needed in order to properly
18 function in that fashion He recognizes it, can do it
19 but for this particular missing element that's required
20 in the whole process The brain ---

21 THE COURT I don't think that's a -- that's not
22 an applicable example, but what you've got here is a
23 specific standard and it's clear, it's precise, it's
24 understandable, and it's been used for an extended
25 period of time by the states of this United States and

1 the State of South Carolina, and I don't see -- I'm
2 having a hard time understanding what your argument is
3 Are you saying half the brain is telling him to do "X"
4 and half his brain is telling him to do "Y"?

5 MR DIGGS It's kind of like that It's like ---

6 THE COURT What's your argument? I just don't
7 understand your argument at all

8 MR DIGGS When we look at a decision that's made
9 in the brain, and in this particular case, let's say
10 we've got a fight or flight impulse that generates from
11 the base of the brain, in a particular area of the
12 brain, and we walk along a time line That fight or
13 flight impulse is broadcast out through the brain to a
14 different area where it's analyzed, and it's digested,
15 and it's thought about, and a decision is made inside of
16 the brain as to best respond to that situation

17 Now, it might be that the impulse is perfectly
18 fine, it's working perfectly fine, and as it moves
19 along, it encounters another area of the brain that's
20 defective Where it might be encountered, a decision is
21 made There might be at some point, at some level where
22 there's a recognized evaluation made or an evaluation
23 can be made, that it might be wrong or it might be
24 right, and yet it's not functioning to the point that it
25 can direct how to properly respond, if that's making any

1 sense to the Court, ---

2 THE COURT And ---

3 MR DIGGS --- and so ---

4 THE COURT Then assuming that to be correct, if
5 that's your analysis of the situation, your expert's
6 analysis of the situation, then they should be able to
7 match that up to the standard and give you an opinion
8 If it prevents them from understanding the -- and
9 distinguish moral or legal right from moral or legal
10 wrong, then I'm sure they'll present that, but you're
11 asking to declare a statute unconstitutional and you're
12 not giving me any reason to do so

13 MR DIGGS Well, the reason is, and what I put in
14 the motion, is there's a conclusive presumption that if
15 one can distinguish moral right from moral and legal
16 wrong, moral and legal right from moral or legal wrong,
17 in one area of the brain ---

18 THE COURT It doesn't say that It -- you're
19 adding something to the statute that it doesn't say It
20 says that the defendant as a result of any kind of
21 mental disease or defect lacks the capacity to
22 distinguish moral or legal wrong from moral or legal
23 wrong or to recognize a particular act charged as
24 morally or legally wrong You're adding things to the
25 statute and explanations that don't exist in that

1 statute Continue on

2 MR DIGGS All right I'm trying -- I'm trying
3 to get a grasp of your argument, your statement ---

4 THE COURT All right, sir, go ahead I'm sorry
5 I've interrupted you You go ahead

6 MR DIGGS Your Honor, that's -- the point that I
7 want to make, I believe that there is a conclusive
8 presumption in the statute that says if one can
9 recognize moral or legal right and wrong, then you are
10 not insane and you do not have this affirmative defense
11 available to you in that situation, and our point is
12 that if there is a recognition at some level in the
13 brain where that is understood, then that should not
14 deprive a defendant of asserting this insanity, the
15 issue of insanity, as a defense simply because it is
16 there present in part of the brain It needs to be
17 something that is a result of the entire complex
18 function of the brain in terms of analysis and that's
19 not what this statute allows for

20 The Solicitor is going to argue right here in this
21 -- along the time line in this part of the brain he
22 fully understood what was right and what was wrong
23 Then that disqualifies him from invoking insanity as a
24 defense in this case, when the analysis from our
25 perspective should be in the jury's, is along this time

1 line is he able to distinguish, to make these
2 distinctions, in this analysis that's going on inside of
3 his brain, and the answer is no, and he shouldn't be
4 disqualified in that situation simply because -- because
5 back here -- earlier in the time line there was a
6 distinction there that recognized right from wrong
7 That's the point I'm trying to make

8 THE COURT Okay What is it that you would want
9 the statute to say? Maybe that would help

10 MR DIGGS I would want the statute -- and the
11 Court made reference earlier that this has been in our
12 law for many, many years, and it has been, this whole
13 concept of malice, and malice aforethought, and
14 distinguishing right from wrong All of those things
15 have been -- you know, they've been factors that have
16 been in our law for as long as we've had the law and for
17 as long as, you know, murder was a -- or a homicide,
18 illegal homicide, was a crime, but it was developed at a
19 time when we didn't have any understanding at all of how
20 the brain was structured, and how it operated, what
21 functions were there inside, at what particular time
22 those functions kicked in

23 It's like the body We can see the body walk We
24 can see a human being walking and taking steps, and we
25 can visualize that -- and we see how that process works

1 We don't have that luxury when we're talking about the
2 brain and what decision -- or how decisions are being
3 made up there, and our point here is that there are
4 defects that can exist in the brain that we are
5 beginning to understand, that there are defects along
6 the way that are going to completely make it impossible
7 for that brain to function in a way that it was intended
8 and the way we presume it was going to function when the
9 statute was written

10 And that's what -- that's the complaint I have with
11 the statute, and so what the statute should say is this
12 is a more -- you know, insanity -- insanity is a complex
13 issue It needs to be taken into account along the
14 entire -- we need to -- when we're going to set a
15 defense and say one can have access to it or not, we
16 need to have an understanding of how the brain operates,
17 where those functions occur in the brain, and the
18 analysis that's done inside the brain, and the statute
19 needs to take that into account and, say, after all of
20 these functions, that there is an understanding of right
21 and wrong morally and legally, then insanity is not
22 applicable in this case and he can't be excused from the
23 conduct on that basis, but the statute doesn't do it

24 It just says between moral and legal right and
25 wrong, and you presume, Your Honor, with all due

1 respect, that that means you I would submit there's no
2 taking into account by the Court or anybody else, after
3 reading the statute, where does this distinction lie in
4 that executive analysis, and if it's earlier on in the
5 thinking process, in the mental process of the
6 functioning of the brain, if there's any understanding
7 at that time, at that point in time, of right and wrong,
8 then insanity is not available, and I would submit that
9 that's wrong and it should take into account the
10 determination of whether there is sanity or insanity

11 THE COURT All right When you're talking at an
12 earlier point in time, what are you talking about at an
13 earlier point in time, because the statute focuses on a
14 specific, exact point in time, when the crime was
15 committed, so that's an exact, definable point in time,
16 and you're talking about an earlier point in time?

17 MR DIGGS Yes, sir

18 THE COURT In reference to the exact reference
19 time that's in the statute, what are we talking about?

20 MR DIGGS We're talking about a period of time
21 that's encompassed within that It's going to be a much
22 -- smaller in duration, Your Honor We're talking about
23 an executive analysis that occurs inside the brain
24 during the brain function, you know, in terms of
25 microseconds, milliseconds, ---

1 THE COURT You're talking about right at the time
2 the crime -- right at the time the crime is committed?
3 Is that what you're talking about?

4 MR DIGGS That's -- I'm talking about a
5 different point in time I'm talking about the time
6 that's consumed within the -- the analysis function that
7 occurs within the brain, you know, from the time that
8 impulse might come out of the base of the brain until
9 it's processed in another area of the brain and then
10 acted upon by the actor

11 THE COURT Or not acted upon?

12 MR DIGGS Correct, and at some point in -- at
13 some point in time, there might be an understanding
14 inside that brain of right and wrong, but that somehow
15 doesn't quite make it to the end of the process and then
16 you have your illegal act that occurs, so if -- if the
17 law is applied ---

18 THE COURT So you're saying that the
19 understanding of the moral or legal right from moral or
20 legal wrong, there's an understanding, but that doesn't
21 prevent the person from committing it for what reason?

22 MR DIGGS You're looking -- you're looking at
23 the function of a brain that's not completely
24 functional, and what we're saying is that that -- the
25 statute would allow a fact finder to make a decision

1 based on part of the functioning of the brain and not
2 the whole functioning

3 THE COURT Well, it would seem to me -- it would
4 seem logical that if you have that scenario that you're
5 talking about, then the expert would be able to say
6 though you've got this conflict in the brain and one
7 area recognizes it and the other one doesn't, and this
8 other one -- other area prevails, that he does fall
9 within the statute because his brain was defective in
10 some way and didn't allow him to distinguish moral or
11 legal right from moral or legal wrong

12 MR DIGGS And if that's the way the law is
13 explained to the jury and applied by the jury, we
14 wouldn't have an objection to it

15 THE COURT Well, it's very clear I mean, it's
16 very clear from what the statute says

17 MR DIGGS All right

18 THE COURT And then it just depends on the facts,
19 whatever is testified to, did he have the ability to do
20 it or didn't -- because of defects, did he have the
21 ability to do it or didn't he?

22 MR DIGGS Right

23 THE COURT And it would seem to me that your
24 arguments you're making, that if that's the case, then
25 the expert will say, "No, he didn't," and then that's up

1 to the jury to decipher all that, sift through all that,
2 and make their -- make their decision, but if the expert
3 comes to the conclusion that despite all -- whatever
4 defects or abnormalities there might be or not be, or
5 whatever it is, he still had the ability to distinguish
6 moral or legal right from moral or legal wrong, then
7 it's not available

8 MR DIGGS Well, and if that -- it that's the way
9 the law is applied ---

10 THE COURT But that's -- that's all a product of
11 the evidence and the scientific analysis that goes into
12 it

13 MR DIGGS All right What I would ask is -- I
14 mean, I understand what Your Honor's ruling is at ---

15 THE COURT Well, I mean, I ---

16 MR DIGGS --- or not ruling, but what your
17 opinion ---

18 THE COURT I'm just having a hard -- I guess, and
19 I appreciate it, and I understand what you're saying
20 I'm just having a hard time understanding what it is
21 about the statute that's unconstitutional in your mind,
22 what issue in there is unconstitutional, because what
23 you're telling me is you may or may not have this
24 evidence, and it seems to fit right within what the
25 statute says

1 MR DIGGS All right Let's say I -- I'm going
2 to try one more time

3 THE COURT All right, I'm sorry

4 MR DIGGS It's not your fault Let's say I do
5 something that startles you and you respond I mean,
6 you're startled, and at that initial reaction, there are
7 a whole range of responses that you might entertain
8 One is -- and they would range from running away to
9 killing, and anywhere in between It might be a simple
10 -- your reaction might be as simple as, "Stop Don't do
11 that," or, you know, "You're an idiot," but there's a
12 whole range of responses that might take place, and you
13 might take place -- you might understand at that time
14 that it is illegal to kill me for something as small as
15 I startled you, but when that reaches on down into --
16 that works its way through the functioning areas of the
17 brain, the functional areas, there might be missing
18 elements there in that analysis that would prevent you
19 from fully understanding that -- the way that it would
20 allow you to act in a more appropriate manner, ---

21 THE COURT Okay

22 MR DIGGS --- okay, and that's what I'm saying

23 THE COURT All right

24 MR DIGGS I don't want the State to be able to
25 say, "Look, he understood this was wrong, but

1 nevertheless, he went ahead and he did it anyway," and
2 what we're saying is the statute doesn't take that type
3 of situation into account It just says, "Look, you
4 knew right from wrong and you're guilty because you knew
5 it," but it's not that simple of a process It's not
6 that simple, and the statute doesn't take that into
7 account

8 THE COURT All right, thank you
9 Solicitor, in response?

10 MR HEMBREE Yes, Your Honor, a couple of things
11 We step back to what we're really talking about here and
12 that's whether the statute is unconstitutional or not
13 I appreciate that Mr Diggs would like to see our
14 statute changed, would like to see the standard changed
15 in South Carolina He's made that clear We've had
16 many discussions and motions in this case and other
17 cases regarding that

18 However, this statute as it stands, and this is
19 going to be the same argument you hear from me on a
20 number of these motions by Defense counsel This
21 statute is the -- has been a long-standing statute in
22 South Carolina It has been challenged repeatedly in
23 the appellate courts It has been affirmed repeatedly
24 It has been challenged at the Supreme Court level and
25 has been affirmed, so it is a statute that has met

1 constitutional muster time and time again

2 We had the benefit in this case that we've tried
3 Mr Stanko in Georgetown County for a somewhat related
4 crime, at least it was a series of crimes He -- Mr
5 Diggs at that time offered these same motions, made
6 these same arguments, and I appreciate that he's
7 preserving his right to appeal on these issues, on the
8 constitutionality of these statutes, but in that case,
9 the -- that case has already been appealed to the State
10 Supreme Court and has been affirmed There has been an
11 appeal to the United States Supreme Court and certiorari
12 has been denied, so not only do we have the weight of
13 precedence in other cases that has found these statutes
14 constitutional, we actually have had the benefit of
15 having this particular set of motions considered by the
16 Court on another case that is very, very closely related
17 with Mr Stanko, and once again, those -- the statute
18 was affirmed at that time, so, Your Honor, we would
19 respectfully request that the Court deny Mr Diggs'
20 motion to find 17-24-10 unconstitutional in -- I'm going
21 to kind of, I guess, save a little bit, Judge, and we've
22 got a number of these motions I can address each one
23 of them, but my argument is going to be essentially the
24 same every time motions ---

25 THE COURT Well, I tell you what, when Mr Diggs

1 argues the particular motion, if there's anything you
2 want to add or you want to just indicate to the Court
3 that you rely upon this argument that you have now made,
4 I'll be glad to hear you at that time

5 MR HEMBREE Thank you, Your Honor, and those
6 motions are 1 through 7 I also -- I will say this, and
7 it's sort of a side note, because we talked -- Mr Diggs
8 talked about a lot of issues in addition to the
9 constitutionality of this motion -- or this statute He
10 spoke of -- it gives me some concern because I recognize
11 -- as the Court recognized, I sort of had the same issue
12 form in my mind, that if Mr Diggs is asserting -- and
13 it sounds like he's preparing to assert an insanity
14 defense, and we have been told by counsel that he is not
15 going to assert an insanity defense

16 Certainly there may be evidence in the penalty
17 phase, but not in the guilt phase is what has been --
18 we've been advised that, and I had Mr Diggs tell me
19 that he hadn't -- but, you know, I believe the Court
20 dealt with this issue several weeks ago, and the answer
21 was, "We do not intend to assert an insanity defense,"
22 and I think he left the back door open and said, "at
23 this time," but that was the message that was
24 communicated to us, so ---

25 MR DIGGS I think he is referring, and with all

1 due respect, I think he's intertwining here the
2 competency issue with the insanity issue

3 THE COURT All right Well, as to what's --
4 let's be clear then Regarding the crime for which Mr
5 Stanko is charged, as to the defense of that crime
6 charged, is the Defense going to raise an insanity
7 defense?

8 MR DIGGS Yes, yes We've always done that in
9 this case, Your Honor, and we always have intended
10 to ---

11 THE COURT All right

12 MR DIGGS And I, you know, am -- I regret
13 anything that I might have said or done that misled the
14 Solicitor, but that's always been our ---

15 MR HEMBREE Thank you for clearing that up, Your
16 Honor

17 THE COURT All right, very good, so it's clear
18 that that will be raised by the Defense in this
19 particular matter

20 MR HEMBREE Thank you, Your Honor

21 THE COURT All right Regarding the motion to
22 declare 17-24-10 unconstitutional, regarding motion
23 number 1, the conclusive presumption number 1, the Court
24 will respectfully decline to grant your motion as set
25 forth in your written motion to the Court I do find

1 that the statute, first, to be constitutional, and
2 secondly, I find that the statute allows certain leeway
3 and latitude to present medical and expert evidence and
4 argument as to the legal standard, so it seems to me
5 that the arguments that Defense have made fall well
6 within the bounds of the statute and I see no reason to
7 declare it unconstitutional

8 MR DIGGS Thank you, Your Honor

9 Number 2 is a very similar argument It asks that
10 the Court declare the statute unconstitutional because
11 of a presumption that exists within that statute, that
12 if again you can distinguish between moral and legal
13 right from moral and legal wrong in any area of the
14 brain under any circumstances, then one is guilty of the
15 criminal conduct under the circumstances presented in
16 this case, notwithstanding the presence of physical
17 defects in the form of missing volumetric mass within
18 the brain or function that's inadequate

19 Your Honor, this kind of spills over into this
20 whole idea of mental defect that's diminished -- a lot
21 of people like to refer to as diminished capacity, but
22 it's much more -- it's much deeper in terms of subject
23 matter and merit I would submit It's different from
24 that, although our courts have in the past liked to kind
25 of throw it in the same container and call it the same

1 thing, but we've got -- and again, I go back to use the
2 physical analogy of a missing limb

3 We understand about how to walk We understand how
4 to do that, what it takes to conform your conduct in
5 that fashion, but if you don't have a limb, you're not
6 going to be able to walk and you're not going to be able
7 to run That's just the way it is, and the brain is the
8 same way You might have a certain area of the brain
9 again that's working properly and it's sending signals
10 over to the other area, down the block where it's
11 supposed to be analyzed and picked up, and analyzed and
12 certain activities to take place, and it just doesn't
13 occur

14 It's not ever going to occur because the mass --
15 the material is missing and what is there is not
16 functioning properly, okay, and it's not going to
17 produce the result that we expect, and no matter what's
18 done in terms of training and how much that individual
19 desires to engage in certain conduct that's legal and
20 that's acceptable, it's not going to happen because the
21 brain is not functioning and it's not going to happen,
22 and I would submit that if one is in a situation and has
23 engaged in conduct that we say is illegal,
24 notwithstanding the inability by the actor to make a
25 decision to engage in that conduct, then the law -- then

1 the Eighth Amendment and the Fourteenth Amendments in
2 our state law especially would step in and relieve
3 someone from the legal culpability as a result of that
4 conduct

5 If you can't conform -- and we're kind of getting
6 into guilty, but mentally ill, but in traditional terms,
7 that's not what I'm talking about If you can't conform
8 because of a mental defect, then it is repugnant to our
9 Constitution and to our, again, long-standing notion of
10 criminal responsibility in requiring that to be an act
11 or an element of the offense that's been committed

12 What our evidence is going to show in this case,
13 the way that law is being applied in this case, is that
14 this defendant could not conform because of a defect,
15 not because of a mental -- what did the doctor call it
16 -- personality disorders that he had, personality
17 disorder He doesn't have a personality disorder He's
18 got a part of his brain that is missing and it doesn't
19 work, and that's why certain conduct is committed, and
20 I'm saying -- and I understand what the case law is all
21 the way out of the U S Supreme Court, all the way up to
22 that level

23 We say on one hand that malice is going to be an
24 element of a crime, and yet we discard -- we don't even
25 have a right to challenge the ability to form malice

1 There is something wrong with that -- with the law that
2 allows that kind of situation, and, Your Honor, as we
3 learn more about how the brain is structured and how it
4 works I submit will change, the law will change, but
5 it's got to change -- it's got to start at sometime

6 THE COURT Okay, well, and I appreciate what
7 you're saying, but once again, I don't see why that
8 would have the statute to be unconstitutional If you
9 have the medical scientific expert testimony to back up
10 the statements you're making, then it would seem to me
11 then the logical conclusion from that expert is he can't
12 recognize the act as charged is morally legal -- morally
13 or legally wrong It just -- one plus one equals two
14 If they've got that medical scientific expert opinion
15 that he has these problems, then it would seem to me
16 very clearly then they can say, "He doesn't fall within
17 the statute "

18 MR DIGGS But what I'm saying, though, Your
19 Honor, is that it should fall within the law If he is
20 unable ---

21 THE COURT It does It fits perfectly with the
22 statute because if that's the expert's scientific
23 medical testimony that's out there, then their opinion
24 then should be he doesn't recognize the particular act
25 charged as morally or legally wrong

1 MR DIGGS Okay I'm going a step further
2 Let's say -- and what I'm reaching now, I mentioned the
3 guilty but mentally ill, the capacity to conform What
4 I'm asking the Court to do -- you know, the bottom line
5 here is to strike down the entire body of case law that
6 says guilty but mentally ill is not a defense to a
7 crime, or as to -- it's not a defense if it's not --
8 what I'm asking the Court to do is to say the guilty but
9 mentally ill concept embodied by our law, that embodies
10 inability to conform, is unconstitutional, it violates
11 fundamental fairness

12 THE COURT So you're wanting me to declare 17-24-
13 20 unconstitutional, not 10?

14 MR DIGGS When I get to that point, we will
15 I'm going to ask the Court to do that, ---

16 THE COURT Okay

17 MR DIGGS --- but at this point ---

18 THE COURT You're still sticking with 17-24-10?

19 MR DIGGS Right, that ---

20 THE COURT All right I would find that -- all
21 right, go ahead I'm sorry

22 MR DIGGS All right Well, I think you
23 understand

24 THE COURT And I appreciate the arguments you're
25 making, but it seems perfectly clear to me from the

1 arguments that you're making that you believe that you
2 have certain medical scientific expert testimony that
3 would indicate certain issues with the defendant's
4 brain, and if they are as you represent, then the
5 expert's opinion should then logically flow and be
6 absolutely covered by 17-24-10 I see no reason to
7 declare 17-24-10 unconstitutional

8 MR DIGGS Okay It doesn't go far enough
9 because it is requiring a defendant to do something that
10 he's physically -- I'll put it this way, physically
11 incapable of doing That's what ---

12 THE COURT Or mentally incapable of doing?

13 MR DIGGS Yes, in a physical way His brain is
14 functioning in a physical way, but it's not -- I don't
15 care how much he tries and how many times he's put in
16 this position, it's going to function the same way over,
17 and over, and over again, and the statute doesn't
18 recognize ---

19 THE COURT And he would fall perfectly within 17-
20 24-10 from what you're saying, ---

21 MR DIGGS Let's go ---

22 THE COURT --- so I would respectfully decline to
23 grant your motion as to then conclusive presumption
24 number 2, motion number 2

25 The next one that you have is motion to declare 17-

1 24-10 unconstitutional, arbitrary factor number 1,
2 motion number 3

3 MR DIGGS Right, and if -- what we're saying in
4 this particular motion is that the statute contains an
5 unconstitutional arbitrary factor that allows the
6 prosecution to establish malice aforethought as a
7 requisite element of murder based solely on the conduct
8 of the accused, but it does not allow a defense to
9 establish insanity based on the conduct of the accused
10 It's a double standard here that is arbitrary

11 A lot of times when we see a particular action
12 taken in a case, we would say that could only happen --
13 it takes a sick person to do something like that, and we
14 say that in a -- you know, in a way that's rhetorical,
15 but we say that, but for a reason I would submit that
16 we say that for a reason because deep down inside
17 intellectually we know that person was sick, and yet we
18 can't use that -- the statute expressly says we can't
19 use that for asserting this defense, and that's what's
20 arbitrary and that shouldn't be able to stand under the
21 Eighth Amendment or the South Carolina equivalent

22 THE COURT All right, sir
23 Solicitor

24 MR HEMBREE Once again, Your Honor, both of
25 these statutes have been tried and truly challenged

1 They've both been upheld constitutionally Again, I
2 think Mr Diggs is looking for the Court to essentially
3 throw out the entire body of law regarding mental
4 illness and in the criminal context, we would ask that
5 the Court follow precedent and decline or deny Mr
6 Diggs' motion

7 THE COURT All right, sir

8 MR DIGGS Your Honor, if I could just very
9 briefly ---

10 THE COURT Yes, sir

11 MR DIGGS At times we understand, you know,
12 things change, science evolves, our information grows,
13 and the law has to change, you know, to recognize that
14 growth and acknowledge the facts that we learn to exist
15 -- that we learned that do exist, you know, with the
16 passage of time We didn't know these things two
17 hundred years ago when the common law was being
18 developed and was evolving, and simply because something
19 has been tried and true, tested over time, seems to be
20 reliable, I mean, that might make sense, it might be
21 rational, but there might come a time in the evolution
22 of the law where we just acknowledge and bite the
23 bullet, so to speak, and make that change

24 Stephen's case, Mr Stanko's case, is one of those
25 situations We've got what I would submit is compelling

1 scientific, medical evidence regarding the state of the
2 defendant's brain, the structure and the functioning,
3 and it's simply not normal, and it's not something that
4 was decided upon by the defendant He didn't decide to
5 be that way, and so what we're suggesting here is that
6 this case is a case that presents facts and
7 circumstances and evidence that shows that our laws,
8 notwithstanding our best efforts, need to be changed to
9 take into account the realities of what science now and
10 medicine are showing

11 THE COURT All right, sir I would respectfully
12 decline to grant your motion to declare 17-24
13 unconstitutional under arbitrary factor 1, and I would
14 also add that I disagree with you, your premise You
15 are coming up with a premise on 17-24-10, and I assume
16 will do the same with 17-24-20, that it's so rigid in
17 its application that it doesn't allow the defense that
18 you're presenting or it unconstitutionally restrains
19 your defense, and I don't see that in any way I see
20 that they are perfectly connected The arguments you're
21 making logically are contained within 17-24-10, can be
22 made under 17-24-10 I just -- in addition to denying
23 your motion to declare it unconstitutional, I see no
24 reason to do so

25 The law in this State and the United States has

1 evolved such to allow you to properly make the arguments
2 that you are presenting before the Court and there's
3 just absolutely no reason to declare the statute
4 unconstitutional in this matter Thank you Continue
5 on

6 MR DIGGS Your Honor, the Defense pre-trial
7 motion number 5, I think, is still focusing ---

8 THE COURT We skipped one Number 4 is motion to
9 declare 17-24-10 unconstitutional, arbitrary factor
10 number 2

11 MR DIGGS Okay, you're right What we're asking
12 is to have the Court declare the statute
13 unconstitutional, 17-24-10, again on the basis that it
14 allows the fact finder without any corroborative
15 evidence to conclude that the brain function of the
16 accused was such that it included the capacity to form
17 the intent to commit a malicious act and the ability to
18 carry it out by executive analysis, which occurs inside
19 of the frontal lobes of the brain, and if I could maybe
20 repeat that and make it ---

21 THE COURT Yes, sir

22 MR DIGGS The statute contains an arbitrary
23 factor that allows the prosecution to establish malice
24 aforethought, which is an element of the crime still,
25 based solely on the conduct of the accused, based solely

1 on his conduct, without requiring any corroborative
2 evidence of his sanity, and what I'm saying is that --
3 that is a critical thought, I would submit, in the
4 process that -- to shift this burden, and I know what
5 some cases have discussed in the past, but, Your Honor,
6 none of those cases are based on this type of evidence

7 To allow the prosecution to prove its case without
8 delving into the sanity issue is a very subtle shifting
9 of the burden of proof in a case that should be made
10 part of the State's burden of proof in its case in
11 chief

12 THE COURT Okay

13 MR DIGGS Do you understand?

14 THE COURT Yes, sir, and I appreciate that In
15 this particular case that we're dealing with involving
16 Mr Stanko, you've clearly stated that not only in the
17 sentencing phase, if it comes to that, if we get to that
18 point in time, but in the guilt phase that an insanity
19 defense is being raised, ---

20 MR DIGGS Right

21 THE COURT --- so in that regard under the facts
22 of this particular case, the State then certainly has
23 the burden of proving the defendant sane Don't they
24 have to present evidence of that?

25 MR DIGGS Well, they do What I'm complaining

1 about is I'm saying that they should be required to
2 present that evidence in their case in chief, that ---

3 THE COURT Well, the case law allows them to do
4 so

5 MR DIGGS I know That's what's wrong The
6 statute and the rules allow that When we know -- we're
7 required to give the State notice of insanity is an
8 issue in the case, ---

9 THE COURT Right

10 MR DIGGS --- so they can ---

11 MR HEMBREE Which we only received today, Your
12 Honor, ---

13 MR DIGGS Well, ---

14 MR HEMBREE --- which we received today

15 MR DIGGS With all due respect, though, they
16 received it three years ago when ---

17 THE COURT Let's not -- whatever it is, it's an
18 issue in this case, and let's just move along Thank
19 you Go ahead

20 MR DIGGS Right, and so knowing that, what we're
21 complaining about under this statute is that they don't
22 require -- the statutes and the cases don't require the
23 State to prove sanity in its case in chief It allowed
24 for a situation that was completely unfair We have to
25 disclose our evidence, but they don't have to disclose

1 theirs

2 For example, last time when one of the State's
3 witnesses took the stand, we had no idea that this
4 gentleman was going to testify, what his testimony was
5 going to be, or anything, and we weren't prepared in the
6 least to deal with it, as it turned out in my opinion
7 It was a fundamental flaw in his analysis of the case,
8 but we didn't have an opportunity to prepare adequately,
9 so in this kind of situation, what I'm suggesting is the
10 statutes are inherently unfair and biased in favor of
11 the prosecution It sets up a situation where they can
12 surprise us and we don't have a chance to properly
13 prepare for the evidence and rebut it

14 THE COURT Well, I mean, I have seen no evidence
15 of that in this particular case If you -- if that's an
16 issue, then you need to bring that to my attention that
17 that exists, but what we have here now is the Defense
18 saying, "We are going to present an insanity defense in
19 the guilt phase, and if it comes to it, again in the
20 sentencing phase," so clearly the State then has to
21 present evidence of his sanity

22 MR DIGGS Well, right What I'm saying is
23 initially one of the reasons I was kept on this case was
24 for the continuity of the defense

25 THE COURT Right, but -- well, and also at the

1 request of -- the explicit request of Mr Stanko to have
2 you ---

3 MR DIGGS Right

4 THE COURT --- present his defense

5 MR DIGGS But what we're saying about this
6 particular statute ---

7 THE COURT He's requested that

8 MR DIGGS --- is that we can look -- what
9 they're saying is they're going to come in and they're
10 going to present their case in chief, and it's going to
11 take them probably a day and a half They're going to
12 present evidence of homicide They're going to present
13 evidence that it was probably committed by Mr Stanko,
14 and then they're going to rest, and nobody is going to
15 -- and we're not even going to be able to reach the
16 issue of his mental state until we are forced to present
17 evidence on that issue and carry a burden of proof on
18 the issue

19 THE COURT All right, so the case law that does
20 not require them to do so, that's your point?

21 MR DIGGS Yes

22 THE COURT Okay

23 MR DIGGS But that, with all ---

24 THE COURT They are certainly allowed to, but
25 you're saying the rule -- I don't know that it would be

1 covered by 17-24-10, I don't understand how it would
2 come in 17-24-10, but what you're saying is either in
3 some way the State should be forced -- there's a
4 procedural error here The State should be forced, if
5 this is an issue, to present its evidence in the guilt
6 phase?

7 MR DIGGS Right, and this statute comes into
8 play because it says that it's an affirmative defense
9 that we have the burden of proof on

10 THE COURT So that's unfair to begin with ---

11 MR DIGGS It is, it is ---

12 THE COURT --- is what you're saying?

13 MR DIGGS --- unfair It allows for prosecution
14 by ambush, you know, one of those -- we go back to the
15 old days before discovery, and in this case it was
16 hurtful, and we've got a flaw in this case now that's
17 going to take some work to get out, and by flaw in this
18 case, I mean in the prior prosecution, not -- not in
19 this case in Horry County

20 THE COURT All right

21 Solicitor

22 MR HEMBREE Judge, I think the motion, if we
23 keep our discussion based on the motion, Mr Diggs --
24 taken to its natural conclusion, Mr Diggs would have us
25 be required to prove the defendant's sanity in every

1 single criminal case that we bring

2 THE COURT I think that's what he's arguing

3 MR HEMBREE I think that's what he asking for,

4 and that's not the state of jurisprudence in North

5 America It's a totally new view of how to handle

6 criminal cases, and there's no -- there's absolutely no

7 support, precedent, or basis for such a request We'd

8 ask that it be denied

9 I have a second part, Judge, that I want to touch

10 on Since Mr Diggs has kind of thrown the gauntlet

11 about sort of a discovery violation or trial by ambush,

12 let me clarify the situation he's talking about The

13 witness he's talking about, we didn't know about The

14 Defense did not provide us the expert opinions, the

15 written documentation they had about their psychiatric

16 medical witnesses

17 They happened to give us some paperwork when we

18 were arguing the motions Judge, we were in trial We

19 were arguing the motions, and that's when we became

20 aware of a neuropsychiatrist that did Mr Stanko's PET

21 scan, the guy who actually performed it, the doctor who

22 performed it at MUSC, and this wasn't a trial by ambush

23 This was a name of a witness that we got through the

24 Defense, and whatever we knew about it, we knew at

25 trial, so if there was any ambush going on, we got

1 ambushed It wasn't -- and I'm not complaining about
2 that I know the deal I realize that happens to us
3 That happens to us frequently in these kind of cases
4 However, once we became aware of him, we did choose to
5 call him in reply, in reply, which we're allowed to do
6 We're not required to notify the Defense about a reply
7 witness

8 THE COURT Well, again, and I appreciate this
9 case has some history from the previous prosecution, but
10 there doesn't seem to be an issue in this particular
11 case, and I'm not trying to be crass here, but we need
12 to stick with this particular case

13 Mr Diggs, if there's an issue about discovery, or
14 notification of witnesses, or some issue in this case,
15 then you need to tell me about it now so that the Court
16 can deal with it and, you know, solve the issue if it's
17 solvable, but maybe you were just making an argument as
18 to -- to show as an example what happened in the past,
19 but ---

20 MR DIGGS Right I'm not saying that they
21 violated the rules in any way I'm saying they complied
22 with the rules and that's what the rules allow them to
23 do, ---

24 THE COURT All right

25 MR DIGGS --- and that's what is fundamentally

1 unfair

2 THE COURT All right, but so -- what you're
3 saying is fundamentally unfair about this particular
4 section, 17-24-10, is that you have to tell the
5 prosecution before the trial starts, "We're going to
6 raise an insanity defense," ---

7 MR DIGGS Right

8 THE COURT --- that the Defense ought to be able
9 to not tell anybody about it ---

10 MR DIGGS No, with all due respect We put them
11 on -- I'm not saying they should prove sanity in every
12 criminal prosecution It's only when we put them on
13 notice that insanity is an issue, which was done in this
14 case

15 THE COURT Okay

16 MR DIGGS That require- -- that should shift the
17 burden of proof to the State in their case in chief, I
18 would submit, to show sanity, and then basically that's
19 the crux of this motion

20 THE COURT All right Just one second

21 It's clear that this issue has been raised before,
22 I mean, not only in this case, but in other cases, and
23 the Supreme Court has -- the South Carolina Supreme
24 Court has ruled on it I'm looking at one, State v.
25 Smith at 379 S E 2d 287 back in 1989, but I do not find

1 based upon the Defense's arguments that there's any
2 reason to declare 17-24 unconstitutional regarding this
3 arbitrary factor number 2, and I respectfully decline to
4 grant your motion

5 Going to the ---

6 MR DIGGS And, Your Honor, ---

7 THE COURT Yes, sir

8 MR DIGGS --- at some point, I think it would be
9 appropriate, and the reason I haven't done it today is
10 because I thought I was approaching this thing in a more
11 general way, but at some point, I will file the
12 appropriate motion to argue against precedent and put
13 everybody on notice for specifically what it is, that
14 it's going to be arising, and, Your Honor, you might
15 have wanted that done today I don't know, but ---

16 THE COURT Well, I had anticipated that -- and,
17 of course, with the scheduling order that if you had
18 that particular argument, that you would have filed that
19 motion and brought it to my attention How long will it
20 be before you can file that written motion with the
21 Court and with the Clerk?

22 MR DIGGS Your Honor, I can do that very
23 quickly, ---

24 THE COURT All right Well, then, I would ask
25 that you ---

MOTIONS

40 -

1 MR DIGGS --- but I don't want to get in the
2 road -- you know, down the road, and the people in
3 Columbia, in the event that the State does prevail in
4 this case, that we waive that, ---

5 THE COURT All right, well, ---

6 MR DIGGS --- and for them to say, "Well, look,
7 Mr Diggs, that's really what you were doing back there
8 with Judge John," and I don't want to do that

9 THE COURT All right Well, then, I want, you
10 know, you -- hold on one second here and let me look at
11 the schedule You'll need to file that motion by next
12 Thursday, that would be the 15th File it by the 15th
13 and send a copy to the Court and to the Solicitor
14 After its receipt, assuming I receive it, I will --
15 we'll see when we argue it We may go ahead and -- hold
16 on a second so I can find the schedule -- go ahead and
17 take time and argue it on that date that we initially
18 meet for -- to look at the jury questionnaires

19 This is October 23rd We've got the first meeting
20 at 9 30 A M in this courtroom concerning juror
21 responses, so anticipate that we will also argue your
22 motion on that date and time, all right?

23 MR DIGGS Okay Thank you, Your Honor

24 MR HEMBREE Your Honor, if I may be heard on
25 that issue

1 THE COURT Yes, sir

2 MR HEMBREE Certainly I concur with Mr Diggs'
3 desire to file a mo- -- to technically file the motion
4 to argue against precedent so he can cross that "T" and
5 make a complete record However, Your Honor, today he
6 has been making those very arguments, and I don't -- I
7 guess my objection would be to let him have two bites at
8 the apple

9 If he wants to -- you know, he's made the motions
10 He's arguing against precedent currently I understand
11 he needs to technically file a motion to argue against
12 precedent, but we ask that -- we just don't want to ---

13 THE COURT I anticipate that by the filing of the
14 motion we're not going to re-hash and ---

15 MR DIGGS Right

16 THE COURT --- go over the ruling the Court has
17 already made You're going to make your presentation in
18 a concise manner If there's something new that the
19 Court has not heard today and ruled on, obviously you
20 will bring that up If you're going to rely again on
21 all the arguments you've made and bring nothing in
22 addition, then we -- you know, obviously ---

23 MR DIGGS Yes

24 THE COURT --- it may -- it may not be a lengthy
25 motion, but I'm giving you the opportunity ---

1 MR DIGGS Right

2 THE COURT --- not only to file the motion, but
3 if you have something in addition, then obviously it
4 needs to be clear in that written motion that you're --
5 "This is something we didn't raise," ---

6 MR DIGGS Right

7 THE COURT --- "you know, today, on October 8th "

8 MR DIGGS We'll make it clear

9 THE COURT All right, very good

10 MR HEMBREE Thank you, Your Honor

11 THE COURT Thank you very much

12 All right, so the next one we've got here then is
13 Defense pre-trial motion 5, motion to declare 17-24-10
14 unconstitutional It says arbitrary factor number 4,
15 motion number 4, was arbitrary factor number 2 I
16 assume we have no arbitrary factor number 3?

17 MR DIGGS We haven't filed that yet

18 THE COURT All right, so we don't have arbitrary
19 factor number 3 All right, very good

20 MR DIGGS Your Honor, what we are -- this is
21 very similar to the prior argument It labels insanity
22 under the statute, 17-24-10, it labels an insanity
23 defense as an affirmative defense, requires us to carry
24 a burden of proof in that regard

25 Logically speaking, I don't see how that does

1 anything other than eliminate the State's burden of
2 proof with respect to the issue of malice aforethought
3 It goes back previously in the motions that we've argued
4 this morning They can establish that issue, the
5 presence of malice aforethought, solely on the basis of
6 the seen conduct of the accused, and what we are arguing
7 more specifically in this motion is about requiring this
8 to be an affirmative defense puts the burden of proof
9 clearly on the Defense on that issue, that is
10 unconstitutional, and if it doesn't violate the U S
11 Supreme Court -- I mean the U S Constitution and the
12 opinions of the U S Supreme Court, it certainly ought
13 to violate due process of law in South Carolina, and I'm
14 asking the Court to declare this statute
15 unconstitutional, both with respect to the U S Supreme
16 Court and the State Supreme Court -- not the Supreme
17 Court, the Constitution

18 THE COURT All right, Solicitor

19 MR HEMBREE I don't need to add to my previous
20 argument, Your Honor

21 THE COURT All right Well, and once again, I
22 think it's covered the state of the law that exists
23 You've got, I guess, a basic presumption that someone is
24 presumed to be sane, every criminal defendant is
25 presumed to be sane, but when a defendant presents the

1 issue of insanity or offers evidence of insanity, the
2 State doesn't enjoy that presumption The State has to
3 then present evidence, and that's the case that we have
4 here today, so I don't understand again that there is
5 any reason -- I don't see any reason to declare the
6 statute unconstitutional

7 Are you arguing that -- the only way that I could
8 see that you're making the argument is that you should
9 never have to tell the State ever until you present it
10 in the trial of the insanity defense?

11 MR DIGGS No I think the -- it's perfectly
12 fine for us to put the State on notice of the presence
13 of that defense ---

14 THE COURT Well, then the presumption goes away

15 MR DIGGS --- and -- but it doesn't Under our
16 procedure, we have to establish that as an affirmative
17 defense It's not part of the State's case in chief
18 They don't have to prove anything on sanity in order to
19 defeat a summary judgment or a directed verdict motion
20 We have to present evidence We have the burden of
21 proof The statute says the defendant has the burden of
22 proving the defense of insanity by a preponderance of
23 the evidence That eliminates the need for the State to
24 prove malice aforethought, and that should be
25 unconstitutional

1 THE COURT Well, I disagree They still have
2 that burden They must show that burden, and they will
3 be required to show and prove that particular aspect of
4 the crime beyond a reasonable doubt, and they will be so
5 required

6 Motion to declare 17-24 unconstitutional, Defense
7 pre-trial motion number 5, arbitrary factor number 4, I
8 respectfully decline to grant your motion

9 The next one we have is motion to declare 17-24-20
10 unconstitutional, Defense pre-trial motion number 6, and
11 it just has -- says arbitrary factor

12 MR DIGGS Your Honor, Mr Stanko wanted to make
13 a comment on that last statute Could he do that?

14 THE COURT I'm certain that whatever he would
15 like to add that he will be able to effectively
16 communicate it to his two counsel and y'all can place it
17 in the record Thank you

18 MR DIGGS He is communicating to me that he had
19 a conversation with his appellate attorneys and they
20 advised him in a manner that was different, contrary to
21 what the Court's statement was just now, and that's why
22 a certain issue was not raised at the appellate level

23 THE COURT I have no understanding of what it is
24 that you're telling me, sir

25 MR STANKO Your Honor, what ---

1 THE COURT No, sir, Mr Stanko, I'm not talking
2 to you I'm talking to your attorney, Mr Diggs

3 What is it that you're asking me to do, Mr Diggs?

4 MR DIGGS He's commenting, Your Honor We're
5 not asking you anything at this point He simply wanted
6 to inform the Court that he had a conversation with Dan
7 Stacy and Kathrine Hudgins at Appellate Defense

8 THE COURT Well, number one, I don't want you
9 telling me what he's talked about with his attorneys in
10 confidence

11 MR DIGGS Okay

12 THE COURT If he's going to do that, then he's
13 opening himself up to areas that I would expect that you
14 would advise him not to do if he's going to start
15 explaining what private conversations he's had with his
16 counsel in the appellate matter Then that -- I'm sure
17 that's an area that you would advise him not to do
18 Continue on Whatever y'all want to do, you go ahead-

19 MR DIGGS We've gone far enough

20 THE COURT Thank you, sir Here we've got 17-24,
21 a motion to declare it unconstitutional, arbitrary
22 factor, Defendant pre-trial motion number 6 Yes, sir

23 MR DIGGS Your Honor, the bottom line is on this
24 motion, this is completely arbitrary, this whole concept
25 of guilty but mentally ill It's -- again, I come back

1 to the analogy of an individual who is lacking a limb,
2 missing a leg They're not going to be able to conform
3 their conduct Somebody who has the same problem in
4 terms of a brain defect, they're not going to be able to
5 conform, and it is unrealistic and unfair to tell that
6 person they're going to be held to the same standard
7 just as it would be to tell a person who doesn't have a
8 limb they're going to be held to the same physical
9 performance, standard That's what's unconstitutional

10 This defense is illusory It doesn't mean a thing
11 You can still be executed and put to death even if you
12 are guilty but mentally ill, and that's barbaric, and it
13 needs to be changed I'm asking the Court to declare
14 this unconstitutional and say, "Look, if you can't
15 conform your conduct, you are insane "

16 THE COURT Yes, sir, Solicitor

17 MR HEMBREE Your Honor, I don't have anything
18 more to add to my previous arguments

19 THE COURT All right

20 MR HEMBREE It's essentially the same argument

21 THE COURT All right, sir, I respectfully decline
22 to grant Defense pre-trial motion number 6, the motion
23 to declare 17-24 unconstitutional under the arbitrary
24 factor argument as made Thank you

25 MR DIGGS Your Honor, the next one we have is --

1 it's a similar argument to the one we made previous on
2 17-24-10

3 THE COURT All right This is Defense pre-trial
4 motion number 7, a motion to declare 17-24-20
5 unconstitutional regarding conclusive presumption?

6 MR DIGGS Right, and again, there's a
7 presumption contained within the statute that says if
8 you can distinguish between moral or legal right from
9 wrong in one area of the brain, that you're able to
10 carry that out in terms of your conduct, and what the
11 evidence is going to show and what we know now is that
12 these analytical functions that occur inside the brain
13 are not something that automatically occur in everybody

14 You've got to have brain material You've got to
15 have the nerves and neurons there and they've got to
16 function properly in order to be able to conform
17 conduct, and the statute presumes that if we know right
18 from wrong -- it's kind of like what I was saying a
19 minute ago If you know a certain reaction is wrong
20 legally or morally on some level, but you're not able to
21 conform your conduct to that expected of you because of
22 a defect, it's unconstitutional to say that, "Well, here
23 we understood what the situation was, but it wasn't
24 properly analyzed here and acted upon Then that's just
25 too bad "

1 THE COURT Are you asking me to say that
2 basically what the -- that the statute is
3 unconstitutional because it ought to be if you're
4 mentally ill, you'll be found not guilty? You can't be
5 guilty but mentally ill If you're mentally ill in
6 accordance with the statute, you have to be not guilty?
7 Is that what you're asking me?

8 MR DIGGS If you're mentally ill and if you're
9 mentally ill because of a certain defect, then you
10 should be not guilty

11 THE COURT Okay, so ---

12 MR DIGGS That's what I'm saying

13 THE COURT So you're attacking the premise of the
14 statute? You say that 17-24-20 should not exist in its
15 entirety? What it should be replaced with is some
16 statute or case law or whatever that if the -- if you
17 have the capacity to distinguish right from wrong or to
18 recognize your act as being wrong, but because of a
19 mental disease or defect you lack the sufficient
20 capacity to conform the conduct to the requirements of
21 the law, you should be found not guilty?

22 MR DIGGS Correct

23 THE COURT So that's what you're arguing here?

24 MR DIGGS Correct

25 THE COURT All right I would respectfully

1 decline to grant your motion to declare 17-24-20
2 unconstitutional under that argument, that being Defense
3 pre-trial motion number 7

4 MR DIGGS , All right Do you want me to hush
5 about that or ---

6 THE COURT Well, ---

7 MR DIGGS What I was going to do is -- I'll go
8 ahead and move on

9 THE COURT Well, I don't know Is there
10 something -- what I was trying to do was to get to your
11 argument? Is that what you're asking me to do and
12 that's what you're asking to say ---

13 MR DIGGS Yes, I was asking ---

14 THE COURT --- that the whole standard is
15 completely wrong? It ought to be a brand new
16 standard, ---

17 MR DIGGS There should be, yes

18 THE COURT Okay, and what I'm saying is under
19 that argument to me, I am respectfully declining to
20 grant your motion I find 17-24-20 to be proper and
21 would respectfully decline to re-word it, or to have a
22 new statute or case law, or court rule that would
23 indicate otherwise, basically that has the same wording
24 of 17-24(a), but follows it up with be found not guilty,
25 will be declared not guilty, all right?

1 MR DIGGS Okay

2 THE COURT Very good Then the next one we have
3 is Defense pre-trial motion number 8, motion to declare
4 16-3-10, et sequitur, unconstitutional, and it says
5 incomplete evidentiary bias

6 MR DIGGS And, Your Honor, this is the same
7 argument that we made with respect to the prior
8 statutes Although this statute is 16-3-10, it
9 incorporates the same defects that we were complaining
10 about regarding the statutes in Title 17

11 THE COURT And so we're clear, just so the record
12 is clear, 16-3-10 is the definition of murder?

13 MR DIGGS Correct

14 THE COURT Very good Okay

15 MR DIGGS It allows you, as the Court, jury, as
16 the fact finder, to make a finding of fact regarding
17 that offense based on an incomplete evidentiary record,
18 one that doesn't take into account the mental status --
19 the structure -- neither the structure nor the function
20 -- the functioning ---

21 THE COURT And I'll allow you to continue in just
22 a second, but just so that I understand, this is going
23 essentially back to the argument that the State ought to
24 have the burden of proof to prove the defendant sane?

25 MR DIGGS Yeah, and it allows the State to

1 satisfy its burden of proof based solely on the conduct
2 of the accused That's what -- that's the problem with
3 this particular statute

4 THE COURT So the underlying premise as against
5 basically every criminal defendant, that they are
6 presumed sane, you are arguing against that?

7 MR DIGGS Well, I am when that issue is put into
8 play

9 THE COURT There still has to be a notice by the
10 Defense that the defendant is claiming insanity?

11 MR DIGGS Right

12 THE COURT All right, so when the Defense says
13 this is an issue, the sanity of the defendant is an
14 issue, the State should be required ---

15 MR DIGGS Yes

16 THE COURT --- by all of these statutes, whatever
17 statutes we're talking about -- in this one, we're
18 talking about 16-3-10 -- to prove the defendant sane?

19 MR DIGGS Yes

20 THE COURT Very good

21 MR DIGGS And we do that as -- I'm not asking
22 the Court to go more broad than it needs to, but we are
23 facing a certain set of facts in this case, and as
24 applied in this case the statute is unconstitutional

25 THE COURT All right

1 Solicitor

2 MR HEMBREE Your Honor, we would ask that this
3 motion be denied under the same grounds as Defense
4 Motion number 4 This is merely the flip side of that
5 motion, looking at the murder statute as opposed to the
6 insanity statute, and we would respectfully request it
7 be denied

8 THE COURT All right, sir

9 All right, your motion to declare 16-3-10
10 unconstitutional, and that again states that murder is
11 the killing of any person with malice aforethought,
12 either express or implied, as defined by the courts of
13 this state I would respectfully decline to grant your
14 motion, that is Defense pre-trial motion number 8

15 All right, the next one that we have is Defense
16 pre-trial motion number 9, motion to declare 16-3-10
17 unconstitutional on the issue of vagueness

18 MR DIGGS Your Honor, the term "malice
19 aforethought," what we are arguing here, fails to
20 acknowledge that malice is a complex concept, or can be,
21 that sometimes things are done, actions are taken
22 completely in the absence of malice simply because of
23 the brain that doesn't function properly There's not
24 any ill will present necessarily It's simply a
25 function of the brain where certain parts of the brain

1 are kicking in and working properly and other areas not,
2 and it results in certain actions that appear to be
3 contrary to what we think is acceptable conduct in our
4 society, but it's really the product of a brain that's
5 defective, and the statute is -- doesn't even begin to
6 talk about or taking into account those kinds of
7 consideration, and we don't -- we have a process and a
8 procedure that doesn't even make it a condition of --
9 it's not even required to be discussed in the trial of
10 the case, but what we're saying is that malice
11 aforethought requires multiple brain functions in the
12 way we perceive malice aforethought and by allowing the
13 guilt or innocence of the accused to be judged based
14 solely on the conduct, it allows for a finding that just
15 skips over or hurdles over the fact that the brain
16 operates in a -- the normal, healthy brain operates in a
17 certain way, and when conduct is produced because of an
18 analysis that occurs in a healthy brain and that's fine,
19 then those people ought to be prosecuted That's what
20 the law presumes, that's what this statute presumes, but
21 it doesn't even cross the draft -- or this statute's
22 mind that malice aforethought might be a complex
23 situation that engages -- that's a product of several
24 different areas of the brain working in concert, and if
25 something in that process is not right, then the end

1 result is not going to be right

2 It's vague, the statute is vague It should say,
3 "Look," -- and this presumption stuff should be
4 disallowed about presumed to be sane, not when it's
5 called into question, when Defense counsel gets in the
6 case, and that has been made an issue in the case, this
7 whole process should be examined very closely, and we
8 look at how the brain functions for this individual
9 You know, if malice exists in the brain, we have the
10 ability now to go down and look at what neuron or what
11 brain cell started with that -- with that idea, with
12 that concept, with that thing, whatever malice is, but
13 now in this case what we're going to show is that the --
14 and the trial of the first case is there You know,
15 that could be incorporated into this hearing if need be
16 in terms of what the evidence is going to show, but if
17 you've got -- let's go back to my issue or my situation,
18 Your Honor, where I do something that startles you or
19 that startles someone and how they react to that
20 situation, a big startle is something you don't think
21 about, you know It's a natural reaction that occurs
22 What happens then, though, is that idea of a big startle
23 is transferred up to a different area inside the brain
24 where it is analyzed and you make judgment -- make
25 judgments about it at that point and then direct your

1 body in terms of what and how to respond, and this
2 statute, that -- if you have an area in the brain that
3 doesn't work properly and it's not going to properly
4 analyze the situation and allowing you to over-react and
5 do something that is extreme, the statute doesn't take
6 any -- it doesn't even begin to consider that

7 It just says, "Look, this is malice and it can be
8 shown by the conduct," and that's it, and so the statute
9 is vague It ought to define what malice is It ought
10 to be the product of a healthy brain that's operating
11 and carrying out the functions of a healthy analysis
12 that's been made in the brain with a criminal intent to
13 do the things that are done in the case

14 THE COURT All right Do you have in regards to
15 your argument a vagueness -- I understand your
16 arguments You are asking that the statute be declared
17 unconstitutional because malice is not properly defined
18 in the statute?

19 MR DIGGS Exactly

20 THE COURT All right

21 MR DIGGS And when the statute was written, they
22 probably had no idea how to define it

23 THE COURT Did you just for the basis of your
24 argument, and not that it's necessary for it, did you
25 come up with a definition that you wanted?

1 MR DIGGS Yeah Basically what -- I think the
2 definition that we've used is half -- it's on track, but
3 it gets you halfway there It needs to be the product
4 of a healthy functioning -- properly functioning brain,
5 and if it's not, then the State hasn't proven malice
6 based solely on the conduct

7 THE COURT And the defendant should be declared
8 not guilty?

9 MR DIGGS Correct -- well, yeah, in that
10 situation, Your Honor, as a result of the State's
11 failure of proof on the issue

12 THE COURT All right, sir, so would that
13 logically flow that every person who has an unhealthy
14 brain can commit any act that they would like to and
15 they would have no responsibility for it then?

16 MR DIGGS It's more discerning than that, okay?
17 If you've got -- if you've got a level -- a certain part
18 of the brain that's functioning at this level, receiving
19 threats to exist here, dangerous, and the inability --
20 there's a specific area of the brain that puts the brake
21 on that in terms of how you react I'm saying if that's
22 the case in the example that the Court just gave, then
23 you've got a problem You've got a situation that
24 shouldn't be analyzed in the criminal law, Your Honor
25 It should be analyzed in a hospital

1 THE COURT So, again, if you have an unhealthy
2 brain, you can commit any act that you'd like to and
3 have no responsibility for it?

4 MR DIGGS Unhealthy brain is too broad of a
5 concept to be able to answer that question

6 THE COURT All right

7 MR DIGGS If you've got a defect that shows --
8 and we can show that the area of the brain that should
9 be analyzing this particular impulse is not functioning,
10 then the answer to your question is yes if that's what
11 is driving the person's conduct Okay, it's not malice,
12 Your Honor It's not malice where there's an intent to
13 do harm and ill will You know, that's not what's
14 coming out of the brain in this case, and I don't know
15 if it would be so in the example you gave or not

16 THE COURT All right, sir

17 Solicitor

18 MR HEMBREE Your Honor, I don't -- I think Mr
19 Diggs's argument is pretty well the same argument he's
20 been offering whether it was in the form of arguing
21 against 17-24-10, 17-24-20, in favor of diminished
22 capacity, or against 17 -- or excuse me, 16-3-10 I
23 don't know anything else I could add to our argument on
24 that

25 THE COURT All right, sir, thank you

1 All right, I respectfully decline to grant Defense
2 pre-trial motion number 9, the motion to declare Section
3 16-3-10 unconstitutional due to vagueness

4 The next motion you have is Defense pre-trial
5 motion number 10, motion to declare 16-3-20
6 unconstitutional due to hypofrontality

7 MR DIGGS Your Honor, hypofrontality is what
8 some experts say is the condition that this defendant
9 has It consists of two things One area in the brain
10 up in here (indicating), about an inch or so down inside
11 the brain from the forehead, we've got two problems
12 We've got a structural defect and we've got a functional
13 defect, and we've got experts in this case both who will
14 testify one as to the structure and one as to the
15 function

16 It's been measured scientifically We will have
17 evidence that shows how -- you know, what the state of
18 Mr Stanko's function and structure -- what the states
19 are, and compare those against what has been determined
20 to be a healthy model composed of mental -- you know,
21 people with good mental health, a big data base which
22 has been put together to show, you know, what the
23 healthy brain and healthy -- mentally healthy
24 individuals should look like in terms of structure and
25 how it should function under certain situations

1 What this case is going to show is that Mr Stanko
2 has this condition of hypofrontality It's not
3 something he chooses to have It's something that he
4 just has We can speculate a little bit about how it
5 got there and what causes it, and there will be evidence
6 about that, but the fact of the matter is it's something
7 that exists in this case, again just like a missing limb
8 might be existing from someone born with an obvious
9 physical defect We can see that We are learning how
10 to see those types of defects when they exist inside the
11 brain, and that's what we've got in this case

12 Now, the status of the law in the U S is that we
13 can execute Mr Stanko notwithstanding the presence of
14 this defect, but we don't execute people who are
15 mentally ill -- excuse me, mentally retarded or who are
16 of a certain age, sixteen years old, seventeen years of
17 age We don't execute them because we know through
18 maybe more obvious observable evidence that there's a
19 problem with these people, their brains aren't working
20 properly, and so we're going to cut them some slack and
21 we, as an evolving society, we're not going to execute
22 those people, because the Eighth Amendment would protect
23 them We are better than that We're going to put them
24 in a hospital somewhere or in a prison setting so
25 they're not out and can't do those types of -- engage in

1 those types -- that type of conduct any more That's no
2 different from -- you know, a brain defect is a brain
3 defect A disability is a disability

4 If someone's brain is not functioning properly
5 because of their young age or because of mental
6 retardation, then it's a proper thing that we not
7 execute, and my argument is that in this case the same
8 rationale should apply We shouldn't execute people who
9 have brain defects, and that's what we have in this
10 case, and our law shouldn't allow for the execution of
11 this person, and we're asking that the statute be
12 declared unconstitutional because it does permit the
13 execution of people like Mr Stanko, and that's what the
14 State is trying to do in this case It should be
15 declared unconstitutional and say, "Look, we've taken
16 the step in terms of mental retardation We've taken
17 the step in terms of age, recognizing that the brain has
18 got to function properly, and in those two cases, the
19 retardation and the young age, it doesn't, so we're not
20 going to execute those people," and we shouldn't

21 That same analysis applies to Mr Stanko's case, I
22 would submit, and the statute would be used in an
23 unconstitutional way to neglect to take into account
24 that situation

25 THE COURT All right, so what you're attacking is

1 the penalty, ---

2 MR DIGGS Correct

3 THE COURT --- correct, the death penalty, ---

4 MR DIGGS Correct

5 THE COURT --- that no other aspect that the --

6 if he was to be found guilty of the crime, that the only

7 punishment that should be allowed is life in prison

8 without the possibility of parole?

9 MR DIGGS Your Honor, I'm not backing off from
10 the prior arguments, but on this particular ---

11 THE COURT Well, see, they don't logically flow,
12 then

13 MR DIGGS Well, if you like, it's kind of ---

14 THE COURT So then if he has this condition, then
15 he needs to be declared not guilty and set free?

16 MR DIGGS Well, under my prior arguments, but
17 let's say ---

18 THE COURT To have all your arguments flow
19 logically

20 MR DIGGS But you've -- you've rejected those,
21 so now this is a fall-back position to say, "Look, even
22 if he did understand right from wrong and this kind of
23 thing, he's got a disability " It's comparable to
24 retardation, or Mr Stanko is certainly not retarded,
25 but in terms of the brain structure and function, it's

1 no different, and as an evolving society, we don't
2 execute people like that

3 THE COURT All right, sir
4 Solicitor

5 MR HEMBREE Thank you, Your Honor I guess
6 first and foremost the question of whether Mr Stanko
7 has a hypofrontality issue or problem is a matter of
8 dispute It would be disputed at trial There are
9 experts that were going to offer contrary opinions to
10 Mr Diggs' experts, so we'll have to deal with that at
11 that point in time, so this motion assumes that he has
12 that condition, so that would be my first request for
13 you to deny this motion, would be based on the fact that
14 it really assumes a fact that's not in evidence and
15 can't be determined at this time

16 Your Honor, the -- the -- secondly, you know,
17 that's -- it goes against precedent This is not a
18 condition that has been recognized by our Supreme Court
19 like mental retardation or like that of a juvenile It
20 has not been recognized as a condition that would --
21 that would permit or would prevent the imposition of the
22 death penalty That would be -- that really is going to
23 be a question that will have to be dealt with even if --
24 even if it is proved that Mr Stanko has this condition
25 Assuming that and we get over that hurdle, the

1 appropriate place and time for that issue to be argued
2 and determined would be at the appellate level and we'd
3 request that this issue -- I mean, excuse me, this
4 motion be denied at this time

5 THE COURT All right

6 I respectfully decline to grant your motion to
7 declare 16-3-20 unconstitutional as to the penalty to be
8 imposed, that is the death penalty, regarding the
9 argument made in Defense pre-trial motion number 10

10 In addition to that, once again, it seems to me
11 that it logically flows that if the medical scientific
12 expert evidence is such as presented by Mr Diggs in his
13 argument, then the logical conclusion of that medical
14 scientific expert opinion should be that he does not
15 have the capacity to distinguish moral or legal right
16 from moral or legal wrong, or to recognize the
17 particular act charged as morally or legally wrong

18 I understand I am making a statement in addition to
19 what was presented, but again, the arguments by the
20 Defense indicate such a rigidity in the application of
21 these statutes that's not warranted and that's not
22 warranted by the application of case law in this state
23 Your motion is denied

24 Defense pre-trial motion number 11, motion for an
25 order requiring the Solicitor to respond in writing to

1 each motion which is contested by the State Well, they
2 filed something, so obviously we don't need to deal with
3 this motion, correct, Mr Diggs?

4 MR DIGGS Yes, sir

5 THE COURT All right, so that one is withdrawn

6 All right, number 12, Defense pre-trial motion
7 number 12, motion to seal visitor or registration log
8 regarding the defendant As I understood it, Solicitor,
9 was there an objection to this?

10 MR HEMBREE No objection, Your Honor

11 THE COURT All right, so granted

12 All right, Defense pre-trial motion number 13,
13 motion prohibiting extra judicial statements of trial
14 participants What's the State's position on that?

15 MR HEMBREE Your Honor, we -- we don't have any
16 objection to that motion either other than scheduling
17 and logistics matters, and we get frequent calls from --
18 from the media and other interested people about this
19 case and other serious cases and we want to be able
20 to ---

21 THE COURT Well, as to -- as to when hearings are
22 going to take place?

23 MR HEMBREE Correct, Your Honor

24 THE COURT Is there any problem with that, Mr
25 Diggs?

1 MR DIGGS Your Honor, could I get him to repeat
2 that? I'm sorry, I was distracted

3 THE COURT Basically what he's saying is he
4 doesn't have an objection to your motion number 13, the
5 motion prohibiting extra judicial statements by all of
6 the trial participants, State and Defense, except as to
7 scheduling issues, when a particular motion is going to
8 be heard, when the trial is going to take place, that
9 sort of thing Is there any problem with that?

10 MR DIGGS No, sir, not from me, and let me ask
11 Ms Williams

12 MS WILLIAMS Beg the Court's indulgence for just
13 a moment (Ms Williams and Mr Diggs speak quietly off
14 the record)

15 MR DIGGS Yeah, we don't have any That's good

16 THE COURT All right, very good

17 All right, then, let's go on to the next motion,
18 Defendant's pre-trial motion, let's see, 13(a), motion
19 to replace toxic terms commonly used in the trial of a
20 capital case It says, "Replacing the commonly used
21 terms, death penalty trial and guilt phase, with more
22 neutral terms "

23 All right, Mr Diggs

24 MR DIGGS Your Honor, what we're trying to do
25 here is put as little alarm as we can, you know, in

1 terms of the minds of the jurors by the way we throw
2 around terms of the process What we're asking for
3 specifically here, the bottom line is just to use
4 neutral terms of capital case and trial phase as opposed
5 to death penalty case and guilt phase Did -- do you
6 get my point on that?

7 THE COURT Yes, sir, I do, I do

8 Solicitor, what's the State's position on that?

9 MR HEMBREE Judge, here's -- I guess I object
10 Technically I object, but let me just try to walk
11 through that a bit I don't -- I don't intend to go --
12 or we don't intend to go out of our way to use toxic
13 terms, whatever that means, to sort of spin this thing
14 one way or another We're -- you know, we will look --
15 we will seek to avoid death -- the term -- we're not
16 using the term "death penalty trial" very often other
17 than to explain to potential jurors that it is a death
18 penalty case We want to make sure the jurors fully
19 understand at the very beginning of the process when we
20 begin the individual voir dire Perhaps in an opening
21 argument just laying out the procedure that it's a
22 capital case, you know, that involves we're going to be
23 asking for the death penalty In that -- that general
24 explanation I could see, you know, using or educating
25 the jury on the fact that it's going to be a death

1 penalty trial The Court is going to do that as well,
2 but I want to make sure folks understand that because
3 they don't always -- sometimes they don't get it even
4 though we say it over and over again, but I don't intend
5 to use it as some sort of a tool to infect the
6 proceedings Guilt phase, you know, the trial phase,
7 we'll endeavor to use that term, trial phase, more than
8 guilt phase It doesn't really matter ---

9 THE COURT That -- that, I think, ---

10 MR HEMBREE It's not going to ---

11 THE COURT I think as to that part of it as best
12 we can, and I'm not going to make this a hard and fast
13 rule, but as best we can, certainly I think if we're
14 talking about a trial phase and sentencing phase, that
15 probably would be good terminology to try and use both
16 on the State and the Defense, and like I say, I'm not
17 making this a hard and fast rule that cannot absolutely
18 -- the words, you know, death penalty case and guilt
19 phase can't be used, but if we can endeavor to use trial
20 phase, sentencing phase, I think that would be best for
21 all in this case

22 Certainly there's going to have to be some
23 explanation to the jury, especially when we're doing the
24 initial questioning of the jurors and maybe in the
25 initial explanation to them that what is being requested

1 of the State, the ultimate penalty It is a death
2 penalty case They have to understand that to be able
3 to respond to the questions that the Court, the State,
4 and the Defense will pose to them, so I understand the
5 purpose of the motion and I'm asking as a general rule
6 that we abide by that and as indicated by the State,
7 we're not trying to influence in any way the jurors in
8 that regard, so in that respect

9 So, literally, I am denying your motion, Mr Diggs,
10 but I am asking the parties to respect what is being
11 offered and certainly if the Defense feels that there is
12 some particular point that's being made at a particular
13 time, please bring that to my attention at that point in
14 time and we will deal with it, all right?

15 MR DIGGS Thank you, Your Honor

16 THE COURT All right, Defendant's pre-trial
17 motion number 14, motion to restrict use of the word
18 "murder "

19 MR DIGGS And, Your Honor, I think probably the
20 Solicitor understands this and probably doesn't do --
21 violate it a lot, but anyway, when we refer to Mr
22 Turner's death, if we -- you know, during the trial, if
23 we don't call it Mr Turner's murder You know, that
24 hasn't been determined yet That's still at issue in
25 the case, and that's what we're trying to get at in this

1 particular motion

2 THE COURT Well, we do have to talk about it I
3 mean, that is the crime for which he is charged That's
4 the crime for which he was indicted He was indicted
5 under count one for the crime of murder, so it's got to
6 be explained in some way to the jury when we're talking
7 about, you know, "This man stands accused of the crime
8 of murder "

9 MR DIGGS And, you know, an example might be,
10 "Now, what time, Officer, did you arrive at the murder
11 scene?" you know, or "What time did the murder occur?"
12 those kinds of things

13 MR HEMBREE Judge, if I may, ---

14 THE COURT Yes, sir

15 MR HEMBREE --- this is -- I see this pretty --
16 really identical to the previous motion Yeah, we will
17 endeavor to avoid using that term, you know, except when
18 it's absolutely appropriate or called for, certainly in
19 the trial phase of the case Now, if we get to a
20 penalty phase, it's a different issue, so ---

21 THE COURT Right, so we're talking about here the
22 trial phase?

23 MR HEMBREE Yes, sir, ---

24 THE COURT All right, very good

25 MR HEMBREE --- but we'll handle it the same

1 way, ---

2 THE COURT All right, and ---

3 MR HEMBREE --- and if we wander afield ---

4 THE COURT And again, Mr Diggs, so the record is
5 clear, I am going to respectfully decline to grant your
6 motion as worded, but again, first, if there is
7 something that is being particularly done during juror
8 qualification or any phase of the trial that you have an
9 objection to, please bring that to my attention so we
10 can deal with it at the time, and again, we will
11 endeavor, all the parties, Court, State, Defense, to
12 restrict the matter to the facts at hand and not
13 unnecessarily use the word "murder" or the crime for
14 which he is charged, all right?

15 MR DIGGS Thank you, Your Honor

16 THE COURT All right The next one we've got
17 here is Defendant's pre-trial motion number 15, motion
18 for fair trial procedures, and you've got a number of
19 them that you've got set forth One of them is to allow
20 the Defense to occupy the counsel table nearest the
21 jurors, so your argument on that

22 MR DIGGS Your Honor, I don't know if there's
23 any psychological or, you know, any evidence that's been
24 developed about this, but it just seems to me to be fair
25 once in a while to allow the Defense to have that

1 position in the courtroom You know, of course, it's
2 never been -- I've never had that situation occur When
3 a juror sits in that box and they look across at us,
4 they see the friendly faces of the prosecution there
5 close to them We're way over here I don't know if
6 there's some psychological -- you know, maybe -- maybe
7 we could -- if the Court is not inclined to grant this,
8 maybe we could change now and then, you know, to rotate,
9 but it just seems to be a little bit unfair to always
10 put the defendant way over here kind of to be isolated
11 out from everybody

12 THE COURT Is it -- and I'm just asking you a
13 question Is it your understanding that this has been
14 the accepted practice and norm because the State has the
15 burden of proof?

16 MR DIGGS It's always been told to me that way,
17 Your Honor, and I've always heard that, but ---

18 THE COURT Despite that, you would ---

19 MR HEMBREE We'll waive the burden of proof,
20 Your Honor, and we'll move wherever he wants us to
21 move ---

22 THE COURT Well, I appreciate that -- but I
23 appreciate that, and I don't mean to make light of that,
24 but I honestly think that that is a good and rational
25 reason to have the State to occupy that particular

1 table Once again, I have not -- certainly not in this
2 particular case, nor have I ever been presented with any
3 kind of evidence of any kind or any studies of any kind
4 that have studied juries to say that they are more
5 inclined to do something because somebody is sitting at
6 a table closer to them I have never seen anything that
7 would indicate that's a basis

8 MR DIGGS Your Honor, one thing that happened in
9 this very courtroom, ---

10 THE COURT All right

11 MR DIGGS --- it was another judge, but there
12 was a lot of -- of course, the victim's families This
13 was in a sentencing phase, so I can use the word
14 "victim " We were in this courtroom and the families,
15 of course, tend to sit behind the Solicitor, and there
16 was a lot of facial expressions being exchanged between
17 the jurors and the family, and it would certainly cut
18 down on that, ---

19 THE COURT Well, it might, but I think -- I think
20 it's -- I don't -- I mean, you're talking about what, an
21 extra ten feet You know, it's not a great distance I
22 can't imagine that, you know, using that, somebody's
23 eyesight is so bad that they can't see facial
24 expressions at one table or another, but certainly if
25 there is something improper that you see going on in any

1 trial, whether it's this trial or any trial, you bring
2 that to the Court's attention and it will get handled
3 right then I mean, that's -- that's not something
4 that's going to be allowed

5 All right, I'm going to respectfully decline to
6 grant your motion to occupy the counsel table nearest
7 the jury box

8 Number two, allowing the jurors to choose their own
9 foreperson, I will take that under advisement and I may
10 very well do that It has been argued that -- and I see
11 some validity in the argument that you ask the jury at
12 the very beginning, no matter what kind of case it is,
13 civil, criminal, whatever it might be, to choose their
14 foreperson because that gets them in the mode of
15 communicating, talking to each other, a way to introduce
16 themselves to each other so that they have the ability
17 to communicate later on, which is absolutely necessary
18 when it comes to the discussion phase, when they are
19 allowed to discuss the matter, so I will take that under
20 advisement and indicate to you I might very well do
21 that

22 Number three is not to sequester jurors

23 MR DIGGS What we're asking here is we
24 understand that the Court sequesters the jurors for the
25 benefit of the defendant so the jurors won't be

1 prejudiced by reading or hearing news articles, news
2 accounts, television and that kind of thing, but the
3 Court always instructs jurors not to do that anyway, it
4 puts a lot of -- it puts a burden on the jurors They
5 don't like to be sequestered and away from the families,
6 away from their homes, and it certainly tends to make
7 the Court feel pressured to hurry up and get this thing
8 over with as quickly as possible so we could keep that
9 inconvenience to a minimum, but I find that the
10 negatives outweigh the positives

11 In this case, we're asking, you know, the Court
12 instructs the jurors not to read the newspapers or watch
13 T V and I would submit they could be trusted to do that
14 and would come in and tell the Judge, you know, tell the
15 Court, when violations of that instruction occurred We
16 don't want to be in a situation where we are required to
17 go late into the evening and work late nights and
18 weekends simply because we want to hurry up and get
19 things over with so the jurors can go home We think
20 that it would be a more fair procedure to do it like
21 most other cases where jurors are not sequestered, and
22 certainly during the trial not to sequester the jurors,
23 and we're asking also not to sequester during even the
24 deliberations

25 Other trials occur where there are not

1 sequestrations and we believe that justice is
2 administered in those situations and we believe that it
3 could be in this case as well without the sequestration,
4 so we're asking the Court not to do that on this case --
5 on this occasion

6 THE COURT All right, Solicitor

7 MR HEMBREE May it please the Court, Your Honor
8 We would oppose this motion and request that the Court
9 deny it You know, we often hear Defense counsel say
10 death is different, you know, death penalty cases are
11 different In this -- certainly in this instance, we
12 would very much agree The sequestration of jurors not
13 only protects the defendant's rights to prevent the jury
14 from being exposed to something that might corrupt their
15 assimilation of information and ultimately their
16 deliberations, but it also protects the process

17 It keeps a controlled environment where we can
18 eliminate those sorts of concerns and problems because
19 it is very -- and it's different in a death penalty case
20 because it lasts so much longer We are looking at a
21 case -- the last one I tried was three weeks long
22 This one is scheduled for two weeks long It is almost
23 unreasonable to ask a jury to say, "Yeah, I'm going --
24 I'm going to, you know, be able to go home and live my
25 life every other way, except I'm never going to turn on

1 that television set, or never going to walk through the
2 room where my husband or wife is watching television, or
3 I'm never going to -- you know, if the newspaper is in
4 the trash can, I'm not going to see it "

5 The other part about a death penalty case is that
6 it -- there's no other case that attracts more attention
7 both by the media and by the public, and it just -- not
8 keeping that jury in a confined atmosphere just is
9 screaming for some sort of a problem either in exposure
10 to a media, exposure to a friend, or somebody that might
11 stop by the house, a co-worker, somebody that you might
12 talk to in your off hours, exposing them to -- well, any
13 other influence I mean, there's so -- there's a world
14 of them out there, and people are interested, and
15 they're talking about it in the community, and if
16 somebody happens to stop by the grocery store on the way
17 home coming back from court one night, what's to say
18 that they don't overhear the conversation in line They
19 didn't even ask for that They didn't even participate
20 in it They were -- but they overheard this discussion
21 and then somehow that affected them or infected the
22 process, so, Your Honor, it would be -- even more than
23 protecting the defendant, it is about protecting the
24 process

25 The last point on this is that in recent years,

1 there have been -- there's sort of a cottage industry
2 that's developed with the capital defense bar They
3 become very, very aggressive about making contacts with
4 jurors on death penalty cases post-trial, and they are
5 pretty good at questioning them and, you know, really
6 creating a problem I fear that -- you know, although
7 there are actually some rules that are being
8 contemplated to address that very problem currently
9 being considered by Judge Hayes' Criminal Rules Revision
10 Subcommittee, so -- because of that very issue

11 To sequester them, you at least eliminate a big
12 chunk of that sort of problem You eliminate that
13 possibility assuming that they're going to be questioned
14 or contacted by defense -- folks working for the defense
15 after the trial We know where they were You know, we
16 know -- we don't have to worry about, "Well, did you
17 happen to stop by the grocery store?" "Did you happen
18 to see a newspaper?" We don't have to worry about those
19 questions because the Court through its order can
20 eliminate those things and protect the process We'd
21 ask the Court to deny this motion

22 THE COURT All right, sir Well, in my decision
23 I'm not taking into consideration any issues about what
24 might happen post-trial I'm not taking that into
25 consideration My job in this particular case or one of

1 my responsibilities and duties as a trial judge is to
2 ensure justice and fairness to all the participants in
3 this trial I think based on the facts of this
4 particular case, the fact that a case has already been
5 tried in Georgetown County involving this particular
6 defendant and the ultimate penalty imposed in that
7 particular case, I believe that in this particular case
8 sequestration of the jury is not only proper but
9 warranted, so to ensure the absolute, as best I can, the
10 fairness and justice to all, I am going to order the
11 sequestration of the jury in this particular case

12 MR HEMBREE Thank you, Your Honor

13 THE COURT All right The next one you have is
14 prohibit the SLED agents from guarding the jurors I
15 guess my first question would be if I don't enlist the
16 aid of State Law Enforcement to do this, who has vast
17 experience in doing it in a number of cases and
18 understanding the restrictions and the complications
19 that are involved in this, who am I going to get to do
20 it?

21 MR DIGGS Well, are you asking me?

22 THE COURT Yes, sir Who am I -- who am I going
23 to turn to because you don't want me to have the County
24 Police do it I mean, I can't reach over to Marion
25 County and tell the Marion County Sheriff "I've got to

1 have your deputies over here in Horry County and do
2 something " I can't do that, so who is going to -- who
3 is going to guard them and ensure the fairness that is
4 absolutely necessary?

5 MR DIGGS And counsel points out the fact that
6 you're going to have these law enforcement agents
7 possibly from the same agency testifying during the
8 trial of the case, and then their cohorts on, you know,
9 the same -- from the same agency guarding the jurors

10 Your Honor, in terms of who might do it, I don't
11 know I know that when we put the jurors in -- when we
12 lock them up, and that's what happens when they're
13 sequestered, and they get told where to go, and what to
14 do, and law enforcement is doing that, it just puts a
15 different spin on the case, a different atmosphere on
16 that case that's different from any other case, and it
17 doesn't benefit the defendant in my opinion It hurts
18 the defendant It kind of adds -- I would submit that
19 there is anger that comes from having to be sequestered
20 anyway and all of this, and then it's to the point where
21 they have to even be guarded by law enforcement
22 officers It's not something that's going to -- the
23 only possible effect it could have on the trial is to in
24 some way put the Defense or the defendant in a bad
25 light

1 In terms of how to do it, I'm not sure Maybe we
2 can discuss that further I'm not sure

3 THE COURT All right, sir
4 Solicitor

5 MR HEMBREE Your Honor, the folks that are --
6 the sequestration team is trained to be a sequestration
7 team It's not just something they stumble into
8 They're actually -- you know, SLED actually has a
9 protocol and procedure for training them, and how
10 they're supposed to behave, and how they're supposed to
11 be -- to not show any favoritism, you know, just to
12 basically be caretakers

13 Most of the agents are retired SLED agents You
14 know, many of them have been away from the agency for
15 quite sometime We often have deputies that are
16 actually made part of that team as well They remain in
17 plain clothes to try to minimize their law enforcement
18 connections and ties They are sworn in as officers of
19 the court, so there are many steps that are taken to
20 prevent any sort of inappropriate or improper contact
21 with the jurors or any sort of influence that these
22 folks might bring upon that jury

23 You know, I would hazard a guess that many of the
24 jurors don't even realize that these folks are SLED
25 agents They just know that these are the people that

1 are taking care of them Your Honor, it's -- again,
2 it's been a method that's been used for a long, long
3 time You know, we've gotten pretty good at it I
4 think SLED -- not we, but I think SLED has gotten very
5 good at that, and to try to depart and create a brand
6 new system in this case when sequestration is so
7 necessary, I think would be kind of throwing caution to
8 the wind, and we'd ask that this motion be denied

9 THE COURT All right Regarding this particular
10 part of the motion, I'm going to respectfully decline to
11 grant it I do believe that the requirements that the
12 Court will place upon the personnel will require them
13 not to have any kind of inappropriate contact with the
14 jurors, that there are things that are done to lessen
15 their connection with law enforcement, such as the use
16 of civilian clothing, and taking all this in and
17 balancing all the competing interest in this case, I
18 intend to use the State Law Enforcement Division
19 sequestration team in this particular matter

20 All right, the last one in this particular motion
21 for fair trial procedures is the forbid showing
22 defendant in cuffs or shackles in the presence of jurors
23 or potential jurors, and as I understand it, the State
24 does not have a general objection to this conditioned
25 upon the actions of the defendant?

1 MR HEMBREE No objection, Your Honor I mean,
2 it's really a security question We don't have a
3 position on that other than what is required by -- it's
4 really not our issue It's really more that -- of a
5 Department of Corrections or Sheriff's Department issue
6 than it is ours, so we take no position

7 THE COURT All right My intention is that when
8 a jury or potential jurors are present that the
9 defendant at that point in time would not be handcuffed
10 or shackled Now, that does not prevent the Department
11 of Corrections or the Sheriff's Office from using other
12 methods that are available to them There is a belt
13 that is used that is worn under the clothing that the
14 Court would find acceptable to be used in these
15 circumstances

16 Now, all this is conditioned upon the actions of
17 the defendant Depending upon how the defendant
18 presents himself in front of the potential jurors or
19 jurors, certainly my intentions could be changed and his
20 presentation could be further restricted, but I'm sure
21 the Defense attorneys will communicate with Mr Stanko
22 and I'm sure Mr Stanko understands that certainly it's
23 in his best interest to be able to effectively
24 communicate with his lawyers in this case and to present
25 a proper image to the jurors in this particular matter,

1 and so initially we will start off without the use of
2 handcuffs or shackles Other devices can be used, and
3 then we will see how the matters progress and if further
4 restrictive devices are necessary, then we will deal
5 with it as the situation presents

6 All right, is there anything else? That's all I
7 saw in that particular motion Is there anything else
8 in that particular motion?

9 MR DIGGS (No response)

10 THE COURT All right The next one we have is
11 Defense pre-trial motion number 16, motion for pretrial
12 disclosure of exculpatory and impeaching information
13 pursuant to, I'm assuming Rule 5, Brady v. Maryland, the
14 cases that have come after Brady v Maryland that have
15 dealt with this particular issue

16 The first question I have is, Mr Diggs, is there
17 any information that you have now in y'all's possession
18 that the State has not complied with Rule 5, South
19 Carolina Rules, or Brady v Maryland, or any of its
20 progeny thereafter? Is there any ---

21 MR DIGGS Your Honor, there is not I don't
22 know if it's directly applied -- or applicable to this
23 motion, but there are journals that we've been trying to
24 get that are in possession of the State somewhere

25 THE COURT Journals about what?

1 MR DIGGS These are journals that Mr Stanko had
2 kept or generated prior to his arrest

3 THE COURT Okay, some -- something that
4 apparently he authored and that was seized from him when
5 he got arrested?

6 MR DIGGS All right They were taken from Ms
7 Ling's home

8 THE COURT Solicitor, are you aware of anything
9 such as this?

10 MR HEMBREE They may be in Georgetown Have
11 y'all looked at attorney stuff?

12 MR DIGGS We went down there before the last
13 trial and they weren't there There were some journals
14 there, but those were not the ones that we're talking
15 about

16 THE COURT Well, I tell you what, if you can, Mr
17 Diggs, can you communicate with the State maybe in a
18 more explanatory fashion than some journals Give them
19 some idea of what it is you are looking for, and then,
20 Solicitor, you will communicate with all the agencies,
21 even the ones down in Georgetown and see if somewhere in
22 some evidentiary file, or in the Clerk's file, and see
23 if we can't locate it

24 All right, anything else?

25 MR DIGGS (No response)

1 THE COURT Now, Solicitor, in the response that
2 you have made to the Court, the written response, and
3 I'm taking from that that you believe, excluding this
4 particular issue, that -- you believe that the State has
5 complied with the requirements of Rule 5, Brady v.
6 Maryland, and the cases that have come thereafter?

7 MR HEMBREE Yes, Your Honor

8 THE COURT All right Mr Diggs, obviously if
9 there is something that you become aware of subsequent
10 to this hearing, then you bring it to the Court's
11 attention and we will deal with it at that point in
12 time, but I -- as regards to those journals, I'm asking
13 you to communicate with the State, the State to
14 cooperate with you in trying to locate those, if they
15 are to be located, and if any issues continue from that
16 particular matter, you let me know

17 MR DIGGS Your Honor, there was some reference
18 to those journals, I believe, in Dr Crawford's
19 testimony at the last trial, and if the Solicitor has a
20 transcript of that, he might could look at that and that
21 might hone in exactly what it is we're trying to get

22 THE COURT All right Well, and then maybe if
23 y'all can -- y'all can cooperate and y'all know
24 apparently what it is that you are looking for If you
25 can tell the State, "In all the stuff that you've given

1 us, we don't find X, Y, and Z that was talked about at
2 the last trial," whatever it is, and so if it becomes an
3 issue for the Court, it will be sufficiently defined for
4 me so I know what you're talking about, because right
5 now it's extremely vague to me what you might be talking
6 about, so if it comes a point in time when you want me
7 to deal with it or I have to become involved with it, it
8 needs to be clear what you are asking for

9 All right, the next motion is number 17, motion to
10 preserve physical evidence Is there any objection to
11 that from the State?

12 MR HEMBREE No; Your Honor

13 MR DIGGS Your Honor, they -- in fact, we have
14 an appointment to review that evidence tomorrow, ---

15 THE COURT All right, and ---

16 MR DIGGS --- so I think the State is ---

17 THE COURT --- and just as a continuing
18 obligation that the State had and would have to preserve
19 this, it continues

20 All right, the next one -- all right, now that one
21 was labeled 17, and I noted -- am I missing 18? Y'all
22 didn't give me 18, or there isn't an 18?

23 MR DIGGS That was a change of venue motion,
24 Your Honor, and it ---

25 THE COURT That hasn't been presented to me?

1 MR DIGGS It hasn't been presented

2 THE COURT All right, so Defendant's pre-trial
3 motion number 19 is, again, a motion for preservation of
4 evidence Again, is there any objection to that from
5 the State?

6 MR HEMBREE No, Your Honor

7 THE COURT All right, very good

8 All right, Defendant's pre-trial motion number 20,
9 a motion for law enforcement officers to retain rough
10 notes What is it you're asking, Mr Diggs?

11 MR DIGGS Well, I don't know if this is the time
12 at this point, but in the investigation of these cases,
13 law enforcement might have made notes, booklets, you
14 know, some information ---

15 MR HEMBREE We don't have any objection to this
16 motion, Your Honor

17 THE COURT All right, very good, very good, and
18 that's the end of the motions that I was made aware of
19 Is that correct?

20 MR DIGGS Your Honor, can I go back and talk
21 about the sequestration again and maybe ask a question?

22 THE COURT Sure

23 MR DIGGS Now, in the third week, if we go into
24 the third week of trial, that's the week of
25 Thanksgiving, and I'm sure the Court is aware of that

1 and has thought about that already, but again, it would
2 be -- we're asking not to put the jurors under pressure
3 that ---

4 THE COURT If this trial -- if this trial goes
5 into a third week, we'll deal with it From what's been
6 presented to me at this point in time, I see no reason
7 why it would go into a third week We can work
8 sufficiently hard and long enough to accommodate all the
9 parties, but if it comes to play, we'll deal with it at
10 that point in time, but I don't anticipate it will ever
11 be an issue in this case

12 Anything else?

13 MS WILLIAMS Your Honor, ---

14 THE COURT Yes, ma'am

15 MS WILLIAMS --- the one thing I thought that we
16 may need to -- because I think it may have been what
17 Solicitor Hembree was addressing, initially -- I think
18 it was at the first of September whether or not we were
19 going to schedule a Blair hearing, and we agreed and via
20 e-mails communicated that at this point we weren't
21 contesting Mr Stanko's competency under Blair to stand
22 trial at the date of trial, and I think that may have
23 been where the confusion arose, but I also thought that
24 at that time Your Honor may have wanted to specifically
25 address that and make sure we created a record of why we

1 did not have a Blair hearing, was at least my
2 understanding with our communication at that time, and I
3 want to make sure we address that at this ---

4 THE COURT All right Well, why don't you do
5 that, please What was the -- if you would, Mr Diggs

6 MR DIGGS Why we don't need a Blair hearing?

7 THE COURT Yes, sir

8 MR DIGGS I believe he understands, that being
9 Mr Stanko understands the charges against him I think
10 he is capable of assisting in his defense I have had
11 an opportunity to work with Mr Stanko for an extended
12 period of time, longer than in most cases, and with
13 respect to the two issues I think that would be at issue
14 in the Blair hearing, he certainly can do those things

15 Now, I'm not saying -- you know, we thought about
16 this a good bit before we took the position that we
17 didn't need a Blair hearing It does not mean that
18 sanity is not an issue in this case, you know, as we've
19 discussed in the other prior motions because it is an
20 issue, but with respect to those -- his competency to
21 understand the charges and to assist us in his defense,
22 he can do that, and for that reason -- and there are
23 other strategic reasons that I don't really want to
24 disclose any further than that, but that's our position

25 THE COURT All right

1 Solicitor, let me hear from you

2 MR HEMBREE Your Honor, we don't have any basis
3 to ask for a Blair hearing We don't have any reason to
4 believe whatsoever that Mr Stanko is suffering from any
5 sort of mental defect that would have affected him at
6 the time or today, or the day of the trial

7 THE COURT Well, nothing has been presented to me
8 that would -- by the State or the Defense to bring the
9 issue to the forefront It has not been presented or
10 questioned by the State It has not been presented or
11 questioned by the Defense In fact, there's an
12 affirmative statement by the Defense that it is not
13 necessary Therefore, the Court finds no reason to
14 conduct a Blair hearing, there being -- these matters
15 not being presented to it nor questioned by the Defense
16 in any way, understanding the requirements of -- that
17 would be covered under a Blair hearing, so I do not see
18 the necessity of conducting it, it not being an issue
19 that has been presented to the Court in any way

20 All right

21 MR DIGGS Your Honor, before we conclude, there
22 are a couple of things I would like to address One is
23 I'm going to ask the Court if Mr Stanko could stay in
24 Horry County during the pendency of his case so he's not
25 -- or from now until the trial -- well, that he be

1 brought up here, you know, as the date of the trial
2 approaches and that he remain here I assume that he
3 will remain here

4 THE COURT Well, we've got a meeting October
5 23rd, 2009, at which time we were going to address any
6 other motion, the motion to argue against precedent, if
7 that comes up, as well as that's the first meeting here
8 in this courtroom regarding the juror responses that
9 have been forwarded out to the potential jurors in this
10 case

11 I might listen to you at that point in time from
12 there or maybe after the second meeting, which is just a
13 week later, October 30th, but we will bring that back to
14 my attention when we meet again on October 23rd, if you
15 would, all right, Mr Diggs?

16 MR DIGGS Okay

17 THE COURT If you would bring it back to my
18 attention when we meet at that point in time

19 MR DIGGS All right, and I do want to state --
20 Your Honor knows obviously, but he is at Lieber We are
21 about a two and a half hour drive one way, so any
22 time ---

23 THE COURT I understand that, but, you know,
24 we're looking at October 23rd That is a full two weeks
25 plus before this trial would start

1 MR DIGGS Okay

2 THE COURT So what I'm asking you to do is bring
3 it again to my attention at that point in time if you
4 would, all right?

5 MR DIGGS All right

6 MS WILLIAMS Your Honor, ---

7 THE COURT Yes, ma'am

8 MS WILLIAMS --- we have determined, based on
9 the Indigent Defense guidelines, for our investigator to
10 be at trial, we have to get -- I mean, we can get
11 funding for her to do prior to court and all of this,
12 but for her to physically be present in the courtroom at
13 trial based on their guidelines, we have to get the
14 Court's permission to allow her to be there, and at this
15 point we're asking for the Court -- we think that when
16 the trial comes that we will need for her to be here
17 There will be things that develop ---

18 THE COURT If you will -- if you will put that to
19 me in writing with some basic rationale for that as you
20 understand the procedure in this matter, and we're not
21 talking about anything in particular to this case, just
22 the general procedure is, any time a request for any
23 type of assistance by the Defense is now made to the
24 Circuit Court, we have been asked to forward that to
25 Indigent Defense to allow them to have some response to

1 it, just as you would any motion, so give it to me as
2 quick as you can I'll forward it on to them I'll
3 make a decision

4 You know, I might very well be inclined to grant
5 your request, but I would like for you to put it in
6 writing to me and I can forward it on to Indigent
7 Defense and then we'll -- we'll deal with it Since
8 you're asking for something to happen starting basically
9 November 9th, we've got plenty of time, but get it to me
10 as quick as you can so I can get it to them and get an
11 answer back to you

12 MS WILLIAMS Yes, sir, and the other is that the
13 orders that we've had so far that we've had to deal with
14 ex parte, we would ask that the Court please seal these
15 orders, at least with regard to our expert services as
16 well

17 THE COURT All right I thought that that had
18 been ---

19 MS WILLIAMS At this point we have not filed
20 them because they weren't sealed

21 THE COURT Oh, they haven't been filed?

22 MS WILLIAMS No, sir They're signed ---

23 THE COURT Okay, they haven't been filed?

24 MR DIGGS We still have them in our possession

25 THE COURT All right, okay

1 MS WILLIAMS And we have submitted copies -- we
2 have submitted signed copies, but we haven't filed them

3 THE COURT Very good
4 Solicitor, is there any problem with that?

5 MR HEMBREE No, Your Honor, no objection at all

6 THE COURT All right, so you can file those with
7 the Clerk and just during the pendency of the action,
8 Madam Clerk, they will be sealed After that, obviously
9 they can be unsealed because all those names will be
10 known anyway, so just during the pendency of the action,
11 when the trial is completed, you open them all back up
12 again

13 Okay, anything else, ma'am?

14 MS WILLIAMS Yes, sir May we approach briefly,
15 including counsel, State's counsel?

16 THE COURT Yes, ma'am

17 (A Bench conference was held off the record)

18 THE COURT Anything else, Mr Diggs, Ms
19 Williams?

20 MR DIGGS Not at this time from the Defense

21 THE COURT All right, from the State, Solicitor?

22 MR HEMBREE Yes, Your Honor We have a number
23 of discovery motions that were filed back in July that
24 we just need to -- I think we can go through these
25 rather quickly, ---

1 THE COURT All right

2 MR HEMBREE --- and hear what Defense's response
3 might be We haven't had any written responses from
4 them on these motions, so ---

5 THE COURT Hold on one second, Solicitor I'm
6 sorry
7 (Pause)

8 THE COURT All right, Solicitor

9 MR HEMBREE Thank you, Your Honor First was a
10 standard request for discovery It's entitled Request
11 for Discovery, Number 1, dated and filed It was filed
12 July 21st It was first where -- in our first paragraph
13 we're asking for any books, papers, documents,
14 photographs, any documents or things of that nature that
15 Defense intends to offer at trial

16 We've not received anything from Defense in
17 response to this discovery request I don't know that
18 -- they may not be intending to introduce any documents,
19 video tapes, presentations, anything of that nature, but
20 I know in the first trial they offered quite a few
21 exhibits, and we would like to have the benefit of those
22 exhibits

23 MR DIGGS Yeah, any -- those exhibits would --
24 they may be used again, and we would just like to put
25 the State on notice of that

1 THE COURT Are you saying ---

2 MR HEMBREE We'd like to get a copy of them,
3 Judge

4 MR DIGGS But he already has those

5 MR HEMBREE They're exactly the same?

6 MR DIGGS Exactly

7 THE COURT All right, so let's be clear now
8 We're talking about the prior trial that occurred in
9 Georgetown County, and exhibits, documents that were
10 used in that trial, those would be the same ones if you
11 use them in this trial?

12 MR DIGGS Correct

13 THE COURT There's nothing new in addition to
14 that?

15 MR DIGGS No

16 THE COURT Very good

17 MR HEMBREE Judge, as you were talking, Ms
18 Williams was whispering over to me that we have
19 everything that they have so far, which implies to me
20 that there are other exhibits that you intend and
21 anticipate using that you are waiting to get Is that
22 -- I've got one saying yes and one saying no

23 THE COURT All right Do we know of anything at
24 this point in time?

25 MS WILLIAMS At this point we know of nothing

1 else To make sure, obviously there's nothing ---

2 THE COURT Right, right, so I'm just saying at
3 this point in time that your intention is if you're
4 going to use them, it's all the stuff that y'all used
5 previously in the previous trial You don't know of
6 anything right now Obviously if something new comes
7 up, you'll alert everybody to that?

8 MS WILLIAMS Yes, sir That exactly was my
9 intention I just don't want us to be hammered into ---

10 THE COURT All right Well, I understand that,
11 but, I mean, what you're telling me, you don't know of
12 anything now, but if something new comes up, you'll --
13 as soon as it comes up, you'll make everybody aware of
14 it?

15 MS WILLIAMS Yes, sir

16 MR HEMBREE That's all I can ask, Your Honor
17 As soon as it comes up, ---

18 THE COURT I understand I understand, and
19 everybody understands their obligations here

20 MR HEMBREE Judge, the second part of this
21 request was for any results, tests, experiments in
22 connection with any experts that the Defense intends to
23 call in this case We have received some material
24 through the first trial, again That may be what we're
25 seeing again, but if there's any additional material,

1 experiments, tests, reports, anything of that nature,
2 that's new that we do not already have in our
3 possession, if they ---

4 THE COURT All right, so that would be as to any
5 written documentation or documents to be referred to by
6 an expert, or items to be -- physical items to be
7 referred to by an expert?

8 MR HEMBREE Yes, Your Honor

9 MR DIGGS We don't have anything at this point,
10 but if we do, and we may, I'll immediately make it
11 available

12 THE COURT All right, so communicate -- what I'd
13 ask that you do, Mr Diggs, if you communicate with your
14 experts and ask them if they anticipate there's anything
15 else new or anything that you're not aware of, that they
16 make you aware of it so you can forward it on to the
17 State, all right?

18 MR DIGGS Yes, sir

19 THE COURT Thank y'all

20 MR HEMBREE Thank you, Your Honor Our second
21 request for discovery has to do with alibi and mental
22 illness as defenses We have not received a response as
23 to whether alibi -- maybe we have received a response as
24 to alibi, I'm not sure, but there's no alibi ---

25 MR DIGGS No alibi ---

1 THE COURT Alibi is not a defense, but obviously
2 mental illness is

3 MR HEMBREE And, of course, mental illness will
4 be a defense in the case

5 THE COURT So mental illness is All right, very
6 good

7 MR HEMBREE In our request for discovery, number
8 4, we request the names and addresses of any potential
9 expert witnesses the Defense intends to rely on in this
10 case Again, we have a -- because we have the benefit
11 of having gone through this process once before, we have
12 a number of folks that we expect will be witnesses, but
13 I didn't know if there were any additional witnesses, if
14 there's any additional expert witnesses that the Defense
15 intends to rely upon in this case

16 MR DIGGS Well, we do -- there's a possibility
17 that we will We don't know yet, but if that becomes
18 the case, we will immediately let him know, and I can
19 tell the Court We can have an answer for this question
20 probably within five to seven days

21 MR HEMBREE A week is certainly ---

22 MR DIGGS Right

23 THE COURT All right, so what we're saying is by
24 -- just so we're clear here, by the 16th, then, by the
25 16th?

1 MR DIGGS Yes, sir

2 THE COURT Very good, by October 16th

3 Anything else, Solicitor?

4 MR HEMBREE The only other matter I have, Your
5 Honor, was just a point of clarification on the
6 scheduling order We had on a -- I think we're just
7 looking at an old scheduling order -- a hearing
8 scheduled for November 3rd and November 4th Are those
9 still ---

10 THE COURT All right, let me see Let me look at
11 the scheduling orders Hold on just one second and let
12 me find those, please And which dates were you talking
13 about, again, Solicitor? I'm sorry

14 MR HEMBREE I'm looking at the scheduling order
15 dated February 24th of 2009

16 THE COURT Now, there was another one that was
17 March 4th

18 MR HEMBREE I've got a feeling that's what you
19 probably ---

20 THE COURT There's an amended scheduling order
21 that was March 4th I don't know how much it changed

22 MR HEMBREE I'm looking at November 3rd and
23 Wednesday, November 4th, attorneys ---

24 THE COURT All right It says, "Attorneys
25 provide witness list to the Court Conference to" --

1 okay, we have obviously amended that to have those
2 conferences on the 23rd and the 30th We sent that to
3 you in writing

4 MR HEMBREE Right That's what we think, yes,
5 sir

6 THE COURT Okay, so yeah, that was amended You
7 got that, basically that one-page document that sets
8 forth on the 23rd, we were going to have the first one
9 On the 30th, we're going to have the second one, so,
10 yes, it's amended in that regard, certainly, yes, ---

11 MR HEMBREE Thank you, Judge

12 THE COURT --- and just so everyone is aware,
13 obviously the Defense, y'all have that, and I gave a
14 copy to the law enforcement, so, you know, they're aware
15 obviously that Mr Stanko needs to be back here, you
16 know, for that first meeting on the 23rd, okay?

17 MR HEMBREE Thank you, Your Honor

18 THE COURT Okay Anything else?

19 MR HEMBREE Nothing else from the State

20 THE COURT All right

21 Yes, ma'am?

22 MS WILLIAMS One moment, please, Your Honor

23 (Pause)

24 THE COURT Ms Williams

25 MS WILLIAMS Your Honor, the other -- the last

1 question that I had, if Your Honor had made any
2 decisions, and I realize we are a little in advance,
3 about the actual trial itself, meaning the length and
4 terms Are we going to go later, possibly on Saturdays
5 or not, and the reason that I ask this is obviously we
6 have experts to bring in, and the Solicitor and I had
7 discussed how long we think their case in chief may be,
8 how long we -- we were trying to sort of guesstimate
9 when we think we will begin our case Therefore, we
10 will kind of know when we need to bring in experts,
11 plane flights, those type of logistics, ---

12 THE COURT Right

13 MS WILLIAMS --- is what I was hoping that if we
14 have any idea, we might could possibly address

15 THE COURT Well, I guess at first it starts off
16 with the State, how long you anticipate your case will
17 take, understanding that, you know, we will be working
18 -- I'm not saying we're going to be, you know, here
19 until the wee hours of the morning, but I don't
20 anticipate we're going to be stopping at five o'clock
21 We will continue on for a while' into -- into the evening
22 before we recess It depends on where we are in the
23 stage of the trial and any unknown factors, if
24 somebody's plane, you know, got canceled and they can't
25 come until tomorrow, you know, or whatever it is, but as

1 I indicated, you know, we will work and move along in
2 the particular case

3 Any general idea of how long you think the State's
4 case -- just some kind of ballpark idea here?

5 MR HEMBREE My guesstimate, Your Honor, would be
6 probably three days for jury qualification That would
7 just be, you know, just kind of looking at other cases
8 in the past

9 THE COURT Right, right

10 MR HEMBREE It may run a little longer because
11 the case has received a lot of -- quite a bit of
12 attention, as well as there may be some people who can't
13 get qualified ---

14 THE COURT Additional questions

15 MR HEMBREE --- so it may take a little
16 longer, ---

17 THE COURT Right

18 MR HEMBREE --- but I think three days is fair

19 THE COURT All right

20 MR HEMBREE Probably two days -- once we start
21 opening arguments, I would say two days to conclude the
22 State's case in chief

23 THE COURT All right I would -- so you have
24 that understanding, and so we will continue on Is it
25 the first week that there's -- when is it that there was

1 a State holiday? There was a holiday -- all right, we
2 have no State holiday We will be holding Court that
3 particular day, so just so that y'all understand that,
4 the 11th, we'll be holding Court that particular day, so
5 that's not a holiday, in this particular matter, so I
6 would anticipate that we would continue the trial of
7 this case each and every day until the jury reaches a
8 verdict in the trial phase We will be working each and
9 every day until they reach -- and then we will have that
10 one-day break

11 Does that mean Saturdays and Sundays? Yes, it
12 means Saturdays and Sundays We will work every single
13 day until the trial phase concludes Okay, is that
14 sufficiently clear? That is the best I can tell you

15 All right, thank you very much

16 (Conclusion of Transcript of Record)
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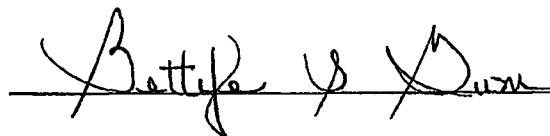
1 STATE OF SOUTH CAROLINA)

2 COUNTY OF HORRY)

3
4 I, the undersigned Bettye S Gum, Certified Court
5 Reporter and Notary Public in and for the State of South
6 Carolina, do hereby certify that the foregoing is a
7 true, accurate and complete Transcript of Record of all
8 the proceedings had and evidence introduced in the
9 hearing of the captioned case, as taken by Dixie Cox
10 Eubank, Official Reporter, and transcribed by me,
11 relative to appeal, in the Court of General Sessions for
12 Horry County, South Carolina

13 I do further certify that I am neither of kin,
14 counsel, nor interest to any party hereto
15
16

17 June 21, 2010

18
19 

20 BETTYE S GUM, CCR-CVR-CM

21 Certified Court Reporter and

22 Notary Public for South Carolina

23 My Commission Expires 7/13/14
24
25

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

THE COURT OF GENERAL SESSIONS
FIFTEENTH JUDICIAL CIRCUIT
05-GS-26-2927

State of South Carolina,)
)
Plaintiff,)

-VS-

) TRANSCRIPT OF RECORD
)

Stephen Christopher Stanko,)
)
Defendant)
_____)

October 23, 2009
Conway, South Carolina

B E F O R E

HONORABLE STEVEN H JOHN, Circuit Judge

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(SW) STATE'S WITNESS
(DW) DEFENSE WITNESS

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E X H I B I T I N D E X

(No Exhibits Marked)

1 THE COURT All right, we had scheduled for today
2 to start reviewing the juror responses Mr Diggs, you
3 did file a motion to argue against precedent and a
4 motion to disclose scientific evidence

5 MR DIGGS Right

6 THE COURT Let's -- let's dispose of those now
7 first, please

8 MR DIGGS Just for your information, Your Honor,
9 Brana Williams is here in the building She, the last I
10 heard, was in a Family Court hearing on the second
11 floor, and she said that if she were not here at 9 30,
12 that she expected to be here in a relatively short time,
13 so I will leave it to your discretion if you want to go
14 ahead and proceed

15 THE COURT Well, was she going to argue the
16 motions ---

17 MR DIGGS No

18 THE COURT --- or were you going to argue the
19 motions?

20 MR DIGGS I am going to argue

21 THE COURT All right Well, then, if you're
22 going to argue the motions, let's go forward

23 MR DIGGS All right Your Honor, the first one
24 I'd like to address is the motion to disclose scientific
25 evidence It concerns the anticipated use by the

1 prosecution of expert testimony in the case

2 Under our -- I think it's Rule 5, that rule
3 requires the prosecution to disclose evidence that is
4 intended for use in the case in chief I would argue
5 that is -- in this case, two grounds One, it's not
6 really a fair procedure It doesn't give us any kinds
7 of heads up or ability to prepare to meet or challenge
8 in any way whatever their evidence is in that regard,
9 but in this case I would argue that we don't need to do
10 that

11 The prosecution knows what basically our testimony
12 is going to be It's going to be basically the same
13 testimony that was introduced at the trial in this
14 matter in Georgetown County, and so I would argue that
15 the State should go ahead and disclose to us now
16 whatever evidence they intend to use in rebuttal if that
17 ends up being the proceeding or the procedure that is
18 used in this case, go ahead and disclose that to us now
19 so that it won't be a complete surprise at the trial
20 when that evidence is introduced

21 THE COURT All right, Solicitor, what's your
22 position?

23 MR HEMBREE Your Honor, we -- this kind of
24 harkens back to some of the issues we dealt with at the
25 last hearing We do not have any additional evidence,

1 any documents or other -- other CDs, or other --
2 photographs or other materials in addition to what we
3 provided to Defense or what Defense actually provided to
4 us in the last trial, so it's -- I guess we have the
5 benefit that we have already sort of shared those --
6 that information, and we have -- the Defense is well
7 aware of what -- what the reply testimony is going to
8 essentially be as much as we are aware of what their --
9 what their case in chief on the psychiatric issues is
10 going to be, so we don't have anything in addition to
11 provide

12 THE COURT That has already been disclosed to
13 them is what you're telling me?

14 MR HEMBREE That's correct

15 THE COURT You've already previously -- and let's
16 be clear about that In this particular case that we're
17 here about in these proceedings, notwithstanding what
18 might have happened in Georgetown, in these proceedings,
19 have you disclosed to them the -- and complied with the
20 dictates of Rule 5 and Brady v Maryland?

21 MR HEMBREE Yes, we have complied with Rule 5,
22 absolutely, Your Honor, but we are not required, as Mr
23 Diggs accurately points out, we are not required to
24 provide reply evidence as part of Rule 5 That's merely
25 -- it's just limited to our case in chief, and that's

1 been provided

2 The -- we've not been provided any material, any
3 discovery from Mr Diggs or his -- or Ms Williams in
4 this case at all, so I guess if -- when we want to talk
5 about just this case, and that's a good question, we've
6 not been provided any discovery by Mr Diggs, nor have
7 we -- I do not believe we've provided him the things
8 that we had from the first case regarding reply,
9 although I know that he has them because we actually
10 received that material from him

11 THE COURT All right

12 MR DIGGS Your Honor, I think we kind of went
13 over that last time It would be expensive for us to
14 reproduce the same evidence that we've already provided
15 to them, ---

16 THE COURT All right

17 MR DIGGS --- and as I stated last time, I
18 believe, we don't have any additional scientific
19 evidence that would go beyond what we introduced into
20 the trial of the case in Georgetown

21 THE COURT All right, so let's be clear about
22 this, then, so that when it is reviewed in the future
23 we're all on the same page and under the same
24 understanding I'm hearing from both of you that
25 basically you have adopted the positions and it is the

1 position of each party that the information that you
2 previously disclosed in the Georgetown case that
3 involved Mr Stanko, that you intend to rely upon that
4 information and evidence again, and that each of you
5 understands that, and if there was any necessity to make
6 a copy of any document or receive another copy of a
7 document, that you would request that of the other side/

8 But as far as the State's information, you're
9 relying upon not only what you've provided in this case,
10 but what you provided to them or what was developed in
11 the Georgetown trial, and as far as the Defense is
12 concerned, all the information you used in the
13 Georgetown case, you intend to rely upon in this case,
14 and since you have previously disclosed it to the State,
15 as a result of the expense that would naturally then
16 flow to the citizens of this State, there is not a
17 necessity to re-copy that information?

18 MR DIGGS Correct

19 THE COURT Is that right?

20 MR DIGGS Yes, sir

21 MR HEMBREE Yes, Your Honor

22 THE COURT All right

23 MR DIGGS Your Honor, to be specific, what we're
24 talking about are M R I results, PET scan results that
25 were done, and also the images that were introduced by

MOTIONS

8

1 Dr Spicer in the testimony that he presented last time
2 at the trial Those are the -- and I think the
3 Continuous Performance Examination that was conducted by
4 Dr Einhorn

5 THE COURT All right Now, if there are any
6 written documents, reports, procedures that are in
7 writing, that have been reduced to writing, that have
8 been done or accomplished since that trial or have been
9 discovered since that previous trial, obviously those
10 need to be, on both sides, turned over to each other
11 Everybody is under that understanding? Mr Diggs

12 MR DIGGS Yes, sir We have -- do you want me
13 to identify those or just tell the Court we'll turn them
14 over?

15 THE COURT I just want to make sure -- well, if
16 you know about them and they haven't now been turned
17 over to the State, yes, I would like you to tell me what
18 they are

19 MR DIGGS Well, we don't have it yet, but I
20 anticipate a report from the crime scene analyst As
21 the State knows, he was just here in town recently
22 They were with us when he reviewed the evidence in the
23 case I anticipate a report coming We haven't
24 received that yet, but I don't have any objection to
25 making that available when we receive it

1 THE COURT As soon as you receive it?

2 MR DIGGS Yes, sir, as soon as we receive it

3 THE COURT All right, very good Other than
4 that, are you aware of anything else?

5 MR DIGGS Not at this point now Now, there may
6 be a report on the software issue, but at this point, I
7 don't have anything that I intend to even use at trial,
8 but just to give the State notice, we may -- that may
9 develop in the next few days

10 THE COURT All right, very good

11 MR HEMBREE Your Honor, I just -- I guess as I
12 consider these issues, it does seem like there may be
13 enough gray area here that it warrants Mr Diggs, Ms
14 Williams, and Mr Humphries, and I, and Mr Richardson
15 sitting down, and making -- just confirming that we --
16 we have everything they intend to introduce on the --
17 with the experts, and they've gotten everything that we
18 have I know that we've seen it all amongst each other,
19 but I don't want to take a risk that we begin the trial
20 and they, you know, ---

21 THE COURT All right Well, y'all -- y'all make
22 sure you accomplish that before next Friday, the 30th
23 Y'all accomplish that before the 30th, sit down and look
24 at it, review it, and if you've got issues, then you
25 need to let me know and that will be a perfect time on

1 the 30th to cover it and resolve it I think my office,
2 though I was earlier this week holding Court in
3 Georgetown, and I think my office sent to y'all an
4 e-mail and reminded you about certain things that you
5 needed to send to me before we started the trial, I
6 think by -- I think the date was November 3rd, I
7 believe, but if -- I just wanted to remind y'all about
8 that

9 If you don't recall getting that e-mail this week
10 on maybe Tuesday or Wednesday, you let me know because I
11 intended it to have been sent out to you, I think, on
12 Tuesday, but y'all remember that There's certain
13 obligation -- or information that I need from y'all on
14 -- by the 3rd

15 All right, so with that, I will leave it to you
16 gentlemen that the parties sit down before the 30th,
17 next Friday, and review the evidence and information,
18 and if you've got any issues, y'all let me know

19 MR HEMBREE Thank you, Your Honor

20 THE COURT All right, that would then take care
21 of the motion to disclose scientific evidence, would it
22 not?

23 MR DIGGS Yes, sir

24 THE COURT All right, very good

25 Your motion to argue against precedent

1 MR DIGGS Your Honor, the first part of that
2 motion we've argued previously What we're seeking here
3 is to have the prosecution present all of its evidence
4 in the case in chief when it presents all of the
5 evidence that it has on the issue of guilt or innocence,
6 and as you recall, we argued that particular aspect of
7 the procedure last time This motion was just to cover
8 in writing for the record the type of precedent in South
9 Carolina that we're seeking to have the Court set
10 aside, ---

11 THE COURT All right

12 MR DIGGS --- and to rule -- or allow us to
13 argue against in this particular case, and I would take
14 the position that because, you know, this type of motion
15 has to be filed at the appellate level, and because of
16 the rule in South Carolina that issues be preserved,
17 that we would probably be safe to follow this procedure
18 at this point just so there won't be any issue down the
19 road about what was raised and what was not

20 THE COURT Anything in addition that the State
21 wants to argue in opposition to the motion?

22 MR HEMBREE No, sir, Your Honor

23 THE COURT All right, very good

24 The Court would rely upon the rulings and the
25 explanations that I made previously when all these

1 issues were presented to the Court There was not a
2 written motion at that point in time to argue against
3 precedent, but it was clear that was what the Defense
4 was doing and made it clear in its argument, and the
5 Court so understood it and made its rulings in that
6 regard, so what I'd do is adopt and reaffirm those
7 previous statements of the Court and rulings when I
8 respectfully declined to grant your motion as it was
9 presented to the Court

10 MR DIGGS Your Honor, the second part of the
11 motion deals with precedent in South Carolina that
12 allows the jury to conclude or find sanity or insanity
13 based solely on lay testimony or circumstantial
14 evidence, and while it might be a good practice to allow
15 lay and circumstantial evidence to be considered in the
16 totality of the circumstances, I would argue and the
17 Defense in this case would argue sanity and insanity is
18 sufficiently a complex issue that would require expert
19 testimony

20 I would argue that there's simply no way that a lay
21 jury is equipped to understand whether or not a
22 defendant is sane or insane without expert testimony on
23 that issue, where -- and I think the State recognizes
24 that I think -- and I would submit simply, you know,
25 because we have a procedure in South Carolina on the

1 issue either of competency to stand trial, or sanity, or
2 mental health issues, that there's a statutory procedure
3 that has to be followed, you know, in that situation
4 where those questions are raised, and to just jump that
5 and throw it aside and say, "We don't need any of that
6 The jury can just disregard all of that and just make a
7 decision based solely on the evidence in the case from
8 lay witnesses," I would argue that certainly in a death
9 penalty situation where the Eighth Amendment is
10 applicable, you've got to have a respect or heightened
11 degree of reliability in those factual findings that the
12 lay testimony rule in South Carolina simply doesn't --
13 and is not equipped to meet that standard

14 And we're asking the Court to allow us to argue
15 against that precedent to say, "Look, there's got to be
16 expert testimony on that issue, especially --
17 particularly in a death penalty case before a lay jury
18 can make a decision based on lay evidence alone," and so
19 we're asking the Court to allow us to argue against
20 precedent in that respect

21 I'm not sure that we argued this or touched on it
22 last time, so it may be somewhat of a new issue that
23 goes beyond the last hearing

24 THE COURT All right, very good

25 Before I turn to you, Solicitor, Ms Williams, I

1 understand that you were -- you joined us during the
2 arguments by Mr Diggs and you were in Family Court
3 earlier We had resolved the issue about the -- or the
4 motion to disclose scientific evidence and part of that
5 is a requirement of the attorneys to meet before next
6 Friday to review all the matters and make sure that all
7 evidence has been -- and information has been disclosed
8 between -- between the parties so that when we come here
9 on the 30th, if there are any issues or questions, it
10 can be raised to the Court, so just to alert you to that
11 particular aspect now

12 MS WILLIAMS Thank you, Your Honor, and I
13 apologize for being late It was ---

14 THE COURT No, ma'am You were otherwise
15 occupied in Court and Mr Diggs indicated these were
16 motions that he intended to argue, so that's why I
17 proceeded

18 All right, Solicitor, in the point that Mr Diggs
19 was making in his motion

20 MR HUMPHRIES We would object to any departure
21 from the longstanding precedent regarding the
22 sufficiency of lay testimony or circumstantial evidence
23 to support a finding of sanity Insanity, as you know,
24 it has a legal, medical definition which is set out by
25 statute We are not asking lay witnesses, nor would it

1 be proper to ask lay witnesses, "Is the defendant sane
2 or insane?"

3 We're simply gathering information from which the
4 jury, the finders of the fact, based on the charge given
5 by the Court with the legal, medical definition if, in
6 fact, he was sane or insane, so this is not purely a
7 medical finding It is a legal, medical finding, and in
8 any event, Your Honor, as Mr Diggs knows, the State did
9 not rely solely on lay witness testimony or
10 circumstantial evidence to support the jury's finding of
11 sanity in the last case An expert was presented, and
12 as a result of the verdict, clearly the defendant found
13 -- the defendant was found sane under the medical, legal
14 definition, so we would object to any departure from the
15 long-standing precedent

16 THE COURT All right, sir All right, as to this
17 particular issue, the Court will respectfully decline to
18 grant your motion to overturn and -- well, to argue
19 against precedent or to overturn prior rulings allowing
20 for lay testimony and actually for the jury to
21 understand the issue as to sanity or insanity based upon
22 the Court's instructions without the necessity of
23 medical testimony

24 Also, I would indicate that there's been nothing
25 presented to me that would indicate that the jury is

1 incapable of understanding or following the Court's
2 instructions as to the legal definition, and nothing has
3 been presented to me that would show that a jury is
4 incapable of following the Court's instructions without
5 medical testimony being provided

6 What's your next argument, sir?

7 MR DIGGS If I just could follow up on that for
8 the record Certainly by the time we get in this trial
9 and instructions are given, there will have been
10 evidence presented Perhaps I could have done a better
11 job encapsulating that at this time

12 THE COURT Well, you might want to renew your
13 motion at that point in time ---

14 MR DIGGS Exactly

15 THE COURT --- because I don't have anything in
16 front of me right now

17 MR DIGGS Okay, and if that's a concern, I
18 certainly would like to treat this as a motion in limine
19 and renew this at the appropriate time in the trial

20 THE COURT Well, I'll be glad for you to renew it
21 if you deem it necessary or proper to do so, ---

22 MR DIGGS Okay

23 THE COURT --- but certainly, you know, part of
24 this is there's just a lack of information in front of
25 me to make any kind of determination

1 MR DIGGS I think what Mr Humphries alluded to,
2 it may be moot at that point because they may go ahead
3 and have expert ---

4 THE COURT Have that presented, I don't know, but
5 anyway, let's just leave it at that Obviously one of
6 the reasons that I'm denying the motion is I don't have
7 that sufficient information in front of me and if you
8 want to renew that motion at a later time in the trial,
9 I'll be glad for you to do so

10 MR DIGGS Thank you, Your Honor

11 THE COURT All right

12 MR DIGGS The next one is dealing with a guilty
13 but mentally ill verdict itself Now, we argued this to
14 a certain extent last time, but I'm going a little bit
15 further -- well, no I think we probably argued this
16 the last time

17 What we're doing here is saying, "Look, for the
18 State to go ahead and recognize the guilty but mentally
19 ill, that people are mentally ill, and that, you know,
20 it has a legal significance sufficiently so, that the
21 legislature needs to address it " We cite a couple of
22 Supreme Court cases that talk about the Eighth
23 Amendment's applicability to -- and the Fourteenth
24 Amendment, I think, applicability to the death penalty
25 and certain mental states ---

1 THE COURT So you basically want to put the -- if
2 a person is found to be guilty but mentally ill, you
3 want to put them in the same category as persons with
4 disabilities or special needs that cannot be executed
5 or ---

6 MR DIGGS Correct

7 THE COURT --- juveniles of a certain age that
8 cannot be executed ---

9 MR DIGGS Yes, sir

10 THE COURT --- you would want to put -- add to
11 that category ---

12 MR DIGGS Correct

13 THE COURT --- a person who was declared to be
14 guilty but mentally ill?

15 MR DIGGS Yes, sir, and because the courts in
16 the Atkins case and the other one -- I skipped -- we
17 cited in the -- Roper v Simmons, when the Court
18 stresses the degree -- it's the degree of culpability in
19 the case that warrants the death penalty, and in that
20 guilty but mentally ill situation, the culpability
21 simply is -- it is not there or is greatly diminished,
22 and so the reasoning and rationale for those two
23 opinions, the Atkins opinion and the Roper opinion,
24 would be applicable to a guilty but mentally ill
25 situation as well, and so we're asking the Court to

1 overrule some of the precedent in -- like the State v.
2 Wilson specifically, and, Your Honor, we point out that
3 the State v Wilson was -- I mean, it relied on evidence
4 -- case law from the nineteenth century, and we
5 certainly are progressed beyond that point in terms of
6 our technology and our understanding about mental
7 illness and the effect that it can have on a person's
8 conduct and ability to conform to the requirements of
9 the law It's time to re-visit that and say, "Look, we
10 need to update the policy in this regard at this time,"
11 so that's the basis for our motion

12 THE COURT All right, very good

13 Solicitor

14 MR HUMPHRIES Number one, I guess we need to
15 take issue with the defendant's assertion that his
16 culpability is greatly reduced as a result of what could
17 be a GBMI verdict Your Honor, this is -- this motion
18 is not ripe There is nothing in the record at this
19 time which would suggest that the jury could even find
20 guilty but mentally ill, so I would say first it's very
21 premature

22 Secondly, Your Honor, while it is true that the
23 U S Supreme Court has placed certain restrictions on
24 the death penalty in regard to mentally retarded
25 persons, certain mentally retarded persons, and people

1 under the age of seventeen, clearly, clearly, Your
2 Honor, there was the opportunity for a GBMI defendant
3 sentenced to death to have been considered at the same
4 time, there is no U S Supreme Court case which
5 restricts a death sentence in that situation, so I would
6 say, number one, there is no standard There is no
7 precedent set for that Number two, it is not ripe and
8 it's premature, and we would object under any
9 circumstances

10 THE COURT All right, thank you

11 As to the particular issue being presented that the
12 Court would find at this point in time that there's no
13 evidence before the Court that would allow the Court to
14 rule on this particular matter

15 I am going to allow the Defense if the evidence in
16 this case is such that would form the basis for this
17 argument, I'll be glad for them to renew their argument
18 at that -- at that point in time All right, Mr Diggs?

19 MR DIGGS Yes, sir, thank you

20 THE COURT All right, very good, and you had a
21 fourth argument?

22 MR DIGGS We did

23 THE COURT All right, yes, sir

24 MR DIGGS Your Honor, this one, I would ask
25 permission to argue against the precedent of Gill v.

1 State and State v. Santiago Gill v State is a State
2 Supreme Court case, and Santiago is a Court of Appeals
3 case that cites the Gill precedent It says that
4 psychiatric testimony about I Q levels -- or in the
5 Gill case, a low I Q and having the requisite mental
6 state to commit malicious crimes, the precedent holding
7 that that type of evidence is not relevant to the case
8 because South Carolina doesn't recognize what's called
9 diminished capacity

10 Our argument is that the case law is too broad and
11 it's too -- it's not intended for situations such as
12 that presented in this particular case, where we focus
13 in on a particular defect, and so what we're asking --
14 and we're basing this primarily on the State
15 Constitution, that our due process, prohibitions, gets
16 -- you know, violations of due process and cruel and
17 unusual punishment on the state level should allow for
18 presentation of evidence on the defendant's inability to
19 form a necessary element of the offense, and so these
20 decisions, I would argue, are based on a misapplication
21 or a misunderstanding of the medical evidence that's in
22 mainstream medical science at this day and time and is
23 not good policy as a result of the inconsistency with
24 mainstream medical science

25 And, Your Honor, again, it may be premature at this

1 time, as Mr Humphries says We can certainly agree to
2 hold -- to revisit this issue after the presentation of
3 the evidence in the case, but based on what we
4 anticipate the evidence to be and based on what the
5 evidence was that was presented in the trial of the case
6 in Georgetown for this defendant, we are arguing -- we
7 are asking permission to argue against the precedent of
8 Gill v State and State v Santiago in the trial of this
9 case

10 THE COURT All right Solicitor

11 MR HUMPHRIES Our appellate courts as late as, I
12 believe, the week before the first trial in this case
13 reaffirmed their holding that this state, among many
14 others, does not recognize the defense of diminished
15 capacity I guess we need to do this just in terms of
16 logistics and planning at this time

17 You know, what we're going to ask the Court after
18 the State's case in chief, if the Defense intends to
19 offer evidence regarding diminished capacity in their
20 case in chief in the guilt phase, the State would move,
21 and will move, at that time that, number one, that that
22 testimony be proffered before this Court, because our
23 position is if the testimony and the evidence goes to
24 diminished capacity that is not recognized and,
25 therefore, is not relevant to be heard before the jury

1 in the guilt phase, so we'll ask the Court to preview
2 that testimony outside the presence of the jury and to
3 make a ruling regarding its admissibility

4 We would object to its admission into evidence if,
5 in fact, the evidence they intend to submit is to
6 support a diminished capacity which is not recognized as
7 a defense in South Carolina, so number one, we say that
8 our appellate courts have been firm on this rule, as
9 most states across the nation have been

10 Number two, if they intend to offer that evidence,
11 that it be proffered before the Court, that the Court
12 make a finding as to whether it's admissible or not
13 admissible, relevant or not relevant, and if it relies
14 on the defense of diminished capacity, we would ask the
15 Court not to admit it as it is absolutely irrelevant

16 THE COURT All right, sir Well, ---

17 MR DIGGS Your Honor, do you want me to respond
18 to that?

19 THE COURT Sure

20 MR DIGGS He made the same motion last time We
21 had to bring in an expert solely for the purpose of
22 presenting evidence in advance The Judge heard the
23 evidence, said, "This is not diminished capacity, it's
24 evidence of insanity I'm going to allow it," and so
25 the State didn't appeal that It's the law of the case

1 with respect to this defendant, and so I would submit
2 that it's really a non-issue

3 The problem -- what, I guess, -- what I'm asking to
4 do, and the Court doesn't really even need to go --
5 well, what we're asking in response to Mr Humphries'
6 argument is that the State not be permitted to even make
7 the argument of diminished capacity because that's not
8 -- I guess what we're doing is anticipating them making
9 that argument, and we're saying that's not a legitimate
10 defense

11 We don't pretend -- we don't intend to present
12 evidence and a defense of diminished capacity What
13 happens though invariably when we present evidence of
14 insanity, they say, "No, it's not that It's a
15 diminished capacity, and we don't recognize that "
16 Diminished capacity is a smoke screen that's been
17 invented by the prosecution to divert attention away
18 from what the central issue in the case is, and that's
19 insanity, and when you start to look, we don't really
20 know what insanity is, kind of a nebulous concept of
21 when we try to start specifically pinning it down, then,
22 you know, that's when they -- the prosecution starts
23 saying, "No, that's diminished capacity It's not
24 insanity, and we don't recognize that " It's just a way
25 to try to chip away at what the legitimate defense of

1 insanity is, and it diverts attention from the real
2 issue, ---

3 THE COURT All right

4 MR DIGGS --- and that's why we made the motion

5 THE COURT Okay First, it's clear that in the
6 State of South Carolina by the appellate court
7 decisions, there is no defense of diminished capacity
8 Everybody recognizes that, and if there was an intention
9 to do that by the Defense, then that's not proper in
10 this state

11 Now, as to the defense of insanity, that obviously
12 is proper What may be necessary, and it's -- y'all
13 help me with this The testimony that we're talking
14 about occurred in the -- not in the trial phase, but in
15 the second phase of the trial, is that correct, or did
16 it happen in the trial phase?

17 MR HUMPHRIES No, sir No, sir It happened in
18 the trial phase, ---

19 THE COURT All right

20 MR HUMPHRIES --- and let's be clear about this
21 We put -- we required the Defense -- the Court required
22 the Defense to put it up, to make a call regarding its
23 admissibility or not, and the Court said, "This is
24 Santiago, but I'm going to let you do it anyway in an
25 abundance of caution," and that's not the law of this

1 case in any event

2 THE COURT All right Well, what will be
3 necessary is prior to you putting on the witness -- and
4 what is the name of the witness so I know it? Y'all
5 obviously already know what the name of the witness is,
6 but I don't Who is it?

7 MR DIGGS We have two psychiatrists who will
8 testify that this defendant was insane

9 THE COURT All right

10 MR DIGGS Now, that's not diminished capacity
11 That's insanity

12 THE COURT All right

13 MR DIGGS Dr Thrasher ---

14 THE COURT Thrasher, ---

15 MR DIGGS --- and Sachy

16 THE COURT And I'm sorry, the other one was?

17 MR DIGGS S-A-C-H-Y

18 THE COURT S-A-C-H-Y, and how do you pronounce
19 that?

20 MR DIGGS Dr Sachy

21 THE COURT Sachy, all right Before Drs
22 Thrasher and Sachy testify before the jury, then the
23 Court will hold an in camera hearing or hearing prior to
24 they -- their testimony, and we'll rule on the issue
25 presented at that point in time

1 MR DIGGS Your Honor, ---

2 THE COURT Go ahead

3 MR DIGGS We respectfully object to that because
4 the testimony will be that he was insane, not diminished
5 -- suffering from diminished capacity per se, and I
6 would submit that the law doesn't require that If
7 we've got an expert who says insanity, then I would
8 argue that there's no need to put that up, just to have
9 the witness come here and testify to that effect to back
10 up what I'm telling the Court ---

11 THE COURT Well, I need to -- I need to know what
12 their definition of insanity is It's clear, as best it
13 can be through the Court's decisions, what the Court has
14 said about the defense of diminished capacity, and if
15 the experts' definition of insanity is the same as the
16 definition as set forth in the Court opinions for
17 diminished capacity, then I need to know that

18 MR DIGGS Yeah We're not going to do that

19 MR HUMPHRIES That's precisely the issue and
20 that's exactly what they did last time

21 MR DIGGS It's not ---

22 THE COURT Well, gentlemen, gentlemen, let's not
23 argue about that, and I appreciate that Y'all have the
24 benefit of having heard all these witnesses and had the
25 benefit of examination and cross examination before I

1 was not the trial judge of that particular proceeding,
2 so -- and obviously this is a different proceeding I
3 understand that there was a prior proceeding, but this
4 is a completely and totally separate case in that
5 regard

6 I understand that maybe for the purposes of
7 judicial economy, certain documents may not need to be
8 produced because of the burden that it will put upon the
9 citizens of the State of South Carolina for --
10 ultimately to pay for it when it's already been done I
11 can understand that, but as to legal issues, this is a
12 brand new proceeding What happened in the other
13 proceeding is not going to come up in the new one It's
14 not going to be talked about

15 The jury is not going to be able to use that in any
16 regard, so what we're going to do so that I understand
17 and have the ability to make a ruling on the matter
18 being presented is I need to know -- and I don't know
19 that we need to go into the entirety of the testimony of
20 Drs Thrasher and Sachy, but I have to have an
21 understanding of their testimony before it is presented
22 so that the Court knows that we are not talking about
23 diminished capacity, which is not allowed

24 I don't know what Dr Thrasher is going to say I
25 don't know what Dr Sachy is going to say because I

1 didn't hear them before, so ---

2 MR DIGGS Your Honor, could I make a request
3 that we do that? Last time it presented a problem for
4 us merely by scheduling considerations These are --
5 Dr Sachy is not from here He's in private practice,
6 so I would ask if we could maybe have that testimony
7 presented at a time when he could be here for trial as
8 well

9 THE COURT I don't have a problem with having
10 that hearing prior to his testimony I don't anticipate
11 that that is going to take an extraordinarily long
12 period of time I don't intend for it to be the
13 entirety of his testimony I intend to let's focus on
14 what the legal definition of diminished capacity is and
15 what his definition of insanity is and see how they
16 compare or don't compare at all, and that's the issue
17 that we're going to talk about

18 If they are not the same or there are significant
19 differences, then it may very well be that the testimony
20 is allowed in that regard and I might put before the
21 jury at some point in time, and y'all might want to work
22 on that, some statement to the jury that the State of
23 South Carolina does not recognize the defense of
24 diminished capacity, and put some legal definition of
25 what that actually is as far as a jury instruction, and

1 that the testimony being presented here is on the
2 defense issue of insanity so that -- and what I'm --
3 since I'm suggesting this, I think that's something that
4 y'all ought to work on so that if and when I allow this
5 testimony there is some instruction to the jury so that
6 they understand their duties and responsibilities as
7 governed by the law in this State, understanding you may
8 not agree with it, but I'm going to be following the law
9 as recognized in this State as far as there not being a
10 defense of diminished capacity

11 Any argument that you're making to present that,
12 I'm not going to allow because I think that's clear in
13 the State, but -- so before Dr Thrasher testifies, and
14 it can be right before Dr Thrasher testifies, I don't
15 have any problem with that, or Dr Sachy, I don't have a
16 problem with that, because we're not going to have, you
17 know, three hours of testimony from them We're going
18 to focus on the issue, ---

19 MR DIGGS Right

20 THE COURT --- okay?

21 MR DIGGS Yeah, but the last time, I think it
22 consumed pretty much an entire day

23 THE COURT Well, it's not going to, all right?

24 It's not going to We're going to focus on the issue

25 You know the case law You can pull out the definition

1 of diminished capacity, and you can have him testify
2 first thing what is my -- what is his definition of
3 insanity, and we're going to compare the two, and if
4 they're exactly the same, then there's an issue

5 If they're not the same, there are significant
6 differences, then fine, we'll move along and hear it,
7 but I do want y'all to work on and give to me before the
8 trial starts some kind of curative instruction to the
9 jury -- or not curative, but explanatory instruction to
10 the jury that diminished capacity is not recognized in
11 the State of South Carolina and I'm allowing this
12 testimony on the Defense issue of insanity, and so that
13 they are clear, what it's being presented for and how
14 the Court is allowing it, so y'all -- y'all work on
15 that We're not going to spend a lot of time because
16 it's not necessary, all right?

17 MR DIGGS Thank you, Your Honor

18 THE COURT All right, so we're not ruling on it
19 right now I will rule on it when Dr Thrasher and Dr
20 Sachy are presented to me on the issue I think we've
21 narrowed down the issue I think it's going to be real
22 clear They give me their definition, we'll compare it
23 to the legal definition and we'll see how it -- how it
24 works out at that point in time, all right?

25 MR DIGGS Thank you, Your Honor

1 THE COURT Good deal

2 MR DIGGS That's all our -- all that we have at
3 this time.

4 THE COURT Good

5 MR HUMPHRIES Your Honor, we do have ---

6 THE COURT Yes, sir

7 MR HUMPHRIES --- one housekeeping matter, and it
8 happens every time you try a case either twice or try
9 cases which are interconnected, and we talked a great
10 bit about the expense of having to reproduce certain
11 exhibits and documents

12 In light of that, Your Honor, we have an order
13 which we will ask counsel for the defendant to stipulate
14 to or to consent to substituting copies for record on
15 appeal from the last case so that we're able to pull the
16 exhibits that were introduced by the State and, of
17 course, the Defense has the ability to do the same thing
18 for our exhibits from the case in Georgetown so that we
19 can re-use them in this record, because as Mr Diggs has
20 indicated, they are essentially the same, or, at
21 least, ---

22 THE COURT Right, but just so obviously there's
23 no indication on its face that it was used in a previous
24 court proceeding, but other than that, is there any
25 problem with that, Mr Diggs?

1 MR DIGGS No

2 THE COURT All right, very good

3 MR HUMPHRIES What we do, and I'm sure the court
4 reporter is aware, we'll take everything to make sure
5 that there is absolutely no evidence that it has been
6 admitted at another trial, and oftentimes we have had to
7 actually pull the exhibit numbers off after some -- but
8 it's -- really, that's the court reporter's ---

9 THE COURT Well, y'all will work with the court
10 reporter, and I'm going to be expecting y'all to work
11 with the court reporter to try and get these matters
12 resolved before they're actually introduced at the
13 trial

14 MR HUMPHRIES Well, no question We'll have a
15 list of the examples and we will have them prepared
16 It's not something that we're unaccustomed to,
17 unfortunately

18 THE COURT All right

19 MR DIGGS And, Your Honor, ---

20 MR HUMPHRIES And I'm going to hand this up to
21 the Court at this time

22 MR DIGGS --- we don't have an order to hand up,
23 but obviously we're going to make the motion to do the
24 same thing with our -- any exhibits that were introduced
25 by the Defense

1 THE COURT All right

2 MR HUMPHRIES What we've done, Your Honor, just
3 so there's no question about the record on appeal, is
4 we've numbered the exhibits we intend to pull out
5 We've attached the court reporter's list of exhibits,
6 and when we take a document or an exhibit out of the
7 record, we replace it with a photograph so there's
8 documentary evidence, not just itemized, but actually a
9 picture, ---

10 THE COURT All right

11 MR HUMPHRIES --- so there's no question about
12 the identity of that exhibit

13 THE COURT All right, sir

14 MR DIGGS And, Your Honor, ---

15 THE COURT Yes, sir, Mr Diggs

16 MR DIGGS --- Ms Williams just pointed out it
17 would be good if we could do that, coordinate with the
18 prosecution, because they always have to be with us
19 anyway, maybe when that's done, we could go along and do
20 it at the same time to get those exhibits and ---

21 MR HUMPHRIES Sure We're going to do it very
22 quickly, so if you will get your order I'll have it
23 filed, Your Honor, and we will make sure the Court has a
24 copy and the Defense has a copy

25 THE COURT Thank y'all All right, anything else

1 from the State?

2 MR HUMPHRIES No, sir

3 THE COURT Anything else from the Defense?

4 MR DIGGS No, Your Honor Could we take a brief
5 recess?

6 THE COURT Sure We'll just take five minutes
7 and then we'll get started with the jurors then Thank
8 you

9 (OFF THE RECORD)

10 ON THE RECORD

11 THE COURT All right, Solicitor, do y'all have
12 your rollcall list and information?

13 MR HEMBREE Yes, Your Honor

14 THE COURT And, Madam Clerk, you gave them a copy
15 of this cover sheet, too?

16 THE CLERK Yes, sir They have everything

17 THE COURT All right, very good, and Mr Diggs
18 and Ms Williams, y'all have got a copy of the rollcall
19 list and the Clerk's information?

20 MR DIGGS Yes, sir With your permission, I
21 would ask if we could stand around here We have one
22 screen that we're going to look at and share

23 THE COURT That's fine, yes, sir That's not a
24 problem Can y'all move the microphone down to that
25 other end of the table, please, if you don't mind Good

1 deal

2 All right, though it may not be the quickest or
3 fastest way to do this, I'm going to go down the
4 rollcall list alphabetically, the information we'll
5 cover and make decisions on the ones we need to If the
6 person is coming in, I'm just going to say, "They're
7 coming in," and we're going to skip on to the next one
8 because I don't see any necessity of dealing any --
9 dealing with them at that point in time

10 All right, number 1, Kristina M Aaronson, unable
11 to locate The Sheriff is still trying to find that
12 particular person

13 THE CLERK No, sir, we have an affidavit

14 THE COURT You now have an affidavit?

15 THE CLERK I have an affidavit on both of these
16 If they've got something -- if it's blank, that's when
17 the Sheriff has located them

18 THE COURT All right There is a Sheriff's
19 affidavit on number 1, that they are unable to locate
20 Kristina M Aaronson in Horry County Address given is
21 a church address Neighbors did not know her They
22 left a card in the church mailbox, an affidavit of the
23 Sheriff of Horry County

24 All right, if y'all have any objections, issues of
25 any kind, I'm expecting the State and the Defense to

1 raise those with me I don't see the necessity of
2 asking you every time do you have a problem If you've
3 got a problem, you've got an issue, please speak up and
4 let me know
5 Is that agreeable to the State?
6 MR HEMBREE Yes, Your Honor
7 THE COURT Defense?
8 MR DIGGS Yes, sir
9 THE COURT Very good All right, the next one,
10 Theresa Adkins, unable to locate The Sheriff's
11 affidavit states that they are unable to locate Theresa
12 A Adkins in Horry County Her neighbor and cousin,
13 Marcella Hellum, states that Theresa A Adkins has moved
14 to Marion County, in the Nichols part of Marion County
15 All right, number 3, Agripino is coming in Number
16 4, Aklın is coming in Number 5, Morrison is coming in
17 Mayra Alfonso, that's -- the Sheriff is still
18 trying to locate that particular person?
19 THE CLERK That's correct
20 THE COURT All right, very good Carolyn S
21 Allen, the Sheriff is still trying to locate that
22 particular person
23 The next one we've got is Cleve Allen, school
24 employee All right, we would look to 14-7-845,
25 postponement of jury service for students and school

1 employees If a school employee is selected for jury
2 service during the school term, requests -- the service
3 must be postponed to a date that does not conflict with
4 the school term A school employee is a person employed
5 as a teacher, certified personnel at the building level,
6 bus driver -- that's what they've got Now, this
7 particular person says they are a security guard at the
8 North Myrtle Beach Middle School and want to be excused
9 until the summer What is the State's position?

10 MR HEMBREE Your Honor, we have no objection to
11 him being excused until the summer

12 THE COURT What is the Defense position?

13 MR DIGGS Yeah, we don't have an objection

14 THE COURT All right, very good

15 All right, Madam Clerk, you can so inform and
16 change this particular juror to jury service in the
17 summer We don't have a list of when that is, but just
18 one of the first two weeks in June

19 All right, number 9, Layton Allen is coming in

20 Norma Allen is over sixty-five All right,
21 14-7-840, exemption from jury service, "No person is
22 exempt from service as a juror in any court of the State
23 except men and women sixty-five years of age or over "
24 All right, what is in this affidavit, there's a
25 statement that Ms Allen is seventy years old She

1 suffered a stroke in June 2004, unable to drive What
2 is the State's position?

3 MR HEMBREE No objection to her being excused,
4 Your Honor

5 THE COURT The Defense position?

6 MR DIGGS Your Honor, with all due respect, we
7 understand the juror's situation and are sympathetic to
8 it, but our position has to be that, you know, sixty-
9 five is not what sixty-five used to be, and we lose a
10 lot of wisdom and experience in this situation, and we
11 object to excusing anybody pursuant to that statute
12 simply because it denies ---

13 THE COURT So you're saying that 14-7-840 is
14 unconstitutional?

15 MR DIGGS Well, it is unconstitutional and it's
16 just bad policy as well

17 THE COURT All right I would respectfully
18 decline to grant your motion to state that 14-7-840 is
19 unconstitutional 14-7-840 says, "No person is exempt
20 from service as a juror in any court of this state
21 except men and women sixty-five years of age or over "
22 The wording of that states that, therefore, if you read
23 it, men and women over the age of sixty-five -- I'm
24 sorry -- men and women sixty-five years of age or over
25 are exempt It is clear, explicit It is not -- and I

1 would respectfully decline to grant your motion to
2 declare it unconstitutional That person is excused

3 MR DIGGS Your Honor, could -- and, of course,
4 we base it on the fact that the segment -- that segment
5 of the population right now is growing, is significant
6 in size more so than it was when that statute was
7 written

8 Also, I'm asking for permission to apply that to
9 every person so I don't -- I mean every person over
10 sixty-five so I don't have to make a motion every time
11 that ---

12 THE COURT If you have -- no, sir If you have
13 an objection to that particular person, you're going to
14 need to raise it

15 MR DIGGS All right, even if it's the same ---

16 THE COURT This person is -- the date of birth,
17 so it's clear, is January 25, 1939, age seventy, and
18 further regarding this particular juror, there is
19 information that the juror suffered a stroke in June of
20 2004

21 MR DIGGS Well, and I understand that, and it
22 may be that that might be a different ground for
23 excusing her, but she didn't say in there that she was
24 incapacitated because of the stroke My wife has had a
25 stroke, but she could certainly serve on a jury

1 THE COURT Very good That juror is excused
2 Thank you very much

3 MR HEMBREE Your Honor, I think Mr Diggs is
4 trying to argue diminished age I'm concerned about
5 that

6 THE COURT All right I do find 14-7-840 to be
7 constitutional

8 Wesley S Allen is coming in, number 11 Number
9 12, James B Allison -- I'm sorry, that was 11 Number
10 12 is coming in Number 13, James Alvey, is coming in
11 Robert E Ambrose, over sixty-five

12 MR DIGGS Your Honor, we'd have the same
13 objection on that one

14 THE COURT All right, and this one, the juror was
15 born on June 9th, 1927 It indicates an age of eighty-
16 two

17 MR HEMBREE No objection, Your Honor

18 THE COURT This juror also indicates that he is
19 blind in his right eye His left eye has a cataract
20 that needs removal He's hard of hearing He's had
21 previous injuries to his knees and right foot, needs the
22 use of a cane, takes medication, and I find this
23 particular juror is exempt Thank you very much

24 MR DIGGS And, Your Honor, I had stated on the
25 record, I believe, earlier -- I just wanted to make sure

1 that was there again

2 THE COURT Yes, sir Juror Number 19, Tina
3 Angelo, is coming in

4 MR HUMPHRIES And, Your Honor, just for
5 housekeeping, we stopped with ---

6 THE COURT Did I skip over -- I had skipped over
7 15, I'm sorry 15, Darren Anderson, the Sheriff is
8 still trying to locate that person

9 Juror number 16, Robert Anderson, the Sheriff is
10 still trying to locate that person

11 Number 17, Thomas Andre, the juror is coming in

12 Let's look at -- I'm sorry Number 18, John
13 Angelino, over sixty-five His date of birth is
14 February 13th, 1942, his age, sixty-seven It says that
15 he is suffering from prostate cancer and currently being
16 treated for this disease What's the State's position?

17 MR HEMBREE No objection to him being excused

18 THE COURT Defense?

19 MR DIGGS Your Honor, we're not going to object
20 on this one, but it's because of that cancer treatment
21 that he's undergoing and not because of the age

22 THE COURT All right, very good

23 The next one, number 19, Tina Angelo, is coming in

24 Number 20, Sandra K Appleby, served June 24th,

25 '08 14-7-250 states that, "The names of those who are

1 drawn and attend a session of court as a member of a
2 jury pool must be placed in an envelope and must not be
3 put back in a jury box until the first revision of the
4 jury list provided for after they have so been drawn to
5 the end that no person is required to serve as a juror
6 more than once in three calendar years

7 Nothing contained in this article may be construed
8 to be in conflict with the provision of law as to
9 selecting by lot from the Grand Jury six members to
10 serve for the ensuing year Nothing contained in this
11 article prohibits a person whose name has been properly
12 drawn and who desires to serve as a juror from serving
13 more frequently than once every three calendar years,
14 except no person shall serve as a juror more than once
15 every calendar year," so if it was within the calendar
16 year, they cannot They are allowed to if it's been
17 within three years

18 This particular person indicated that they served
19 June 24, 2008 I did not note -- did they specifically
20 request to be excused, Madam Clerk? Did you see that in
21 there?

22 THE CLERK When we did the affidavit, they had
23 called us That's why we did the affidavit They
24 called us

25 THE COURT All right In response to number

1 forty-nine?

2 MR HEMBREE Number 29?

3 THE COURT No, I'm sorry In -- it's number 20,
4 but question number 49 They say, "Is there any
5 information about you which you feel the Judge and the
6 attorneys should know in reference to your ability to
7 serve as a juror?"

8 Oh, this juror is also a teacher and prefers jury
9 duty during the summer, besides having jury duty in June
10 of 2008, so this juror is a teacher and wishes to be
11 excused Any objection to that from the State?

12 MR HEMBREE No, Your Honor

13 MR DIGGS No, Your Honor

14 THE COURT Very good

15 The next one, 21, Jennifer A-R-A-U-J-O, is coming
16 in

17 Number 22, Matthew Arbaugh, is coming in

18 23, Tina Arms, is coming in

19 Number 24, Catherine T Arthur is over sixty-five
20 Date of birth is January 21, 1939 She indicates her
21 age is seventy and a half She also ---

22 MR DIGGS Your Honor, we don't ---

23 THE COURT I'm sorry?

24 MR DIGGS We don't object to your excusing this
25 witness because of her medical answers

1 THE COURT All right, because of the medical
2 reasons and the doctors appointments that are apparently
3 for the medical conditions that she does have
4 All right, is there any objection from the State?
5 MR HEMBREE No objection from the State, Your
6 Honor
7 THE COURT All right, very good
8 Number 25, Richard Ashley, is over sixty-five, and
9 date of birth is 5/18/1941, age sixty-eight, and wishes
10 to be excused What is the State's position?
11 MR HEMBREE We have no objection to his being
12 excused, Your Honor
13 THE COURT Defense?
14 MR DIGGS Your Honor, we object on the grounds
15 that the statute, the sixty-five or older statute, is
16 unconstitutional
17 THE COURT All right, very good I'm going to
18 exempt this particular -- excuse this particular juror
19 All right, 26, the Sheriff is still looking
20 27, the Sheriff is still looking
21 28, James Bailey, over sixty-five Date of birth
22 is 10/10/28, age eighty Also, juror information
23 supplied by his wife states that he has had a stroke and
24 is not able to attend He is under a doctor's care
25 The State's position?

1 MR HEMBREE No objection, Your Honor

2 THE COURT Defense position?

3 MR DIGGS Well, in reliance on the statement
4 that they are not able to attend, we don't have an
5 objection

6 THE COURT All right, sir, thank you

7 All right, the next one is 29, Beverly Baker, over
8 sixty-five Date of birth is 3/1/37, age seventy-two

9 All right, the State's position, please

10 MR HEMBREE No objection to Ms Baker being
11 excused, Your Honor

12 MR DIGGS We object

13 THE COURT All right, sir I'm going to excuse
14 this particular juror Just for the record, and all
15 these documents are part of the record anyway, but ---

16 MR DIGGS What? I'm sorry

17 THE COURT I'm sorry All these documents are
18 part of the record, but I just ---

19 MR DIGGS Right

20 THE COURT --- I just wanted to note one of Ms
21 Bailey's responses, that she's a firm believer in good
22 old-fashioned common sense

23 MR DIGGS There you go I submit my case

24 THE COURT And I appreciate it She wishes to be
25 excused I'm going to excuse her

1 All right, the next one, unable to locate juror
2 number 30, Pierre Barkhuizen The Sheriff's affidavit
3 says is unable to locate that individual in Horry
4 County No driver's license is found Checked DMV,
5 moved from the address that the county officials had
6 approximately three years ago

7 All right, the next one, 31, Karen Barr, is coming
8 in

9 32, William Barry, is unable to locate The
10 Sheriff's affidavit indicates that they are unable to
11 locate William J Barry in the confines of Horry County
12 and no forwarding information was found by the Sheriff's
13 Department

14 The next one, 33, Bartomeo, is coming in
15 Number 34, the Sheriff is still looking

16 35, Mary Bates, is coming in

17 36, Christopher Baucom, we have no longer resides
18 in Horry County Affidavit from the Sheriff indicates
19 that they are unable to locate Christopher J Baucom in
20 the confines of Horry County The individual moved to
21 the State of California in 2005

22 The next one, Darryl Bayne, the Sheriff is still
23 looking

24 38, Richard Beasley, is coming in

25 39, Irene Beaver, is over sixty-five Date of

REVIEW OF ROLLCALL LIST FOR PANEL

48

1 birth was 9/21/1925 Let's see, what would that
2 calculate out to?

3 THE CLERK Eighty-four

4 THE COURT That would be eighty-four All right,
5 Ms Beaver is eighty-four, has requested under the
6 statute not to serve What is the State's position?

7 MR HEMBREE No objection to her being excused,
8 Your Honor

9 THE COURT Defense?

10 MR DIGGS Your Honor, we object

11 THE COURT All right She is excused

12 All right, the next one is number 40, Cheryl
13 Becker We have some medical information on her We
14 have a statement from the Center of Hope, Myrtle Beach,
15 LLC "This is to inform you that Cheryl Becker is a
16 patient at Center of Hope, Myrtle Beach, under the care
17 of Dr McCarthy We are a methadone clinic that treats
18 opioid addiction and patients are required to medicate
19 on-premises every day "

20 All right, what is the State's position?

21 MR HEMBREE Your Honor, the State's position is
22 that Ms Becker should be excused based on her medical
23 condition It also indicates, I noted in there, that
24 she's -- it requires her to go to the methadone clinic
25 for treatment every single day That's -- I fear that

1 the condition that the methadone would put her in would
2 undermine her ability to serve effectively as a juror,
3 especially considering that the jurors are going to be
4 sequestered and she's going to be kept -- you know, kept
5 away from her home and unable to get her treatments

6 THE COURT All right, sir What is the Defense
7 position?

8 MR DIGGS Your Honor, we agree, the diminished
9 capacity defense to jury service would be applicable
10 here

11 THE COURT You believe that there is a sufficient
12 medical excuse, is that correct?

13 MR DIGGS Yes, sir

14 THE COURT Very good

15 41, the Sheriff is still looking

16 42, Leroy Beckwith, is coming in

17 43, Daniel Begley, the Sheriff is still looking

18 44, Madgie Bell, is coming in

19 45, Rosanne Bell, is coming in

20 46, James Bellamy, is coming in

21 47, Jennifer Bellamy, pre-school children The
22 statute regarding pre-school children, 14-7-860, "The
23 presiding judge for cause may -- shown may excuse any
24 person from jury duty at any term of court if the Judge
25 considers it advisable But no juror who has been drawn

1 to serve at any term of the court may be excused except
2 for good and sufficient causes, which, together with his
3 application, must be filed in the office of the clerk of
4 court and remain on record

5 A person who is" -- and then they have primary
6 caretaker, may have -- I'm sorry, is the -- Subsection
7 1, B-1, "has legal custody and duty of care of a child
8 less than seven years of age "

9 All right, Ms Bellamy indicates in her information
10 and from the Clerk's affidavit that she has a pre-school
11 child under the age of seven and does not work outside
12 the home She is at home during the day with her child
13 The child does not attend daycare

14 What's the State's position?

15 MR HEMBREE Your Honor, based on the affidavit
16 that I've reviewed, she appears to have the -- to meet
17 all the criteria to seeking exemption and we would have
18 no objection to her being -- her being excused from this
19 trial

20 THE COURT All right The State's position?

21 MR HUMPHRIES The defendant's position

22 THE COURT I'm sorry, I'm sorry That was the
23 State's position

24 The defendant's position? I'm sorry Mr Diggs

25 MR DIGGS Your Honor, we don't have any

1 objection
2 THE COURT All right 47 is excused
3 48, Lucille Bellamy, is over sixty-five The
4 birthday is 12/18/33, indicates an age of seventy-five
5 Also, we have a doctor's certificate from the -- from
6 Dr Mario S Mango that indicates that Ms Bellamy has
7 been diagnosed with dementia and Alzheimer's
8 Any objection from the State?
9 MR HEMBREE No, Your Honor
10 THE COURT Defense?
11 MR DIGGS No
12 MS WILLIAMS Your Honor, we don't object on
13 those grounds because of her medical condition
14 THE COURT Correct
15 49 is coming in
16 50 is coming in
17 31 is -- I'm sorry 51, we have information of
18 deceased What kind of information do we have?
19 THE CLERK We have a death certificate
20 THE COURT We have a death certificate for that
21 -- a copy of the death certificate That person was
22 deceased January 31, 2008
23 All right, the next one is 52, Steve Berbes He's
24 over sixty-five, wishes to be excused Date of birth
25 6/12/1942, age sixty-seven The State's position?

1 MR HEMBREE No objection to Mr Berbes being
2 excused

3 THE COURT The Defense position?

4 MR DIGGS Your Honor, we object based on the age
5 criteria

6 THE COURT All right, sir I'm going to excuse
7 the juror

8 Number 53 is coming in

9 54 is coming in

10 55, Dominick Bezmen, is a student All right,
11 referring back to the previous statute that I read,
12 we've got documentation here from Horry-Georgetown
13 Technical College dated September 23rd, 2009, that Mr
14 Bezmen is enrolled in the Fall 2009 term of Horry-
15 Georgetown Technical College, a program of associated
16 and applied science, undergraduate studies, major is
17 general studies, fifteen credit hours of work that the
18 student is taking this particular Fall

19 Regarding the request of the student to be
20 transferred to the summer, what is the request of the
21 State or the position of the State?

22 MR HEMBREE The position is Mr Bezmen is
23 entitled to the continuation of his service to another
24 time

25 THE COURT Defense?

1 MR DIGGS We don't object, Your Honor

2 THE COURT All right, sir He's continued to the
3 summer Madam Clerk, you will pick a time in June for
4 him, please

5 All right, the next one is over sixty-five, 58
6 (sic) Marilyn Bigham She has -- she is -- date of
7 birth is 8/25/1942, indicating an age of sixty-seven
8 Though it is not a statutory exemption, the Court does
9 note in this particular request that this particular
10 juror has a cruise vacation that they have already paid
11 for during the term of court

12 What's the State's position?

13 MR HEMBREE No objection to Ms Bigham being
14 excused

15 THE COURT Defense?

16 MR DIGGS No objection based on the fact that
17 she's got the vacation booked and paid for

18 THE COURT All right, very good She is excused,
19 Madam Clerk

20 The next one is 57, Gwendl Blondmonville, a medical
21 excuse

22 THE CLERK This is a medical excuse and you will
23 need to read it

24 THE COURT Well, apparently we need to look at
25 this one All right, do they have a copy of this?

1 THE CLERK They do

2 THE COURT All right, State and Defense, I
3 believe y'all have a copy of the written statement of
4 Ms Blondmonville regarding this particular matter

5 MR HEMBREE Yes, Your Honor, we do have a copy
6 of the statement

7 THE COURT It honestly is not really a medical
8 excuse Since I stated medical excuse, I just wanted to
9 be clear for the record It's obviously not a medical
10 excuse It is obviously an issue that could be covered
11 with direct questioning of the -- of Ms Blondville --
12 Blondmonville

13 What is the State's position at this point in time
14 requir- -- as to this juror being required to come in?

15 MR HEMBREE Your Honor, although she does fairly
16 clearly express that she may -- she may have difficulty
17 serving on this jury because of her knowledge of the
18 victim, Laura Ling, the victim in the Georgetown case,
19 Laura Ling, and she had some -- actually expresses some
20 knowledge of the defendant, Stephen Stanko, through her
21 work with Voc Rehab , I don't believe that her
22 statement is as definitive as would be necessary to
23 express ---

24 THE COURT Very good

25 MR HEMBREE --- that she renders -- you know,

1 that she cannot be a fair and impartial juror

2 THE COURT All right

3 MR HEMBREE We would ask that this juror be at
4 least required to come in ---

5 THE COURT Okay

6 MR HEMBREE --- and be queried by the Court, and
7 at that point, it very well could be that she's excused,
8 but we just need more information

9 THE COURT All right, I understand Very good
10 Would the Defense position be the same?

11 MR DIGGS Well, we don't feel that she needs to
12 come in, Your Honor, so ---

13 THE COURT All right Well, I -- it may very
14 well be that this person is going to be excused, but I
15 do think that it does not fall within the necessary
16 statutory requirements It is a person that needs to
17 come in and then explain the situation and so forth

18 All right, the next one, 58, Lloyd Blythe, is over
19 sixty-five, wishes to be excused Date of birth
20 indicated as July 13th, 1932, age of seventy-seven

21 The State's position?

22 MR HEMBREE No objection to Mr Blythe being
23 excused

24 THE COURT Defense?

25 MR DIGGS We object, Your Honor, if the age is

1 the only basis for the exemption

2 THE COURT Very good I am going to excuse the
3 juror

4 All right, the next one we have is an affidavit
5 from the Sheriff that they no longer reside That's
6 number 59, Lester Bodkin Unable to locate Lester H
7 Bodkin, III, in Horry County Now lives in Florence,
8 South Carolina

9 The next one, Number 60, Glenn (sic) Boggs, is
10 coming in

11 61, the Sheriff is still looking

12 62, Ernest Bone, over sixty-five This juror --
13 well, let's see We've got a birthdate here of -- he's
14 got an age of seventy-three I was looking for his
15 birthdate in here -- 1936 Okay, there it is Okay, it
16 wasn't on the other sheet He says that he is retired
17 and obviously requests to be excused from jury duty
18 basically because of his age The State's position?

19 MR HEMBREE No objection to Mr Bone being
20 excused, Your Honor

21 THE COURT All right Defense position?

22 MR DIGGS We object

23 THE COURT All right, sir, and, I mean, his
24 written statement about his health condition is in the
25 record, but I believe it's proper, him being over

1 seventy-three, to be excused

2 All right, the next one is 63, Kathryn Bowman, over
3 sixty-five She says she's over sixty-five, wishes to
4 be excused Date of birth, June 24, 1929, age of
5 eighty What is the State's position?

6 MR HEMBREE No objection to Ms Bowman's
7 excusal

8 THE COURT Defense?

9 MR DIGGS We object

10 THE COURT All right, very good I'm going to
11 excuse -- excuse her The Court also notes her
12 responses as to her medical condition in this particular
13 matter

14 All right, 64, the Sheriff is still looking
15 65 is coming in

16 Number 66, Geraldine Brancheau, is over sixty-five
17 Birthday, 11/15/1927, age of eighty-one, and asks to be
18 excused The State's position?

19 MR HEMBREE No objection to Ms Brancheau being
20 excused, Your Honor

21 THE COURT The Defense?

22 MR DIGGS We object

23 THE COURT All right, sir I'm going to excuse
24 Ms Brancheau based upon the information set forth in
25 her juror explanation sheet

REVIEW OF ROLL CALL LIST FOR PANEL

58

1 All right, the next one we've got is 67, is coming
2 in
3 68 is coming in
4 69 is coming in
5 70 is coming in
6 71, Jack Brown, over sixty-five Date of birth of
7 5/14/1934, age seventy-five, wishes to be excused The
8 State's position?
9 MR HEMBREE No objection
10 THE COURT Defense?
11 MR DIGGS We object
12 THE COURT Very good I'm going to excuse Mr
13 Brown in this particular matter
14 72, Joan Bruno, no longer resides We have an
15 affidavit from the Sheriff, was unable to locate Joan M
16 Bruno in the confines of Horry County, and the Sheriff
17 states that this particular party moved to the State of
18 North Carolina in the year 2007
19 73, the Sheriff is still looking
20 74 is over sixty-five William Burriss, a birthday
21 of 2/12/1941, age sixty-eight The State's position?
22 MR HEMBREE No objection, Your Honor
23 THE COURT Defense?
24 MR DIGGS He should serve, Your Honor, so we
25 would object

1 THE COURT All right, sir I am going to excuse
2 this particular juror

3 The next one, 75, is a student, Maranda Burroughs
4 We've got documentation from Horry-Georgetown Technical
5 College as to -- dated October 2nd, 2009, as to Ms
6 Burroughs' Fall schedule, taking developmental english,
7 developmental mathematics, developmental reading, those
8 courses are set forth specifically

9 What's the State's position?

10 MR HEMBREE The State's position is that this
11 juror meets the criteria to seek a deferment ---

12 THE COURT Service in the summer?

13 MR HEMBREE Yes, sir

14 THE COURT All right, very good Defense?

15 MR DIGGS We don't object

16 THE COURT All right Madam Clerk, you will
17 transfer this juror to the summer, please, ma'am

18 76, the Sheriff is still looking

19 77 is unable to locate, Bryn Butler The affidavit
20 of the Sheriff says unable to locate K Bryn Butler in
21 the confines of Horry County The house is vacant that
22 was the address and is for sale

23 All right, the next one, 78, is coming in

24 79 is also unable to locate, Wendell Butts The
25 Sheriff's affidavit says unable to locate Wendell G

1 Butts in Horry County The DMV's address is the same,
2 but there's no person that's at that particular address
3 that the officials of Horry County have The Post
4 Office has no forwarding, and the apartment office that
5 governs the apartment complex that this apartment is has
6 no forwarding address or information about Mr Butts

7 Number 80, Angelique Bynum is deceased The
8 residents state they have no way to contact the family
9 members The resident at the address that was located
10 -- that the Sheriff has for this particular individual
11 states that the person is deceased

12 All right, the next one, unable to locate
13 Kristopher S Byrd, number 81 The Sheriff's affidavit,
14 unable to locate Kristopher S Byrd in the confines of
15 Horry County The subject is deployed to Iraq, serving
16 in the United States Army, and was previously stationed
17 in Hawaii, and all this information comes from his
18 mother

19 The next one, 82, Elizabeth Calamari, over sixty-
20 five, wishes to be excused Date of birth, August 23rd,
21 1937, age seventy-two The State's position?

22 MR HEMBREE No objection, Your Honor

23 THE COURT Defense?

24 MS WILLIAMS Your Honor, we would object based
25 on the age requirement

1 THE COURT All right, very good I am going to
2 excuse Ms Calamari

3 The next one is 83, is coming in
4 84, the Sheriff is still looking for that
5 particular person

6 85 is over 65, Merle D Callison, has a date of
7 birth of February 11, 1942, age sixty-seven The
8 State's position?

9 MR HEMBREE No objection to his being excused
10 THE COURT Defense?

11 MS WILLIAMS Your Honor, we would object based
12 on the age requirement

13 THE COURT All right, very good I'm going to
14 excuse Mr Callison

15 The next one is Phyllis Campbell, over sixty-five,
16 has a date of birth of 10/29/1935, age seventy-three,
17 will obviously be -- shortly be, in a few days, seventy-
18 four The State's position?

19 MR HEMBREE No objection, Your Honor

20 THE COURT Defense?

21 MS WILLIAMS Your Honor, we don't object based
22 on what she states with regard to her medical situation

23 THE COURT Very good This witness is excused --
24 or juror is excused

25 87 is coming in

REVIEW OF ROLLCALL LIST FOR PANEL

62

1 88 is coming in

2 89 is coming in

3 90 is coming in

4 91, the Sheriff is still looking

5 92, we have a medical excuse We have a statement
6 from Dr Domagoj Coric of the Carolina Neurosurgery and
7 Spine Associates saying that the patient is currently
8 under his active care The patient underwent spine
9 surgery on March 3rd, 2008, continues to have ongoing
10 pain and discomfort The patient is unable to sit for
11 long periods of time, and there is a request to be
12 excused

13 The State's position on 92?

14 MR HEMBREE Yes, sir I'm just reviewing his
15 material We have no objection to this juror being
16 excused

17 THE COURT All right The Defense position?

18 MS WILLIAMS Your Honor, we don't object based
19 on his medical situation

20 THE COURT All right, very good We'll excuse
21 this particular juror

22 All right, 93 is coming in

23 94 is a student We have documentation from
24 Coastal Carolina University dated September 24th, 2009,
25 regarding enrollment verification Current course load

1 indicates a biology course, a lab biology, another
2 biology course, another biology course, another biology
3 course, another lab biology, another biology course,
4 obviously majoring in biology

5 The State's position?

6 MR HEMBREE No objection

7 THE COURT Defense?

8 MS WILLIAMS Your Honor, we don't object to this
9 student being transferred or excused

10 THE COURT Transferred to the summer? All right
11 Transfer the student to the summer, please

12 All right, 95 is coming in

13 96 is over sixty-five Date of birth on that one
14 is 7/3/1933, age seventy-six, wishes to be excused The
15 State's position?

16 MR HEMBREE No objection

17 THE COURT Defense?

18 MS WILLIAMS Your Honor, we would object based
19 on just simply it being the age disqualification

20 THE COURT All right I'm going to excuse that
21 particular juror

22 Number 97 is Zella Catansariti, over sixty-five
23 Date of birth is 1/3/1937, wishes to be excused What's
24 the State's position?

25 MR HUMPHRIES No objection

1 THE COURT Defense?

2 MS WILLIAMS Your Honor, we would object based
3 on simply the age requirement We did not see any
4 medical excuse

5 THE COURT All right, very good I'm going to
6 excuse this particular juror

7 Number 98, the Sheriff is still looking

8 99 is coming in

9 100 is no longer resides The Sheriff's affidavit
10 on juror number 100, Cali Cergol, states unable to
11 locate Cali Allison Cergol in Horry County, moved out of
12 state in 2007, now living in the State of Michigan

13 All right, 101 is coming in

14 102 is coming in

15 103 is coming in

16 104 is coming in

17 105 is over 65, Patricia Clark Date of birth,
18 9/20/1933, age seventy-six The State's position?

19 MR HUMPHRIES No objection

20 THE COURT Defense?

21 MS WILLIAMS We don't have any objection based
22 on her medical issues, Your Honor, that she set forth

23 THE COURT All right, very good This witness is
24 -- juror is excused

25 106 is coming in

1 107 is coming in

2 108, the Sheriff is still looking for that
3 particular person

4 109 apparently has a medical excuse We have here
5 a statement from Patrick Ryan, states that Ms Bonnie
6 Colassi has irritable bowel syndrome which causes her to
7 have uncontrollable diarrhea especially when she is
8 nervous The State's position?

9 MR HUMPHRIES Please excuse her

10 THE COURT Defense?

11 MS WILLIAMS We don't object, Your Honor, based
12 on her medical condition

13 THE COURT All right She's excused

14 Number 110 is over sixty-five, Dix Colbert Date
15 of birth, 5/2/1935 He also has medical information
16 that he has set forth that indicates that he is starting
17 radiation therapy for a cancerous condition that needs
18 to be done five days a week The State's position?

19 MR HUMPHRIES Excuse him

20 THE COURT Defense?

21 MS WILLIAMS No objection based on that medical
22 condition, Your Honor

23 THE COURT Excused

24 Number 111 indicates they are a school employee
25 There's a statement from the principal of Conway

1 Elementary School that states that Ms Cole is employed
2 as a data quality clerk at the Conway Elementary School

3 MR HUMPHRIES No objection

4 THE COURT Okay, no objection from the State
5 Defense?

6 MS WILLIAMS No objection, Your Honor

7 THE COURT All right, excused -- I'm sorry,
8 transferred I'm sorry She's is transferred to the
9 summer, Madam Clerk

10 All right, the next one is unable to locate, 112,
11 Scott Collins The affidavit of the Sheriff says unable
12 to locate Scott C Collins in the confines of Horry
13 County, could not be located at the Post Office box
14 number given on the address They are unable to find
15 that particular person

16 The next one has a medical excuse, 113, Wilmina
17 Collins It's a statement from Conway Physicians Group

18 MR HUMPHRIES I've been working on it, Judge I
19 think it says ---

20 THE COURT It says, okay, "Excuse from jury duty
21 due to her hearing and inability to sit for" ---

22 MR HUMPHRIES "Prolonged periods "

23 THE COURT --- "prolonged periods " All right
24 It also indicates down at the bottom is apparently this
25 person -- looking in the information area, a caregiver

1 for a person who is ninety years of age

2 MR HUMPHRIES No objection

3 THE COURT Defense?

4 MR DIGGS Your Honor, I don't guess we have any
5 objection here

6 THE COURT All right, very good That one is
7 excused

8 All right, the next one is 114, unable to locate
9 The Sheriff's affidavit states that they are unable to
10 locate Brandy S Connolly in Horry County The same
11 address was at the DMV, but the Sheriff was unable to
12 find that particular person at the address stated

13 All right, 115 is coming in

14 116, the Sheriff is still looking

15 117, over sixty-five, Eugene Cook Date of birth,
16 1/8/1943 He is sixty-six You'll also note the
17 information that is set forth in a written statement of
18 Mr Cook as far as the travel plans What's the State's
19 position?

20 MR HUMPHRIES No objection

21 THE COURT Defense?

22 MS WILLIAMS Your Honor, we don't object based
23 on that information with regard to his travel plan

24 THE COURT All right He is excused

25 118, the Sheriff is still looking

REVIEW OF ROLLCALL LIST FOR PANEL

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1 119 is coming in

2 120, the Sheriff is still looking for that
3 particular person

4 121 is coming in

5 122 is coming in

6 123 is coming in

7 124 is over sixty-five, Rosemary Cottrell Date of
8 birth, 2/15/1928, age eighty-seven The State's
9 position?

10 MR HUMPHRIES No objection, Your Honor

11 THE COURT Defense?

12 MS WILLIAMS Your Honor, we don't object based
13 on the fact that she says she has hearing issues and the
14 medical situation

15 THE COURT All right, very good This one is --
16 124 is excused

17 125, the Sheriff is still looking

18 126, the Sheriff is still looking

19 127 indicates no longer resides in Horry County
20 An affidavit of the Sheriff states they are unable to
21 locate Caroline R Cox in Horry County, and they moved
22 to the State of New York on -- in the year of 2008 and
23 has a driver's license in the State of New York dated
24 9/2/2008

25 All right, Number 128, Rachel Cox, indicates that

1 she served December 3rd, 2008 The Clerk's affidavit
2 indicates that she served December 3rd, 2008 The
3 State's position?

4 MR HUMPHRIES No objection

5 THE COURT Defense?

6 MR DIGGS No objection

7 THE COURT Excused

8 129, the Sheriff is still looking

9 130 is over sixty-five, Edna Crusenberry Date of
10 birth, 5/17/1940, sixty-nine, wishes to be excused, and
11 also indicated previous service in January of 2008
12 regarding jury court The State's position?

13 MR HUMPHRIES No objection

14 THE COURT Defense?

15 MS WILLIAMS Your Honor, we don't have any
16 objection based on what she stated in her affidavit and
17 the fact that she has served fairly recently

18 THE COURT All right, very good, all right, so
19 juror number 130 is excused

20 131 is coming in

21 132 no longer resides The Sheriff's affidavit
22 states that this person does not reside in the State of
23 South Carolina, resides in the State of West Virginia

24 The next one we have is also no longer resides,
25 number 133, Gretchen Cunningham The Sheriff's

1 affidavit states that unable to locate Gretchen S
2 Cunningham in the confines of Horry County, moved to 320
3 Spencer Street, Orlando, Florida

4 134 is coming in

5 135 is no longer resides The Sheriff's affidavit,
6 unable to locate David G Dalesky in Horry County, moved
7 to 25 Green Pasture Road, Lewisburg, North Carolina

8 136 we have as deceased Obituary -- we do have an
9 obituary from the newspaper indicating that this
10 particular person died May 16th, 2009

11 All right, number 137, -- all right, do y'all have
12 the information about the person's travel schedule, I
13 assume, from the State and Defense?

14 MR HUMPHRIES We do

15 THE COURT What's the State's position?

16 MR HEMBREE Your Honor, it's a little unclear to
17 me, but it looks like he's -- this person is flying out
18 on November 1st, and he doesn't really -- it's not
19 really clear when they are returning unless I'm missing
20 something

21 THE COURT No It just -- it does indicate
22 leaving November 1st from Myrtle Beach to Charlotte,
23 Charlotte to San Francisco, San Francisco to Hawaii
24 Obviously they don't have when they will return -- oh,
25 they do, November 7th, coming back November 7th, Hawaii

1 to -- let's see, Hawaii to Chicago, Chicago to
2 Charlotte, Charlotte to Myrtle Beach, on November 7th

3 MR HEMBREE Just in the nick of time

4 THE COURT All right The State's position is
5 the juror should come in?

6 MR HEMBREE Yes, Your Honor

7 THE COURT Defense?

8 MS WILLIAMS Yes, sir

9 THE COURT All right, very good Madam Clerk,
10 you will tell them ---

11 THE CLERK They will not be able to report on the
12 6th It will be the 9th before they come in

13 THE COURT Right Now, you know all the jurors
14 are coming in on the 6th?

15 MR HEMBREE Yes, Your Honor

16 THE COURT All right, so obviously this one,
17 we'll just have to have this juror report on -- we'll
18 just put him in a panel then because, you know, having
19 all the jurors come in on the 6th, which is a Friday,
20 before they come back on the 7th, so your position is
21 we'll put them in a panel and we'll just tell them to
22 come in the next week whenever it is that we want them
23 to come in?

24 MR HUMPHRIES Yes, sir

25 MR HEMBREE That makes good sense, Judge

1 MS WILLIAMS That will be fine

2 THE COURT All right, very good

3 All right, 138 is coming in

4 139 is a student, Caroline Dargan We have a
5 enrollment verification certificate from Coastal
6 Carolina University dated October 5th, 2009, indicating
7 that the person is currently enrolled as a student at
8 Coastal Carolina Is there any -- well, what's the
9 position of the State?

10 MR HEMBREE No objection, Your Honor

11 THE COURT Defense?

12 MS WILLIAMS No objection, Your Honor

13 THE COURT All right, transferred to the summer

14 All right, the next one is 140, Skipper Davies, a
15 student We have a statement from the University of
16 South Carolina, the University Registrar, indicates that
17 the student is enrolled less than half-time for the Fall
18 2009, inclusive dates are August 16th to December 14,
19 2009, the College of Arts and Sciences, major political
20 science, minor military science The student is
21 classified as a senior What is the State's position?

22 MR HEMBREE No objection to his being
23 transferred, Your Honor

24 THE COURT Defense?

25 MS WILLIAMS No objection, Your Honor

1 THE COURT All right, is transferred to the
2 summer

3 All right, 141 is over sixty-five Date of birth
4 for Eldora Davis is 11/10/32, wishes to be excused, age
5 seventy-six What's the State's position?

6 MR HEMBREE No objection, Your Honor

7 THE COURT Defense?

8 MS WILLIAMS Your Honor, we would object based
9 on the age qualification

10 THE COURT All right I am going to excuse the
11 -- excuse the juror

12 All right, 142, 143, and 144, the Sheriff is still
13 looking for those individuals

14 145 is coming in

15 146 is over sixty-five

16 THE CLERK 146 or 147?

17 THE COURT Are both over sixty-five 146 says
18 over sixty-five on mine

19 THE CLERK I do not have an affidavit on that one
20 it does not look like

21 THE COURT All right, so why don't we -- do y'all
22 have any in your computer information, or any
23 information on juror number 146? From the State, do you
24 have anything?

25 MR HEMBREE No, Your Honor

1 THE COURT Okay

2 THE CLERK They were born in 1940, though

3 THE COURT Okay What I'm going to request that
4 you do is have the Sheriff communicate again with that
5 particular juror, number 146, and let's get the
6 information We'll review that one on the 30th

7 THE CLERK Yes, sir

8 THE COURT All right, very good

9 147, Thomas Davis, over sixty-five Date of birth,
10 3/21/1942, wishes to be excused The State's position?

11 MR HEMBREE No objection, Your Honor

12 THE COURT Defense?

13 MR DIGGS We would object

14 THE COURT This witness -- this juror is excused
15 148, Shirley Days, has a medical excuse statement
16 from Waccamaw Primary Care, LLC She is unable to sit
17 for greater than ten minutes I'm looking for any
18 further information What's the State's position?

19 MR HUMPHRIES Your Honor, I would excuse her
20 In addition, I reviewed the criminal histories She was
21 convicted of food stamp fraud I am unsure as to
22 whether or not that would disqualify her, but based on
23 her doctor's excuse, we have no objection

24 THE COURT All right, sir Defense?

25 MR DIGGS We don't object

(

1 THE COURT All right, sir That particular
2 witness is excused -- juror is excused
3 All right, 149 is coming in
4 150 is coming in
5 151 is coming in
6 152, over sixty-five, Joseph A Depasquale Date
7 of birth, 3/1/1940, falls within the exemption of being
8 over sixty-five What's the State's position?
9 MR HUMPHRIES No objection
10 THE COURT Defense?
11 MR DIGGS Your Honor, we object
12 THE COURT All right I'm going to excuse the
13 juror
14 153, unable to locate The Sheriff's affidavit
15 states that they are unable to locate Roxanne N Derr,
16 D-E-R-R, in Horry County There is no phone listing or
17 power information
18 Okay, 154 is coming in
19 155 is coming in
20 156 is coming in
21 157 is coming in
22 158, the Sheriff is still looking
23 159 is coming in
24 160, over sixty-five, Walter Dombroski Date of
25 birth, 1/17/1935 The State's position?

(

REVIEW OF ROLL CALL LIST FOR PANEL

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1 MR HUMPHRIES No objection

2 THE COURT Defense?

3 MR DIGGS Your Honor, we object to the age
4 exemption

5 THE COURT All right, very good I'm going to
6 excuse the juror

7 The next one is 161, Melton Dotson, over sixty-
8 five Date of birth, 10/15/1940, wishes to be excused
9 The State's position?

10 MR HEMBREE No objection

11 THE COURT Defense?

12 MR DIGGS Your Honor, we object to that one

13 THE COURT All right I'm going to excuse the
14 juror

15 162 is coming in

16 163 is over sixty-five Date of birth, 3/15/1934,
17 seventy-five The State's position?

18 MR HEMBREE No objection

19 THE COURT Defense?

20 MS WILLIAMS Your Honor, we don't object based
21 on what she states that the medical situation is
22 regarding her household

23 THE COURT Very good Excused

24 All right, the next one is 164, unable to locate
25 The Sheriff's affidavit states that unable to locate

1 Thomas J Duncan in Horry County, is gone from the
2 address one year, possibly living in Greenville, South
3 Carolina, does have a driver's license indicating a
4 Greenville, South Carolina, address

5 The next one, 165, Marjorie Dunn, is over sixty-
6 five, wishes to be excused Date of birth, 7/10/39, age
7 seventy-eight (sic) What's the State's position?

8 MR HEMBREE No objection

9 THE COURT Defense?

10 MR DIGGS Your Honor, we don't object based on
11 her overall medical condition

12 THE COURT Very good Excused

13 166 is coming in

14 167 is coming in

15 168 is over sixty-five, Ted E Durni Date of
16 birth, 11/7/1931, age seventy-seven The State's
17 position?

18 MR HEMBREE No objection

19 THE COURT Defense?

20 MR DIGGS Your Honor, we would object He might
21 -- we might not have an objection later, but just based
22 on the overview of the information he gave us, we
23 object

24 THE COURT All right, very good The Court does
25 note the medical information stated in the juror

REVIEW OF ROLL CALL LIST FOR PANEL

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1 information sheet He is excused

2 All right, Number 169 is over sixty-five Date of
3 birth, 12/15/32 The State's position?

4 MR HEMBREE No objection, Your Honor

5 THE COURT Defense?

6 MS WILLIAMS I'm sorry, Your Honor, what number?

7 THE COURT It is 169, over sixty-five, age
8 seventy-six

9 MS WILLIAMS We would object due to the age
10 requirement, Your Honor

11 THE COURT All right Excused

12 170 is coming in

13 171, employed by the Horry County Police
14 Department, is that correct?

15 MR HUMPHRIES He is

16 THE COURT He's an officer He has -- well,
17 being with the Horry County Police Department, he's in
18 the National Guard and has orders to leave Horry County
19 to report to Fort Stewart, Georgia, to be deployed to
20 Afghanistan The State's position?

21 MR HEMBREE No objection to being excused, Your
22 Honor

23 THE COURT Defense?

24 MS WILLIAMS No objection, Your Honor

25 THE COURT Excused

1 172 is coming in

2 173 is over sixty-five Date of birth, 1/31/1937

3 It also indicates certain health reasons, wishes to be
4 excused The State's position?

5 MR HEMBREE No objection

6 THE COURT Defense?

7 MR DIGGS We object

8 THE COURT I am going to excuse that particular
9 juror

10 All right, 174 is over sixty-five, Walter Edwards
11 Date of birth, 1/8/1927, age eighty-two The State's
12 position?

13 MR HEMBREE No objection, Your Honor

14 THE COURT Defense?

15 MR DIGGS Your Honor, we don't object, it's the
16 pain, I guess, that he's referring to there

17 THE COURT All right, sir He's excused

18 175, Therese Eldred, school employee In the
19 documentation, it says -- it says that she home-schools
20 her children Let's look at the ages, do we have in
21 here the ages of the children? Thirteen, nine, and
22 seven All right, what's the State's position?

23 MR HUMPHRIES No objection, Your Honor

24 THE COURT Defense?

25 MR DIGGS Your Honor, we have to object Is

1 that exemption based on the home-schooling?

2 MR HUMPHRIES Did you read the -- why don't we
3 take a look, Bill

4 THE COURT You read through her complete juror
5 questionnaire -- number 42?

6 MR DIGGS We don't ---

7 THE COURT Very good All right, we'll excuse
8 this particular juror

9 All right, 176 was -- he had a trip planned Do we
10 have something from 176?

11 THE CLERK What did I give you?

12 THE COURT 177 All right, 176 is Steven Elias,
13 has certain information about being in Florida 11/4
14 through 11/12, and I have a written statement from the
15 particular person All right, what's the State's
16 position?

17 MR HEMBREE I don't have any -- we don't have
18 any objection to Mr Elias being excused

19 THE COURT Defense?

20 MS WILLIAMS No objection, Your Honor

21 THE COURT All right Transfer them to another
22 week if you would

23 All right, 177, Billy Elliott, a medical excuse by
24 a doctor from Walker Urgent & Family Care, LLC The
25 State's position?

1 MR HUMPHRIES Relying on the doctor's
2 professional opinion and nothing else, the State would
3 not object

4 THE COURT Defense?

5 MR DIGGS We don't object

6 THE COURT Well, there's some documentation --
7 there's something there from Social Security I'm not
8 sure what that was, but excused

9 All right, Carl Elliott, 178, over sixty-five
10 Date of birth, 6/13/1939, age seventy The State's
11 position?

12 MR HUMPHRIES No objection

13 THE COURT Defense?

14 MR DIGGS We object

15 THE COURT I'm going to excuse the juror

16 All right, 179 is coming in

17 180 is coming in

18 193, pre-school children

19 MS WILLIAMS Your Honor, if we may, just for a
20 moment, we just realized we are missing Page 16

21 THE COURT Oops, and I did, too I skipped right
22 over because -- that's right Yeah, I just jumped from
23 180 to 193, so ---

24 THE CLERK If you would give us one second
25 About seven o'clock last night, my copy machine was

1 about shot

2 THE COURT All right, so let's -- yeah, we need
3 Number 16 Why don't we just continue on and then we'll
4 come back to that particular page Why don't we do
5 that

6 Let's see, the top of the next page, then, is 193
7 193, Ashley Feliciano

8 MR HUMPHRIES There's no objection from the
9 State on that

10 THE COURT Defense?

11 MR DIGGS Your Honor, we have to -- no, no
12 objection

13 THE COURT All right Excused

14 All right, 194 is over sixty-five, Nancy Fellenz
15 Date of birth, 10/27/1942, age sixty-six The State's
16 position?

17 MR HUMPHRIES No objection

18 THE COURT Defense?

19 MR DIGGS We object

20 THE COURT All right I'm going to excuse this
21 particular juror

22 195 is coming in

23 196 is over sixty-five Date of birth, 6/14/1940,
24 Harold Ferrell All right, the State's position?

25 MR HUMPHRIES No objection

(

1 THE COURT Defense?

2 MR DIGGS Well, I think we're going to have to

3 object

4 THE COURT All right I'm going to excuse this

5 particular juror

6 All right, 197 is coming in

7 198 is coming in

8 199 is coming in

9 200 is coming in

10 201, unable to locate The affidavit of the

11 Sheriff says unable to locate David M Fisher in Horry

12 County Address has been changed on the DMV, but there

13 is no forwarding, and no forwarding from the Post

14 Office

15 202, the Sheriff is still looking

16 203, the Sheriff is still looking

17 204, the Sheriff is still -- oh, I'm sorry 204 is

18 coming in

19 205 is over sixty-five Date of birth, 1/27/1935,

20 Shirley Ford, age seventy-four, wishes to be excused

21 The State's position?

22 MR HUMPHRIES No objection

23 THE COURT All right Defense?

24 MR DIGGS We object, Your Honor

25 THE COURT All right Excused

(

REVIEW OF ROLL CALL LIST FOR PANEL

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1 206 is over sixty-five, Robert Formica Date of
2 birth, 9/19/1938, age seventy-one The State's
3 position?

4 MR HUMPHRIES No objection

5 THE COURT Defense?

6 MR DIGGS We have the same objection

7 THE COURT All right Excused

8 207, the Sheriff is still looking

9 208 is coming in

10 209, the Sheriff is still looking

11 210, deceased, death certificate attached The
12 person died -- was the age of ninety-one, and the date
13 of -- 4/17/2008 -- 4/17/2008, died at the age of ninety-
14 one

15 All right, the next one, 211, is over sixty-five,
16 wishes to be excused Date of birth, 4/22/1934 The
17 State's position

18 MR HUMPHRIES No objection

19 THE COURT Defense?

20 MR DIGGS Your Honor, we object

21 THE COURT Excused

22 212, unable to locate The Sheriff's affidavit,
23 unable to locate Dan R Franklin in the confines of
24 Horry County No such address as 2925 Carriage Row
25 Lane A Department of Motor Vehicles' photo shows a

1 Summerville address
2 The next one, 213, is coming in
3 214 is over sixty-five, Eleanor Freeman Date of
4 birth, 3/24/1933 All right, the State's position?
5 MR HUMPHRIES No objection
6 THE COURT Defense?
7 MR DIGGS We object, Your Honor
8 THE COURT I am going to excuse the juror
9 215 is coming in
10 216, Cheryl Fritz, says they have a Federal juror
11 summons
12 MR HUMPHRIES No objection
13 THE COURT All right Has a Federal juror
14 summons to appear in Columbia on November 3rd, may not
15 be available on 11/6, and the Federal summons is
16 attached thereto What's the Defense's position?
17 MR DIGGS No, we don't object
18 THE COURT All right, so we now can go to --
19 let's go then to Page 16, the one that we skipped over,
20 going to juror number 181, is coming in
21 182 is over sixty-five Okay, 182, Louella Ellis,
22 date of birth, 6/23/1936, age seventy-three The State?
23 MR HUMPHRIES No objection
24 THE COURT Defense?
25 MR DIGGS We object

1 THE COURT Excused
2 All right, 183, the Sheriff is still looking
3 184, unable to locate Affidavit of the Sheriff,
4 unable to locate Mandi Y Elwood in Horry County
5 Checked DMV, address at house, Post Office, no change on
6 address, but unable to locate the individual
7 185, the Sheriff is still looking
8 186 is coming in
9 187 is coming in
10 188, unable to locate The Sheriff's affidavit
11 states unable to locate James M Evans in Horry County
12 Subject did not change address through DMV, but has
13 moved from address No forwarding address found
14 189 is over sixty-five, Robert D Everhart Date
15 of birth, 3/23/1931, age seventy-eight The State's
16 position?
17 MR HUMPHRIES No objection, Your Honor
18 THE COURT Defense?
19 MS WILLIAMS Your Honor, we would object based
20 on the age criteria
21 THE COURT All right Excused
22 190 is coming in
23 191 is coming in
24 192, the Sheriff is still looking
25 All right, looking at where we are, number 217, and

1 that one has a medical excuse, a statement from the
2 Medical University of South Carolina, Division of
3 Gastroenterology-Hepatology, MUSC The State has it
4 What's the State's position?

5 MR HEMBREE No objection to Ms Frye being
6 excused

7 THE COURT Defense?

8 MR DIGGS No objection

9 THE COURT Excused

10 218 is coming in

11 219, Beth Fungaroli, school employee We have a
12 earning statement here from the Horry County Schools, a
13 recent pay stub, employed as a teacher Any -- what's
14 the State's position?

15 MR HEMBREE No objection to this juror being
16 transferred

17 THE COURT Defense?

18 MR DIGGS No objection

19 THE COURT Excused

20 All right, 220, says -- Lynn Gallagher, says they
21 have a trip planned

22 MR HUMPHRIES We don't object, Your Honor

23 THE COURT Defense?

24 MR DIGGS No objection

25 THE COURT All right That one is excused -- or,

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1 I'm sorry, transferred You will transfer that
2 particular juror

3 All right, we've got 221 is no longer resides The
4 Sheriff's affidavit, unable to locate Katherine D
5 Gander in Horry County Moved to Goose Creek, South
6 Carolina, December of 2006

7 222, the Sheriff is looking

8 223, unable to locate, Robert Garcia The
9 Sheriff's affidavit states unable to locate Robert
10 Garcia in Horry County Per a mail carrier, Garcia has
11 not lived there in two years No forwarding address per
12 Loris Post Office

13 The next one, 224, the Sheriff is still looking

14 225 is over sixty-five, Marylen Garvey Date of
15 birth, 12/31/1935, does not wish to serve The State?

16 MR HEMBREE No objection

17 THE COURT Defense?

18 MR DIGGS We object

19 THE COURT Excused

20 226, James Gasque, a medical excuse statement from
21 Pain, Spine, and Sports Medicine, C Gregory Kang, M D ,
22 two back surgeries The State's position?

23 MR HUMPHRIES No objection

24 THE COURT Defense?

25 MR DIGGS No objection

1 THE COURT Excused
2 227, the Sheriff is still looking
3 228, no longer resides The Sheriff's affidavit
4 states unable to locate Melanie E Gee, G-E-E, in Horry
5 County The subject now lives in the State of Florida
6 229 is coming in
7 230, the Sheriff is still looking
8 231 is coming in
9 232, over sixty-five, Charles Gidney Date of
10 birth, 4/9/1943, wishes to be excused The State's
11 position?
12 MR HUMPHRIES No objection
13 THE COURT Defense?
14 MR DIGGS We object, Your Honor
15 THE COURT All right He also would -- the Court
16 would also note that he's already purchased airplane
17 tickets for an out-of-state travel to Dallas, Texas,
18 November 11th through November 15th, 2009 I'm going to
19 excuse the juror
20 233, the Sheriff is still looking
21 234, John Gira, has a trip planned 11/23 it says
22 MR HUMPHRIES Your Honor, I hope that's not a
23 problem
24 MS WILLIAMS Your Honor, the trip that was
25 planned out to Texas was 231, right?

REVIEW OF ROLL CALL LIST FOR PANEL

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1 THE COURT Was -- no, 231 is coming in 232,
2 Charles Gidney

3 MS WILLIAMS Has the trip?

4 THE COURT And is over sixty-five, but had the
5 trip to Dallas, Texas, the second week of -- or part of
6 -- or, I think, part of the first week, into the second
7 week

8 Okay, now we're on 234, John Gira I'm going to
9 require this particular juror to come in and we'll
10 review that with them when there's a -- when we have
11 them in the panel

12 235, over sixty-five -- over sixty-five Date of
13 birth, 8/8, 1935, seventy-four The State's position?

14 MR HUMPHRIES No objection

15 THE COURT Defense?

16 MR DIGGS We object

17 THE COURT I'm going to excuse the juror

18 236 is coming in

19 237 is coming in

20 238, no longer resides The Sheriff's affidavit
21 states that they now live in Spartanburg County -- or
22 Spartanburg, South Carolina, a copy of their driver's
23 license indicating the address in Spartanburg, South
24 Carolina

25 239 is coming in

1 240 is coming in

2 MR HEMBREE Your Honor, ---

3 THE COURT I'm sorry

4 MR HEMBREE I'm sorry, Your Honor If I may on
5 239, I know he's scheduled to come in I just want to
6 make the Court aware of this He has been convicted of
7 a crime that carries over a year in another
8 jurisdiction ,It appears that he is not qualified to
9 serve I don't know -- we've not run across this yet
10 I didn't know if the Court wanted to bring him in to
11 make those inquiries or to save him a trip

12 THE COURT What's the Defense's position in that?

13 MR DIGGS Your Honor, we don't really take a
14 position, whatever your ---

15 THE COURT Well, if -- if the Defense does not
16 agree, then we'll have to have him come in and verify
17 that he has that criminal record then

18 MR HEMBREE Thank you, Your Honor

19 THE COURT All right, very good

20 MR HEMBREE Your Honor, I don't know if the
21 Court wishes us to, as we run across those -- as we go
22 through this list, ---

23 THE COURT Well, yeah, if you have those and you
24 know that there is -- somebody has a criminal record,
25 you know, I would like you to let me know so we can at

1 least make the note even if we have them coming in, or
2 we might be able to deal with them now, but so that
3 everybody is aware that that issue is ---

4 MR DIGGS Your Honor, could we approach the
5 bench for a second?

6 THE COURT Absolutely

7 (A Bench conference was held off the record)

8 THE COURT Mr Diggs, you indicated that you have
9 a previously scheduled short Family Court hearing in
10 just a few moments and you wish to attend that Have
11 you explained that to your client?

12 MR DIGGS Yes, sir

13 THE COURT And, Mr Stanko, do you have an
14 objection to Mr Diggs leaving for a short period of
15 time and this matter being handled by Ms Williams, or
16 do you want Mr Diggs here present the whole time?

17 MR STANKO I have no objection to that or any
18 problem with that, sir

19 THE COURT All right, very good Any -- anything
20 from the State?

21 MR HEMBREE No, sir

22 THE COURT All right, very good

23 All right, Mr Diggs, if you'll just -- obviously
24 when you're done, just come back and let us know We
25 will take a lunch break at some period of time here, but

1 we'll see where that is

2 All right, 240 is coming in

3 241 is over sixty-five Francis Gore, date of
4 birth, 9/3/1942, age sixty-seven They also have them
5 as a -- a statement from the principal of Myrtle Beach
6 High School that Mr Francis Gore is a full-time
7 employee at the Myrtle Beach High School, so what is the
8 State's position?

9 MR HEMBREE No objection to this juror being
10 excused

11 THE COURT Defense?

12 MS WILLIAMS Your Honor, we don't have any
13 objection based on the fact that he is a full-time
14 school employee

15 THE COURT Thank you very much

16 All right, 242, they are looking, the Sheriff is
17 still looking

18 243, the Sheriff is still looking

19 244 is over sixty-five, wishes to be excused Date
20 of birth, 5/18/1937, age seventy-two The State?

21 MR HEMBREE No objection, Your Honor

22 THE COURT Defense?

23 MS WILLIAMS Your Honor, we would object based
24 on the age requirement

25 THE COURT All right I'm going to excuse the

1 juror

2 All right, 245, unable to locate The Sheriff's
3 affidavit states that unable to locate Elizabeth A
4 Goyak in Horry County, moved from address given, left no
5 forwarding address DMV shows no change of address

6 246 is coming in

7 247 is coming in

8 248, the Sheriff is still looking

9 249, pre-school children, indicates that Ms Kim
10 Grate has a two month old child, does not work outside
11 the home The State's position?

12 MR HEMBREE No objection to the juror being
13 excused

14 THE COURT Defense?

15 MS WILLIAMS Your Honor, we do not object

16 THE COURT Excused

17 All right, 250 is coming in

18 251 is coming in

19 252 indicates they served January 28th, 2008, and
20 the Clerk so verifies that they served on jury duty
21 January 28th, 2008 Also, there was a written statement
22 by the -- by the juror The State's position?

23 MR HEMBREE No objection to this juror being
24 excused

25 THE COURT All right Defense?

1 MS WILLIAMS No objection, Your Honor

2 THE COURT All right, very good Excused

3 All right, 253 We've got a written statement from
4 juror number 253, Janice Greenwood

5 MR HUMPHRIES Your Honor, we've read it The
6 only day that appears to be a difficulty for this juror
7 is the 6th

8 THE COURT Do you wish that they then be excused
9 from reporting on November 6th and then they -- we would
10 put them on a panel?

11 MR HUMPHRIES Yes, sir

12 THE COURT Okay Defense, do you have a problem
13 with that?

14 MS WILLIAMS No, sir That's fine

15 THE COURT All right, very good Madam Clerk, if
16 you'll just so inform the juror, that will be the
17 procedure, all right?

18 THE CLERK Yes, sir

19 THE COURT Thank you, ma'am Now, there was two
20 of those Do you have those noted specifically?

21 THE CLERK Yes, sir, I do

22 THE COURT Because we need to make sure,
23 especially when those two come in on a panel that those
24 are sworn, because the panel will be sworn on November
25 6th and those two won't be there, so you need to make

1 sure you make some special notes that when those come
2 in, you will need to place those two jurors, or if
3 there's any more, under oath at that point in time, all
4 right?

5 THE CLERK Yes, sir

6 THE COURT All right, thank you, and if y'all
7 will help us all remember about that, please

8 254, the Sheriff is still looking

9 255, the Sheriff is still looking

10 256 has a trip planned All right, we've got a
11 written statement from the juror What is the State's
12 position?

13 MR HUMPHRIES No objection, Your Honor

14 THE COURT Defense?

15 MS WILLIAMS No objection, Your Honor

16 THE COURT All right If you will transfer this
17 -- this particular juror to another term of court, all
18 right, Madam Clerk?

19 THE CLERK Yes, sir

20 THE COURT All right 257 is coming in

21 258 is coming in

22 259 is coming in

23 260 is coming in

24 261 is coming in

25 262, over sixty-five, Bernice Hardee Date of

1 birth, 8/3/1928, also has a medical reason about a total
2 knee replacement, age eighty-one The State's position?

3 MR HEMBREE No objection

4 THE COURT Defense?

5 MS WILLIAMS No objection based on that medical
6 reasoning, Your Honor

7 THE COURT All right Excused

8 All right, 263, Loretta Hardee, indicates she works
9 with the Horry County Police Department and also
10 indicates something -- something about a trip that says
11 she also works with the Horry County Police Department
12 Warrant Division

13 MR HUMPHRIES She's a licensed officer with
14 powers of arrest We have no objection

15 THE COURT Defense?

16 MS WILLIAMS No objection

17 MR HUMPHRIES No, I'm sorry, let me correct
18 that She's the admin with the Police Department Her
19 husband ---

20 THE COURT She's an administrative assistant,
21 uniformed patrol, place of employment, Horry County
22 Police Department

23 MR HUMPHRIES Right Her husband actually is
24 the certified law enforcement officer

25 THE COURT All right, so she is not ---

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1 MR HUMPHRIES She ---

2 THE COURT She works for the Horry County Police
3 Department?

4 MR HUMPHRIES Yes, sir She will be
5 available ---

6 THE COURT Working with the Horry County -- "I
7 work with the Horry County Police Department" ---

8 MR HUMPHRIES Based on her travel plans, she
9 will be available that Monday

10 THE COURT But it also says that she worked with
11 the -- daily with the officers that worked this case is
12 what she indicates

13 MR HUMPHRIES Yes, sir, in the course of that

14 THE COURT It's a response to Question 49

15 MR HUMPHRIES Yes, sir, no question

16 THE COURT What's the Defense's position in this?

17 MS WILLIAMS Your Honor, we would submit that
18 she should be excused from even appearing

19 THE COURT All right I'm going to excuse her
20 from this particular case You're going to transfer to
21 another week of court, but you'll excuse her from this
22 particular case

23 All right, 264, over sixty-five Date of birth,
24 3/5/1933, age seventy-six The State's position?

25 MR HEMBREE No objection, Your Honor

1 THE COURT Defense?
2 MS WILLIAMS We don't object based on his
3 medical condition he discussed in his affidavit, Your
4 Honor
5 THE COURT All right, very good Excused
6 All right, 265 is coming in
7 266, the Sheriff is still looking
8 267 has a Federal juror summons
9 MR HEMBREE No objection, Your Honor
10 MS WILLIAMS No objection from the Defense, Your
11 Honor
12 THE COURT All right, and that juror summons or
13 information is so attached They are excused
14 All right, 268 is coming in
15 269 no longer resides The Sheriff's affidavit
16 states unable to locate Casey N Harris in Horry County
17 Subject now resides in Atlanta, Georgia, and there's
18 certain information indicating address, 309 Summer Place
19 Drive, Dunwoody, Georgia
20 All right, 270, the Sheriff is still looking
21 271 no longer resides The Sheriff's affidavit,
22 unable to locate Lisa A Hartman in Horry County No
23 phone, power Moved to -- out of state to the State of
24 Pennsylvania
25 272, the Sheriff is still looking

1 273, over sixty-five Date of birth, 5/20/1942

2 All right, the State's position?

3 MR HEMBREE No objection

4 THE COURT Defense?

5 MS WILLIAMS Your Honor, we would object based
6 on the age requirement

7 THE COURT I'm going to excuse the juror

8 We've got 274 being a prison guard, the statute
9 being 24-3-930, "All guards, keepers, employees, and
10 other officers employed at the penitentiary shall be
11 exempted from serving on juries and from military or
12 street duty Employees of county or municipal
13 correctional facilities, employees of any county or
14 municipal jails, prisons, work camps, overnight lock-up
15 facilities while performing their officially assigned
16 duties shall have the status of peace officers anywhere
17 in the state "

18 MR HUMPHRIES No objection, Your Honor

19 THE COURT All right The Defense?

20 MS WILLIAMS No objection, Your Honor

21 THE COURT All right Excused

22 275 is coming in

23 276, Jack Heins, is deceased The newspaper
24 obituary indicates the date of death to be July 30th of
25 2008

(

1 277 is coming in

2 278, over sixty-five, Robert Hemingway Date of

3 birth, 3/4/1938, wishes to be excused, age seventy-one

4 The State?

5 MR HEMBREE No objection

6 THE COURT Defense?

7 MS WILLIAMS Your Honor, we don't object based

8 on his saying that he was eighty percent blind

9 THE COURT All right, very good Excused

10 279 is coming in

11 280 is coming in

12 281, coming in

13 282, coming in

14 283, over sixty-five Date of birth, 5/31/1938,

15 wishes to be excused State's position?

16 MR HEMBREE No objection

17 THE COURT Defense?

18 MS WILLIAMS We object based on the age

19 requirement, Your Honor

20 THE COURT All right Excused

21 284, coming in

22 285, over sixty-five Date of birth, 5/15/1932,

23 wishes to be excused, age seventy-seven State's

24 position?

25 MR HEMBREE No objection

(

1 THE COURT Defense?

2 MS WILLIAMS Your Honor, we place the same

3 objection

4 THE COURT Very good I'm going to excuse the

5 juror

6 The next one, Kindel Hickman, 286, says served

7 January 8th, 2009 Any objection from the State?

8 MR HEMBREE No objection, Your Honor

9 THE COURT Defense?

10 MS WILLIAMS No, sir

11 THE COURT All right, very good Excused

12 The next one, 287, is coming in

13 288 is a school employee That's Elwanda Hodge

14 There's a statement from the principal of Loris

15 Elementary School All right, what's the State's

16 position?

17 MR HEMBREE No objection to a transfer, Your

18 Honor

19 THE COURT Defense?

20 MS WILLIAMS No objection as well, Your Honor

21 THE COURT Transferred to the summer

22 All right, we're probably going to work until about

23 twelve-thirty We'll break for lunch at twelve-thirty

24 just so y'all know

25 All right, 289 is over sixty-five Date of birth,

1 7/18/1933, age seventy-six State? The State's
2 position?

3 MR HEMBREE No objection, Your Honor

4 THE COURT Defense?

5 MS WILLIAMS We do not object based on what she
6 says the condition of her husband is, Your Honor, at
7 all

8 THE COURT Very good Excused

9 All right, 290 is coming in

10 291 is coming in

11 292, unable to locate

12 MR HEMBREE Your Honor, let me -- as we move on,
13 it appears that juror number 291 has a criminal record
14 that would render that person ineligible to serve

15 THE COURT All right Defense, do you have
16 information about that or not? Do you have a copy
17 of ---

18 MS WILLIAMS No, sir, we have no information
19 regarding any of that

20 THE COURT Okay State, if y'all don't mind, if
21 y'all want to -- could you give them a copy of whatever
22 it is, the NCIC or whatever it is that y'all have, and
23 what we'll do is, Madam Clerk just note this one for
24 November 30th -- or I mean October 30th, next Friday,
25 and we'll review it again at that point in time, all

1 right?

2 THE CLERK Yes, sir

3 MS WILLIAMS Thank you, Your Honor

4 THE COURT Good, and Ms Williams, if you would
5 on that one previously that we had that had a criminal
6 record, if you could get that -- again, the State will
7 give you that information Y'all review that, and then
8 we'll look at those persons next Friday and see if we
9 still want them to come in, all right?

10 MS WILLIAMS Yes, sir

11 THE COURT All right, very good

12 282 -- I'm sorry, 292, unable to locate, David
13 Holland The Sheriff's affidavit, could not locate
14 anyone at this address Mail in box was not addressed
15 to this particular individual, David Holland

16 All right, 293, Linda Hollandsworth We have a
17 medical statement Y'all have that information What's
18 the State's position?

19 MR HUMPHRIES We don't object I don't know if
20 she comes under any statutory exemption, but ---

21 THE COURT Well, it does indicate -- there is a
22 statute about the individual that is a caretaker for a
23 disabled person, so it looks from the statement of the
24 Professor of Medicine at ---

25 MR HUMPHRIES We don't object

1 THE COURT --- from Charleston, MUSC, that she
2 would fall under ---

3 MS WILLIAMS We do not object either, Your
4 Honor

5 THE COURT All right, very good All right, so
6 that is --293 is excused

7 All right, 294 is coming in

8 295, the Sheriff is still looking

9 296 is over sixty-five Date of birth, 2/14/1938,
10 age seventy-one The State's position?

11 MR HEMBREE No objection, Your Honor

12 THE COURT Defense?

13 MS WILLIAMS Your Honor, we object based on the
14 age requirement

15 THE COURT All right Excused

16 All right, Mr Diggs, I see that you're back
17 You've probably been back, but I just noticed I just
18 wanted to note that for the record

19 MR DIGGS Thank you, Your Honor

20 THE COURT All right, 297 is coming in

21 298, 299, 300, all coming in

22 301 is over sixty-five 301 over sixty-five, Sam
23 Huggins Date of birth, 9/18/1935, age seventy-four
24 The State's position?

25 MR HEMBREE No objection, Your Honor

1 THE COURT Defense?

2 MS WILLIAMS We would object based on the age
3 requirement, Your Honor

4 THE COURT All right Excused

5 All right, 302 is coming in

6 303 is a school employee Let's see what we have
7 here Place of employment, Horry County Middle School
8 -- or Myrtle Beach Middle School, seventh grade teacher,
9 science All right, what's the State's position?

10 MR HEMBREE No objection to a transfer, Your
11 Honor

12 THE COURT Defense?

13 MS WILLIAMS No objection, Your Honor

14 THE COURT All right Transfer her to the
15 summer, please, ma'am

16 All right, 304, the Sheriff is still looking

17 305, unable to locate The Sheriff's affidavit,
18 unable to locate Trissie O Huskey in Horry County
19 Moved to 300 Grove Road, Greenville, South Carolina

20 306 is over sixty-five Date of birth, 6/14/1944,
21 Mary L Husman, wishes to be excused What's the
22 State's position?

23 MR HEMBREE No objection

24 THE COURT Defense?

25 MS WILLIAMS We would object based on the age

(

1 requirement, Your Honor

2 THE COURT All right I'm going to excuse the

3 juror

4 All right, 307, the Sheriff is looking

5 308, the Sheriff is looking

6 309 is coming in

7 310, the Sheriff is looking

8 311, the Sheriff is looking

9 312, over sixty-five, Ida Irvine Date of birth,

10 4/28/1938, wishes to be excused, seventy-one The

11 State's position?

12 MR HEMBREE No objection

13 THE COURT Defense?

14 MR DIGGS We object, Your Honor

15 THE COURT All right Excused

16 313, the Sheriff is looking

17 314, unable to locate The Sheriff's affidavit,

18 unable to locate Gussie M Isom in Horry County No

19 answer at this address Unable to find any forwarding

20 information

21 315 coming in

22 316 coming in

23 The Sheriff is looking for 317, 318, and 319

24 320, 321, and 322 are coming in

25 323, unable to locate The Sheriff's affidavit,

(

1 unable to locate Fennie B Jenerette in Horry County
2 Neighbors say the person didn't live -- doesn't live
3 there, moved last year

4 324, the Sheriff is still looking

5 325 and 326 are coming in

6 327, over sixty-five Date of birth, 11/1 -- I'm
7 sorry, 6/14/1938, Beulah N Johnson, wishes to be
8 excused, and there's a written statement from the juror,
9 age seventy-one The State's position?

10 MR HEMBREE No objection, Your Honor

11 THE COURT Defense?

12 MR DIGGS No objection

13 THE COURT Excused

14 MR HEMBREE Your Honor, just one matter that
15 kind of ran by me Number 325, ---

16 THE COURT Yes, sir

17 MR HEMBREE --- we do have a criminal history on
18 juror 325 It appears that she would not be qualified
19 to serve We'll provide that to Defense counsel and
20 deal with that on -- next week

21 THE COURT Next Friday All right, very good

22 328, the Sheriff is still looking

23 329, 330, 331, 332, and 333 are coming in

24 334 is over sixty-five Date of birth, 8/16/1942,
25 Lila Johnson, wishes to be excused, age sixty-seven

(

1 The State's position?

2 MR HEMBREE No objection

3 THE COURT Defense?

4 MR DIGGS No objection, Your Honor We do that

5 based on her occupation

6 THE COURT All right, very good I'm going to

7 excuse her on the age requirement

8 335, unable to locate The Sheriff's affidavit

9 states that unable to locate Nathan A Johnson in the

10 confines of Horry County No forwarding or change of

11 address located

12 336, over sixty-five Date of birth, June 4, 1936,

13 Pecolia Johnson, wishes to be excused, age seventy-two

14 The State's position?

15 MR HEMBREE No objection, Your Honor

16 THE COURT Defense?

17 MR DIGGS We object

18 THE COURT Excused

19 All right, 337 indicates they are an employee of

20 the county in the finance department Any reason that

21 person should not come in, from the State?

22 MR HEMBREE No, Your Honor

23 THE COURT From the Defense?

24 MR DIGGS No, Your Honor

25 THE COURT Have them come in, Madam Clerk

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1 338 and 339 are coming in

2 340 is a school employee

3 THE CLERK Excuse me Since we made the list, we
4 got some more information that 338 now wishes to use
5 their exemption

6 THE COURT All right, so -- I don't know if y'all
7 have that We've got here a written statement from the
8 -- we're talking about juror number 338, Tony L
9 Johnson A written statement from the wife of Mr
10 Johnson states that he's over sixty-five Let's see,
11 the age is 8/26/1940, which would be over sixty-five
12 It also says he wears a hearing aid, has a serious
13 hearing problem "I have to speak very loud for him to
14 hear me Also, his hands and arms shake so bad that he
15 would not be able to write notes "

16 All right, what's the State's position on juror
17 number 338?

18 MR HEMBREE No objection to Mr Johnson being
19 excused

20 THE COURT Defense?

21 MR DIGGS Your Honor, we don't object based on
22 the hearing difficulty

23 THE COURT All right Excused, 338 is excused

24 All right, 340, school employment Here's a
25 statement by the principal that Jerry Jones is a full-

1 time employee at Myrtle Beach Elementary during this
2 particular school year The State's position?

3 MR HEMBREE No objection that Mr Jones be
4 transferred

5 THE COURT All right Defense?

6 MR DIGGS No objection

7 THE COURT All right Transfer that particular
8 juror to the summer, please, ma'am

9 All right, 341, ---

10 MR HUMPHRIES Your Honor, we don't object to a
11 transfer in this case

12 THE COURT All right This is a statement letter
13 from the South Carolina Forestry Commission as to this
14 particular juror The State does not object What is
15 the Defense position based upon the information provided
16 by the South Carolina Forestry Commission?

17 MR DIGGS We don't object

18 THE COURT All right Madam Clerk, if you will
19 transfer, and transfer them to -- why don't we transfer
20 them to some term in February

21 All right, 342 and 343 are coming in

22 344, unable to locate The Sheriff's affidavit,
23 they are unable to locate Shetan M Jordan in Horry
24 County, no phone or power Place of employment, Wal-
25 Mart terminated them three months ago

1 345, 346, 347, 348 are coming in

2 349 served November 17th, 2008 What's the State's
3 position on that?

4 MR HEMBREE No objection to Mr Kascher being
5 excused

6 THE COURT Defense?

7 MR DIGGS No objection

8 THE COURT Excused

9 350, unable to locate The Sheriff's affidavit
10 states that Evan G Kay cannot be located in Horry
11 County The current resident has lived at given address
12 for over a year, does not know Evan G Kay, and unable
13 to locate

14 351 has some type of letter All right, what's the
15 State's position on juror number 351?

16 MR HEMBREE This juror should be required to
17 come in and ---

18 THE COURT All right The Court agrees
19 Defense?

20 MR DIGGS We agree

21 THE COURT All right, very good Have the juror
22 come in, please

23 352 is coming in

24 353 is over sixty-five Date of birth, 4/26/1921
25 What's the State's position?

1 MR HEMBREE No objection to Mr Kearns being
2 excused
3 THE COURT Defense?
4 MR DIGGS We object
5 THE COURT Excused
6 354 is coming in
7 355 is over sixty-five All right, the State's
8 position?
9 MR HEMBREE No objection
10 THE COURT I'm sorry The date of birth is
11 8/28/1920 All right, the Defense position?
12 MR DIGGS We object
13 THE COURT All right, Mr Kearns being eighty-
14 nine All right, excused
15 The next one, 356, Ann Kessler, over sixty-five
16 Date of birth, 8/7/1935 The State's position?
17 MR HEMBREE No objection
18 THE COURT Defense?
19 MR DIGGS We object
20 THE COURT That juror wished to be -- all these
21 jurors wish to be excused, and I'm going to excuse that
22 particular juror
23 357 says no longer resides Affidavit of the
24 Sheriff, unable to locate Susan M Kime, K-I-M-E, in
25 Horry County Moved to Mall of Georgia Boulevard in

1 Buford, Georgia

2 All right, 358, the Sheriff is looking

3 359, Delphia King, medical excuse, a statement from
4 Conway Physicians Group "Please excuse from jury duty
5 due to current medical condition because she would not
6 be a good candidate at this time "

7 MR HUMPHRIES Looking at her actual juror
8 questionnaire, she's a diabetic She's had laser
9 surgery on both eyes, makes it difficult to see,
10 arthritis in hands, fingers She says hearing is no
11 problem, but you can't hear her, can't sit for long
12 periods of time," and she's on numerous medications

13 THE COURT All right What's the State's
14 position?

15 MR HUMPHRIES We would -- we would not object to
16 her being excused

17 THE COURT All right Defense?

18 MR DIGGS We don't object

19 THE COURT All right, excused

20 All right, 360 no longer resides -- unable to
21 locate All right, I'm sorry, unable to locate The
22 Sheriff's affidavit says unable to locate Judy King in
23 Horry County This address needs a condo number Could
24 not locate which condo she lives in Neighbors do not
25 know her Unable to locate

1 Okay, 361 is a student We've got a -- got
2 documentation here from Horry-Georgetown Tech whereby
3 the juror is taking developmental english, developmental
4 mathematics, and developmental reading, among others
5 What's the State's position?
6 MR HEMBREE No objection to Ms King being
7 transferred, Your Honor
8 THE COURT Defense?
9 MR DIGGS No objection
10 THE COURT Transfer the juror to the summer,
11 please
12 262 (sic) is coming in
13 263 (sic) coming in
14 Two -- 362 is coming in
15 363 is coming in
16 364 is over sixty-five Date of birth, June 18,
17 1937, Deverre Knickel wishes to be excused, age seventy-
18 two The State's position
19 MR HEMBREE No objection, Your Honor
20 THE COURT Defense?
21 MR DIGGS We don't object based on her (sic)
22 hearing impairment
23 THE COURT All right, very good Excused
24 All right, the next one is 365, Katherine Kohler
25 Date of birth, 10/26/1941, over sixty-five The State's

1 position?

2 MR HEMBREE No objection, Your Honor

3 THE COURT Defense?

4 MR DIGGS No objection

5 THE COURT Excused

6 366, the Sheriff is still looking

7 367, Joseph Konopka, over sixty-five Date of

8 birth, 3/18/1927 The State's position?

9 MR HEMBREE No objection, Your Honor

10 THE COURT Defense?

11 MR DIGGS We object

12 THE COURT All right The juror being eighty-

13 two, excuse the juror

14 All right, the next one, 368, Jo Ann Kovach, over

15 sixty-five Date of birth, 10/7/1938, wishes to be

16 excused The State's position?

17 MR HEMBREE No objection

18 THE COURT Defense?

19 MR DIGGS We don't object based on her medical

20 history

21 THE COURT All right, very good Excused

22 369, the Sheriff is still looking

23 370 is coming in

24 371, over sixty-five That is Joseph Landau Date

25 of birth, 7/29/1944, wishes to be excused The State's

1 position?

2 MR HEMBREE No objection, Your Honor

3 THE COURT Defense?

4 MR DIGGS The Defense objects

5 THE COURT All right Excused

6 And we have 372, is coming in

7 All right, we're going to stop, Counsel, for lunch

8 If we come back at 1 45, is that a problem, Solicitor?

9 MR HEMBREE 1 45, not at all, Your Honor

10 THE COURT All right, Defense?

11 MR DIGGS Yes, sir

12 THE COURT Very good We'll resume at 1 45

13 Thank you very much

14 (OFF THE RECORD-Lunch Recess)

15 **ON THE RECORD**

16 THE COURT To continue on, we start at 373, and a

17 medical excuse for 373 All right, we have a statement

18 from Carolina Health Specialists as to Annette Larosa

19 What's the State's position, and there was a written

20 statement from the witness -- the juror also

21 MR HEMBREE Your Honor, we'd ask that this

22 witness be excused

23 THE COURT Any objection?

24 MR DIGGS No, Your Honor

25 THE COURT All right, excused

1 All right, 374, unable to locate The Sheriff's
2 affidavit states that they are unable to locate Amie R
3 Larson in Horry County, checked DMV, no change of
4 address Moved from address listed back in 2006 per the
5 management company to Midtown, New York

6 The next one, 375, is coming in
7 376, the Sheriff is still looking
8 377 is coming in

9 378, a medical excuse There's a medical excuse
10 and a statement from the employer and a medical
11 statement from North Myrtle Beach Internal Medicine,
12 Inc What's the State's position?

13 MR HEMBREE Your Honor, I guess it would be our
14 position that this -- this potential juror needs to come
15 in The excuse, it's very, very broad in general, and
16 she's working, so apparently it doesn't -- it's not a
17 type of an illness that prevents her from working
18 because she works for Sturhs & Becker Construction
19 Company, and they're talking about an economic hardship
20 and they're trying to get her excused for that It just
21 seems a bit vague

22 It appears that the Court may want to inquire of
23 her about ---

24 THE COURT What's the Defense position in that?

25 MR DIGGS Your Honor, we agree with what the

1 prosecution stated

2 THE COURT All right, very good Madam Clerk,
3 you will require this juror to come in, please

4 All right, 379, a statement from the witness (sic)
5 I assume y'all have a copy of that What's the State's
6 position?

7 MR HEMBREE Bear with us just a moment

8 THE COURT Yes, sir

9 MR HEMBREE Once again, Your Honor, this sounds
10 a bit -- at least on this issue as to her travel plans,
11 it sounds like she's going to be back, driving home --
12 well, no, maybe not She may not make it back We'd
13 ask that this juror be excused, Your Honor

14 THE COURT What's the Defense's position?

15 MR DIGGS We don't object

16 THE COURT All right, is excused -- I'm sorry,
17 Madam Clerk, if you'd transfer, rather Thank you,
18 ma'am

19 All right, 380 is coming in

20 381, over sixty-five Date of birth, 9/14/1941,
21 Michael E Lenhart, wishes to be excused The State's
22 position?

23 MR HEMBREE No objection

24 THE COURT Defense?

25 MR DIGGS No objection, Your Honor, because of

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1 the hearing issue

2 THE COURT All right, sir Excused

3 182 (sic) is coming in I'm sorry, 382 is coming

4 in

5 383 is deceased The jury summons was returned by

6 the wife indicating that the husband was deceased

7 All right, 384, over sixty-five Date of birth,

8 8/18/1940, Vonnah Lett, age sixty-nine The State's

9 position?

10 MR HEMBREE No objection, Your Honor

11 THE COURT Defense?

12 MR DIGGS Your Honor, we don't have an objection

13 based on the family illness that is present

14 THE COURT All right, very good Excused

15 385, the Sheriff is looking for that particular

16 person

17 386 and 387 are coming in

18 388, the Sheriff is looking

19 389, 390, 391, 392, 393 are coming in

20 394, over sixty-five Date of birth, 7/1/1942,

21 Minnie Long, wishes to be excused, sixty-seven All

22 right, the State's position?

23 MR HEMBREE No objection

24 THE COURT Defense?

25 MR DIGGS Your Honor, we don't object, but based

1 on the fact that she has to care for others during the
2 day

3 THE COURT All right, excused

4 The next one, 395, over sixty-five Date of birth,
5 3/29/1927, William H Long, wishes to be excused,
6 eighty-two The State's position?

7 MR HEMBREE No objection

8 THE COURT Defense?

9 MR DIGGS Your Honor, we would object

10 THE COURT All right I'm going to excuse the
11 juror

12 The next one, 396, says, "Attends school at night
13 on-line " The State is going to require this particular
14 juror to come in

15 All right, the next one, 397, work letter All
16 right, we've got a letter from the juror What's the
17 State's position?

18 MR HEMBREE Your Honor, there's no statutory
19 basis or no clear statutory -- or this doesn't present a
20 clear statutory basis for him to be excused We'd ask
21 that this juror be required to come in

22 THE COURT All right Defense?

23 MR DIGGS Your Honor, we don't object to your
24 excusing him

25 THE COURT All right Well, we're going to have

1 the juror come in and we'll deal with it at that point
2 in time

3 Have that juror come in, please

4 398 is a student, James Lordo We have a statement
5 here from Horry-Georgetown Technical College dated
6 October 7, 2009 They classify him as a full-time
7 student at Horry-Georgetown Technical College What's
8 the State's position?

9 MR HEMBREE No objection to his being
10 transferred, Your Honor

11 THE COURT Defense?

12 MR DIGGS Yes, no objection

13 THE COURT All right Transfer to the summer,
14 Madam Clerk

15 All right, 399, we have some letter about work
16 All right, would the State's position be that the juror
17 should be required to come in?

18 MR HEMBREE Yes, Your Honor

19 THE COURT All right, Defense?

20 MR DIGGS We agree

21 THE COURT All right Have the juror come in,
22 please, Madam Clerk

23 400 is unable to locate The Sheriff's affidavit
24 states that unable to locate Jamie W Lowry in Horry
25 County No longer lives at given address Current

1 tenants have lived there for over one year

2 401 and 402 are coming in

3 403, the Sheriff is looking for that particular
4 person

5 404, over sixty-five Date of birth, 6/15/1927,
6 Jane M Mack, requests to be excused, age eighty-two
7 The State's position

8 MR HEMBREE No objection to her being excused,
9 Your Honor

10 THE COURT Defense?

11 MR DIGGS Your Honor, we would object

12 THE COURT I'm going to excuse the juror

13 The next one, 405, is a student We have a
14 statement here from Horry-Georgetown Technical College
15 indicating the student is taking a number of courses in
16 the science wing, and it's for the fall term, as well as
17 hotel, restaurant, and travel, and contemporary
18 mathematics What is the State's position?

19 MR HEMBREE We'd ask that the juror be
20 transferred to another term

21 THE COURT Defense?

22 MR DIGGS Yes, we don't object to that, Your
23 Honor

24 THE COURT All right Transfer her to the
25 summer, please, ma'am

1 406 ---

2 MR HEMBREE Your Honor, could we go back to 405
3 very briefly?

4 THE COURT Yes

5 MR HEMBREE 405, just for -- this is really for
6 the Clerk's benefit, appears not to be qualified to
7 serve based on a prior conviction, prior criminal
8 conviction She may just want to note that for her
9 records instead of transferring her to another time
10 She may want to take her off the -- off the list

11 THE COURT Very good

12 406, Gerald Madeiras, over sixty-five Date of
13 birth, 4/11/1940 What's the State's position? Wishes
14 to be excused

15 MR HEMBREE No objection

16 THE COURT Defense?

17 MR DIGGS Your Honor, we don't have an
18 objection, but that's based on his overall health issues
19 and not the age issue

20 THE COURT All right, very good

21 407 is coming in

22 408, the Sheriff is still looking for that
23 particular person

24 409, is a school employee We have a statement
25 from the Horry County School System This particular

1 juror is a teacher with the Horry County Schools The
2 State's position?

3 MR HEMBREE No objection to this juror being
4 transferred to another term

5 THE COURT Defense?

6 MR DIGGS No objection

7 THE COURT Transfer her (sic) to the summer,
8 please, ma'am -- or him, I'm sorry

9 410 no longer resides The Sheriff's affidavit
10 states unable to locate Werner Mansouri in Horry County
11 The driver's license number gives an address in
12 Knoxville, Tennessee

13 411, 412, 413 are coming in

14 414 says a school employee All right, we've got a
15 statement here from the First Presbyterian Church,
16 looking at the juror questionnaire indicates that the
17 place of employment is the First Presbyterian Church
18 Growing Tree Pre-School, lists the job description as
19 assistant teacher for eleven years What's the State's
20 position?

21 MR HEMBREE Your Honor, I don't recall if the
22 statute distinguishes between what type of school I
23 believe this would qualify and we would ask that she be
24 transferred to another term

25 THE COURT Defense?

1 MR DIGGS Yeah, I guess if it's a school and
2 they've got students, ---

3 THE COURT All right

4 MR DIGGS --- we don't object

5 THE COURT Transfer her to the summer, please,
6 ma'am

7 415 is coming in

8 416, unable to locate The Sheriff's affidavit
9 states unable to locate Teresa A Maust in Horry County
10 The house is empty at the given address

11 417, we've got a medical excuse All right, it's a
12 statement from Keith Wyche, M D , cardiologist, Waccamaw
13 Cardiology What's the position of the State as to 417?

14 MR HEMBREE No objection to Ms Mays being
15 excused

16 THE COURT Defense?

17 MR DIGGS No objection

18 THE COURT All right, excused

19 The Sheriff is looking for 418

20 419, 420, we've got no longer resides The
21 Sheriff's affidavit indicates -- I'm sorry The Clerk's
22 affidavit indicates based upon the juror's driver's
23 license that the juror is a resident of the State of
24 North Carolina, lives in Tabor City

25 411, 412, 413 are coming in -- I'm sorry I went

1 -- wait a minute I'm sorry 420 was the one we were
2 talking about 420, there was a proper excuse

3 All right, 421, the Sheriff is looking for that
4 one

5 422, unable to locate The Sheriff's affidavit
6 states that unable to locate Leroy McDonald in the
7 confines of Horry County No forwarding found by the
8 Sheriff's Office

9 423, 424 are coming in

10 425, the Sheriff is still looking

11 426 is coming in

12 427, unable to locate The Sheriff's affidavit
13 states that unable to locate Michael F McGrath in Horry
14 County Never could locate this subject after several
15 attempts at home address No further information found

16 Regarding 428 and 429, those jurors are coming in

17 430, the Sheriff is still looking

18 421 (sic), student, got documentation here from
19 Horry-Georgetown Technical College indicating the juror
20 is taking fourteen credit hours, college chemistry,
21 english composition, american history, elementary
22 spanish What's the State's position?

23 MR HEMBREE The State requests that this juror
24 be transferred

25 THE COURT Defense?

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1 MR DIGGS No objection

2 THE COURT Transfer the juror to the summer,

3 please, ma'am

4 432, the Sheriff is looking for that particular

5 person

6 433 is coming in

7 434, over sixty-five Date of birth, 9/28/1943,

8 Beverly S McMillen, wishes to be excused What's the

9 State's position?

10 MR HEMBREE Ask that this juror be excused, Your

11 Honor

12 THE COURT Defense?

13 MR DIGGS We object if it's based on age

14 THE COURT All right, excused

15 435, over sixty-five, Mary McNair Date of birth,

16 2/14/1939, wishes to be excused, seventy years of age

17 The State's position?

18 MR HEMBREE No objection to the juror being

19 excused, Your Honor

20 THE COURT All right What's the position of the

21 Defense?

22 MR DIGGS The same objection

23 THE COURT All right, excused

24 436 is coming in

25 437, a medical excuse We've got a statement here

1 from Conway Medical Center to certify that the juror was
2 admitted to Conway Medical Center on 10/13/2009, had
3 spinal surgery on 10/13/2009, discharged on 10/16/2009
4 What's the -- there's a written statement from the juror
5 also What's the State's position?

6 MR HEMBREE Your Honor, I'm reading here In
7 addition to the letter from the hospital, I read her
8 personal note that's attached here She indicates that
9 she's going to be -- that her doctors tell her she's
10 going to be out of work eight to twelve weeks, so it's
11 been a rather short time frame It sounds like it's a
12 fairly serious surgery We'd ask that she be excused,
13 Your Honor

14 THE COURT Defense?

15 MR DIGGS No objection

16 THE COURT All right, excused

17 All right, 438 is coming in

18 439, the Sheriff is looking

19 440, over sixty-five Date of birth, 11/10/1942,
20 Daniel Menich, wishes to be excused, sixty-six What's
21 the State's position?

22 MR HEMBREE We would ask that this juror be
23 excused, Your Honor

24 THE COURT Defense?

25 MR DIGGS We don't object based on his vacation

1 plans

2 THE COURT All right, excused

3 441, a medical statement Look at the medical
4 statement What's the State's position?

5 MR HEMBREE Judge, I guess the only thing about
6 this, that procedure is a preventive procedure that
7 typically can be rescheduled I just don't know what
8 category -- I guess it could be something that's more
9 urgent in this case There's no way to tell based on
10 this medical statement I know my wife had one of these
11 and we'd be doing her a favor to put it off as long as
12 we can, but ---

13 THE COURT It's scheduled for 11/9 of '09

14 MR HEMBREE Yes, sir We'd ask that she be
15 excused, Your Honor

16 THE COURT What's the Defense's position?

17 MR DIGGS We don't object

18 THE COURT All right 442 is over sixty-five
19 Date of birth, 8/12/1941, Patricia Migliaro, over sixty-
20 five, wishes to be -- sixty-eight, wishes to be excused
21 The State's position?

22 MR HEMBREE No objection, Your Honor

23 THE COURT Defense?

24 MR DIGGS Your Honor, we don't object, but it's
25 based on the law enforcement connections

1 THE COURT All right, excused on age
2 All right, 443, unable to locate The Sheriff's
3 affidavit states unable to locate Denise A Mileski in
4 Horry County No longer lives at given address No
5 forwarding found by the Sheriff's Department
6 444 is coming in
7 445, over sixty-five Date of birth, 2/13/1940,
8 Diann Miller Over sixty-five, wishes to be excused,
9 sixty-nine What's the State's position?
10 MR HEMBREE No objection, Your Honor
11 THE COURT Defense?
12 MR DIGGS Your Honor, we don't object based on
13 the medical situation and the law enforcement ---
14 THE COURT All right, excused
15 446 is coming in
16 447, over sixty-five Let's see, 447, over sixty-
17 five Date of birth, 8/12/1942, Richard Miller, over
18 sixty-five, wishes to be excused, age sixty-seven The
19 State's position?
20 MR HEMBREE No objection, Your Honor
21 THE COURT Defense?
22 MR DIGGS Your Honor, we object to the
23 exemption
24 THE COURT All right, excused
25 448 is coming in

1 449, unable to locate The Sheriff's affidavit,
2 unable to locate Gina M Mills in Horry County, unable
3 to find this person Found different address, but
4 nobody there

5 MR HEMBREE Your Honor, if I might, going back
6 to 448, this is yet another one that has a criminal
7 history I just want to note that for the benefit --
8 we'll set that aside, provide it to Defense counsel, and
9 we can deal with that when 448 comes in

10 THE COURT All right, very good

11 All right, 449 (sic), they've got -- you can see
12 the travel statement by the juror What's the State's
13 position?

14 MR DIGGS That's 450

15 THE COURT 450, yes I'm sorry, 450

16 MR HEMBREE It appears it's a prepaid vacation,
17 Your Honor, and we don't have any objection to excusing
18 Mr Mills

19 THE COURT What's the Defense position?

20 MR DIGGS No objection

21 THE COURT 451 is coming in

22 452, all right, as a result of the Clerk following
23 up on juror number 452, there's an additional statement
24 from the juror that the person that she is the care
25 provider for is her mother-in-law The husband is in

1 prison All right, what's the State's position as to
2 juror number 452?

3 MR HEMBREE It appears based on this -- kind of
4 reviewing this correspondence that Ms Moore would have
5 a statutory exemption We would ask that she be
6 excused

7 THE COURT Defense?

8 MR DIGGS Now we're talking about juror 452?

9 THE COURT That's correct

10 MR DIGGS No objection

11 THE COURT All right

12 All right, 453 is over sixty-five Date of birth,
13 11/8/1939, Jimmy Moore, sixty-nine, wishes to be
14 excused The State's position?

15 MR HEMBREE No objection

16 THE COURT Defense?

17 MR DIGGS No objection, but based on his wife's
18 health, but not his age

19 THE COURT All right, very good Excused

20 454, unable to locate The Sheriff's affidavit
21 states that unable to locate Jeannette L Moreland in
22 Horry County Subject not here Moved over one year

23 455, a medical excuse We've got a statement here
24 from Hearing Healthcare All right, the State and
25 Defense have a copy of it What's the State's position?

1 MR HEMBREE No objection to this juror being
2 excused, Your Honor

3 THE COURT Defense?

4 MR DIGGS Your Honor, we don't have an
5 objection

6 THE COURT All right, excused

7 456, over sixty-five Date of birth, 5/25/1935,
8 Inez Morgan, over sixty-five, wishes to be excused, age
9 seventy-four Also indicates her -- there's a statement
10 from the juror as to her medication All right, what's
11 the State's position?

12 MR HEMBREE No objection, Your Honor

13 THE COURT Defense?

14 MR DIGGS No objection based on her medication

15 THE COURT All right, very good Excused

16 457, over sixty-five, Louise Morgan Date of
17 birth, 10/12/1930, age seventy-eight, wishes to be
18 excused The State's position?

19 MR HEMBREE No objection

20 THE COURT Defense?

21 MR DIGGS Your Honor, we don't object, but it's
22 based on the health of her husband

23 THE COURT All right, excused

24 458 and 459 are coming in

25 460, unable to locate The Sheriff's affidavit

1 states that unable to locate Meghan R Morris in Horry
2 County Per the new homeowner, states they've lived at
3 the given address for three years No forwarding
4 address found at the Loris Post Office

5 The next one, 461, school employee I have
6 something here from the -- from Horry-Georgetown
7 Technical College, the department chair of associated
8 health sciences as to the juror stating that she is an
9 anatomy and physiology instructor for the college
10 What's the State's position?

11 MR HEMBREE The State requests this juror be
12 transferred

13 THE COURT Defense?

14 MR DIGGS We don't object

15 THE COURT All right Transfer, Madam Clerk
16 462 is coming in

17 463, the Sheriff is looking

18 464, a medical excuse It says that -- here it
19 says that Arlette Muffley, who is the juror, as her
20 statement says that she is the sole caregiver for her
21 eighty-two year old mother-in-law, Mary Muffley What
22 is the State's position?

23 MR HEMBREE Your Honor, just looking at this,
24 she's got a -- she works full-time, it appears, at First
25 Baptist Church or First Baptist Child Development Center

1 as a teacher eight to five We'd ask that she be tran-
2 -- I think she just has ---

3 THE COURT All right Ask her to come in?

4 MR HEMBREE Ask that she be transferred, Your
5 Honor

6 THE COURT Okay, I'm sorry I was confused Do
7 you wish that ---

8 MR HEMBREE No, sir I think -- I think she's
9 -- I think she probably has the exclusion as a teacher
10 to be transferred

11 THE COURT Okay All right Very good Okay,
12 I'm sorry All right, very good

13 All right, Defense?

14 MR DIGGS We agree

15 THE COURT All right If you would transfer her,
16 please, ma'am, to the summer

17 465, over sixty-five Date of birth, 12/17/1939,
18 Maureen Muller, over sixty-five, wishes to be excused,
19 age sixty-nine What's the State's position?

20 MR HEMBREE No objection

21 THE COURT Defense?

22 MR DIGGS We object

23 THE COURT Is excused, the juror is excused

24 466, the Sheriff is looking

25 467, 468 are coming in

(
1 469, over sixty-five Date of birth, 8/11/1921,
2 Lucile M Nalley, over sixty-five, eighty-eight years
3 old, wishes to be excused The State's position?

4 MR HEMBREE No objection

5 THE COURT Defense?

6 MR DIGGS Your Honor, no objection based on her
7 hearing impairment

8 THE COURT All right, excused

9 470 has some type of statement What's the State's
10 position?

(
11 MR HEMBREE Your Honor, it appears that Michelle
12 and Glenn are getting married on the 7th I'm looking
13 -- it looks like -- I think I'm looking at an invitation
14 here, and therefore, I would request that the Court put
15 this juror, Thomas Nanick, on a panel assuming he'll be
16 back after that weekend

17 THE COURT What's the Defense's position?

18 MR DIGGS Your Honor, we don't object if you
19 reschedule the juror

(
20 THE COURT The information not only that is here,
21 but also the Clerk has, is obviously they are getting
22 married on November 7th, 2009, the day after they are
23 reporting, and then were to go on their honeymoon the
24 following week I am going to transfer this particular
25 juror to another term of court, Madam Clerk

1 MR HEMBREE That's fine Is this guy -- is this
2 juror going on the honeymoon? I think those are -- it
3 appears that the ones that are getting married are
4 Michelle Claire ---

5 THE COURT I'm sorry Then maybe I misread it

6 THE CLERK They're just staying the week in New
7 Jersey

8 THE COURT Okay, then, I'm sorry

9 MR HEMBREE I didn't have that information

10 THE COURT Okay, I'm sorry

11 THE CLERK I didn't know until His Honor just
12 told me

13 THE COURT Okay, well, all right, so they are
14 going -- so they are going to the wedding, going to a
15 wedding on November 7th, is that right, Madam Clerk?

16 THE CLERK Yes, sir

17 THE COURT All right, and then their intention
18 was to stay for the remainder of the next week in New
19 Jersey?

20 THE CLERK As per their conversation with Donna

21 MR HEMBREE Your Honor, I'd like to change my --
22 our position would be that we have no objection to this
23 juror being excused

24 THE COURT Defense, again, I'm sorry

25 MR DIGGS We don't object

1 THE COURT All right, transfer Transfer, yes,
2 ma'am
3 471 coming in
4 472 coming in
5 473, the Sheriff is still looking
6 474, unable to locate The Sheriff's affidavit
7 states unable to locate Herbert S Nodine in Horry
8 County New address that was found appears to be a
9 vacation condo
10 The next one, 475, is over sixty-five Date of
11 birth, 12/30/1928, Edna Norris, eighty, wishes to be
12 excused Also gives a written statement of all the
13 medication that she is taking The State's position?
14 MR HEMBREE No objection, Your Honor
15 THE COURT Defense?
16 MR DIGGS No objection based on her health
17 THE COURT Excused
18 The next one is 476, Reba Norris Date of birth,
19 8/31/1916, Ms Norris being over sixty-five wishes to be
20 excused, ninety-three, and apparently she is residing at
21 Agape' Senior Home What's the State's position?
22 MR HEMBREE No objection, Your Honor
23 THE COURT Defense?
24 MR DIGGS Your Honor, we would object if it's
25 based solely on the age

REVIEW OF ROLLCALL LIST FOR PANEL

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1 THE COURT All right I'm going to excuse the
2 juror

3 All right, 477, 478, 479, and 480 are coming in
4 481, Dorothy Oldham, over sixty-five Date of
5 birth, 6/13/1942 Dorothy A Oldham, age sixty-seven,
6 wishes to be excused The State's position?

7 MR HEMBREE No objection

8 THE COURT Defense?

9 MR DIGGS No objection, there's an illness ---

10 THE COURT Excused

11 MR DIGGS --- in the family

12 THE COURT Very good

13 482, Robert L Oliver, over sixty-five Date of
14 birth, 2/4/1933, wishes to be excused, age seventy-six
15 The State's position?

16 MR HEMBREE No objection

17 THE COURT Defense?

18 MR DIGGS Your Honor, based on his health, we
19 don't have an objection

20 THE COURT All right, excused

21 The next one is 483, Nicholas Oppen Date of
22 birth, 12/17/1924, wishes to be excused What's the
23 State's position?

24 MR HEMBREE No objection, Your Honor

25 THE COURT Defense?

1 MR DIGGS Your Honor, we do object on age
2 THE COURT All right I'm going to excuse the
3 juror
4 484, 485 are coming in
5 486, got them as a school employee I've got
6 basically a little bit of information indicating it's
7 apparently a wage statement of some kind from Little
8 People's College, Bridgewater Academy, job title, Pre-K
9 teacher It says length of present employment, sixteen
10 years What's the State's position?
11 MR HEMBREE We would request that the juror be
12 transferred to another term of court
13 THE COURT Defense?
14 MR DIGGS Yeah, we don't object
15 THE COURT All right Transfer, Madam Clerk,
16 please
17 487, the Sheriff is still looking
18 488, a medical excuse Let's see what we have
19 here All right, it says the baby her -- the baby is
20 due November 26th, 2009 What's the State's position?
21 MR HUMPHRIES We ask that this juror be excused
22 THE COURT Defense?
23 MR DIGGS We don't object, Your Honor, if you
24 postpone that
25 THE COURT All right Excuse the juror

1 The next one, 489, is Geoffrey J Parsons, a
2 medical excuse from South Strand Internists, P A ,
3 unable to perform jury duty as he is sole caregiver to
4 handicapped family member, so under that particular
5 section, a handicapped brother apparently It says,
6 "Mother recently died " He's taken over the care of his
7 handicapped brother

8 All right, what's the State's position?

9 MR HEMBREE We don't have any objection to him
10 being -- well, maybe transferred, Your Honor He's got
11 a -- he's also a part- -- he works for Coastal Carolina
12 full-time, so he's able to manage both of those things
13 Of course, this juror will be sequestered I would ask
14 he be transferred to another term

15 THE COURT All right, sir What's the Defense's
16 position?

17 MR DIGGS We don't object

18 THE COURT All right

19 490 is coming in

20 491, the Sheriff is still looking

21 492, unable to locate

22 THE CLERK Do you want me to transfer 489?

23 THE COURT Yes, transfer that one

24 492, the Sheriff's affidavit says unable to locate
25 Melanie J Patrick in Horry County Moved to the State

1 of Ohio in 2006

2 493, a medical excuse We've got a document here
3 from the Social Security Administration On just the
4 first page of it, Office of Hearing and Appeals,
5 indicating that they -- a fully favorable decision,
6 found you disabled on December 16th, 2004, because of
7 impairments to the back so severe that you are unable to
8 perform sustained work You are precluded from your
9 injuries from working eight hours a day, five days per
10 week What's the State's position?

11 MR HEMBREE No objection to this juror being
12 excused, Your Honor

13 THE COURT Defense?

14 MR DIGGS Your Honor, we don't object

15 THE COURT All right, excused

16 494, 495, 496 are coming in

17 497 we have as deceased A copy of a death
18 certificate is attached, deceased May 26, 2008

19 498, unable -- or, sorry, no longer resides The
20 Clerk's affidavit shows that the juror does not reside
21 in the State of South Carolina from the information the
22 Clerk has

23 All right, 499, the juror is coming in

24 500, the Sheriff is looking

25 501, over sixty-five Date of birth, 9/4/1938,

1 Gloria Perritt, Ms Perritt being seventy-one, wishes to
2 be excused The State's position?

3 MR HEMBREE No objection, Your Honor

4 THE COURT Defense?

5 MR DIGGS No objection based on her health

6 THE COURT Excused

7 502, unable to locate The Sheriff's affidavit
8 states unable to locate Shannon E Peterson in Horry
9 County Subject has moved out of the state

10 503 is coming in

11 504, the Sheriff is looking

12 505 and 506 are coming in

13 507, the Sheriff is looking

14 508 is coming in

15 509, the Sheriff is looking

16 510 is coming in

17 511, a medical excuse I have a statement from
18 Inlet Medical Associates It basically states that she
19 is hard of hearing She can't hear in a large room
20 The person speaking has to be facing her so she can lip-
21 read What's the State's position?

22 MR HEMBREE No objection to excusing this juror,
23 Your Honor

24 THE COURT Defense?

25 MR DIGGS No objection

1 THE COURT Excused
2 512 and 513 are coming in
3 514, we've got no longer resides The Sheriff's
4 affidavit states unable to locate Earl S Proffitt in
5 Horry County Now lives in Rock Hill, South Carolina
6 515, 516 are coming in
7 517, 518, the Sheriff is still looking
8 519 has no longer resides The Sheriff's affidavit
9 states that Donna R Rakovan -- is unable to locate
10 Donna R Rakovan in Horry County, moved to Pennsylvania
11 in April of 2008
12 The next one, 520, Joanne P Rankin Date of
13 birth, 9/10/1942, over sixty-five Ms Rankin, being
14 sixty-seven, wishes to be excused What's the State's
15 position?
16 MR HEMBREE No objection, Your Honor
17 THE COURT Defense?
18 MR DIGGS We object
19 THE COURT Excused
20 All right, 521, Joseph Ray, we've got a work
21 letter Let's see what that is It's from Charles Ray
22 of Ray Realty It indicates that he has prepaid for a
23 business-related matter on November 11th, returning
24 November 17th What's the State's position?
25 MR HEMBREE We would ask that this juror be

1 transferred to another term

2 THE COURT Defense?

3 MR DIGGS No objection

4 THE COURT All right, ma'am, if you'll transfer
5 this juror, please, ma'am

6 522 is coming in

7 523, over sixty-five Date of birth, 10/9/1927,

8 Paul E Reinhardt, eighty-two, wishes to be excused

9 The State's position?

10 MR HEMBREE The State has no objection, Your
11 Honor

12 THE COURT All right Defense?

13 MR DIGGS Your Honor, we don't object because of
14 the hearing problem and his health

15 THE COURT All right Excused

16 524 is coming in

17 525, over sixty-five Date of birth, 10/18/1934,

18 Jessamine Richardson, wishes to be excused What's the

19 State's position?

20 MR RICHARDSON No objection, Your Honor

21 THE COURT Defense?

22 MR DIGGS We object

23 THE COURT Excused

24 526, Samuel Richardson Date of birth, 4/20/1939,

25 over sixty-five Mr Richardson, seventy years old,

(

1 wishes to be excused The State's position?

2 MR RICHARDSON No objection, Your Honor

3 THE COURT Defense?

4 MR DIGGS We object

5 THE COURT Excused

6 427 (sic), Zorah Richardson Date of birth,

7 5/30/1940, over sixty-five

8 THE CLERK What was the number?

9 THE COURT 527, Zorah S Richardson Ms

10 Richardson, sixty-nine, wishes to be excused The

11 State's position?

12 MR RICHARDSON No objection, Your Honor

13 THE COURT Defense?

14 MR DIGGS Your Honor, she apparently cares for

15 her husband who has Alzheimer's, so we don't object

16 THE COURT All right Excused

17 428 (sic), the Sheriff is still looking for that

18 particular person -

19 429 (sic), the Sheriff is looking for them

20 430 (sic) is coming in

21 THE CLERK Judge, I think it's 530

22 THE COURT It is What did I say? I'm sorry

23 528, the sheriff is looking for that particular

24 juror

25 529, the Sheriff is looking for that particular

(

1 juror

2 530 is coming in

3 531, have no longer resides

4 THE CLERK 531?

5 THE COURT Yes, ma'am, that's right Yeah, 531

6 no longer resides is what we have The Sheriff's

7 affidavit, unable to locate John T Rigglesman in Horry

8 County Moved to Commerce City, Colorado

9 532 is coming in

10 533, 534, the Sheriff is still looking

11 535, a medical excuse All right, we've got a

12 matter here, the Social Security Administration, Office

13 of Hearings and Appeals The case came before an

14 Administrative Law Judge, concludes that the claimant

15 has been disabled since January 21, 2002 Claimant

16 meets the insured status requirement of the Social

17 Security Act Claimant is not engaged in any

18 substantial gainful activity What's the State's

19 position?

20 MR RICHARDSON No objection to her being

21 excused, Your Honor

22 THE COURT Defense?

23 MR DIGGS We don't have any way of knowing the

24 extent of the disability, and so we would object

25 THE COURT Based upon the Social Security

1 Administration's statement, the juror questionnaire
2 indicating that she has short-term memory problems, the
3 medication that she's taking, ---

4 MR DIGGS Your Honor, we withdraw ---

5 THE COURT --- the back pain that she is in, I am
6 going to excuse her Thank you, sir

7 MR DIGGS Thank you

8 THE COURT All right, Maryanne Robinson, it says
9 she served jury duty June 4 of '07, so the automatic
10 exemption for one year does not apply She has to
11 request being excused, which she has done within the
12 three years What's the State's position?

13 MR RICHARDSON Your Honor, we would have no
14 objection to her being excused

15 THE COURT Defense?

16 MR DIGGS No objection

17 THE COURT Excused

18 437 (sic), over sixty-five Date of birth,
19 7/5/1938, Sanford Robinson Mr Robinson, being
20 seventy-one, wishes to be excused The State's
21 position?

22 MR RICHARDSON No objection, Your Honor

23 THE COURT Defense?

24 MR DIGGS No objection

25 THE COURT Excused

1 All right, 438 (sic) no longer resides 538 no
2 longer resides I'm sorry Unable to locate Lisa M
3 Rock in Horry County, moved to 401 Vermont Avenue,
4 Hagerstown, Maryland

5 539, Ryan Rodriguez, is coming in

6 540, the Sheriff is still looking for that
7 particular person

8 541, over sixty-five Date of birth, 8/9/1936,
9 Thomas J Rogers, seventy-three years of age, wishes to
10 be excused The State's position?

11 MR RICHARDSON No objection, Your Honor

12 THE COURT Defense?

13 MR DIGGS Your Honor, we don't object, but it's
14 based on the relation to law enforcement

15 THE COURT He's excused because of age

16 542 is coming in

17 543, over sixty-five Date of birth, 3/1/1939,
18 Nonnita M Rooney, age seventy, wishes to be excused
19 The State's position?

20 MR RICHARDSON No objection, Your Honor

21 THE COURT Defense?

22 MR DIGGS No objection

23 THE COURT Excused

24 The next one, 544, Amy E Ross, says school
25 employee Place of employment, Horry-Georgetown

1 Technical College, adjunct faculty instructor Business
2 hours, 9 00 to 3 00 Length of employment, two years
3 The State's position?
4 MR RICHARDSON No objection to her being
5 transferred, Your Honor
6 THE COURT Defense?
7 MR DIGGS No objection
8 THE COURT Transfer, Madam Clerk, please
9 545, the Sheriff is still looking
10 546, we've got as a school employee We've got a
11 statement here from Horry County Schools, Daisy
12 Elementary, and she works as a speech therapist, 7 15 to
13 3 00 Length of employment, three years, ten months
14 The State's position?
15 MR RICHARDSON No objection to a transfer, Your
16 Honor
17 THE COURT Defense?
18 MR DIGGS No objection
19 THE COURT Transfer, Madam Clerk, please
20 547 is coming in
21 548, the Sheriff is looking
22 549 is coming in
23 550 no longer resides The Sheriff's affidavit
24 states that unable to locate Harriet A Russell in Horry
25 County Moved to Winston-Salem, North Carolina

REVIEW OF ROLL CALL LIST FOR PANEL

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1 The next one, 551, the Sheriff is still looking
2 552 is coming in
3 553, unable to locate All right, unable to locate
4 Peter J Salerno, Sr in Horry County It is indicated
5 by the Sheriff's affidavit could not find a driver's
6 license or any more information
7 554, unable to locate The Sheriff's affidavit
8 states unable to locate Corisa L Salinas in Horry
9 County Unable to find any information on this person
10 Juror 555, the Sheriff's affidavit, unable to
11 locate Napier Denise H Salter in Horry County Not a
12 good address No forwarding found
13 556, over sixty-five Date of birth, 8/20/1942,
14 Elizabeth Sambleson Ms Sambleson, age sixty-seven,
15 wishes to be excused The State's position?
16 MR RICHARDSON The State has no objection, Your
17 Honor
18 THE COURT Defense?
19 MR DIGGS We object
20 THE COURT Excused
21 557, 558, and 559 are coming in
22 560, over sixty-five That is William H Schrock
23 Date of birth, 12/14/1928 Mr Schrock, being eighty
24 years of age, wishes to be excused The State's
25 position?

(

1 MR RICHARDSON No objection

2 THE COURT Defense?

3 MR DIGGS We object

4 THE COURT Excused

5 561 is coming in

6 562, we have unable to locate The Sheriff's

7 affidavit states that unable to locate Jenna C Scissons

8 in Horry County Moved to the State of Georgia in June

9 of 2008

10 563 and 564 are coming in

11 565 states she cannot understand English Looking

12 at the juror information, some of it appears to be

13 filled out in Spanish and some of it in English What

14 is the State's position?

15 MR RICHARDSON The State would have no problem

16 with this juror being excused, Your Honor

17 THE COURT Defense?

18 MR DIGGS No objection

19 THE COURT All right, excused

20 566, the Sheriff is still looking

21 567 and 568 are coming in

22 569, over sixty-five Date of birth, 9/11/1942,

23 Brenda K Shoemaker Ms Shoemaker, age sixty-seven,

24 wishes to be excused, also gave some medical

25 information The State's position?

(

1 MR RICHARDSON No objection, Your Honor

2 THE COURT Defense?

3 MR DIGGS No objection based on that
4 information

5 THE COURT Excused

6 570 is coming in

7 571 has some type of statement Let's see, a
8 travel schedule He's a senior vice president,
9 operations, House of Blues Clubs, and gave a summation
10 of his weekly travel schedule What's the State's
11 position?

12 MR RICHARDSON Your Honor, it would appear that
13 this is not anything unexpected It appears he travels
14 weekly, so we would ask that he come in

15 THE COURT All right, very good

16 Does the Defense agree?

17 MR DIGGS Yes, sir

18 THE COURT All right Ask that juror to come in,
19 please, ma'am

20 All right, 572 is coming in

21 573, a medical excuse, Dorothy A -- Dorothy
22 Simpson It's from Pain, Spine, and Sports Medicine
23 It just says, "Please excuse from jury duty due to low
24 back condition " What is the -- the employment appears
25 to be Edward Jones Investments, job title or

1 description, senior branch administrator Business
2 hours, 9 00 to 5 00 Length of employment, thirteen
3 years It does indicate a back condition and certain
4 medication What's the State's position?

5 MR RICHARDSON The State would ask that she come
6 in

7 THE COURT Defense?

8 MR DIGGS We agree

9 THE COURT Have the juror come in, please, ma'am
10 574 indicates a trip planned Let's see what that
11 is 574 is Willard Simpson He plans to be out of the
12 country from November 2nd through the 10th, 2009, and as
13 per the statement, it's apparently in Canada is where
14 he's going What's the State's position?

15 MR RICHARDSON Your Honor, the State would have
16 no objection to him being transferred

17 THE COURT Defense?

18 MR DIGGS No objection

19 THE COURT All right Transfer this juror,
20 please, ma'am

21 575 is coming in

22 576, a medical excuse 576, a statement from
23 Waccamaw Cardiology Due to recent heart attack and
24 stents, her heart and heart arteries, re-admitted to
25 hospital with atrial fibrillation This was dated

REVIEW OF ROLL CALL LIST FOR PANEL

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1 September 23rd, 2009 What's the State's position?
2 MR RICHARDSON The State would have no objection
3 to a transfer, Your Honor
4 THE COURT Defense?
5 MR DIGGS No objection
6 THE COURT We'll excuse the juror, Madam Clerk
7 577, coming in
8 578, unable to locate The Sheriff's affidavit
9 states unable to locate Francis P Siratt in Horry
10 County, could not find house or mail box number
11 Neighbor did not know name
12 579, 580, 581, the Sheriff is still looking
13 582 is coming in
14 583, 584, the Sheriff is looking
15 585, a school employee, Amy Smith A statement
16 here from the principal of North Myrtle Beach Middle
17 School She's currently employed as a school teacher
18 at North Myrtle Beach Middle School The State's
19 position?
20 MR RICHARDSON No objection to a transfer, Your
21 Honor
22 THE COURT Defense?
23 MR DIGGS No objection
24 THE COURT Transfer her to the summer, Madam
25 Clerk

1 586 is coming in

2 587, a trip planned, Henry Smith All right, you
3 have the information What's the State's position?

4 MR RICHARDSON Your Honor, we would ask that he
5 be empaneled on the 9th It looks like he's coming
6 back ---

7 THE COURT So excuse him from the 6th and have
8 him come in on Monday or whenever he is placed on a
9 panel on the 6th?

10 MR RICHARDSON Yes, sir

11 THE COURT All right Does the Defense agree?

12 MR DIGGS Yes, sir

13 THE COURT All right Madam Clerk, we'll note
14 this is another one that we'll need to swear when they
15 come in

16 All right, 588, the Sheriff is still looking

17 589, no longer resides Affidavit of the Clerk
18 indicates that though she -- the juror lives in the
19 Murrells Inlet area, it's the Georgetown County part of
20 Murrells Inlet, so she does not live in Horry County
21 (Juror 590 is skipped by the Court)

22 All right, 591, over sixty-five Date of birth,
23 10/24/1942, Morris Smith Mr Smith, being sixty-seven,
24 wishes to be excused The State's position?

25 MR RICHARDSON No objection, Your Honor

1 THE COURT Also indicated he received a
2 misdemeanor criminal sentence for insurance fraud The
3 Defense's position?

4 MR DIGGS We object

5 THE COURT Did you have any information on his
6 criminal status?

7 MR RICHARDSON Bear with me just a second, Your
8 Honor

9 THE COURT Well, I'm going to -- he's over sixty-
10 five I'm going to excuse him, but I'll also note the
11 criminal record of that particular juror

12 All right, 592 is coming in

13 593, the Sheriff is looking

14 594, the Sheriff -- I'm sorry -- is coming in

15 595, unable to locate All right, we've got the
16 Sheriff's affidavit, unable to locate Charles L Soles
17 in Horry County Now resides at 462 Cox Ann Road in
18 Tabor City, North Carolina

19 All right, 596, the Sheriff is still looking

20 597 and 598 is coming in

21 599, over sixty-five, Kenneth Staley Date of
22 birth, 4/20/1943, Mr Staley being sixty-six, wishes to
23 be excused The State's position?

24 MR RICHARDSON No objection, Your Honor

25 THE COURT Defense?

1 MR DIGGS We object

2 THE COURT Excused

3 600, the Sheriff is looking

4 601 and 602, the Sheriff is looking

5 603, over sixty-five Date of birth, 8/20/1937,

6 Wayne G Staves, being seventy-two and wishes to be

7 excused Also indicates the problems that his wife has

8 being permanently disabled The State's position?

9 MR RICHARDSON No objection, Your Honor

10 MR DIGGS Yeah, no objection, Your Honor, based
11 on that latter statement

12 THE COURT All right, excused

13 604 no longer resides The Sheriff's affidavit
14 states that unable to locate Lyndsi D Stearn in Horry
15 County, moved to Philadelphia, Pennsylvania

16 The next one is 605, Ruth Stebbins Date of
17 birth, 5/24/1939, over sixty-five Ms Stebbins,
18 being age seventy, wishes to be excused The State's
19 position?

20 MR RICHARDSON No objection, Your Honor

21 THE COURT Defense?

22 MR DIGGS No objection based on her illness

23 THE COURT All right, very good Excused

24 We've got 606, unable to locate The Sheriff's
25 affidavit states unable to locate Ryan T Stefanides in

1 Horry County Checked Post Office and DMV, no
2 information found

3 The Sheriff is looking for 608 and 607 -- 607 and
4 608

5 609 says school employee All right, I've got a
6 card showing a -- dated August 19th, 2009, showing a
7 faculty I D card from Socastee High School Looking at
8 the juror information line, place of employment,
9 Socastee High School, science department, 7 45 to 3 45,
10 sixteen years The State's position?

11 MR RICHARDSON No objection to a transfer, Your
12 Honor

13 THE COURT Defense?

14 MR DIGGS No objection

15 THE COURT Transfer to the summer, Madam Clerk

16 The Sheriff is looking for 610, 611, 612

17 613, over sixty-five Date of birth, 7/1/1923,
18 Opal P Suggs, Ms Suggs, being eighty-six, wishes to
19 be excused The Defense position? I'm sorry The
20 State's position? I'm sorry

21 MR RICHARDSON No objection, Your Honor

22 THE COURT All right, and the Defense position
23 on ---

24 MR DIGGS No objection, Your Honor, ---

25 THE COURT I'm sorry?

1 MR DIGGS No objection based on the health

2 THE COURT All right, excused

3 614, Dennis M Sullivan, over sixty-five Date of
4 birth, 7/11/1943 Mr Sullivan, being sixty-six, wishes
5 to be excused What's the State's position?

6 MR RICHARDSON No objection

7 THE COURT Defense?

8 MR DIGGS Your Honor, we don't object because of
9 vacation plans that apparently have been paid for

10 THE COURT All right I'm going to excuse the
11 juror

12 615, the Sheriff is looking

13 616, no longer resides 616, the Sheriff's
14 affidavit says unable to locate Dennis S Szakacs in
15 Horry County Moved to North Brunswick, New Jersey

16 617, Roslyn V Szymanski Unable to locate Roslyn
17 Szymanski in Horry County by the Sheriff's affidavit
18 Moved to San Jose, California

19 The next one is 618, medical information This is
20 Russell G Taylor This medical information is as a
21 result of his wife's situation and treatment with the --
22 having been transferred recently from Magnolia OB-GYN to
23 the Hollings Cancer Center at MUSC, talking about the
24 severity of her diagnosis, and he being her
25 transportation

REVIEW OF ROLL CALL LIST FOR PANEL

162

1 The State's position?

2 MR RICHARDSON No objection, Your Honor

3 THE COURT Defense?

4 MR DIGGS No objection

5 THE COURT Excused

6 619 indicates they are a school employee We have
7 a statement here -- well, just a statement of the person
8 saying they are a school employee and wish to be
9 transferred Let's look at their juror information It
10 says place of employment, Horry County School, indicates
11 he is a grounds-building custodian, 6 00 to 6 00

12 What's the State's position?

13 MR RICHARDSON No objection, Your Honor

14 THE COURT Defense?

15 MR DIGGS No objection

16 THE COURT All right You can transfer him to
17 another term

18 620 no longer resides Affidavit of the Sheriff
19 says unable to locate William H Temple in Horry County
20 Now residing in Charleston, South Carolina

21 621 and 622, the Sheriff is still looking

22 623, over sixty-five Date of birth, 6/15/1928

23 David A Thomas, being eighty-one, wishes to be excused

24 The State's position?

25 MR RICHARDSON No objection, Your Honor

1 THE COURT Defense?
2 MR DIGGS We object
3 THE COURT Excused
4 624, unable to locate The Sheriff's affidavit
5 states that unable to locate Dwight J Thomas in Horry
6 County Tried several times, no answer at this
7 residence No forwarding found
8 625, the Sheriff is still looking
9 626, no longer resides The Sheriff's affidavit
10 states that unable to locate Ginger H Thompkins in
11 Horry County Moved to Valles Mines, Missouri
12 All right, 627, unable to locate The Sheriff's
13 affidavit says unable to locate Brandon J Tilley in
14 Horry County No change on DMV, no forwarding found at
15 Post Office or apartment
16 628, the Sheriff is still looking
17 629, over sixty-five Date of birth, 1/20/1944,
18 Bonnie S Todd Ms Todd wishes to be excused The
19 State's position The State's position?
20 MR RICHARDSON No objection, Your Honor
21 THE COURT Defense?
22 MR DIGGS No objection
23 THE COURT 630, Charlie C Todd Date of birth,
24 1/18/1929, over sixty-five Mr Todd, being eighty, and
25 indicating he was unable to fill out the questionnaire,

REVIEW OF ROLL CALL LIST FOR PANEL

164

1 wishes to be excused The State's position?

2 MR RICHARDSON 630, Your Honor?

3 THE COURT 630, over sixty-five

4 MR RICHARDSON Your Honor, the State has no
5 objection

6 THE COURT Defense?

7 MR DIGGS Your Honor, we don't object based on
8 his inability to fill out the paperwork

9 THE COURT Very good Excused for age
10 631, 632, 633, 634, the Sheriff is still looking
11 635, unable to locate All right, the Sheriff's
12 affidavit says unable to locate William B Truitt in
13 Horry County Checked with maintenance, but believe
14 this subject passed away two years ago There's a
15 person by the name of Vaughn in the residence

16 Regarding 636, unable to locate The Sheriff's
17 affidavit says unable to locate Sandra R Trull in
18 Horry County No phone listing No such numeric
19 address

20 637, and 638, and 639, the Sheriff is still
21 looking

22 640, unable to locate The Sheriff's affidavit
23 says unable to locate Douglas A Valero in Horry County
24 Driver's license suspended for failure to pay No
25 longer at this address

1 641 and 642, the Sheriff is still looking
2 643, we have as a criminal record We have a copy
3 here of an incarcerated inmate search from the South
4 Carolina Department of Corrections, for assault with
5 intent to kill, sentence length nine years, and he
6 started his incarceration 3/4/2009 The State's
7 position?

8 MR RICHARDSON We would wish that he be excused

9 THE COURT Defense?

10 MR DIGGS We agree

11 THE COURT He's excused because of his criminal
12 record

13 All right, 644, unable to locate The Sheriff's
14 affidavit indicates unable to locate Michael M Vereen
15 in Horry County, no forwarding, no phone, and no power

16 645, unable to locate The Sheriff's affidavit
17 indicates unable to locate Jennifer L Volpe in Horry
18 County No one at address given The South Carolina
19 tag number not registered to Volpe that was at the
20 address

21 646, over sixty-five, Arlene Vong Date of birth,
22 12/16/1932 Ms Vong, being seventy-six, wishes to be
23 excused The State's position?

24 MR RICHARDSON No objection

25 THE COURT Defense?

1 MR DIGGS Your Honor, she says she's in bad
2 health, so we don't object

3 THE COURT Excused

4 647, the Sheriff is still looking for that person

5 648, unable to locate The Sheriff's affidavit
6 indicates unable to locate Ayeshia S Walker in Horry
7 County No longer lives there Unknown where she
8 moved She still has mail at this address and new
9 tenants send it back Current tenant, Claire Johnson,
10 has lived there for almost one year and does not know
11 this person

12 All right, for 649, unable to locate The
13 Sheriff's affidavit indicates to locate Deborah Walker
14 in Horry County Clara Johnson has lived at this
15 address for a year

16 650, the Sheriff is still looking

17 651 is a student All right, we've got a statement
18 here from Horry-Georgetown Tech indicating that they are
19 registered and taking courses for the Fall of 2009, a
20 full-time nursing student What's the State's
21 position?

22 MR RICHARDSON No objection, Your Honor, to a
23 transfer

24 THE COURT Defense?

25 MR DIGGS No objection

1 THE COURT All right Transfer her to the
2 summer, please, Madam Clerk

3 652, unable to locate The Sheriff's affidavit
4 indicates unable to locate Renee F Wallace in Horry
5 County Unable to find any further information or
6 driver's license information

7 653 is over sixty-five, Christina Walsh Date of
8 birth, 9/4/1940 Ms Walsh, being sixty-nine, wishes to
9 be excused It also says she has a disabled son that
10 she cares for The State's position?

11 MR RICHARDSON No objection, Your Honor

12 THE COURT Defense?

13 MR DIGGS No objection based on that ground

14 THE COURT All right, excused

15 All right, 654, 655, 656, 657, 658, the Sheriff is
16 still looking for those individuals

17 658 (sic) is coming in

18 660, the Sheriff is still looking

19 661, 662, the Sheriff is still looking

20 663, Estelle B Weaver, over sixty-five Date of
21 birth, 11/25/1925 Ms Weaver, being eighty-three
22 years of age, wishes to be excused The State's
23 position?

24 MR RICHARDSON No objection, Your Honor

25 THE COURT Defense?

REVIEW OF ROLL CALL LIST FOR PANEL

168

1 MR DIGGS We object

2 THE COURT Excused

3 The Sheriff is looking for 664

4 665 says over sixty-five, Mildred H Welch

5 5/31/1938, Ms Welch being seventy-seven, wishes to be
6 excused The State's position?

7 MR RICHARDSON No objection

8 THE COURT Defense?

9 MR DIGGS We object

10 THE COURT Excused

11 All right, 666, Virginia A Welles, over sixty-
12 five Date of birth, 9/12/1927 Ms Welles, being
13 eighty-two years of age, wishes to be excused The
14 State's position?

15 MR RICHARDSON No objection, Your Honor

16 THE COURT Defense?

17 MR DIGGS Your Honor, we object

18 THE COURT Excused

19 All right, the Sheriff is looking for 667, 668,
20 669, 670, 671, 672

21 673, the indication being a student We have
22 information here from Coastal Carolina University
23 indicating current enrollment The date of the
24 enrollment and a verification certificate is October
25 14th, 2009 The State's position?

1 MR RICHARDSON No objection to a transfer, Your
2 Honor
3 THE COURT Defense?
4 MR DIGGS No objection
5 THE COURT Transfer her to the summer, please,
6 ma'am
7 674, over sixty-five Date of birth, 2/22/1944,
8 Ronald B Whetstone Mr Whetstone, being over
9 sixty-five, wishes to be excused The State's
10 position?
11 MR RICHARDSON No objection
12 THE COURT Defense?
13 MR DIGGS We object
14 THE COURT Excused
15 All right, 675, William R Whisnant, over sixty-
16 five Date of birth being 9/6/1929 Mr Whisnant,
17 being eighty years of age, wishes to be excused The
18 State's position?
19 MR RICHARDSON No objection, Your Honor
20 THE COURT Defense?
21 MR DIGGS We object
22 THE COURT Excused
23 676, there's an indication unable to locate The
24 Sheriff's affidavit states that unable to locate
25 Timothy J Whitbeck in Horry County House at given

REVIEW OF ROLL CALL LIST FOR PANEL

170

1 address is empty No forwarding information

2 The Sheriff is looking for 677

3 678, Wanda White Date of birth, 3/1/1934, over
4 sixty-five Ms White, being seventy-five, wishes to be
5 excused Also, the Court notes certain medical
6 information she provided The State's position?

7 MR RICHARDSON No objection, Your Honor

8 THE COURT Defense?

9 MR DIGGS Okay, we agree, Your Honor, based on
10 the medical

11 THE COURT 678 excused

12 All right, 679, Bernice A Whittington Date of
13 birth, 9/28/1922, Ms Whittington being eighty-seven
14 years of age, wishes to be excused The State's
15 position?

16 MR RICHARDSON No objection, Your Honor

17 THE COURT Defense?

18 MR DIGGS No objection based on her health

19 THE COURT Excused

20 The next one is 680, Allison R Wible Date of
21 birth, 1/9/1943 Ms Wible, being sixty-six, wishes to
22 be excused The State's position?

23 MR RICHARDSON No objection

24 THE COURT Defense?

25 MR DIGGS Again, Your Honor, no objection based

(

1 on the health of the juror

2 THE COURT All right, excused

3 681, William Wickliffe Date of birth, 8/2/1944

4 Mr Wickliffe, being over sixty-five, wishes to be

5 excused The State's position?

6 MR RICHARDSON No objection, Your Honor

7 THE COURT Defense?

8 MR DIGGS We object, Your Honor

9 THE COURT Excused

10 All right, the Sheriff is looking for 682, 683,

11 684, 685, and 686

(

12 687 indicates they are over sixty-five Date of

13 birth, 10/17/1942, Barbara F Williamson Ms

14 Williamson being seventy-two (sic), wishes to be

15 excused What's the State's position? I'm sorry I

16 had the wrong date of birth Her date of birth,

17 1/30/1937 I'm sorry, date of birth, 1/30/1937, age

18 seventy-two What's the State's position?

19 MR RICHARDSON No objection, Your Honor

20 THE COURT Defense?

21 MR DIGGS Your Honor, because she says she's

22 ill, we don't object

23 THE COURT Excused

24 The Sheriff is looking for 688

(

25 689, we've got an unable to locate The Sheriff's

1 affidavit indicates that unable to locate David L
2 Wilson in Horry County No forwarding address per Loris
3 Post Office
4 690, the Sheriff is still looking
5 691, unable to locate Rickey Wilson Unable to
6 locate Rickey J Wilson in Horry County by the
7 Sheriff's affidavit Could not locate anyone at this
8 address
9 The Sheriff is still looking for 692, 693, 694,
10 695, 696, 697
11 698, we've got an unable to locate The Sheriff's
12 affidavit says unable to locate Constance C Yun in
13 Horry County Moved from given address No forwarding
14 found
15 699, unable to locate The Sheriff's affidavit
16 states unable to locate Nathaniel D Zinnel in Horry
17 County House address -- house at this address is for
18 sale No forwarding found
19 700, the Sheriff is still looking
20 All right, we have gone through the information
21 that we have We've set up another date for next
22 Friday Counsel will go over the ones that the Sheriff
23 was still searching for at that point in time
24 Also, there were a few that we had a criminal
25 record and the State was going to give those to the

1 Defense and then we could review those individuals with
2 a criminal record also next Friday

3 Anything further from the State at this point in
4 time?

5 MR HEMBREE No, Your Honor

6 THE COURT From the Defense?

7 MR DIGGS No, Your Honor

8 MS WILLIAMS Well, Your Honor, the only thing I
9 was going to say was we briefly discussed it last time
10 about having our client transported from Lieber to be
11 left here

12 THE COURT And I'm going to allow him once he is
13 transported back on the 30th

14 MS WILLIAMS Well, Your Honor, what we were
15 going to have to -- if it would be okay if we could
16 actually have him on the 2nd Apparently there's
17 something going on at Lieber that weekend, but either
18 to ---

19 THE COURT Well, he has to be here on the 30th

20 MS WILLIAMS Yes, sir

21 THE COURT Okay, so you want him to go back and
22 then come back on the 2nd

23 MS WILLIAMS On Monday

24 THE COURT On Monday?

25 MS WILLIAMS Yes, sir That -- that is our

1 request, and if that would be okay, we can obviously do
2 an order for you

3 THE COURT Okay What is it that we can't -- I'm
4 sorry, I just don't understand Why is it that when he
5 comes here on the 30th he would just not stay until the
6 trial was over with?

7 MS WILLIAMS The Court's indulgence one minute

8 THE COURT Yes

9 MS WILLIAMS Your Honor, what it is, is there's
10 a fellowship seminar at the prison that weekend that Mr
11 Stanko would like to participate in

12 THE COURT I appreciate that What I'm going to
13 have is if -- and I understand that y'all need to work
14 with Mr Stanko and I want him here for your help When
15 he comes on the 30th, then he'll stay with us until the
16 end of the trial proceedings in this matter

17 Madam Clerk, if you will communicate with the
18 Sheriff and inform the Sheriff and make sure that they
19 are aware that Mr Stanko will be with us starting the
20 30th of October, next Friday, until the trial is
21 concluded in this matter, all right?

22 THE CLERK Yes, sir

23 THE COURT All right, thank you, ma'am
24 Anything further from the State?

25 MR HEMBREE No, Your Honor

(

1 THE COURT Anything further from the Defense?

2 MR DIGGS No, Your Honor

3 THE COURT Thank you very much

4 (Conclusion of Transcript of Record)

5

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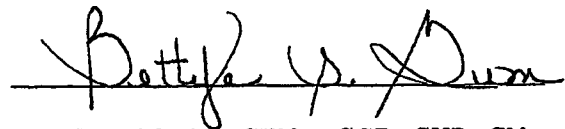
1 STATE OF SOUTH CAROLINA)

2 COUNTY OF HORRY)

3
4 I, the undersigned Bettye S Gum, Certified Court
5 Reporter and Notary Public in and for the State of South
6 Carolina, do hereby certify that the foregoing is a
7 true, accurate and complete Transcript of Record of all
8 the proceedings had and evidence introduced in the
9 hearing of the captioned case, as taken by Dixie Cox
10 Eubank, Official Reporter, and transcribed by me,
11 relative to appeal, in the Court of General Sessions for
12 Horry County, South Carolina

13 I do further certify that I am neither of kin,
14 counsel, nor interest to any party hereto

15
16
17 July 7, 2010

18
19 

20 BETTYE S GUM, CCR-CVR-CM

21 Certified Court Reporter and
22 Notary Public for South Carolina
23 My Commission Expires 7/13/14
24
25

STATE OF SOUTH CAROLINA) THE COURT OF GENERAL SESSIONS
COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT
05-GS-26-2927

State of South Carolina,)
) Plaintiff,)
) -VS-) TRANSCRIPT OF RECORD
) Stephen Christopher Stanko,)
) Defendant)
_____)

October 30, 2009
Conway, South Carolina

B E F O R E

HONORABLE STEVEN H JOHN, Circuit Judge

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(SW) STATE'S WITNESS
(DW) DEFENSE WITNESS

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E X H I B I T I N D E X

(No Exhibits Marked)

1 THE COURT All right, looking at the roll call
2 list, Madam Clerk, I understand from the number that the
3 Sheriff is looking at, there are still a few that the
4 Sheriff is still looking for Do you have that, ma'am?
5 THE CLERK I do
6 THE COURT All right Could you tell me those?
7 MS WILLIAMS Your Honor, I'm sorry, if I may
8 before we begin, the Court has to direct if we may have
9 Mr Stanko's -- at least one hand free so that he can
10 take his notes during the proceeding
11 THE COURT All right Please, if y'all don't
12 mind doing that, to release one hand so he can make some
13 notes, please
14 Thank y'all
15 MS WILLIAMS Thank you, sir
16 THE COURT All right, Madam Clerk, go ahead
17 THE CLERK Yes, sir
18 Number 6, Mayra Alfonso Number 26, Thomas
19 Aumiller 37, Darryl Bayne 43, Daniel Begley 84,
20 Rolando Calixto 98, Ray Caulk 116, Eryca Cook
21 THE COURT Hold on one second All right
22 MR HEMBREE Judge, I'm just curious What are
23 these? Which ---
24 THE CLERK These are the ones the Sheriff ---
25 THE COURT The Sheriff is still looking for

REVIEW OF ROLLCALL LIST FOR PANEL

4

1 MR HEMBREE Okay, understood

2 THE CLERK 129, Robert Crowe 185, Stuart
3 Emmons 209, Nicolas Fowler 255, Richard Gregory
4 272, Deborah Hattem 540, Melody Rogers 545, Scott
5 Roth

6 THE COURT All right, hold on one second All
7 right, go ahead

8 THE CLERK 600, Barbara Stanley And 686,
9 Barbara Williamson

10 THE COURT All right, so those are the numbers of
11 the ones that the Sheriff is still trying to locate or
12 get some information on

13 Now what we'll do is go to the ones that since last
14 Friday the Sheriff has located and we'll go to the first
15 one that's number 7, Carolyn S Allen, and I've got
16 information that this juror is over sixty-five Her
17 birthday, 10/7/42, age sixty-seven, does not wish to
18 serve The State's position?

19 MR HEMBREE No objection, Your Honor

20 THE COURT Defense?

21 MR DIGGS Your Honor, we would object

22 THE COURT All right I'm going to excuse this
23 particular juror

24 Number 15 is unable to locate by the Sheriff It
25 states it's -- the Sheriff's affidavit states unable to

1 locate Darren J Anderson in Horry County Moved from
2 given address No forwarding found

3 Number 16, we have some information about a
4 commissioned law enforcement officer He works for
5 Probation, is that correct, Madam Clerk?

6 THE CLERK A DEU Unit, a DEU officer, I think,
7 from Probation, out of Probation That's what he had
8 told me

9 THE COURT All right Solicitor, do we have --
10 is that the information y'all have?

11 MR HEMBREE Yes, Your Honor, that's he an
12 officer with South Carolina Probation, Pardon, & Parole
13 Services, and they do have someone assigned to the DEU
14 Task Force, so I don't -- either way, he's a
15 commissioned law enforcement officer

16 THE COURT All right, very good, and the
17 Defense's position?

18 MR DIGGS Your Honor, we don't -- he's being
19 excused, is that correct?

20 THE COURT Well, that's what I'm asking you
21 He's ---

22 MR DIGGS All right Well, we don't object to
23 him being excused and we ask that he be excused

24 THE COURT All right, very good He is excused
25 All right, the next one we have, then, is Number

REVIEW OF ROLLCALL LIST FOR PANEL

6

1 27

2 THE CLERK She came in to see me this morning
3 She could not read or write in English

4 THE COURT All right The Clerk informs me that
5 this juror came in to speak to the Clerk this morning,
6 indicates she cannot write the English language and as
7 it indicates, barely is able to speak the English
8 language What is ---

9 MR HEMBREE The State has no objection to
10 excusing this juror

11 THE COURT Defense?

12 MR DIGGS We don't object to her being excused

13 THE COURT All right, excused

14 The next one we have, then, is Number 41 ---

15 THE CLERK Number 34

16 THE COURT Oh, I'm sorry Okay, 34, I'm sorry
17 I skipped over somebody Number 34, I'm sorry

18 Number 34, Jay T Basham The Sheriff's affidavit
19 indicates that unable to locate Jay T Basham, Jr in
20 Horry County Not at given address No forwarding
21 found

22 All right, now we'll go to Number 41 That juror
23 did fill out the juror questionnaire and is coming in

24 The next one after that, then, is Number 61,
25 Margaret Bolt, over sixty-five, wishes to be excused

1 Date of birth, 8/23/1921 The State's position?
2 MR HEMBREE No objection to excuse this juror
3 THE COURT Defense?
4 MR DIGGS Your Honor, we would object
5 THE COURT Excused
6 The next one is juror number 64 Juror number 64
7 has filled out the juror questionnaire form and will be
8 coming in
9 The next one is juror number 73 Juror number 73
10 has filled out the juror questionnaire form and will be
11 coming in
12 The next one is juror number 76 Juror number 76
13 has filled out the juror questionnaire form and will be
14 coming in
15 The next one we need to go to is juror number 91
16 The Sheriff's affidavit indicates that is unable to
17 locate Candace A Carter in Horry County Advised by
18 foster father this person is in the military in the
19 State of Kansas Has been serving in the military for
20 three years The State's position?
21 MR HEMBREE Please excuse this juror, Your
22 Honor
23 THE COURT Defense?
24 MR DIGGS Your Honor, we don't object to an
25 excusal

REVIEW OF ROLLCALL LIST FOR PANEL

8

1 THE COURT All right, excused

2 The next one we have is juror number 108 The
3 Sheriff's affidavit indicates that Samantha N Clemmons
4 -- unable to locate Samantha N Clemmons in Horry
5 County Now resides in Hallsboro, North Carolina

6 The next one we have is juror number 112 Let's
7 see, 112, unable -- we've got here unable to locate It
8 says, "Review for criminal history " That was the one
9 -- we might have gone over 112 last time, but we
10 indicated there was a criminal history

11 Solicitor, y'all gave a copy of that to the
12 Defense?

13 MR HEMBREE I believe we have not yet, Your
14 Honor

15 THE COURT Okay Well, how about y'all do that
16 I had hoped we had so they could make a decision on
17 that, but ---

18 MR HUMPHRIES Your Honor, is this an unable to
19 locate?

20 THE COURT I'm sorry, this was an unable to
21 locate, so we don't have to worry about them All
22 right, I'm sorry I was just looking at the notes on
23 the side instead of the UTL on the other side

24 All right, let's go to 118 I'm sorry All right,
25 118, Lucinda A Cook has a medical excuse, let's see,

1 from Pain, Spine, and Sports Medicine It says, "Please
2 excuse from jury duty " I don't know what that word is,
3 and then it's some word that I cannot decipher -- "to
4 medical problems " Looking at the juror questionnaire
5 form to see if that will help us in any way -- do y'all
6 have a copy of the juror questionnaire form?

7 MR HUMPHRIES We do, Your Honor

8 THE COURT If y'all will look at the answers to
9 questions 21 and 48

10 MR HUMPHRIES Yes, sir We don't have any -- we
11 don't have any problem with excusing that juror

12 THE COURT What's the Defense's position?

13 MR DIGGS Your Honor, we don't have any
14 objection to her being excused

15 THE COURT All right We'll excuse juror number
16 118, Madam Clerk

17 All right, so 120, apparently we were going to
18 review for criminal history, but the Sheriff has
19 indicated -- here is the Sheriff's affidavit, unable to
20 locate Thomas C Cooper in Horry County Vacant mobile
21 home at given address No forwarding found, so that's
22 120

23 All right, the next one we have, then, is 125
24 We've got a statement from the juror, Erin Counts,
25 indicates she has two children under the age of seven,

1 is unable to provide alternative or adequate child care
2 It is her notarized affidavit to that effect What is
3 the State's position?

4 MR HEMBREE Your Honor, Ms Counts would be
5 entitled to an excusal We would ask that she be
6 excused

7 THE COURT Defense?

8 MR DIGGS No objection

9 THE COURT All right, excused

10 All right, Juror Number 126, we have a copy of a
11 death certificate The juror died on 10/5/09

12 The next one is juror -- let's see, number 142
13 She indicates in her verification to the Clerk that she
14 is the primary caretaker of a disabled person, or a
15 person age sixty-five or older who cannot care for
16 themselves Let's look at the juror -- got a place of
17 employment, though, as Blue Cross-Blue Shield, claims
18 associate Business hours, 8 00 to 4 00, length of
19 employment, fifteen years This apparently is one
20 employee that does work from home through -- for Blue
21 Cross-Blue Shield through a computer set-up at home

22 Do we have any information about who this person is
23 that they're taking care of?

24 MR HUMPHRIES The husband I think it's the
25 husband

1 MR HEMBREE She says the husband is totally
2 disabled

3 THE COURT It says spouse's name is Robert C
4 Davis -- oh, retired/disabled I'm sorry, so it does
5 indicate the spouse is retired/disabled Oh, here it
6 is, 23. "My husband is a hundred percent disabled," in
7 question number 23 All right, what's the State's
8 position?

9 MR HEMBREE We'd ask that Ms Davis be excused

10 THE COURT Defense?

11 MR DIGGS We -- we agree and join in the motion

12 THE COURT All right, excused

13 All right, the next one is 143 The Sheriff's
14 affidavit, unable to locate Henry A Davis in Horry
15 County, gone from given address for two weeks No
16 forwarding found That's juror number 143

17 The next one that we have is 144 The Sheriff's
18 affidavit, unable to locate Jimmy D Davis in Horry
19 County Not at given address No forwarding found

20 Going to juror number 158, juror number 158 filled
21 out the juror questionnaire and is coming in

22 Then we go to juror number 183 There was a change
23 in the address for juror number 183, filled out the
24 juror questionnaire form and is coming in

25 Going down to juror number 192, the only

1 information we have from juror number 192 is a statement
2 from Surgical Associates of Myrtle Beach signed by Mark
3 R Borowicz, M D , reference Donna Hinson, juror number
4 192 "To whom this may concern "Donna Hinson has been
5 called to serve jury duty on 11/9/09 Her husband,
6 Donald Hinson, is scheduled to have major surgery on the
7 same day and she will need to be with him Therefore,
8 Mrs Hinson will be unable to serve as a juror at that
9 time "

10 What's the State's position?

11 MR HEMBREE Your Honor, we ask that this juror
12 be required to come in on the 6th It's just unclear
13 here if that major surgery is going to require her to be
14 with him for a period of time or just the 9th If it's
15 just the 9th, we could certainly address that by -- even
16 if she was selected in a first-day panel, we could just
17 carry her -- her voir dire over until the 10th or 11th

18 THE COURT What's the Defense's position?

19 MR DIGGS Your Honor, we don't object to her
20 being excused The doctor said major surgery You
21 know, that probably includes some follow-up time, and so
22 we don't object to her being excused and rescheduled

23 THE COURT Do we have a phone number for this
24 individual, Madam Clerk? We didn't get anything else
25 other than this document?

1 I'll excuse this particular juror
2 THE COURT REPORTER Barbara Farmer is listed on
3 mine as juror 192
4 THE CLERK What number is on that?
5 THE COURT That's right
6 THE CLERK What number is written on the top up
7 there?
8 THE COURT 192, 192, and this is as to Donna
9 Hinson I'm sorry
10 THE CLERK We have the wrong number on there
11 THE COURT I'm sorry We were talking about the
12 wrong particular person, so who is ---
13 THE COURT REPORTER Barbara Farmer is listed as
14 192
15 THE COURT Barbara Farmer is 192 Thank you,
16 Madam Court Reporter I'm sorry
17 So what do we have for Ms Barbara Farmer? Do we
18 have anything on her?
19 THE CLERK We don't have anything on her
20 THE COURT I don't know what Ms Hinson's number
21 is
22 MR HUMPHRIES She doesn't appear
23 MR HEMBREE She may be summoned for another term
24 of court, Judge
25 THE CLERK I bet you she is for my other November

1 the 9th

2 THE COURT She probably is That's what it is,
3 so do we have anything on 192 at all? Let's look at
4 192

5 MR DIGGS Your Honor, she's over sixty-five

6 THE COURT Did we address that last time?

7 THE CLERK No, we did not address that last time

8 THE COURT Do we have a questionnaire?

9 THE CLERK We do not because I got it mixed up
10 with the other one

11 THE COURT All right, so we're going to add 192,
12 Barbara Farmer, to the Sheriff's list and the Sheriff
13 will go out and try and get some information on juror
14 number 192, all right?

15 THE CLERK I'm sorry, Your Honor

16 THE COURT That's all right

17 Okay, 202, I've got a note here is a review for
18 criminal history

19 THE CLERK I have no paperwork

20 THE COURT 202, did y'all -- Solicitor, that was
21 something y'all had, a criminal history? Did you give a
22 copy of that to the Defense?

23 MR HEMBREE We have not We can share it with
24 him

25 THE COURT All right What do we have on

1 juror ---

2 MR HEMBREE We have a breaking into motor
3 vehicle It was five years suspended on five years
4 probation, a conviction in 1996

5 THE COURT All right Mr Diggs, what's the
6 Defense's position on juror number 202?

7 MR DIGGS Your Honor, we don't object to him
8 being excused based on his history

9 THE COURT All right, very good 202 is excused
10 then

11 All right, going to juror number 203, we have an
12 affidavit from the Sheriff's Office, unable to locate
13 Clara W Ford in Horry County Not at given address
14 Subject possibly living in Murrells Inlet Her neighbor
15 could not obtain a physical address Obtained phone
16 number, called, left message No response That was
17 203

18 All right, 207, we did have a matter about criminal
19 history, but we have a Sheriff's affidavit unable to
20 locate, unable to locate Jonthan Foster in Horry County
21 Not at this address No such name at the United States
22 Postal Service No forwarding found

23 The next we go down to is 222 This juror did fill
24 out the juror questionnaire and supplied that
25 information Was there some criminal history

1 information that you had, Solicitor?

2 MR HEMBREE Yes, Your Honor

3 THE COURT What is that?

4 MR HEMBREE He was convicted of burglary in the
5 second degree, received a sentence of thirty-six months
6 probation That was in 1993 It's a rather lengthy
7 record, Your Honor I can go through it if you'd like
8 me -- a controlled substance -- if you need to

9 MR DIGGS Your Honor, we don't need any
10 additional information We don't object to his excusal

11 THE COURT All right The Defense agrees for an
12 excusal?

13 MR DIGGS Yes, sir

14 THE COURT All right, excused

15 MR HEMBREE Thank you

16 THE COURT All right, the next one we have then
17 is 224 224 filled out the juror questionnaire form and
18 will be coming in There was a change of address on
19 that particular juror

20 227, juror number 227, filled out the juror
21 questionnaire form and will be coming in

22 All right, go to juror number 230 We've got a
23 Sheriff's affidavit, unable to locate Stephens L
24 Gibbons, Jr in Horry County Post Office box inactive
25 since 2003 No physical address available from the

1 United States Postal Service

2 Going to juror number 233, the Sheriff's affidavit,
3 unable to locate Jamie E Giffen in Horry County
4 Vacant mobile home at given address No forwarding
5 found

6 We need to go down, it looks like, to juror number
7 239 Y'all had some criminal history information on
8 239, Solicitor?

9 MR HEMBREE Yes, Your Honor This is Mr Dario
10 Gonzalez He has a criminal conviction for non-support
11 in another -- this is in Calvert County, Maryland He
12 was sentenced to three years, suspended on two years and
13 three hundred and fifty-eight days probation That's
14 the extent of his criminal record

15 THE COURT All right What's the Defense's
16 position?

17 MR DIGGS No objection to excusal

18 THE COURT All right, excused

19 All right, the next one is 242 The Sheriff's
20 affidavit, unable to locate Kenneth E Gore in Horry
21 County, not at given address, no forwarding found

22 The next one we have then is juror number 243
23 Juror number 243 filled out the juror questionnaire and
24 will be coming in

25 Then we go down to juror number 248 The Sheriff's

1 affidavit, unable to locate Barbara C Grant in Horry
2 County No forwarding found

3 Then we go to juror number 254 The Sheriff's
4 affidavit, unable to locate Patricia A Gregory in Horry
5 County No forwarding found

6 Just so we cover it and we, I'm sure, will probably
7 deal with it again later, 259, y'all have looked at
8 juror number 259 and aware who juror number 259 is?

9 MR HEMBREE Yes, Your Honor That would be Mr
10 Humphries' brother-in-law

11 THE COURT And that would be the Deputy
12 Solicitor's brother-in-law

13 MR HUMPHRIES He says he would rather come in
14 and not be selected so he wouldn't get selected for
15 another panel, for another jury

16 THE COURT What is -- does the Defense have any
17 position at this point in time?

18 MR DIGGS Your Honor, we don't object to him
19 being excused, given the relationship I realize it's
20 an in-law, and normally that would be something we would
21 like, but we don't object to him being excused

22 THE COURT All right What I am going to do is
23 transfer Mr Guest to another term of court Preferably
24 you will make it a term of civil court and not criminal
25 court, all right?

1 THE CLERK Yes, sir

2 THE COURT Thank you, Madam Clerk

3 All right, going to juror number 266, the Sheriff's
4 affidavit, unable to locate Crystal J Hardwick in Horry
5 County This person has moved out of the State of South
6 Carolina

7 The next one we have is juror number 270 The
8 Sheriff's affidavit says unable to locate Phyllis A
9 Hart in Horry County Moved to Texas in 2007 and there
10 is a report from the South Carolina DMV where the South
11 Carolina driver's license was surrendered, returning to
12 the State of Texas

13 You have some information on 291, Solicitor, Morris
14 M Holiday?

15 MR HEMBREE Yes, Your Honor It appears Mr
16 Holiday was convicted of armed robbery in Duffy County,
17 Georgia, in 1979

18 MR DIGGS No objection, Your Honor

19 THE COURT All right He is excused

20 All right, juror number 295, the Sheriff's
21 affidavit, unable to locate Jessica A Holloway in Horry
22 County No forwarding found Left card, no response,
23 295

24 The next one is juror number 304, Fred Hunter, Sr
25 Date of birth, 5/29/1943, is over the age of sixty-five

1 Wishes to be excused What's the State's position?

2 MR HEMBREE No objection, Your Honor

3 THE COURT Defense?

4 MR DIGGS We object

5 THE COURT Excused

6 All right, the next one we go down is to juror
7 number 307, filled out the juror questionnaire form, is
8 coming in There was a change of address for that
9 particular juror

10 Juror number 308, the Sheriff's affidavit states
11 unable to locate Cammy A Hyman in Horry County Now
12 resides in Georgetown County, and there was attached to
13 that the driver's license record or information from the
14 DMV showing the Georgetown County address

15 Number 310, the information we have from the
16 affidavit of the Clerk is that this particular juror is
17 deceased, and there's a copy of the obituary The juror
18 died on January 16th, 2009

19 The next one is juror number 311, unable to locate
20 James G Inman in Horry County No power, no phone
21 Not in the South Carolina Department of Motor Vehicle
22 file base

23 Going down to juror number 313, the Sheriff's
24 affidavit, unable to locate Melissa A Isaacson in Horry
25 County No forwarding found Left card, no response

1 Going to juror number 317, the Sheriff's affidavit,
2 unable to locate Charles T Jackson in Horry County
3 Moved from given address No forwarding found

4 The next juror, number 318, affidavit from the
5 Clerk of Court stating that the juror is in the military
6 stationed in Washington, D C , through information
7 supplied by his mother He had also called the Clerk's
8 Office and the return number was the Washington area
9 code of 202

10 All right, going to juror number 319, that juror
11 filled out the juror questionnaire form, is coming in
12 Solicitor, you have some information on this particular
13 juror?

14 MR HEMBREE We had a criminal record on juror,
15 Minnie Jackson

16 THE COURT Okay

17 MR HEMBREE It indicates that she has a burglary
18 -- well, a number -- quite a number of convictions, but
19 the earliest one, 1991, for burglary of a building,
20 which she was convicted in Harris County, Texas, and
21 received a three year sentence

22 THE COURT All right I will just note it for
23 the record her place of employment is with the Horry
24 County School System as a substitute teacher

25 All right, going on to juror number 324, the

1 Sheriff's affidavit states unable to locate Kristina M
2 Jennings in Horry County No forwarding information
3 could be found

4 The next -- I'm sorry, 325, Solicitor, Tracey L
5 Jenrette, you have some information?

6 MR HEMBREE Yes, Your Honor Ms Jenrette was
7 convicted, among other things, -- her first conviction
8 was for a forgery in 1991 here in Horry County She
9 received three years, suspended on two years probation

10 THE COURT Mr Diggs?

11 MR DIGGS No objection, Your Honor

12 THE COURT All right, excused Thank you

13 MR HEMBREE Thank you, Your Honor

14 THE COURT All right, the next, 328, the Clerk's
15 affidavit, this juror has passed away A copy of the
16 obituary is attached showing that Ms Johnson died on
17 November 2nd, 2007

18 332, we do have the juror questionnaire form filled
19 out now Solicitor, you have some information about a
20 criminal history?

21 MR HEMBREE Yes, Your Honor, if I may It
22 indicates there is a conviction for bringing contraband
23 into the jail in 1993, for which she received three
24 years concurrent with another charge She had her
25 driver's license suspended also Conspiracy to

1 distribute cocaine and marijuana There appears to be a
2 marijuana charge also, a marijuana conviction

3 THE COURT All right, Mr Diggs?

4 MR DIGGS No objection, Your Honor

5 THE COURT All right, excused

6 339, the place of employment for this particular
7 juror is he is an Horry County police officer The
8 State's position? 329 -- 339, I'm sorry 339, William
9 P Johnson, William Paul Johnson, employed at the Horry
10 County Police Department, it says for 2 7 years

11 MR HUMPHRIES He's disqualified

12 THE COURT Defense?

13 MR DIGGS We agree

14 THE COURT Excused

15 The next one we go to is 358 The Sheriff's
16 affidavit, unable to locate David J King in Horry
17 County Not at this address Left card, no response
18 No forwarding found for this particular juror

19 Then we go on to juror number 366 Juror number
20 366 filled out the juror questionnaire and is coming in

21 All right, juror number -- the next one is juror
22 number 369 The Sheriff's affidavit, unable to locate
23 Denise M Kurdi in Horry County No forwarding found
24 Left card, no response

25 All right, juror number 376 The Sheriff's

1 affidavit, unable to locate June S Lawson in Horry
2 County Now resides in the State of Ohio We've got a
3 report from the DMV indicating that the South Carolina
4 driver's license was surrendered, indicating that the
5 driver was returning to the State of Ohio

6 All right, the next one we go on then to is juror
7 number 385 This juror has filled out the juror
8 questionnaire form and is coming in

9 388 filled out the juror questionnaire form and is
10 coming in

11 391, Solicitor, we had marked that down for a
12 review for criminal history

13 MR HEMBREE Yes, Your Honor Upon further
14 review, that is not this juror

15 THE COURT Okay, very good So that juror will
16 continue to come in, and we have their paperwork
17 already

18 All right, let's go to juror number 400, was an
19 unable to locate Juror number 400, unable to locate
20 I think we also had a review for criminal history I
21 don't have the Sheriff's affidavit for 400, Jaime W
22 Lowry

23 What information did you have for the crim- ---

24 THE CLERK We did that one on the ---

25 THE COURT We already did that one?

1 THE CLERK We dealt with that one on 10/29
2 THE COURT I'm sorry We already did that one
3 THE CLERK I just had it because of the criminal
4 history
5 THE COURT All right, so we already covered that
6 one the last time, I'm sorry, with the Sheriff's
7 affidavit
8 All right, let's go on then to 403 The Sheriff's
9 affidavit, unable to locate Alexandra I MacFarlane in
10 Horry County Not at given address Checked Post
11 Office No phone Checked with current resident No
12 forwarding found Unable to locate
13 Juror -- let's see, 405 Solicitor, it says review
14 for criminal record
15 MR HEMBREE Your Honor, she was transferred to
16 another term, I believe, 405 was
17 THE COURT Okay, all right, transferred out, but
18 then something came in for -- okay, well, we'll just
19 have to ---
20 THE CLERK Well, I have the criminal record from
21 the Solicitor's Office, and I didn't know if you wanted
22 to address it I just put it in if you did want to
23 address it
24 THE COURT Do you still have that with you?
25 MR HEMBREE No, Your Honor, we don't have it

1 THE COURT All right, so we'll just have to deal
2 with that whenever she's ---

3 THE CLERK I transferred to the first or second
4 week in June

5 THE COURT We'll just have to deal with it at
6 that point in time, then

7 All right, 408, juror number 408, was located,
8 filled out the paperwork, the juror questionnaire form,
9 and is coming in

10 All right, we need to go down to juror number 412
11 I think we had gone over this particular person last
12 time, but we did not review their request for an
13 exemption, indicating that they are the primary
14 caretaker of a disabled person over -- or a person over
15 the age of sixty-five who cannot care for themselves
16 That's the spouse -- the spouse is disabled, and they
17 have requested the exemption regarding that What is
18 the State's position? They are not currently employed
19 or do not show employment

20 MR HEMBREE We have no objection to this juror
21 being excused, Your Honor

22 THE COURT All right Defense?

23 MR DIGGS We don't -- we don't have any
24 objection on this case

25 THE COURT All right, excused

1 All right, number 418 There was a change of
2 address The juror has been located, filled out the
3 juror questionnaire form and is coming in

4 Going to 419, the Sheriff's affidavit, unable to
5 locate William S McClain in Horry County No
6 forwarding information could be found This address
7 appears to be a weekend home

8 Then we go to juror number 421 The Sheriff's
9 affidavit, unable to locate Jack D McCoy in Horry
10 County Checked power company, checked South Carolina
11 Department of Motor Vehicles, checked phone book No
12 information found

13 Juror number 425 The Sheriff's affidavit, unable
14 to locate Judy B McGinnis in Horry County Not at this
15 address Checked Post Office No phone Checked with
16 neighbor No forwarding information found

17 Juror number 430 The Sheriff's affidavit, unable
18 to locate Miranda B McLaughlin in Horry County Now
19 residing at 906 Horry Street, Georgetown, South
20 Carolina, and there is a report here from the Department
21 of Motor Vehicles indicating the Georgetown County
22 address

23 Going now to juror number 432 The Sheriff's
24 affidavit, unable to locate Brian E McLeland in Horry
25 County Checked address given, no answer Left card,

1 no response No forwarding information found
2 All right, go to juror number 436, gentlemen
3 We've got the affidavit of Peggie G McNeil Date of
4 birth, 10/1/1931, requests to be excused, age seventy-
5 eight The State's position?
6 MR HEMBREE No objection, Your Honor
7 THE COURT Defense?
8 MR DIGGS Your Honor, we object
9 THE COURT Excused
10 Go down then to juror number 439 The Sheriff's
11 affidavit, unable to locate Nilsson Ste Mendoza in
12 Horry County Not in the South Carolina Department of
13 Motor Vehicle records No forwarding address found
14 We've got here juror number 448, review for
15 criminal record, Solicitor
16 MR HEMBREE Your Honor, I am not completely
17 convinced that this Vickie B Miller is the same Vickie
18 B Miller we have in our criminal history Does the
19 Clerk have a ---
20 THE COURT All right
21 MR HEMBREE Madam Clerk, do you have a Social
22 Security number for her?
23 THE CLERK That's not on the questionnaire
24 MR HEMBREE Okay, so ---
25 THE CLERK I do have her paperwork, though

1 THE COURT Well, we'll just have juror number 448
2 come in, then, and then we will just note that for the
3 record, gentlemen, and y'all -- we'll just make sure we
4 find out that information when we talk to that
5 particular juror

6 MR HEMBREE Thank you, Your Honor

7 THE COURT All right, let's go to 463 The
8 Sheriff's affidavit, unable to locate John M Motto in
9 Horry County Now living in the State of Maryland, and
10 there was an information -- a paste-up that this juror
11 had sent in indicating working in and showing an address
12 of out of state

13 All right, 466, Thomas G Murray That juror was
14 located, filled out the juror questionnaire form and he
15 is coming in

16 471, you've got noted for review for criminal
17 history, Solicitor

18 MR HEMBREE Yes, Your Honor It appears that
19 Mr Nealy was convicted of possession of stolen vehicle
20 in Horry County in 1991, received a sentence of one
21 year, suspended on one year probation

22 THE COURT All right, Mr Diggs?

23 MR DIGGS We don't object

24 THE COURT All right, excused

25 All right, the next one we then go to is 473

1 There was a change of address for this particular juror
2 They have filled out the juror questionnaire form and
3 are coming in

4 Going down then to juror number 487, that juror was
5 located, filled out the juror questionnaire form and is
6 coming in

7 Going down to juror number 491, the Sheriff's
8 affidavit, unable to locate Jessica L Patrick in Horry
9 County Checked Post Office No phone Checked with
10 letter carrier Moved to New York The home that was
11 in South Carolina is leased to someone else

12 Let's look at 495 Apparently y'all don't have
13 this particular fax that Madam Clerk just got this
14 morning I will read it verbatim It's got apparently
15 a Santee Cooper logo on it, and it says, "Attention
16 Clerk of Court My name is Ronald K Peavy I received
17 a juror summons for Circuit Court," and that's juror
18 number 495, "for Circuit Court for the term beginning
19 the week of November 6, 2009 The intent of this letter
20 is not to answer my summons for jury duty It is to
21 have it delayed to another term of court Since
22 receiving the summons, I have been promoted to
23 supervisor at my work and will need to be out of town
24 November 10th and November 11th to attend training
25 classes These front-line supervision classes are only

1 offered on a limited basis and it will be many months
2 before they are offered again These classes are
3 critical for new supervisors to attend as part of their
4 initial training and to complete the promotion process
5 If more clarification is needed, please let me know and
6 I can have my management provide you with any necessary
7 paperwork," and just says, "Thanks, Ronald Kevin Peavy,
8 juror number 495," with a phone number

9 What would be the State's position?

10 MR HEMBREE Your Honor, we really don't have a
11 position one way or the other That's such a close
12 call I don't have any objection to his being excused

13 THE COURT Defense?

14 MR DIGGS We don't object to him being
15 transferred, Your Honor

16 THE COURT All right Let's transfer him to
17 another term of court, please, Madam Clerk

18 All right, the next one then we would go down to is
19 juror number 500 The Sheriff's affidavit states unable
20 to locate Natasha P Pepper in Horry County Moved to
21 Georgetown County

22 Go down then to juror number 504, Joe W Phillips
23 The Sheriff's affidavit, unable to locate Joe W
24 Phillips in Horry County The lady next door stated
25 this person moved two years ago

1 Go to juror number 507, if y'all will There was a
2 change of address The juror did fill out the juror
3 questionnaire form They checked the block that says,
4 "I have legal custody and duty of care of child under
5 the age of seven and am unable to provide adequate child
6 care while performing jury duty " It does -- and the
7 juror questionnaire form indicates place of employment,
8 it says "Unemployed, but part-time Horry-Georgetown
9 Technical College professor Monday and Wednesday, 1 15
10 to 4 15 " Looking at the -- where it has for children,
11 has one that's eight and one that's twenty, so what's
12 the State's position?

13 MR HEMBREE Your Honor, we'd ask that this juror
14 be required to come in

15 THE COURT All right Does the Defense agree?

16 MR DIGGS We agree

17 THE COURT All right Have the juror come in on
18 the 6th, please

19 Juror number 509, there is no doctor's excuse The
20 information we have from the Deputy that visited this
21 person to get them to fill out the juror questionnaire
22 form verifies the statement on the juror questionnaire
23 form that says that the person is disabled, and if you
24 look at question number 21, disability, walked with a
25 cane, and wheelchair It also has the answer to number

1 48, bad memory loss What's the State's position?

2 MR HEMBREE We would ask this juror be excused,
3 Your Honor

4 THE COURT Defense?

5 MR DIGGS Yeah, we would, too, based on his
6 anxiety and depression

7 THE COURT All right, very good Based on the
8 information provided, I find the juror should be
9 excused

10 All right, let's go down then to juror number 517
11 The Sheriff's affidavit, unable to locate Tyrell C
12 Pyatt in Horry County Now resides in Charleston, South
13 Carolina, have a copy from the Department of Motor
14 Vehicles indicating a Charleston, South Carolina,
15 address

16 Juror number 518, there was a change of address
17 The juror has filled out the juror questionnaire form
18 and is coming in

19 528, we did get a juror questionnaire form filled
20 out by this particular person I have here there was a
21 review for criminal history, Solicitor

22 MR HEMBREE That is correct, Your Honor Let me
23 go back just for the record We also had a review on
24 number 524

25 THE COURT 524, all right I didn't see that

REVIEW OF ROLL CALL LIST FOR PANEL

34

1 MR HEMBREE And I've reviewed -- sorry, Your
2 Honor In more carefully reviewing that, I'm not
3 convinced that that's the same person, and we'd ask that
4 that person come in

5 THE COURT All right, sir, great, so we're having
6 524 come in Good

7 MR HEMBREE And give me one moment to take a
8 look at 528 Yes, Your Honor, it appears that Mr
9 Michael Richburg was convicted of burglary in 1986 in
10 Horry County and received a youthful offender sentence
11 of one to six years

12 THE COURT All right The Defense position?

13 MR DIGGS We don't object to his being excused

14 THE COURT All right, sir 528 then is excused
15 All right, it looks like we need to look at number
16 533 for review for criminal history -- oh, I'm sorry,
17 529 first

18 529, the juror was located, filled out the juror
19 questionnaire form and is coming in

20 All right, 533, reviewed for criminal history We
21 also have a Sheriff's affidavit, unable to locate Angel
22 L Rivera in Horry County Not at given address No
23 forwarding found Unable to locate

24 534, the juror was located, filled out the juror
25 questionnaire form, and is coming in

1 Going to 548, the change of address for that juror,
2 the juror filled out the questionnaire form and is
3 coming in

4 All right, go to juror number 551, Broadus L
5 Rutledge The Clerk's affidavit, -- date of birth,
6 3/21/1933, and is over sixty-five, wishes to be excused
7 The State's position?

8 MR HEMBREE No objection, Your Honor

9 THE COURT Defense?

10 MR DIGGS We object

11 THE COURT Excused

12 Okay, 559, Solicitor, we've got a review for
13 criminal history?

14 MR HEMBREE Yes, Your Honor It appears that
15 Mr Schreiber was convicted of possession of narcotics
16 and received -- this was in -- it's an out of state
17 record, Your Honor I have to interpret it a little
18 more It was a 1982 conviction, four years suspended on
19 four years probation

20 THE COURT All right Mr Diggs?

21 MR DIGGS No objection

22 THE COURT Excused

23 All right, 563 Let's look at 563, if we could,
24 Counsel The juror questionnaire indicates the place of
25 employment, the South Carolina Department of Health and

1 Environmental Control Current job title or
2 description, law enforcement There is a statement, a
3 facsimile, that the Clerk of Court received from this
4 individual I'll read it to you verbatim

5 "Mrs Huggins, I wanted to inform to whom it" -- it
6 says "my " I assume it is "may concern I am now and
7 have been since 1980 a full-time law enforcement officer
8 with the State of South Carolina, DHEC I do have
9 statewide jurisdiction and authority to enforce laws of
10 the state My concern is being a police officer, does
11 this disqualify me from serving as a jury member If
12 so, I would like to know because I am having a
13 camping/hunting trip planned with my son for the 6th
14 through the 9th of October," and he goes on to talk
15 about this rewarding him for his grades and things of
16 that nature

17 What's the State's position about his law
18 enforcement exemption?

19 MR HEMBREE Your Honor, I know Officer Sechler
20 and he is a -- he does have statewide jurisdiction,
21 statewide powers of arrest, and he would not be
22 qualified

23 THE COURT All right Defense?

24 MR DIGGS We agree

25 THE COURT All right, excused

(

1 Going to 566, a Sheriff's affidavit Unable to
2 locate Derrick D Seymore in Horry County No
3 forwarding information can be found

4 Going to juror number 579, a Sheriff's affidavit,
5 unable to locate Tammy R Sizemore in Horry County
6 Checked address given, no answer Left card, no
7 response No forwarding information found

8 Juror number 580 has filled out the juror
9 questionnaire form and is coming in

10 Juror number 581, a Sheriff's affidavit Unable to
11 locate Billijo N Small in Horry County Has moved to
12 Ocean Isle Beach, North Carolina

(

13 Go to 583, a Sheriff's affidavit Unable to locate
14 Nathan J Small in Horry County No such address found
15 No forwarding information found

16 Let's go to 584 There was a change of address
17 The juror did fill out the juror questionnaire form We
18 have a date of birth of 11/7/1941 The juror has
19 requested to be excused for being over sixty-five The
20 State's position?

21 MR HEMBREE No objection, Your Honor

22 THE COURT Defense?

23 MR DIGGS We object

24 THE COURT Excused

(

25 All right, going to number 588, a Sheriff's

REVIEW OF ROLL CALL LIST FOR PANEL

38

(
1 affidavit Unable to locate Kelly E Smith in Horry
2 County Not at given address No driver's license
3 Checked Post Office Checked letter carrier No
4 forwarding found

5 Going then to 593, a Sheriff's affidavit Unable
6 to locate Willie J Smith in Horry County Per driver's
7 license information, this person is now living in
8 Beaufort County

9 Juror number 596, a Sheriff's affidavit Unable to
10 locate Elena L Speedling in Horry County Not at given
11 address No forwarding found

(
12 Go to juror number 601 The juror was located,
13 filled out the juror questionnaire form, and is coming
14 in

15 As to juror number 602, the juror was located, has
16 filled out the juror questionnaire form, and is coming
17 in

18 607, the juror was located The juror has filled
19 out the juror questionnaire form, and is coming in

20 608, the juror was located The juror has filled
21 out the juror questionnaire form, and is coming in

22 610, the juror was located, has filled out the
23 juror questionnaire form, and is coming in

(
24 611, the juror was located, has filled out the
25 juror questionnaire form, and is coming in

1 612, the juror was located The juror has filled
2 out the juror questionnaire form, and is coming in
3 Go to -- something is noted on here I don't know
4 if we covered them before, but we've got 615 is coming
5 The juror has filled out a questionnaire form, and is
6 coming in
7 Let's go down then to 621 The juror was located
8 A juror questionnaire form was filled out, and the juror
9 is coming in
10 Looking at 622, the juror was located The juror
11 has filled out the juror questionnaire form, and is
12 coming in
13 All right, let's go to juror number -- let's see --
14 I'm sorry Going back to -- or going to juror number
15 625, a Sheriff's affidavit on juror number 625 Unable
16 to locate William G Thomas, Jr in Horry County Not
17 at given address No forwarding found
18 Look at 628 The juror was located, has filled out
19 the juror information form, and is coming in
20 The next one is juror 631 The juror was located,
21 has filled out the juror questionnaire form, and is
22 coming in
23 632, the juror was located, has filled out the
24 juror information sheet, and is coming in
25 633, the juror was located, has filled out the

1 juror information form, and is coming in

2 634, the juror was located, has filled out the
3 juror information sheet, and is coming in

4 Go to juror number 637 The juror was located, has
5 filled out the juror information sheet, and is coming
6 in

7 MR HEMBREE. Your Honor, which number was that?
8 I'm sorry

9 THE COURT 637, Diane E Tyler

10 MR HEMBREE Thank you

11 THE COURT Juror number 638, the juror was
12 located, has filled out the juror information sheet, and
13 is coming in

14 639, the juror was located The juror has filled
15 out the juror information sheet, and is coming in

16 Go to 641, an affidavit from the Sheriff Unable
17 to locate Mary C Valvano in Horry County Not at given
18 address No forwarding found

19 Go to 642 The Sheriff's affidavit, unable to
20 locate Velvadean Vaught in Horry County No forwarding
21 information can be found

22 Going to juror number 647, the juror was located,
23 has filled out the juror information sheet, and is
24 coming in

25 Going then to juror number 650, a Sheriff's

1 affidavit Unable to locate Natasha D Walker in Horry
2 County Checked Post Office No phone Checked with
3 letter carrier No forwarding information found

4 Go to juror number 654, a Sheriff's affidavit
5 Unable to locate Michael P Walsh in Horry County Not
6 at given address No forwarding found

7 And we have for 655, review for criminal record,
8 Solicitor

9 MR HEMBREE Your Honor, this is another one that
10 I'm not convinced is the same person that we have a
11 criminal history on, and I would request that they be --
12 are they coming in otherwise?

13 THE COURT Yes, they are coming in The juror
14 has filled -- was located, has filled out a juror
15 questionnaire form, and is coming in

16 MR HEMBREE Thank you, Your Honor We'd like to
17 bring him in and review it with him at that time

18 THE COURT All right, very good

19 MS WILLIAMS Your Honor, ---

20 THE COURT Yes, ma'am

21 MS WILLIAMS --- if we may, if you are not sure,
22 but in his questionnaire, he indicates on number 32 that
23 he was convicted of -- in Florida ---

24 THE COURT Let's see, number 32 It says, "Yes,
25 Florida, trafficking of a controlled substance

REVIEW OF ROLL CALL LIST FOR PANEL

42

1 Adjudication withheld 1989," so ---

2 MR HEMBREE That's correct, but that is the same
3 -- I didn't have the questionnaire, but that's ---

4 THE COURT So it says, "Adjudication withheld "
5 Does that mean -- is that like PTI?

6 MR HEMBREE He got three years probation is what
7 this record indicates

8 THE COURT All right What's the -- what would
9 be the State's position then?

10 MR HEMBREE Your Honor, we'd ask that he be
11 excused

12 THE COURT Defense?

13 MR DIGGS Excused

14 THE COURT All right I'm going to excuse this
15 particular juror then

16 Go to juror number 656 The juror was located, has
17 filled out the juror information sheet, and is coming
18 in

19 Juror number 657, a Sheriff's affidavit Unable to
20 locate Dhana M Warren in Horry County Not at given
21 address No forwarding found

22 658, the juror was located, has filled out the
23 juror questionnaire form, and is coming in

24 Juror number 661, the juror was located, has filled
25 out the juror questionnaire form There was a change of

(

1 address The juror is coming in

2 Juror number 662, there was a change of address

3 The juror was located The juror has filled out the

4 juror questionnaire form, and 662 is coming in

5 664, there was a change of address The juror was

6 located The juror has filled out the juror ---

7 THE CLERK 664?

8 THE COURT 664, right 664, Dennis E Webb, 664,

9 has been located, filled out the juror questionnaire

10 form, and is coming in

11 THE CLERK 666, I put coming in ---

12 THE COURT 667? I don't have anything for 666

13 THE CLERK That was my error I just wanted to

14 make sure it wasn't on your sheet

15 THE COURT No, I don't have anything on that

16 667, a change of address The juror was located

17 The juror has filled out the juror information sheet,

18 and is coming in

19 668, the juror was located, has filled out the

20 juror questionnaire form, and is coming in

21 669, Larry D West, the juror was located, has

22 filled out the juror questionnaire form, and is coming

23 in

24 Juror number 670, the juror was located, has filled

25 out the juror questionnaire form, and is coming in

(

REVIEW OF ROLL CALL LIST FOR PANEL

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1 All right, 671, we had for review for criminal
2 history, but we've got a Sheriff's affidavit that states
3 that unable to locate juror number 671, Christopher
4 Weston in Horry County Not at given address No
5 forwarding found

6 Go to 672 The juror was located, has filled out
7 the juror information sheet, and is coming in

8 Juror number 677, a Sheriff's affidavit Unable to
9 locate Douglas W White in Horry County Moved from
10 address over three years ago No forwarding found

11 682, juror was located, has filled out the juror
12 information sheet, and is coming in

13 683, the juror was located, has filled out the
14 juror information sheet, and is coming in

15 Going to juror number 684, got a Sheriff's
16 affidavit indicating unable to locate Stephanie M
17 Williams in Horry County Not at given address
18 Checked the Post Office No phone House at given
19 address is vacant No forwarding found

20 All right, go to juror number 685 The juror was
21 located, has filled out the juror questionnaire form,
22 and is coming in

23 688, the juror was located, has filled out the
24 juror questionnaire form, and is coming in

25 Going to 690, the juror was located, has filled out

1 the juror questionnaire form, and is coming in

2 All right, going to 692, we've got a letter from
3 that juror, Greg J Wojcik, asking to be excused The
4 letter states, "Dear Sir, Please excuse me from jury
5 duty for the following reasons I have a young business
6 in these struggling times that I operate seven days a
7 week, open to close I could not afford to pay someone
8 else to work or afford to shut down I also have two
9 kids, age nine and four, that I have to get fed, bathed,
10 and dressed each day, take them to school, and pick up
11 each afternoon, and watch until my wife gets out of
12 work I just can't justify time or affordability to
13 take off for any length of time for jury duty Thank
14 you," signed by the juror

15 What is the State's position?

16 MR HEMBREE Normally, Your Honor, I would ask
17 that this juror be required to at least come in I
18 mean, just the hardship of his business is not usually
19 sufficient, but I noted his answer in question number
20 50 It says it's difficult or impossible to be fair and
21 impartial, and he says, "Yes I do not believe in the
22 legal system," a pretty broad statement We could bring
23 him in and maybe inquire more about that, Your Honor,
24 but it sounds like this gentlemen is going to be excused
25 either way, and it would probably just be taking up time

1 on Friday I don't have any objection to him being
2 excused

3 THE COURT All right What's the Defense's
4 position?

5 MR DIGGS Your Honor, we don't mind him being
6 transferred to another term where he's not going to be
7 sequestered

8 THE COURT All right I'm going to excuse this
9 particular juror

10 All right, 693 was located The juror has filled
11 out the juror questionnaire form, and is coming in

12 694, we have a juror's affidavit -- I'm sorry, not
13 a juror's affidavit -- a Sheriff's affidavit on the
14 juror Unable to locate William B Wood in Horry
15 County This person resides in the State of North
16 Carolina

17 We've got here 695 The juror was located, has
18 filled out the juror questionnaire form, is coming in
19 I also have some note about review for the criminal
20 record She did indicate in her juror questionnaire
21 form that she has not been indicted or convicted

22 MR HEMBREE And I would state, I don't believe
23 that the record that we have on a Woolard is the same
24 person as this Teresa P Woolard that is listed as a
25 juror

1 THE COURT All right, very good

2 MR HEMBREE I would take it she's coming in,
3 Your Honor?

4 THE COURT Yes, she is coming in She's filled
5 out the juror questionnaire form, and is coming That's
6 correct That was 695, Teresa P Woolard

7 696, there was also a review for criminal record,
8 but we have a Sheriff's affidavit Unable to locate -
9 juror 696, Alan E Yoder, in Horry County Checked the
10 Post Office No phone Checked with letter carrier
11 No forwarding information found

12 Go to juror number 697 The Clerk's affidavit,
13 date of birth for the juror, Janet M Young, is
14 2/20/1932 The juror wishes to be excused, being over
15 sixty-five The State's position?

16 MR HEMBREE No objection, Your Honor

17 THE COURT Defense?

18 MR DIGGS We object

19 THE COURT Excused

20 And then going down to juror number 700, the juror
21 was located, has filled out the juror information form,
22 and is coming in

23 All right, except for those ones that the Clerk
24 indicated at the very beginning, y'all have all the
25 information regarding these particular jurors Whatever

1 additional information the Clerk gets, you know, from
2 the Sheriff as to those other ones, we'll -- she will
3 obviously give that to you

4 You know we are going to have the Blair hearing on
5 next Thursday, Counsel, so Madam Clerk, if we get the
6 information on -- what was it, fifteen of them, or
7 whatever, fifteen, we get some more information on those
8 fifteen, we'll review it at that point in time on
9 Thursday after the Blair hearing on Thursday

10 MR HUMPHRIES Your Honor, we have just as a
11 point of clarification -- you might be getting to this
12 We've got ---

13 THE COURT I'm sorry, just one second The Blair
14 hearing is at ten o'clock All right, very good

15 MR HUMPHRIES We have scheduled -- at least at
16 some point we had scheduled for Tuesday morning at 9 30
17 additional jury excusals, submission of witness lists to
18 the Court, and the stipulation of exhibits

19 THE COURT Right As far as just the
20 documentation, I was just expecting y'all to give that
21 to the Court and we were not going to have some type of
22 formal proceeding or hearing

23 MR HUMPHRIES And I just want to be clear about
24 that, that we weren't going to actually have a hearing
25 on it?

1 THE COURT That's correct We're not having a
2 hearing I'm just expecting y'all to give that
3 information to the Court on that particular day

4 MR HUMPHRIES Yes, sir, and what we'll do in
5 terms of the actual marking of the exhibits -- of
6 course, this is at the Court's pleasure, but we can have
7 the physical exhibits ready to be marked Friday after we
8 impanel the jurors, or we can do it sometime later
9 Obviously we've got two to three days, you know, the
10 following week before we'll actually start putting in
11 evidence

12 THE COURT Dixie, would you like to do it on the
13 6th, get that done on the 6th?

14 THE COURT REPORTER Yes, whatever you want

15 THE COURT Yeah, on that Friday when we get done
16 with the general qualification, so if we could do that
17 -- if y'all could do that with the Court Reporter on the
18 6th when we get done with the general qualification and
19 get those marked with the Court Reporter on that Friday,
20 the 6th, that would be good, all right?

21 MR HUMPHRIES Yes, sir One other matter, Your
22 Honor, and I've inquired of the Defense, they had not
23 filed a motion to suppress based on a search warrant
24 executed on the victim's truck in Augusta, Georgia Of
25 course, we'd have a number of issues about whether

1 there's standing or not, but in any event, we can't just
2 wait for them to make an objection right before we, you
3 know, intend to elicit the testimony because that
4 witness is in Georgia, and that witness doesn't testify
5 about anything else but the obtaining of the search
6 warrant, so we would have to have that person here if
7 there's going to be a motion to suppress

8 Like I said, there's not been one I've inquired
9 this morning, and just so logistically we can plan as to
10 whether or not to have that witness here

11 THE COURT Mr Diggs, do you anticipate filing a
12 suppression motion?

13 MR DIGGS No, we don't, ---

14 THE COURT Very good

15 MR DIGGS --- not on that issue

16 THE COURT Not on that particular person

17 MR HUMPHRIES Very good Thank you, Your Honor

18 THE COURT Very good

19 (The Court has an off the record discussion with the
20 Clerk)

21 THE COURT All right, is there anything further
22 from the State at this point in time?

23 MR HEMBREE No, sir, Your Honor

24 THE COURT All right

25 MR DIGGS Your Honor, is Dr Crawford going to

1 interview the defendant ---

2 THE COURT Yes, at sometime before the hearing on
3 Thursday Hopefully there will be -- we're going to
4 have arrangements made for Mr Stanko to come over here
5 at, say, 8 30 on Thursday, and -- so that Dr Crawford
6 can speak to him on that particular date and time prior
7 to the -- prior to the hearing

8 MR DIGGS Your Honor, back in, I think, it was
9 2006, Dr Crawford and I were -- I was present when she
10 interviewed Mr Stanko about the Horry County incident,
11 and if you -- I don't have her report here in front of
12 me, but I do have a copy of it Excuse me

13 In her report, and the State has a copy of it also,
14 and we touched based on this issue previously with Mr
15 Humphries, she was ordered by Judge Jefferson not to
16 disclose any of the information, you know, about the
17 Henry Turner incident until further order of the Court,
18 and so when you look at the report that was issued by
19 Dr Crawford, it makes mention of the Henry Turner
20 incident, but then it's X-ed out, and I think that the
21 parties are in agreement at this point We would like
22 for the Court -- I didn't prepare an Order for you to
23 sign this morning, but I'm going to hand one up probably
24 later today, get it to you by e-mail, and allowing Dr
25 Crawford to go ahead and disclose that portion of the

1 report that was previously redacted and sealed

2 We're asking that she go ahead and be permitted to
3 include that information in that report that previously
4 was provided, and I've been handed a copy of it I
5 think I can ---

6 THE COURT All right Is there any objection to
7 that from the State?

8 MR HEMBREE No, Your Honor We'd actually join
9 in that request

10 THE COURT All right Well, if y'all -- if you
11 could, Mr Diggs, if you could when you -- could you e-
12 mail that Order over to the Solicitor's Office first so
13 they can look at it and make sure everybody is in
14 agreement with the Order, and then y'all give it to me
15 and I'll be glad to sign it

16 MR DIGGS Thank you, Your Honor

17 THE COURT All right Anything else from the
18 Defense at this point in time?

19 MR DIGGS Your Honor, also at the time that Mr
20 Stanko, before his arrest down in -- following the
21 incident in Georgetown, the police came in and, of
22 course, took a lot of personal items The police took a
23 lot of the information, personal belongings, things of
24 that nature, writings and so forth, that belonged to Mr
25 Stanko that were left in the residence down in

1 Georgetown, and if they're not of evidentiary value, I'm
2 going to ask the Court to enter an Order just releasing
3 those things back to the possession of the Defense or
4 the defendant

5 MR HEMBREE Your Honor, it would be premature, I
6 think, at this time to consider that request It would
7 be inappropriate You know, there will be an
8 appropriate time for that at the conclusion of this
9 trial I'm not exactly sure what Mr Diggs is speaking
10 of, but I think at that point in time we can probably
11 jointly look at what is being requested and probably
12 consent to much of it

13 THE COURT All right, so there is some overall
14 evidentiary list that the State has as far as specifying
15 what items that were seized, correct?

16 MR HEMBREE Yes, sir

17 THE COURT What I'd have you do, Solicitor, is at
18 the -- is there any reason that you need any of that for
19 this particular trial, Mr Diggs? Is it necessary for
20 this trial?

21 MR DIGGS Your Honor, I'm not ---

22 MS WILLIAMS Your Honor, part of what we were
23 looking for is in part of the mitigation relationship,
24 and there are basically two boxes For instance, there
25 are copies of prior cases that Mr Stanko worked on with

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1 other inmates and things I mean, it's ---

2 THE COURT Okay Where is this evidence located?
3 Where is it at?

4 MS WILLIAMS It's all -- it's in the Georgetown
5 County Sheriff's Office, and ---

6 THE COURT Okay I thought y'all ---

7 MR HUMPHRIES Your Honor, we ---

8 MS WILLIAMS Part of where that comes from is
9 when we went down ---

10 THE COURT Okay, just hold on a second I
11 thought y'all already reviewed all of that and were
12 going to make copies of whatever it is that you needed?
13 Y'all hadn't done that?

14 MR HUMPHRIES They've been given that
15 opportunity

16 THE COURT Okay Is there some reason why that's
17 not been done or we can't do that?

18 MS WILLIAMS Well, with regards to making copies
19 of it, basically when we ask them to make copies of it,
20 we're going to have to go down there and -- I mean, it's
21 like -- it's a box full, two big box fulls of it, and we
22 thought maybe it would make more sense in a monetary
23 type situation as opposed to having to pay somebody to
24 stand there, pay for all the copies, pay for all these
25 other things, if they're not going to use that stuff, if

1 they could release it and then we would have it instead
2 of duplicating ---

3 THE COURT Well, I'm not comfortable with
4 releasing any potential evidence until the matters are
5 concluded and we know that they either are exhibits in
6 the trial or they are not exhibits in the trial, so I'm
7 not comfortable with releasing the items that were
8 seized, so what I'm going to have y'all do is cooperate,
9 have the Defense given the opportunity to make any and
10 all copies of any documentation they would like, but as
11 far as the originals, those will remain seized at this
12 point in time and will not be released until the
13 conclusion of this trial, and then it could be addressed
14 by y'all if there's some reason for it, but State and
15 Defense, obviously Solicitors, if y'all will again
16 cooperate, give them the opportunity to review and copy
17 any and all documentation or items that they would like

18 MR DIGGS Your Honor, we have different people
19 working on different aspects of the case, and it may be
20 -- I don't always know what another expert or another
21 person -- might be important and need to copy and that
22 kind of thing That's why we make the request, and
23 that's why it might seem disjointed

24 THE COURT Well, and I appreciate that, but as to
25 your motion, I'm not going to release the items at this

1 point in time I'm just not comfortable with that
2 process, but I'm giving you full, complete access to
3 them to make any and all copies that you would like to
4 do, all right?

5 MR DIGGS Thank you, Your Honor

6 THE COURT Anything else from the Defense at this
7 point in time?

8 MR DIGGS Not with the Solicitors

9 THE COURT Well, can we cover the issue of Mr
10 Stanko and him returning to the South Carolina
11 Department of Corrections or him staying here in Horry
12 County? Has that been resolved?

13 MR HUMPHRIES Your Honor, we thought it was
14 resolved, and as I understood your Order, he was to
15 remain today throughout That was my understanding

16 THE COURT That's correct Once he was here, he
17 was going to stay, and he wasn't going back

18 MR HUMPHRIES Well, what I've heard, and what I
19 advised the Court just in terms of scheduling today was
20 that I had received a call from the Department of
21 Corrections, a Rob Steele, or I can't remember his name,
22 worked in the Department of Corrections, and he did not
23 seem clear on that point, so that's the reason I brought
24 it up to the Court so we could get some ---

25 THE COURT All right The Department of

1 Corrections representatives that were here, what were
2 your instructions? Were you to take Mr Stanko back, or
3 were you to leave him here in Horry County? Y'all must
4 have got some instructions

5 A DEPARTMENT OF CORRECTIONS REPRESENTATIVE Leave
6 him here

7 THE COURT Y'all were going to leave him here
8 All right, that's fine I mean, that's -- as I
9 understood, that was the situation I just wanted to be
10 clear about that, so y'all will leave him in the custody
11 of the Horry County Sheriff's Office He's going to
12 remain with us until the conclusion of the trial

13 Yes, ma'am?

14 MS WILLIAMS Your Honor, I was just going to say
15 that Mr Stanko understood that that's what the Judge --
16 that Your Honor had ordered, and he actually brought his
17 things and is prepared to stay

18 THE COURT Well, and I just said -- I just got
19 some information that it might be unclear, and so I just
20 wanted to be clear that we were all -- that's what was
21 going to happen, he's going to stay with us He'll
22 stay, you know, until the conclusion of the trial

23 Please, if y'all would, make sure that the Sheriff
24 is aware that Mr Stanko needs to come back next
25 Thursday, you know, at 8 30, so that he could speak to

MOTIONS

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1 Dr Crawford, and then we can have the hearing, okay?

2 All right, gentlemen, thank you very much

3 MR HEMBREE Thank you, Judge

4 MR DIGGS Thank you

5 (Conclusion of Transcript of Record)

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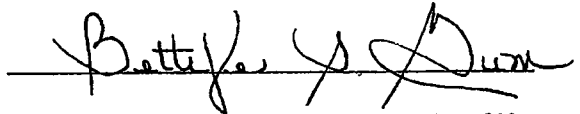
1 STATE OF SOUTH CAROLINA)

2 COUNTY OF HORRY)

3
4 I, the undersigned Bettye S Gum, Certified Court
5 Reporter and Notary Public in and for the State of South
6 Carolina, do hereby certify that the foregoing is a
7 true, accurate and complete Transcript of Record of all
8 the proceedings had and evidence introduced in the
9 hearing of the captioned case, as taken by Dixie Cox
10 Eubank, Official Reporter, and transcribed by me,
11 relative to appeal, in the Court of General Sessions for
12 Horry County, South Carolina

13 I do further certify that I am neither of kin,
14 counsel, nor interest to any party hereto

15
16
17 July 7, 2010

18
19 

20 BETTYE S GUM, CCR-CVR-CM

21 Certified Court Reporter and
22 Notary Public for South Carolina
23 My Commission Expires 7/13/14
24
25

STATE OF SOUTH CAROLINA) THE COURT OF GENERAL SESSIONS
COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT
05-GS-26-2927

State of South Carolina,)
))
Plaintiff,)
))
-VS-) TRANSCRIPT OF RECORD
))
Stephen Christopher Stanko,)
))
Defendant)
_____)

November 4, 2009
Conway, South Carolina

B E F O R E

HONORABLE STEVEN H JOHN, Circuit Judge

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Official Reporter

I N D E X

(SW) STATE'S WITNESS

(DW) DEFENSE WITNESS

BLAIR HEARING

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

DR PAMELA CRAWFORD

MR HEMBREE 3

MR DIGGS --

STEPHEN C STANKO

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E X H I B I T I N D E X

(S) STATE

(D) DEFENSE

(C) COURT

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C-2	DR SACHY'S REPORT	10

DR PAMELA CRAWFORD - DIRECT EXAMINATION BY MR HEMBREE 3

1 THE COURT All right, we are here in the State of
2 South Carolina versus Stephen C Stanko, 2005, GS-26-
3 2927, for the purposes of a Blair hearing Is the State
4 ready to proceed?

5 MR HEMBREE Yes, Your Honor, we are

6 THE COURT Is the Defense ready to proceed?

7 MR DIGGS Yes, sir

8 THE COURT All right, Solicitor

9 MR HEMBREE Thank you, Your Honor The State
10 calls Dr Pam Crawford to the witness stand

11 THE COURT All right If you would come forward,
12 please, ma'am

13 DR PAMELA CRAWFORD, being first duly sworn,
14 testifies as follows

15 THE COURT Yes, ma'am

16 MS WILLIAMS If we may, if the Court could
17 instruct the deputies to at least release a hand so that
18 Mr Stanko can take notes, please

19 THE COURT All right If you would just release
20 one -- one hand for Mr Stanko so he can take some notes,
21 please Thank you

22 THE CLERK State your full name and spell your
23 last name for the Court

24 DR CRAWFORD Pamela Crawford, C-R-A-W-F-O-R-D
25 DIRECT EXAMINATION BY MR HEMBREE

1 Q Dr Crawford, if you could very briefly give the
2 Court the benefit of your training and experience in the
3 field of forensic psychiatry

4 A Yes I am a forensic psychiatrist I trained at
5 Emory University, became a physician first, and then a
6 general psychiatrist, and then I specialized in forensic
7 psychiatry, and I've been practicing in the State of
8 South Carolina -- the forensic psychiatry specifically
9 since about 1998 in a variety of capacities

10 Q And, Dr Crawford, have you been qualified as a
11 forensic psychiatrist in courts of record in this state
12 and other states?

13 A Yes, I have

14 Q On how many occasions?

15 A Several hundred

16 MR HEMBREE Thank you, Dr Crawford

17 Your Honor, we would move that Dr Crawford be
18 qualified to testify as an expert in the field of
19 forensic psychiatry

20 MR DIGGS Your Honor, we don't have any
21 objections, ---

22 THE COURT All right She is so qualified

23 MR DIGGS --- or questions, or objections

24 THE COURT All right, thank you She is so
25 qualified

1 MR HEMBREE Thank you, Your Honor

2 Q Dr Crawford, you were called upon in the case, I
3 believe, to perform a competency evaluation on the
4 defendant, as well as evaluation for criminal
5 responsibility?

6 A Yes, criminal responsibility back in 2006 I was
7 called upon for that purpose, for today's purpose for
8 competency

9 Q Correct, and you had -- back in 2006, you had the
10 opportunity to evaluate Mr Stanko for the purposes of
11 competency?

12 A Yes

13 Q In relation to a different, but related case?

14 A Yes

15 Q And then you once again recently have been ordered
16 by the Court to conduct a competency evaluation in
17 relation to the Henry Turner case?

18 A That's correct

19 Q If you would, please share with the Court the
20 steps that you undertook to fulfill that obligation in
21 determining the competency of Mr Stanko

22 A Okay

23 Q And you can take that back -- certainly anything
24 that has helped you even back at the other evaluation ---

25 A Sure

1 Q --- you think that assisted you in rendering -- in
2 forming an opinion would be an appropriate item to
3 discuss

4 A Okay Well, first of all, I referred back to my
5 evaluation in 2006 in which it was my opinion that he did
6 not have a major psychiatric illness, but had a severe
7 personality disorder, and it was my opinion back then
8 that he was competent to stand trial, so when I was
9 ordered to do this evaluation, I had to determine whether
10 there was any information, anything that had changed,
11 between the time I saw him last and now in terms of new
12 medical illnesses, new mental health issues, new mental
13 health treatment, so I needed that information updated,
14 and I received that, and then I interviewed him today
15 with his attorneys present to do a psychiatric evaluation
16 and an evaluation of competence

17 Q And what specific questions or issues were you
18 focusing on in determining Mr Stanko's competency to
19 stand trial?

20 A Well, I wanted to make sure that he had both a
21 factual understanding of the legal proceedings against
22 him, and we went into, I think, pretty good detail about
23 the legal process in general, about the roles of
24 different people in the courtroom, the different
25 sentences We talked pretty extensively about this being

1 a death penalty trial, and he was clear and able to
2 understand the difference of the two phases of the trial
3 We just went through a lot of detail about all the
4 procedures involved in the trial of this case, and we
5 also -- I also interviewed him to see if there was
6 anything that was impairing him psychiatricly so that he
7 could not assist his counsel in his defense

8 Q And you sort of anticipated my next question I
9 was going to ask if he -- was there anything about the
10 way he presented himself, the manner in which he answered
11 questions, that gave you any concern whatsoever regarding
12 his mental status?

13 A No, I have no concerns

14 Q Now, did you, as a result of your evaluation in
15 2006, generate a report?

16 A I did

17 Q And at that time, did you render an opinion
18 regarding his competency to stand trial?

19 A I did

20 Q Let me ask you to take a look at what has been
21 pre-marked as Court's Exhibit Number 1 and ask if you can
22 identify it for us?

23 A Yes This is a report that I provided to Judge
24 Jefferson alone I had provided redacted copies at her
25 order to Mr Stanko's attorneys and to the Solicitor's

1 office prior to this, but this is a copy that I sent to
2 Judge Jefferson

3 MR HEMBREE Defense counsel indicates that he has
4 no objection, that they have no objection to this being
5 entered in evidence as a Court's Exhibit

6 THE COURT Is that correct?

7 MR DIGGS Correct, no objection

8 THE COURT Very good That's Court's Exhibit 1
9 without objection

10 REPORT OF DR PAMELA CRAWFORD ENTERED AS

11 COURT'S EXHIBIT NUMBER 1

12 Q Dr Crawford, in 2006, Mr Stanko's -- Mr Stanko
13 retained a forensic psychiatrist for his -- or a
14 psychiatrist to assist in his defense, Dr Sachy from
15 Georgia Are you familiar with Dr Sachy?

16 A Yes

17 Q And as a result of this examination of Mr Stanko,
18 he also generated a report Were you provided an
19 opportunity to review that report?

20 A I was

21 Q If you would take a look at Court's Exhibit Number
22 2 and I would ask if you could identify that document,
23 please

24 A Yes This is Dr Sachy's report from 2006

25 Q And do you recall if Dr Sachy back in 2006

1 conducted an evaluation of Mr Stanko's competency to
2 stand trial?

3 A He did

4 Q And did he render an opinion at that time?

5 A It was his opinion based on his report that Mr
6 Stanko was competent to stand trial

7 Q So y'all were in agreement about that in 2006?

8 A Yes, we were

9 Q Dr Crawford, is there anything at all about your
10 essentially updated conversation, your interview with Mr
11 Stanko, and a review of his medical and psychiatric
12 records from the Department of Mental Health that gives
13 you any indication that he has any issue as to
14 competency?

15 A No There's -- I have no concerns about it

16 Q And so in your opinion, he is competent to stand
17 trial, competent to assist his counsel?

18 A It is my opinion that he is, yes

19 Q Okay, within a reasonable degree of medical and
20 psychiatric certainty?

21 A Yes

22 MR HEMBREE Your Honor, we would ask that Dr
23 Sachy's report be entered into evidence as Court's
24 Exhibit Number 2

25 THE COURT Is there any objection to that?

1 MR DIGGS Your Honor, we don't really object to
2 it I don't know that it would have any relevance, but,
3 you know, if the State wants to offer it, we're not going
4 to object

5 THE COURT All right Well, it's entered without
6 objection

7 MR HEMBREE Thank you, Your Honor

8 REPORT OF DR SACHY ENTERED AS COURT'S
9 EXHIBIT NUMBER 2

10 THE COURT Do you have any further questions,
11 Solicitor? I'm sorry

12 MR HEMBREE No, Your Honor

13 THE COURT All right Mr Diggs

14 MR DIGGS Your Honor, we don't have any
15 questions

16 THE COURT All right

17 Thank you, ma'am You may step down

18 THE COURT Anything further from the State?

19 MR HEMBREE No, Your Honor

20 THE COURT All right Anything from the Defense
21 at this point in time?

22 MR DIGGS No, Your Honor

23 THE COURT All right, very good

24 As to Mr Stanko and the requirements of the Court
25 to make a determination in this matter, is your -- Mr

1 Diggs, is your client prepared at this point in time to
2 answer some procedural questions by the Court?

3 MR DIGGS Yes, sir

4 THE COURT All right, very good

5 Madam Clerk, would you -- you can stay right there,

6 Mr Stanko

7 Just place him under oath

8 THE CLERK Please raise your right hand

9 (Mr Stanko raises his right hand)

10 STEPHEN C STANKO is placed under oath by the Clerk

11 THE COURT Mr Stanko, let me ask you a couple of
12 questions In the interview with Dr Crawford today, did
13 you discuss with her the proceedings you are facing
14 upcoming in this particular case?

15 MR STANKO Yes, sir, I did

16 THE COURT All right, and in her discussions with
17 you, were there any matters that were unclear to you or
18 you did not understand?

19 MR STANKO No, sir They were all clear

20 THE COURT All right, sir, and in this particular
21 proceeding, in this particular matter, that is 2005-GS-
22 26-2927, you understand that the State of South Carolina
23 is seeking the death penalty against you, correct?

24 MR STANKO Yes, sir, correct

25 THE COURT All right Though it may seem basic, I

1 want you to review with me your basic understanding of
2 what is the job of the Solicitors, Mr Hembree, Mr
3 Humphries What is their job in these proceedings in
4 general?

5 MR STANKO Their job is to prosecute the charges
6 which are being presented against me

7 THE COURT All right, sir In that regard, what
8 would they be trying to do?

9 MR STANKO They would be trying to convict me and
10 eventually sentence me, have me sentenced to death for
11 the result of the death of Henry Turner

12 THE COURT All right, sir, and the Defense
13 attorneys that are seated with you and are participating
14 in this matter as your Defense attorneys, Mr William
15 Diggs and Ms Brana Williams, what is -- in general, what
16 is their job in these proceedings?

17 MR STANKO Their job is to defend me in those
18 same charges, to present evidence on my behalf to the
19 jury that might earn me either an acquittal, or in the
20 event that I'm found guilty, a life sentence rather than
21 death

22 THE COURT All right, sir, and in general again,
23 when or if and when a jury is seated in this particular
24 matter, what would be the jury's job or responsibility in
25 these proceedings?

1 MR STANKO Their -- their duty would be to
2 observe all the evidence, see the facts, the way
3 everything was presented, and make first the decision of
4 guilt or innocence, and since this is a bifurcated case,
5 then they'll -- in the event that I'm found guilty, they
6 will have to decide whether to give me death or life

7 THE COURT All right, sir, thank you, sir, and
8 finally as to my role, how would you see or observe my
9 role in these proceedings to be?

10 MR STANKO Your role is to make sure that these
11 proceedings are handled in a judicial and constitutional
12 manner, to make sure the rules are followed, the statutes
13 are obeyed, and nobody acts out, I guess

14 THE COURT All right, sir Thank you very much

15 MR STANKO Yes, sir

16 THE COURT Any questions in that regard from the
17 State?

18 MR HEMBREE No, Your Honor

19 THE COURT From the Defense?

20 MR DIGGS No

21 THE COURT All right, thank you

22 Pursuant to the dictates of State v Blair, and our
23 South Carolina Code of Laws, especially 44-23-410 and 44-
24 23-430, based upon the matters that have been presented
25 to me, those being Court's Exhibits 1 and 2, the

1 testimony of Dr Crawford, the testimony of Mr Stanko in
2 these proceedings, I do find Mr Stanko to be competent
3 to stand trial He has the capacity to understand the
4 proceedings against him in this particular matter He
5 has the capacity to assist in his own defense, and not
6 only -- this is based upon not only the Court's
7 questioning and observation of Mr Stanko at this point
8 in time, but in all the proceedings that the Court has
9 already had in these matters and Mr Stanko's
10 participation in those

11 Anything further from the State at this point in
12 time regarding the Blair hearing?

13 MR HEMBREE No, Your Honor We would only ask
14 that Dr Crawford be excused so she can return to
15 Columbia

16 THE COURT Very good Any objection to that, Mr
17 Diggs?

18 MR DIGGS No, no objection

19 THE COURT All right

20 Thank you, Doctor You are excused and released
21 from your subpoena Thank you, ma'am

22 Anything further from the Defense as to the Blair
23 hearing, Mr Diggs?

24 MR DIGGS Nothing at this time, Your Honor

25 THE COURT All right, very good

1 Madam Clerk is sort of stretched thin this afternoon
2 being in a number of places, and I told her -- she
3 probably will not be here probably until about two-thirty
4 to go over those other -- I think there were sixteen
5 jurors, I believe, that we had still left outstanding
6 that we had to get some report on, so if we'll hold on
7 and we'll do that

8 One thing I did want to cover with y'all, gentlemen,
9 to see if you had any issues or problem with it on
10 Friday, just to kind of go over generally on Friday when
11 the panel comes in and they're going to be reporting
12 initially downstairs to the jury assembly room They'll
13 then -- to be logged in They will then come upstairs

14 We will do the general qualification of the jurors
15 at that point in time The first thing, obviously, the
16 Clerk will place them under oath We will find out their
17 general information about their work or employment, the
18 information the Clerk needs about their mileage We will
19 do the general qualification We would not excuse any
20 particular juror If any issues come up in the general
21 qualification, the Court will, the Clerk will, and
22 obviously I expect y'all to note that particular issue,
23 and when that person is placed on the panel, we will deal
24 with that particular issue when that juror is singularly
25 before the Court at that point in time

1 My other intention at that point in time is to
2 before the panel as a whole is excused, they would
3 obviously all of them be given reporting dates when to
4 come back and what time to come back, but even before
5 they leave on Friday, they would be handed by the Clerk's
6 Office a sheet that has -- I don't know if we would call
7 them the standard questions, but the recognized questions
8 of the juror as to the type of category that the juror
9 believed would best describe them, and have the jurors
10 pick the one type of juror that they believe best
11 describes them We would then have that juror sign that
12 document and put Friday's date on it so that that would
13 be available to all when that particular juror is
14 singularly questioned as to their ability to be a juror
15 in this -- or in these proceedings

16 Any questions or suggestions as to the totality of
17 that that I described from the State?

18 MR HEMBREE The question, Your Honor, about the
19 -- whether they're what we call a one, two, or three
20 juror, I assume that's the form that the Court proposes
21 to provide to each juror?

22 THE COURT That's correct

23 MR HEMBREE Okay What sort of an environment
24 does the Court anticipate giving the juror to contemplate
25 those three questions? Will it be ---

1 THE COURT Well, and that's the reason I wanted
2 suggestions -- I wanted answers or suggestions from you
3 I -- if y'all would want to wait until the juror comes
4 before the Court singularly and then give them some short
5 period of time to answer it all by themselves, I don't
6 have a problem with doing so I'll be glad to hear any
7 suggestions, Solicitor, that you might have, and
8 obviously, Mr Diggs, Ms Williams, if y'all have any
9 suggestions that you want to give to the Court on that
10 issue, I'll be glad to hear from you

11 MR DIGGS Your Honor, I -- I'm sorry

12 THE COURT Go ahead, Solicitor, and then I'll hear
13 from Mr Diggs

14 MR HEMBREE Thank you, Your Honor The -- and,
15 of course, it's -- you know, I fall back into the --
16 maybe the methods that we've used in the past that have
17 -- that we know have worked well, that we feel like, you
18 know, we've gotten an opportunity to see and experience
19 and have seen -- have experienced very few or no problems
20 with

21 Typically we had the forms available in the jury
22 rooms when the panels report They then had the
23 opportunity to review the witness list, as well as the --
24 as well as the type juror they are and then make that
25 determination They -- typically it's quiet, fairly

1 quiet It's isolated There are very few people in
2 there with them, four or five, you know, usually at the
3 most, and they have some time to do it because the only
4 one that ever has -- none of them are ever rushed,
5 because we don't rush them, but the only one that might
6 be somewhat rushed would be the first juror in that panel
7 because we're expecting them first, but by the time we
8 get to the second juror, we have always had -- already
9 had plenty -- plenty of time for the rest of the jurors
10 to have had an opportunity to read those forms

11 It's -- I don't know -- we've never had them
12 actually take a form and sign it, but that -- it does
13 tend to -- you know, that -- that would be a good --
14 sounds like a pretty good idea, that when they came out,
15 they would have the form They could -- you know,
16 they've used that form, they've signed that form and
17 indicated which juror they are, so it's a ---

18 THE COURT Well, that and ---

19 MR HEMBREE That's a good -- make that part of
20 the record

21 THE COURT I just think it's just a point, and
22 obviously there could very well be further review of the
23 matter, that I just think it's important that a juror --
24 that all that information be clear to any reviewing
25 authority, what the juror actually initially indicated

1 and then maybe thereafter indicated as a result of
2 questions that may be posed to them, so all that is clear
3 to any reviewing authority

4 MR HEMBREE I think that makes good sense, Judge,
5 and I think that's a good addition to the policy we've
6 used or the practice we've used in the past My -- I
7 guess my concern, if we do it en masse or you have a
8 large body of people out here ---

9 THE COURT Well, I hear that, and I hear what you
10 have suggested about the panels

11 Mr Diggs, any problem with that or any other
12 suggestion you'd like to make?

13 MR DIGGS Well, it just -- it occurs to me that
14 the sooner we can let them know they're going to have
15 that decision to make, the better, so like Friday, if you
16 could give them -- let them know this is a sheet they're
17 going to be asked to look at at some point and they might
18 want to be thinking about it over the weekend, it just
19 seems to me that the more lead time that we can give the
20 jurors, the better it would be, because they would have
21 had the ability and the opportunity to sit down and, you
22 know, contemplate on it and think about it, and then be
23 ready to go, you know, when we actually start the process
24 of examination

25 THE COURT All right What I may do in that --

1 what I may do in that regard is then in some comments to
2 them in the general qualification, I may tell them before
3 I excuse them that the process that will then go forward
4 and they would be -- when they come, that they would be
5 delivered a witness list, as well as this category
6 question form, and that for them to anticipate that they
7 would be -- before the Court talks to them, that they
8 will have examined the witness list to see if they know
9 anybody, to have gone through the juror categories and
10 selected a particular category that they believe best
11 describes them so they can anticipate that, and I may
12 tell them in general -- I think just telling them, from
13 what I've heard from y'all, I think talking to them in
14 general will probably be the best and then have them when
15 they come to look at the form and then pick the juror
16 that best describes them I don't anticipate handing it
17 to them or giving it to them until they actually come
18 then to the panels

19 MR HUMPHRIES And -- and the only concern that
20 the State would have in that regard, and I'm certain the
21 Court will give them an additional charge, what -- what
22 we've seen in the past, and it doesn't happen wholesale,
23 but it does happen on a regular enough basis that I think
24 a charge is warranted If we tell them we want -- you
25 know, "This is something that you can anticipate dealing

1 with when you show up for individual voir dire," there
2 will be those jurors, unless otherwise charged, who will
3 talk to their family members about that decision, to
4 their preacher about that decision, and it is a unique --
5 it is a very unique position not to be, you know, talked
6 about with other folks, so as long as there's some charge
7 in connection with that, I certainly don't have any
8 problem with that

9 I think they've got some anticipation of that, and I
10 think it helps, you know, sort of put it in context and
11 sets the parameters I certainly don't have any
12 objection to that, but, you know, in conjunction with
13 some charge that this is their unique position, not that
14 collectively of their family, or their preacher, or
15 significant others, whatever, so if the Court would
16 consider that, we don't have any objection to that
17 process

18 THE COURT Any comments on that, Mr Diggs?

19 MR DIGGS We don't really disagree I mean, when
20 they ---

21 THE COURT Ultimately it has to be the juror's
22 decision

23 MR DIGGS Exactly, exactly Another thing comes
24 to mind as well In fact, I was thinking maybe the exact
25 opposite, they might want to go home and discuss it with

1 family, but understanding that it's their decision that
2 ultimately they're going to have to make, or they might
3 want to -- they might not have ever thought about it
4 before and they might want to discuss it with people or
5 confide in them, but with an understanding on the proper
6 instruction probably from the Court that it's a decision
7 they're ultimately going to have to make and not based on
8 something else that was told to them by another person

9 Also, Your Honor, in that regard, too, we might want
10 to let them know that simply by selecting a particular
11 category, they're not going to be automatically excused
12 from service

13 THE COURT I'm not even going to bring that up
14 I'm just going to say, you know, to pick a category which
15 best describes you, and then that will, of course, then
16 lead to other questions by the Court and the attorneys in
17 this matter, so that I don't -- I don't even think I'll
18 bring up that subject with them I just don't think
19 that's -- that would be probably the right thing to do,
20 but just talk to them in general about it, okay?

21 All right, why don't we just take a real short break
22 and if you can communicate with Madam Clerk and see how
23 quickly she might be able to come join us and then we'll
24 get started Thank y'all

25 (OFF THE RECORD)

ON THE RECORD

THE COURT All right, so the first one that we're going to go over is Juror Number 6, Mayra I Alfonso. The Sheriff's affidavit says unable to locate Mayra Alfonso in Horry County. Moved from given address. No forwarding found.

Then we go on to juror number 26, and that one is Thomas B Aumiller. The Sheriff's affidavit states unable to locate Thomas B Aumiller in Horry County. Not at given address. Per neighbor, this person moved two years ago.

THE CLERK Number 37 will be the next one. They are picking up the paperwork tomorrow, and they are being told to come in, and the paperwork will be done.

THE COURT All right, so they're coming in Friday, and that was number ---

THE CLERK Number 37, and I will have the paperwork tomorrow.

THE COURT Great. Number 37 was located by the Sheriff's Office. The paperwork will be to the Clerk tomorrow, and the juror will be here on Friday, and that was Number 37.

Okay, the next one after that is 43. We've got a written statement from the juror, Daniel E Begley, and I'll just read it verbatim. "To Whom It May Concern I

1 would like to request to be excused from jury duty at
2 this time I have recently started a new job with
3 Outback Steakhouse I am in the management training
4 program and will be until mid-December Here is a copy
5 of my schedule Schedule attached " What's the State's
6 position?

7 MR HEMBREE Your Honor, it appears that Mr --
8 that juror number 43 -- it appears that this training is
9 a local training I don't know that this would be -- if
10 it were some sort of out of town, you know, ---

11 THE COURT Or out of state

12 MR HEMBREE --- or out of state type of training
13 that can't be -- you know, can't be repeated or he'd have
14 to start the class all over, or something like that, I
15 guess I would have a different -- I would feel that he
16 should be excused This appears to be something that's
17 just sort of on-the-job type training Maybe it can be
18 kind of plugged back in at a later date or not I'd ask
19 that this juror be required to come in

20 THE COURT All right, very good, to come in, and
21 the position of the Defense?

22 MR DIGGS Your Honor, we don't object to him
23 being rolled over to the next term If it's something --
24 I mean, he's got an opportunity to improve himself on the
25 job He may lose that if he's forced to come in I

1 would prefer not to have that type of juror ---

2 THE COURT Well, we'll have the juror come in and
3 maybe we can further explore that when they are
4 singularly questioned, but Madam Clerk, you'll have this
5 juror come in, please

6 THE CLERK Yes, sir

7 This is number 49 They were in the stack to be
8 coming in, but they're over sixty-five and they do want
9 to be excused

10 THE COURT All right Juror Number 49 did fill
11 out a juror questionnaire form They have indicated on
12 the juror summons for circuit court that they are over
13 sixty-five and wish to be excused The date of birth on
14 that one is January 26, 1944 What is the position of
15 the State?

16 MR HEMBREE No objection to the juror being
17 excused

18 THE COURT All right, and the Defense's position?

19 MR DIGGS We object

20 THE COURT I am going to excuse the juror

21 THE CLERK Number 50 was also coming in, but is
22 over sixty-five and wants to be excused

23 THE COURT All right The next one is juror
24 number 50 The juror did fill out a questionnaire form,
25 has indicated on the juror summons for circuit court that

1 they are over sixty-five and wish to be excused Date of
2 birth, December 31, 1942 What's the State's position?

3 MR HEMBREE No objection to this juror being
4 excused

5 THE COURT All right, and Defense?

6 MR DIGGS We object

7 THE COURT I am going to excuse the juror

8 The next one we have is juror number 84 Juror
9 number 84, we have Rolando S Calixto The Sheriff's
10 affidavit states that unable to locate Rolando S
11 Calixto, Jr in Horry County Moved from given address
12 for five years No other address found

13 The next one we have is juror number 116 116,
14 Eryca V Cook The Sheriff's affidavit indicates unable
15 to locate Eryca V Cook in Horry County Not at this
16 address No forwarding found

17 MR HEMBREE Your Honor, we had some paperwork on
18 juror number 98

19 THE COURT 98

20 MR HEMBREE It appears that that juror was found
21 and has answer- -- has provided a questionnaire I
22 just ---

23 THE CLERK I have it

24 THE COURT Okay

25 THE CLERK I didn't know that they wanted to --

1 number 98

2 THE COURT Is coming in?

3 THE CLERK Yes, is coming in

4 THE COURT Okay 98 is coming in

5 MR HEMBREE I just wanted to confirm that, Your
6 Honor Thank you

7 THE COURT Very good I just wanted to make sure
8 98 is coming in

9 All right, so 129, the Sheriff's affidavit on Robert
10 N Crowe Unable to locate Robert N Crowe in Horry
11 County Not at address given No forwarding found
12 Unable to locate

13 All right, juror number 151 The juror has filled
14 out the questionnaire and the juror summons for circuit
15 court, indicating they are over sixty-five and wish to be
16 excused Date of birth is 11/8/1938 The State's
17 position?

18 MR HEMBREE No objection, Your Honor

19 THE COURT Defense?

20 MR DIGGS We object

21 THE COURT All right I'm going to excuse the
22 juror

23 All right, juror number 155 has filled out the juror
24 questionnaire form and the Clerk has just recently
25 received an e-mail from the juror, and I'll read it

1 verbatim

2 "Mrs Huggins, my name is Bruce Diamond," and that's
3 juror number 155, "and I am scheduled to appear for jury
4 duty on Friday, November 6th I am writing you to
5 request dismissal from my responsibility to appear I
6 have become unemployed recently after the time I received
7 the original juror summons and due to financial
8 restraints, I have been forced to make certain changes
9 I now care for my three year old full-time, as I was
10 forced to take him out of daycare, and I also now pick up
11 my seven year old from school three days per week to
12 avoid paying for after-school care

13 I absolutely do not have the financial/personal
14 resources to provide for outside care and having to do so
15 would be financially devastating to my family I would
16 appreciate any consideration you can give me I have
17 previously sent in my questionnaire My juror number is
18 155, but clearly my situation has changed since that
19 time "

20 The State's position?

21 MR HEMBREE Your Honor, it appears based on this
22 communication that juror number 155 would be entitled to
23 an exemption based on full-time care of a child ---

24 THE COURT Under the age of seven

25 MR HEMBREE Excuse me, under the age of seven,

1 and we would ask that he be excused

2 THE COURT What is the Defense's position?

3 MR DIGGS We agree

4 THE COURT All right Madam Clerk, this juror is
5 excused

6 All right, juror number 185 has filled out the juror
7 questionnaire form and also the juror summons for circuit
8 court, and that juror is -- I don't have that page
9 Madam Clerk, just make me another one of those

10 All right, juror number 185 Juror number 185
11 filled out the juror -- as I said, juror questionnaire
12 form The juror summons for circuit court indicates
13 under disqualifications that "I have been sentenced in a
14 State or Federal Court for a crime that carries a
15 sentence of more than one year," and they said unlawful
16 harvesting of water fowl, June 1995, Charleston Federal
17 Court, a Thousand Dollar fine, two years probation -- I'm
18 having a hard time reading this -- "penalty up to" -- I
19 believe it says one and a half years jail and a Five
20 Thousand Dollar fine or a Fifteen Thousand Dollar fine

21 All right, what's the State's position on that?

22 MR HEMBREE Your Honor, we have a criminal
23 history on juror number 185 that indicates his statement
24 here is accurate, that he was convicted in 1996 of
25 violating federal migratory bird laws He was given a

1 sentence, it indicates here, of two years probation and
2 fifty hours community service It appears it's a crime
3 that -- at least the probation carries more than a year,
4 and I can't speak for my own knowledge of the maximum
5 sentence of this violation, but I am aware that they
6 carry some fairly hefty penalties

7 THE COURT All right What's the Defense's
8 position?

9 MR DIGGS We don't object to him being excused

10 THE COURT All right We'll excuse juror number
11 185 then

12 All right, the next one we have then is juror number
13 186 186 filled out the juror questionnaire form and the
14 juror summons, indicates also under disqualifications,
15 "I've been convicted in State or Federal Court," and they
16 say -- the handwritten note says, "Possession with intent
17 of" -- I'm assuming marijuana, "1979, question mark "

18 Solicitor, do you have anything on juror 186?

19 MR HEMBREE Yes, Your Honor That conviction
20 actually was in 1982, and he was convicted of PWID
21 marijuana, received a three year suspended sentence,
22 three years probation, and a fine

23 THE COURT All right, so you'd ask he be excused?

24 MR HEMBREE Yes, Your Honor

25 THE COURT And Defense position?

1 MR DIGGS No objection

2 THE COURT All right He is excused

3 The next one we have then is juror number 192,

4 Barbara Farmer The Sheriff's affidavit states unable to

5 locate Barbara Farmer in Horry County Not at given

6 address No forwarding found Unable to locate

7 All right, let's go to juror number 197 That juror

8 did fill out the juror questionnaire form and the juror

9 summons, has checked an exemption "I am the primary

10 caretaker of a disabled person or person age sixty-five

11 or older who cannot care for himself " Their current

12 place of employment in the juror questionnaire form

13 indicates N/A, not applicable In looking through --

14 let's see, questionnaire number 23, "Are you or any

15 family members currently being treated for a medical

16 illness which would prevent or impair your jury service?"

17 "Yes " "If yes, please explain " "Eighty-seven year old

18 mother with health issues" is what they say, and that

19 appears to be the only notation with that

20 What's the -- what's the State's position on juror

21 number 197?

22 MR HEMBREE Your Honor, it appears that the juror

23 is entitled to the exemption They are not working, and

24 claim that they are caring for a disabled person We

25 would ask that the juror be excused

1 THE COURT The Defense position?

2 MR DIGGS Your Honor, we don't object

3 THE COURT All right Mark this juror as excused,
4 Madam Clerk

5 The next one is juror number 209, and that is
6 Nicholas T Fowler The Sheriff's affidavit states that
7 unable to locate Nicholas T Fowler in Horry County Not
8 at address given No forwarding found 209, unable to
9 locate

10 All right, juror 255 has been located and filled out
11 the juror information form, doesn't list any
12 disqualifications or exemptions That juror is coming
13 in

14 272, the Sheriff's affidavit on Deborah B Hattem
15 Unable to locate Deborah B Hattem in Horry County
16 Subject moved to Greenville, South Carolina, on 10/31/09,
17 and no longer resides

18 All right, juror number 279 had filled out the juror
19 questionnaire form and indicated on the juror
20 questionnaire form regarding exemptions that they served
21 on circuit court jury duty during the previous four
22 calendar years Date of service, they have -- and Madam
23 Clerk indicates that they served on May 22nd, 2008, per
24 the Clerk of Court's records, so the juror did serve in
25 circuit court May 22nd of '08

1 What's the State's position?

2 MR HEMBREE The juror is entitled to the
3 exemption, Your Honor No objection

4 THE COURT Defense?

5 MR DIGGS Yeah, no objection

6 THE COURT And I noted that I read the previous
7 four calendar years It's obviously three calendar years
8 is what the statute has, but the juror summons for
9 circuit court that was sent to all the Clerks by the
10 State had that typographical error in it Obviously
11 we're going by the statute of the three calendar years,
12 and when Madam Clerk brought that to the attention, the
13 State authorities they weren't going to spend money to
14 have new summons, so until those are used up, that's what
15 they have

16 All right, so that one is excused

17 All right, go to juror number 313 Juror number 313
18 filled out the juror form Apparently the Sheriff hadn't
19 been able to locate, but the mail service did, and so the
20 Clerk -- the juror filled out the juror information sheet
21 and will be coming in That's juror number 313

22 All right, the next one, we go to juror number 401,
23 had filled out the juror questionnaire form The juror
24 summons indicated prior circuit court jury duty, and the
25 Clerk of Court went through her records and has an

1 affidavit stating that the juror served on jury duty on
2 July 23rd, 2008, on juror 401 What's the State's
3 position?

4 MR HEMBREE The juror is excused, Your Honor No
5 objection to the juror being excused, Your Honor

6 THE COURT Defense?

7 MR DIGGS No objection

8 THE COURT And 401 is excused

9 Go to juror number 413, Counsel, if you would They
10 did fill out the juror information sheet, but they set
11 forth on the juror summons that the exemption -- that
12 they have legal custody and duty of care of a child under
13 the age of seven and cannot provide adequate child care
14 while serving as a juror They also added to their juror
15 questionnaire form that, "I am the only one who can take
16 and pick up my two kids from school and care for them
17 after school My son stays sickly, and I really need to
18 be on call if I need to pick him up May I please be
19 excused from this trial to be able to do this "

20 In the juror questionnaire form and the answer of 9
21 and 10, she indicates she's a homemaker Current job,
22 title, or description, "Stay-at-home mom," and 11 was,
23 "For the last seven years "

24 The children, as indicated, are seven and five, as
25 set forth in number 15 What's the State's position?

1 MR HEMBREE The juror is entitled to the
2 exemption in our judgment, Your Honor We would ask that
3 she be excused

4 THE COURT All right Defense?

5 MR DIGGS No objection

6 THE COURT All right, excused 413

7 All right, if we can go down to juror number 415
8 They answered the juror questionnaire and a juror
9 summons, indicated in the exemption that they had a
10 criminal record, and they indicate breach of trust,
11 August 1997, in Horry County Do you have any
12 information on that, Solicitor, 415?

13 MR HEMBREE No, Your Honor, we don't have any
14 information on that one We can double-check that and
15 make a -- you know, try to make a determination on the
16 amount Certainly if it's over ---

17 THE COURT But they have it listed, and, you know,
18 honestly we don't know if that's correct or not, but they
19 list it as breach of trust, August 1997, Horry County
20 That's what they -- that's what they set forth, so if
21 you'll check out juror number 415

22 We'll have them come in, Madam Clerk, and then if we
23 find that out, and the Defense is in agreement, maybe on
24 Friday we'll excuse that juror, all right?

25 MR HEMBREE We'll double-check that, Your Honor

1 Thank you

2 THE COURT All right, great

3 All right, just so there is some added information
4 on juror number 448, it's not an exemption of any kind,
5 but they did indicate that they are a title abstracter
6 I don't know if that was -- since they added that to the
7 bottom of the juror summons for circuit court, I wanted
8 to make sure that y'all had that additional information
9 They do title abstracting work All right, that was 448

10 All right, go to number 485 The juror had
11 initially responded, sent in the juror questionnaire and
12 the juror summons for circuit court, and thereafter had
13 faxed to the Clerk's Office a statement from the Conway
14 Adult Medicine, and it has Karen Owens giving a date of
15 birth that matches the one on the juror questionnaire
16 form, date 11/3/09 "Patient under my care and is unable
17 to attend jury duty due to illness at this time " That's
18 what it says

19 What's the State's position?

20 MR HEMBREE Your Honor, that's just a big vague
21 I would ask that this juror at least required to come in
22 for general qualification and then we can assess the
23 situation at that ---

24 THE COURT Very good Madam Clerk, you can tell
25 them if they want to bring in some additional

1 information, that would be great

2 All right, let's go to juror number 506, if you
3 would, please 506 filled out the juror questionnaire
4 form and on the juror summons for circuit court in the
5 exemption category, he states that, "I am the primary
6 caretaker of a disabled person or a person age sixty-five
7 or older who cannot care for himself " They indicate in
8 their juror questionnaire form they have a place of
9 employment as Celebrations Nightlife, bartender, business
10 hours 7 00 to 3 00 A M I'm assuming that's 7 00 P M --
11 7 00 P M to 3 00 A M , five years employment there

12 Looking at number 23, "Are you or any family member
13 currently being treated for any medical illness which
14 would prevent or impair your jury service? Yes Mother
15 recovering from breast cancer and father is disabled " I
16 don't see any other information What would be the
17 State's position on that particular juror? Do you want
18 to have them come in and question them further?

19 MR HEMBREE Normally I would say yes, Your Honor
20 That was where I was headed until I got to question
21 48, ---

22 THE COURT 48

23 MR HEMBREE --- and it's unrelated to the
24 exemption that he claims, but he states there that "He
25 don't want to" ---

1 THE COURT "Feel personally responsible for a
2 decision "

3 MR HEMBREE --- "responsible for a decision " He
4 indicates that would -- you know, anything that would
5 prevent him from paying attention during the trial It
6 sounds to me like he's probably going to get excused
7 anyway, but ---

8 THE COURT All right What's the Defense
9 position, Mr Diggs?

10 MR DIGGS Your Honor, we believe he needs to come
11 in

12 THE COURT All right Madam Clerk, we'll have the
13 juror come in You might want to tell them that if they
14 have further information or explain further their request
15 regarding the primary caregiver, since that doesn't
16 square with their employment status

17 THE CLERK Okay, I will

18 THE COURT All right Go to 532 They filled out
19 the juror questionnaire form and the juror summons, and
20 then contacted the Clerk of Court, and we have an
21 affidavit indicating that their date of birth is
22 5/18/1942, over the age of sixty-five, and wishes now to
23 be excused What is the State's position?

24 MR HEMBREE No objection, Your Honor

25 THE COURT Defense?

1 MR DIGGS We object

2 THE COURT Excused

3 Go to juror number 540, Melody B Rogers The
4 Sheriff's affidavit, unable to locate Melody B Rogers in
5 Horry County Not at this address No forwarding found
6 Unable to locate

7 Go to juror 545, the Sheriff's affidavit on Scott R
8 Roth Unable to locate Scott R Roth in Horry County
9 Not at given address No forwarding found Unable to
10 locate

11 We've got juror number 548 I think there was some
12 information about the father was having surgery on the
13 5th, and I think we were going to have them come in, or
14 come in on the 9th or the 10th, or whenever it was they
15 were put in a panel There's another e-mail to the Clerk
16 of Court "Mrs Huggins, juror number 548 I am e-
17 mailing the dates I am to be there, November 6th I was
18 just notified last Thursday of this My father is having
19 major surgery on November 5th in Pinehurst, North
20 Carolina If there is any way at all that I can be moved
21 to the next case, I would greatly appreciate it," and
22 Valerie Ruonala

23 She indicates her place of employment is Ruonala
24 Durable Medical Equipment, the owner Business hours,
25 9 00 to 5 00 Length of employment, seven years

1 What's the State's position? I think before we had
2 indicated to put her on a panel and have her come in and
3 be sworn at that time, and questioned

4 MR HEMBREE I guess the only thing that changes,
5 Your Honor, is that she's got to be there for the surgery
6 on the 5th Coming in on the 6th, I don't ---

7 THE COURT If she comes in on -- like I said, if
8 she doesn't have to come in -- well, if she was not
9 coming in Friday, she was placed on a panel, come in the
10 next week and then be sworn and questioned at that point
11 in time

12 MR HEMBREE Your Honor, that sounds -- we have no
13 objection to that process, Your Honor Thank you

14 THE COURT All right Defense?

15 MR DIGGS Your Honor, we don't object to you
16 moving her on down to the next term of court, you know,
17 in the event that there's some complications with the
18 surgery

19 THE COURT All right Well, have her come in not
20 -- Madam Clerk, she doesn't have to come in Friday, but
21 tell her we will put her on a panel and she will be
22 coming in the next week at whatever time you tell her to
23 come in, all right?

24 THE CLERK Yes, sir

25 THE COURT And remember, that's one we'll need to

1 swear

2 All right, going then -- skipping up to 600 Juror
3 number 600, Barbara Jo Stanley, filled out the juror
4 questionnaire form and is coming in

5 Go to juror number 625, originally was unable to
6 locate, but apparently mail caught up with them, and
7 there's certainly a different address from the one set
8 forth for 625 There's a change of address, Madam Clerk,
9 so we'll note that for 625, and then they did fill out
10 the questionnaire form, so we'll have that juror coming
11 in

12 MR HEMBREE Your Honor, ---

13 THE COURT Yes, sir

14 MR HEMBREE --- on this one, it may -- and if the
15 Clerk would like to contact this juror, it appears that
16 they may live in Georgetown County It's Murrells Inlet
17 Now, some Murrells Inlet ---

18 THE COURT Murrells Inlet, and that's -- we don't
19 know

20 MR HEMBREE Right, right

21 THE COURT I mean, that's the problem with
22 Murrells Inlet is part of it is in Horry County and part
23 of it is not, so is there any way, rather than leaving it
24 to the juror to tell you, Madam Clerk, is there any way
25 for y'all to check to see or have someone check to see if

1 this address is located in Horry County or Georgetown?

2 THE CLERK I can call 911

3 THE COURT How about do that How about see if we
4 can't communicate otherwise than relying upon the juror
5 to tell us what county they live in

6 THE CLERK If they say that, can I go ahead and
7 excuse them?

8 THE COURT If 911 indicates that this juror lives
9 in Georgetown County, is there any problem with the Clerk
10 just informing us of that and that juror being excused?
11 From the State?

12 MR HEMBREE No objection from the State, Your
13 Honor

14 THE COURT Defense?

15 MR DIGGS No objection

16 THE COURT Very good

17 All right, go to 642 It's another one that
18 apparently was originally unable to -- unable to locate,
19 but the mail caught up with them and they filled out the
20 juror questionnaire form Again, the street address is
21 different It's still North Myrtle Beach, but it's a
22 different street address, but they have filled out the
23 juror questionnaire form and are coming in

24 MR HEMBREE Your Honor, I don't know -- I just
25 point it out I'm not sure what it means We'll

1 probably just have to -- clearly have to wait until they
2 get here, but they checked the box that says they're not
3 a U S citizen, and then they filled in -- they said they
4 were born in Conway, South Carolina I'm puzzled with
5 the ---

6 THE COURT Well, we'll just see It might be that
7 they got -- I don't know I'm assuming it may be that
8 they're not -- maybe they're not registered to vote or
9 something, ---

10 MR HEMBREE May be I just -- we'll have them
11 here

12 THE COURT --- so I don't know We'll find out,
13 but obviously we'll just have this juror coming in, and
14 just note the new address

15 All right, 686 was originally unable to -- unable to
16 locate, but then has filled out the juror questionnaire
17 form Is the correct address that's on the rollcall list
18 -- the same address on the rollcall list and they filled
19 out the juror information form, so they'll be coming in

20 All right, go to number 700, if you would Got a --
21 the Clerk got a fax dated November 3rd, 2009, so Horry
22 County Judicial Complex, 1301 Second Avenue, Conway,
23 South Carolina It says, "Dear Judge, I have a friend
24 typing this letter for me as I am unable to do so myself
25 I was summoned as a potential juror, juror number 700,

1 for a case to begin this Friday, November 6, 2009

2 After receiving the summons, I contacted the Clerk
3 of Courts requesting a deferral of my jury duty as I have
4 made travel plans to go to New York to visit my ailing
5 grandparents Before receiving a reply from the Court on
6 this matter, I suffered a broken right hand I had a
7 cast put on yesterday and am finding the simplest task
8 very difficult to perform I am presently taking pain
9 medication that leaves me drowsy, and the instructions on
10 the label warn against driving or operating heavy
11 equipment I now have no way of getting to and from
12 Court

13 In view of these recent events, I am again
14 requesting to be dismissed from this jury pool and
15 rescheduled for a later date Contact number -- thank
16 you for considering my request Michelle Zona "

17 All right, what's the State's position?

18 MR HEMBREE Your Honor, we don't have any
19 objection to Ms Zona's jury service being transferred to
20 another term

21 THE COURT Defense?

22 MR DIGGS We don't object

23 THE COURT All right, Madam Clerk, you can
24 transfer her Let's transfer her to January Transfer
25 her to a term in January Let's pick January 11th

1 Transfer her to January 11th, please, ma'am

2 What we're going to do, Counsel, is with the Clerk,
3 she's going to go through the numbers just to make sure
4 who's coming in so that we're all on the same page If
5 y'all don't mind us doing that, we'll try to do it as
6 quickly as we can

7 All right, Madam Clerk, go ahead

8 THE CLERK I've got 3, 4, 5, -- and if anybody has
9 any question ---

10 THE COURT If you have a question, y'all raise
11 your hand, or jump up, or something

12 THE CLERK 9, 11, 12, 13, 17, 19, 21, 22, 23, 31,
13 33, 35, 37, and the paperwork will be here tomorrow, ---

14 THE COURT Okay

15 THE CLERK --- 38, 41, 42, 43, 44, 45, 46, 47 --
16 I'm sorry -- 53, 54, 57, 60, 64, 65, 67, 68, 69, 70, 73,
17 76, 78, 83, ---

18 THE COURT Could you stop for just one second and
19 let me catch up

20 All right, go ahead, Madam Clerk

21 THE CLERK 87, 88, 89, 90, 93, 95, 98, 99, 101,
22 102, 103, 104, 106, 107, 115, 119, 121, 122, 123, 131,
23 134, 137, 138, 145, 149, 150, 154, 156, 157, 158, 159,
24 162, 163, 166, 167, ---

25 THE COURT I'm sorry I had 163 as excused, being

1 over sixty-five, 163

2 THE CLERK I could have marked the wrong one

3 THE COURT I have 162 is coming in, 163 as being
4 excused, over sixty-five

5 THE CLERK And that's correct

6 THE COURT All right, very good

7 THE CLERK Okay, 166, 167, 170, 172, 179, 180,
8 181, 183, 187, 190, 191, 195, 198, 199, 200, 204, 208,
9 213, 215, 218, 222, 224, 227 ---

10 THE COURT Wait a minute

11 MR HEMBREE Excuse me, Your Honor We had 222
12 down as not coming in, a criminal record

13 THE COURT 222? I didn't have anything -- I don't
14 have anything on 222 I'm sorry

15 THE CLERK No, he's coming in

16 THE COURT Do you have anything on Angel Garcia
17 then?

18 MR HEMBREE Your Honor, we didn't bring that
19 material up here today, but we will ---

20 THE COURT All right How about -- we'll have to
21 -- y'all just make a note to check 222, and then on
22 Friday, we'll need to check on that, okay?

23 MR HEMBREE Thank you, Your Honor

24 THE CLERK I think that might have been one you
25 wasn't sure if that was really them or not I'm not

1 sure

2 THE COURT All right, that's okay We'll just
3 check it out again Okay, 222

4 THE CLERK Okay, 224, 227, 229, 231, 234, 236,
5 237, 240, 241, 243, ---

6 THE COURT Wait, wait 241, I had excused, over
7 sixty-five

8 THE CLERK And they would be over sixty-five

9 THE COURT Okay

10 THE CLERK Okay, 243, 247, ---

11 MR HEMBREE Your Honor, I have 246 coming in

12 THE COURT Yes, 246 also coming in

13 THE CLERK I had it written to the side

14 THE COURT All right

15 THE CLERK I'm sorry 246 and 247

16 THE COURT All right, very good

17 THE CLERK 250, 251, 253, 255, 257, 258, 260, 261,
18 265, 268, 275, 277, 280, 281, 282, 284, 287, 290, 294,
19 297 ---

20 THE COURT How about 291?

21 THE CLERK 291, I have criminal conviction

22 THE COURT Is that what you have, Solicitor?

23 MR HEMBREE Yes, Your Honor

24 THE COURT All right, thank you

25 THE CLERK Then I have 294 coming in

1 THE COURT Okay

2 THE CLERK 297, 298, 299, 300, 302, 307, 309, 313,
3 315, 316, 320, 321, 322, 326, 329, 330, 331, 333, 337,
4 342, 343, ---

5 MR HEMBREE Excuse me Your Honor, I had 339
6 coming in also

7 THE CLERK That's a commissioned law enforcement

8 THE COURT 339, no, I don't have that

9 THE CLERK I could have wrote it on the wrong one,
10 so let me pull it

11 THE COURT Okay I've got -- I've got 338 is
12 excused

13 THE CLERK Yes, I have that

14 THE COURT 339, William P Johnson All right, my
15 clerk indicates that that person is employed with the
16 Horry County Police Department

17 MR HEMBREE Thank you, Your Honor

18 THE CLERK So that is correct?

19 THE COURT Yes, ma'am, Horry County Police
20 Department, that's correct

21 THE CLERK All right, 342, 343 ---

22 THE COURT Just stop for one second

23 Now, obviously, Mr Diggs, Ms Williams, if y'all
24 object to any of these, y'all let me know, okay? Y'all
25 haven't said anything, but if you've got any problems,

REVIEW OF ROLLCALL LIST FOR PANEL

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1 y'all let me know

2 MR DIGGS We will

3 THE COURT All right, thank you Go ahead, ma'am

4 THE CLERK 345, 346, 347, 348, 351, 352, 354, 362,

5 363, 366, 370, 372, 375, 377, 378, 380, 382

6 THE COURT I've got -- let's see, okay, 378 is

7 coming in Okay, great I'm sorry Go ahead

8 THE CLERK Okay, 385, 386, 387, 388, 389, 390,

9 391, 392, 393, 396, 397, 399, 402, 407, 408, 411, 415,

10 418 ---

11 THE COURT What happened to 412?

12 THE CLERK Invalid caregiver

13 THE COURT Okay, thank you, ma'am

14 THE CLERK 423, 424, 426, 428, 429, 433, 438,

15 444, ---

16 THE COURT And tell me what happened to 436,

17 please, ma'am

18 THE CLERK 436 is over sixty-five

19 THE COURT Over sixty-five All right, thank you,

20 ma'am

21 THE CLERK Okay, 446, 448, 451, 458, 459, 462,

22 466, 467, 468, 472, 473, 477, 478, 479, 480, 484, 485,

23 487, 490, 494, 496, ---

24 THE COURT What happened to 495?

25 THE CLERK Transferred

1 THE COURT Transferred All right, thank you
2 THE CLERK 499, -- I said 497, right?
3 THE COURT Yes, ma'am
4 THE CLERK No, that's not a resident
5 THE COURT No, 496
6 THE CLERK Okay, and then 499, 503, 505, 506, 507,
7 508, 510, 512, 513, 515, 516, 518, 522, 524, 529, 530,
8 534, 539, 542, 547, 548, 549, 552, 554, 557, 558 ---
9 MR HEMBREE Excuse me I had 554 was unable to
10 locate
11 THE CLERK 554?
12 MR HEMBREE Yes, ma'am
13 THE CLERK I've got 553, unable to locate
14 THE COURT Well, I had the first three, 53, 54,
15 and 55 was unable to locate
16 THE CLERK I could have missed just coding it on
17 the computer She's checking that for you
18 THE COURT All right
19 THE CLERK 557, 558, 561, 564, ---
20 THE COURT And 563, what happened to 563?
21 THE CLERK Law enforcement
22 THE COURT Okay
23 THE CLERK I think he's the DHEC officer
24 MR HEMBREE He's the DHEC officer
25 THE COURT All right, very good

REVIEW OF ROLLCALL LIST FOR PANEL

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1 THE CLERK 554 is unable to locate

2 THE COURT All right, very good

3 THE CLERK Okay, 564 is coming in, 567, 568, 570,
4 571, 572, 573, 575, 577, 580, 582, 586, 587, 592, 594,
5 597, 598, 600, 601, 602, 607, 608, 610, 611, 612, 615,
6 621, 622, 625, 628, 631, 632, 633, 634, 637, 638, 639,
7 642, 647, 656, 658, 659, 660, 661, 662, 664, 667, 668,
8 669, 670, 672, 673, 682, 683, ---

9 MR HEMBREE Excuse me

10 THE COURT Sorry, Madam Clerk

11 MR HEMBREE Madam Clerk, I had 673 as a student

12 THE COURT Transferred 673 transferred, a
13 student

14 THE CLERK Thank you

15 THE COURT All right, start with 673 again,
16 please

17 THE CLERK After that, the next one coming in will
18 be 682

19 THE COURT All right

20 THE CLERK 683, 685, 686, 688, 690, 693, 695, and
21 that's it Does that sound right?

22 MR HEMBREE That's good

23 THE CLERK That puts it up around 300, maybe 299

24 THE COURT All right, very good

25 Anything else from the State at this point in time?

1 MR HEMBREE Yes, Your Honor One sort of just
2 housekeeping matter, and I may have misunderstood the
3 Court's intention on Friday, that I understand that the
4 jurors will be checking in downstairs when they first
5 arrive and they will be coming up here for the general
6 qualification?

7 THE COURT Right They just -- the Clerk is going
8 to -- downstairs is going to kind of with their computer
9 system kind of check them off, make sure that they have
10 all of them, and you're just going to send them up as you
11 check them in?

12 THE CLERK And we're going to get their mileage

13 THE COURT Their mileage

14 THE CLERK Get their mileage, check them in and
15 get their mileage, and give them their badge, and send
16 them up

17 THE COURT Okay

18 MR HEMBREE And that was my understanding Then
19 I think I heard the Court say that they were going to be
20 asked about their employment when they got up here?

21 THE COURT Well, if we don't need to do the -- if
22 we don't need that -- I don't know that we need to do
23 that I could just go into then just the general
24 qualification I didn't know you were going to get the
25 mileage down there, so I was just going to have them ---

1 THE CLERK Yes That was to just try to save some
2 time

3 THE COURT All right Then we'll just do the --
4 we'll just start off with the general -- swear them all
5 in and then do the general qualification then as soon as
6 -- when they come upstairs

7 MR HEMBREE Very good I just wanted to check on
8 that Thank you, Your Honor

9 THE COURT Okay great Yes, sir?

10 MR DIGGS Your Honor, do we need to be there?
11 I'm not sure ---

12 THE COURT I'm sorry?

13 MR DIGGS Do we need to be there?

14 THE COURT Downstairs, no, just upstairs That's
15 just a -- you know, they're going to be coming in in
16 dribs and drabs, you know, ones and twos, and the Clerk
17 is just going to check them off, mileage, give them a
18 badge, and send them upstairs, so I don't see a necessity
19 for any of us honestly to be there That's more an
20 administrative matter for the Clerk's Office and to help
21 them, you know, in their recordkeeping, and making sure
22 the people get paid properly, that sort of thing

23 All right, anything else, Solicitor?

24 MR HEMBREE Nothing else from the State, no, Your
25 Honor

1 THE COURT Mr Diggs? Ms Williams?

2 MR DIGGS Nothing from the Defense, Your Honor

3 THE COURT All right, very good All right, so
4 the next matter that we have then, as I see it, is on
5 Friday, correct?

6 MR HEMBREE Yes, Your Honor

7 THE COURT All right, I'll see y'all Friday
8 morning then here in the courtroom

9 MR DIGGS Thank you

10 THE COURT Yes All right, we're going to be
11 optimistically shooting for ten 'til ten They're
12 starting at 9 30 downstairs It will probably be later
13 than that, but let's make sure that Mr Stanko is here by
14 ten 'til ten on Friday How about that, okay, so that if
15 we can go forward, we'll be able to, all right?

16 MR HEMBREE Thank you, Your Honor

17 THE COURT Thank y'all I appreciate it very
18 much

19 THE CLERK I did pull my paperwork on Garcia and I
20 do have excused, and I called and spoke with his wife and
21 told him not to come in

22 THE COURT And that was excused for?

23 THE CLERK Excused for a criminal record

24 THE COURT And what number was that?

25 THE CLERK 222

1 THE COURT 222, excused for criminal record

2 Thank you

3 (Conclusion of Transcript of Record)

4

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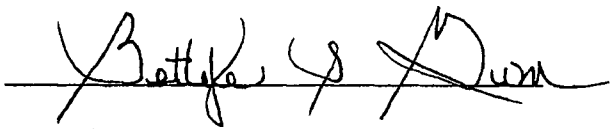
1 STATE OF SOUTH CAROLINA)

2 COUNTY OF HORRY)

3
4 I, the undersigned Bettye S Gum, Certified Court
5 Reporter and Notary Public in and for the State of South
6 Carolina, do hereby certify that the foregoing is a true,
7 accurate and complete Transcript of Record of all the
8 proceedings had and evidence introduced in the hearing of
9 the captioned case, as taken by Dixie Cox Eubank,
10 Official Reporter, and transcribed by me, relative to
11 appeal, in the Court of General Sessions for Horry
12 County, South Carolina

13 I do further certify that I am neither of kin,
14 counsel, nor interest to any party hereto

15
16
17 July 9, 2010

18
19 
20

BETTYE S GUM, CCR-CVR-CM

21 Certified Court Reporter and

22 Notary Public for South Carolina

23 My Commission Expires 7/13/14
24
25

STATE OF SOUTH CAROLINA) THE COURT OF GENERAL SESSIONS
 COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT
 05-GS-26-2927

State of South Carolina,)
)
 Plaintiff,)
)
 -VS-) TRANSCRIPT OF RECORD
)
 Stephen Christopher Stanko,)
)
 Defendant)
 _____)

November 6, 2009
 Conway, South Carolina

B E F O R E

HONORABLE STEVEN H JOHN, Circuit Judge

A P P E A R A N C E S

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 Official Reporter

I N D E X
(SW) STATE'S WITNESS
(DW) DEFENSE WITNESS

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E X H I B I T I N D E X

(No Exhibits Marked)

GENERAL QUALIFICATION OF JURORS

3

1 THE COURT All right, ladies and gentlemen, I
2 appreciate very much your patience in this regard
3 Obviously there is a large number of you It took a
4 long time for the Clerk's Office to index you, to make
5 sure we had everybody that was properly responded
6 Unfortunately we couldn't start until we had all of
7 y'all, so we needed to make sure that we had everybody
8 before we could begin any part of the process

9 My name is Steven John, the Resident Judge of the
10 Fifteenth Judicial Circuit which covers Horry and
11 Georgetown Counties

12 Madam Clerk, have you placed them all under oath?

13 THE CLERK Yes, sir

14 THE COURT Very good The first thing that we're
15 going to do is call the roll The Clerk will call the
16 roll, make sure that we haven't lost some of y'all from
17 downstairs to up here, they aren't still hanging out in
18 the bathrooms or whatever, so we do need to call the
19 roll once y'all have been sworn, and then we will start
20 the general qualification process

21 All right, Madam Clerk, if you would call the roll,
22 please, ma'am

23 THE CLERK When I call your name, please stand,
24 and then you can be seated

25 Number 3, Agripino (The juror stands) Thank

GENERAL QUALIFICATION OF JURORS

1 you
2 4, Anntanette Aklin (The juror stands) Thank
3 you
4 Number 9, Layton Allen (The juror stands) Thank
5 you
6 11, Wesley Allen (The juror stands) Thank you
7 13, James Alvey (The juror stands) Thank you
8 21, Jennifer -- I'm not quite sure (The juror stands)
9 MS ARAUJO Araujo That's okay
10 THE CLERK Thank you
11 22, Matthew Arbaugh (The juror stands) Thank
12 you
13 23, Tina Arms (The juror stands) Thank you
14 31, Karen Barr (The juror stands) Thank you
15 33, Margaret Bartomeo (The juror stands) Thank
16 you
17 35, Mary Bates (The juror stands) Thank you
18 37, Darryl Bayne (The juror stands) Thank you
19 41, Daniel Becker (The juror stands) Okay
20 42, Leroy Beckwith (The juror stands) Thank
21 you
22 43, Daniel Begley (The juror stands) Thank you
23 44, Madgie Bell (The juror stands) Thank you
24 45, Rosanne Bell (The juror stands)
25 46, James Bellamy (The juror stands) Thank you

GENERAL QUALIFICATION OF JURORS

5

1 53, James Berry (The juror stands) Thank you
2 54, Jaime Bess (The juror stands)
3 57, Gwendl Blondmonville (The juror stands)
4 Thank you
5 60, Gina Boggs (The juror stands) Thank you
6 64, Brandon Boyd (The juror stands) Thank you
7 65, Jeannemarie Brady (The juror stands) Thank
8 you
9 67, Bobby Branton, Jr (The juror stands) Thank
10 you
11 68, Susan Briggs (The juror stands) Thank you
12 69, Randall Broughton (The juror stands) Thank
13 you
14 70, Earnest Brown (The juror stands) Thank you
15 73, Brian Bullock (The juror stands)
16 76, Brenda Butler (The juror stands) Okay
17 78, Rashel Butler (The juror stands) Thank you
18 83, Tim Caldwell (The juror stands) Thank you
19 87, Amanda Cannon (The juror stands) Thank you
20 88, Sonny Cannon (The juror stands) Thank you
21 90, Barbara Carr (The juror stands) Thank you
22 93, Lisa Carver (The juror stands)
23 95, Angel Castillo (The juror stands) Thank
24 you
25 98, Ray Caulk (The juror stands) Thank you

GENERAL QUALIFICATION OF JURORS

1 99, Johnny Causey (The juror stands) Thank you
2 101, Allyson Chambers (The juror stands) Thank
3 you
4 103, Joyce Chestnut (The juror stands)
5 102, Johnny Chestnut (The juror stands) Thank
6 you
7 104, Anthony Cimini (The juror stands) Thank
8 you
9 106, Zachary Clark (The juror stands) Okay
10 121, Thomas Cooper (The juror stands)
11 119, Michael Cooper (The juror stands) Thank
12 you
13 131, Walter Cumbow (The juror stands) Thank
14 you
15 134, Nancy Custard (The juror stands) Thank
16 you
17 137, Lonnie Daniels (No response) 137 Lonnie
18 Daniels (No response) That's one that's coming in
19 Monday, Judge
20 138, Melinda Daniels (The juror stands) Thank
21 you
22 145, Laura Davis (The juror stands) Thank you
23 149, Ronaldo De Los Reyes (The juror stands)
24 Thank you
25 150, Vance Defelice (The juror stands) Thank

GENERAL QUALIFICATION OF JURORS

7

1 you
2 154, John Desantis (The juror stands) Thank
3 you
4 156, Rose Diaz (The juror stands) Thank you
5 158, Tiffany Dixon (The juror stands) Thank
6 you
7 159, Cynthia Dodd (The juror stands) Thank you
8 162, Jeremiah Doyle (The juror stands) Thank
9 you
10 166, Sybil Dupie (The juror stands) Thank you
11 167, Linda Dupree Did she stand up? 167, Linda
12 Dupree (The juror stands) Thank you
13 172, Lynn Edmonds (The juror stands) Thank you
14 179, Toni Elliott (The juror stands)
15 180, Dale Ellis (The juror stands)
16 181, Gerald Ellis (The juror stands) Thank you
17 183, Tamara Elvis (The juror stands) Thank you
18 190, James Faircloth (The juror stands) Thank
19 you
20 191, Kenneth Farley (The juror stands)
21 195, Donna Ferrebee (The juror stands) Thank
22 you
23 199, William Files (The juror stands) Thank you
24 200, Steven Finley (The juror stands) Thank
25 you

GENERAL QUALIFICATION OF JURORS

8

1 204, Herman Ford (The juror stands) Thank you
2 208, Jill Fowler (The juror stands) Thank you
3 213, Jamie Franklin (The juror stands)
4 215, Lynn Frick (The juror stands) Thank you
5 218, Deborah Fullwood (The juror stands) Thank
6 you
7 224, Terry Gartner (The juror stands) Thank
8 you
9 227, Solomon Gause (The juror stands) Thank
10 you
11 229, Karen Geigle (The juror stands) Thank you
12 231, Telia Gibbons (The juror stands) Thank
13 you
14 234, John Gira (The juror stands) Thank you
15 236, Judy Glymph (The juror stands) Thank you
16 237, Kimberley Goh (The juror stands) Thank
17 you
18 240, Donna Gore (The juror stands) Thank you
19 243, Nancy Goss (The juror stands) Thank you
20 246, Norman Graham (The juror stands) Thank
21 you
22 247, Terry Lynn Graham (The juror stands) Thank
23 you
24 250, Diane Graziano (The juror stands) Thank
25 you

GENERAL QUALIFICATION OF JURORS

9

1 255, Richard Gregory (The juror stands) Thank
2 you
3 257, Celeste Griffin (The juror stands) Thank
4 you
5 258, Virginia Grissett (The juror stands) Thank
6 you
7 260, Robert Hall (The juror stands) Thank you
8 261, Donna Hallaran (The juror stands) Thank
9 you
10 265, Sandra Hardin (The juror stands) Thank
11 you
12 268, William Harrill (The juror stands) Thank
13 you
14 275, Shannon Headley (The juror stands) Thank
15 you
16 277, Martin Hemingway (The juror stands) Thank
17 you
18 280, Veola Hemingway (The juror stands) Thank
19 you
20 281, Tammy Henderson (The juror stands) Thank
21 you
22 282, Karen Henry (The juror stands) Thank you
23 284, Arcissia Herndon (The juror stands) Thank
24 you
25 290, Brenda Holderfield (The juror stands)

GENERAL QUALIFICATION OF JURORS

10

1 Thank you
2 294, Andrea Hollemback (The juror stands) Thank
3 you
4 297, William Holt (The juror stands) Thank you
5 298, Elizabeth Holton (The juror stands) Thank
6 you
7 299, Michelle Horne (The juror stands) Okay
8 300, Richard Hudson (The juror stands) Thank
9 you
10 302, Eddie Hughes (The juror stands) Thank you
11 307, Bonnie Hutto (The juror stands) Thank you
12 309, James Hyman (The juror stands) Thank you
13 313, Melissa Isaacson (The juror stands) Thank
14 you
15 315, Audrie Ivey (The juror stands) Thank you
16 316, James Jablonski (The juror stands) Thank
17 you
18 320, Lewis Janes (The juror stands) Thank you
19 322, Gary Jeffcoat (The juror stands) Thank
20 you
21 326, Amanda Johnson (The juror stands) Thank
22 you
23 333, Karen Johnson (The juror stands) Thank
24 you
25 329, Glenda Johnson (The juror stands) Thank

GENERAL QUALIFICATION OF JURORS

11

1 you
2 330 Jennifer Johnson (The juror stands) Okay
3 337, Rhonda Johnson (The juror stands)
4 331, Joseph Johnson (The juror stands) Okay
5 342, Bradley Jordan (The juror stands) Okay
6 345, Timothy Jordan (The juror stands) Thank
7 you
8 346, Wanda Jordan (The juror stands) Thank you
9 343, Lakenya Jordan (The juror stands) Thank
10 you
11 347, Ariane Joyce (The juror stands) Thank you
12 348, Sharon Kantowitz (The juror stands) Thank
13 you
14 351, Brian Keane (The juror stands) Thank you
15 352, Lisa Keane (The juror stands) Thank you
16 354, Dawn Kennedy (The juror stands) Thank you
17 363, Norine Klebach (The juror stands) Thank
18 you
19 370, David Lally (The juror stands) Thank you
20 372, Andrew Langway (The juror stands) Okay
21 375, Michael Laughter (The juror stands) Thank
22 you
23 377, Paul Leckie (The juror stands) Thank you
24 378, Tonja Leidig (The juror stands) Thank you
25 380, Sharon Lemon (The juror stands) Thank you

GENERAL QUALIFICATION OF JURORS

12

1 382, Dreama Lentz (The juror stands) Thank you
2 385, Richard Lewis (The juror stands) Thank
3 you
4 386, Barbara Linderman (The juror stands) Thank
5 you
6 387, Ellic Livingston (The juror stands) Thank
7 you
8 388, Jeanetta Livingston (The juror stands)
9 Thank you
10 389, David Lloyd (The juror stands) Okay
11 391, Linda Lockner (The juror stands) Thank
12 you
13 392, Michael Loehr (The juror stands) Thank
14 you
15 393, Christopher Lombardi (The juror stands)
16 Thank you
17 396, Billy Lookabill (The juror stands) Thank
18 you
19 397, John Lopes (The juror stands) Thank you
20 399, Catherine Lowery (The juror stands) Thank
21 you
22 402, Rebecca Lyons (The juror stands) Thank
23 you
24 407, Raymond Maggio (The juror stands) Thank
25 you

GENERAL QUALIFICATION OF JURORS

13

1 408, Guiseppe Maglione (The juror stands) Thank
2 you
3 415, Anne Mateer (The juror stands) Thank you
4 418, Richard McAbee (The juror stands) Thank
5 you
6 423, Gregory McEvoy (The juror stands) Thank
7 you
8 424, Lisa McGee (The juror stands) Thank you
9 426, Rachel McGowan (The juror stands) Thank
10 you
11 428, Melvin McKinney (The juror stands) Thank
12 you
13 429, Bryan McKnight (The juror stands) Thank
14 you
15 433, Russel McMahon (The juror stands) Thank
16 you
17 444, Mildred Millar (The juror stands) Thank
18 you
19 446, Jane Miller (The juror stands) Thank you
20 448, Vickie Miller (The juror stands) Thank
21 you
22 451, Sherrie Mitchell (The juror stands) Thank
23 you
24 458, Mary Morningstar (The juror stands) Thank
25 you

GENERAL QUALIFICATION OF JURORS

1 459, Gloria Morris (The juror stands)
2 I've got number 5, Linda Morrison (The juror
3 stands) Thank you
4 462, Joseph Morrow (The juror stands) Thank
5 you
6 466, Thomas Murray (The juror stands) Thank
7 you
8 468, Harrie Myers (The juror stands) Thank you
9 472, Sara Newton (The juror stands) Thank you
10 473 Andrea Nobles (The juror stands) Thank
11 you
12 477, Sandra Norton (The juror stands) Thank
13 you
14 478, Byrdeen Nota (The juror stands) Thank you
15 115, Darlene Novak (The juror stands) Thank
16 you
17 480, Bonnie Oguin (The juror stands) Thank you
18 484, Linda Orsimarsi (The juror stands) Thank
19 you
20 485, Karen Owens (The juror stands) Thank you
21 487, Salvatore Panepinto (The juror stands)
22 Thank you
23 490, Ashwin Patel (The juror stands) Thank you
24 494, Carey Payne (The juror stands) Thank you
25 499, Thomas Pennington (The juror stands) Thank

GENERAL QUALIFICATION OF JURORS

15

1 you
2 503, Hoaly Pham (The juror stands) Thank you
3 505, Cynthia Phipps (The juror stands) Thank
4 you
5 506, Jerry Pike (The juror stands) Thank you
6 507, Benjamin Pinckney (The juror stands) Thank
7 you
8 508, Beverly Pitman (The juror stands) Thank
9 you
10 510, Jane Powell (The juror stands) Thank you
11 512, Dave Priest (The juror stands) Thank you
12 513, Samuel Pringle (The juror stands) Thank
13 you
14 515, Stacey Prosser (The juror stands) Thank
15 you
16 516, John Pryor (The juror stands) Thank you
17 522, Michael Ray (The juror stands) Thank you
18 524, Richard Lewis (The juror stands)
19 MR RICHARDS That's Lewis Richards
20 THE CLERK Oh, I've got it backwards Sorry
21 529, Jay Riddell (The juror stands) Thank you
22 530, Nicholas Rider (The juror stands)
23 534 Violeta Roberts (The juror stands) Thank
24 you
25 539, Ryan Rodriguez (The juror stands) Thank

GENERAL QUALIFICATION OF JURORS

1 you
2 542, Victor Romano (The juror stands) Thank
3 you
4 547, Keith Roy (The juror stands) Thank you
5 549, Linda Russ (The juror stands) Thank you
6 552, Sharon Safford (The juror stands) Thank
7 you
8 557, Lisa Sapochak (The juror stands) Thank
9 you
10 558, Linda Scheyd (The juror stands) Thank you
11 561, Vicki Schwimmer (The juror stands) Thank
12 you
13 564, Lisa Sellers (The juror stands) Thank you
14 567, Renee Shaw (The juror stands) Thank you
15 568, Thomas Shelley (The juror stands) Thank
16 you
17 570, Joan Silvestri (The juror stands) Thank
18 you
19 571, Robert Simeone (The juror stands) Thank
20 you
21 573, Dorothy Simpson (The juror stands) Thank
22 you
23 575, William Simril (The juror stands) Thank
24 you
25 577, Joyce Singleton (The juror stands) Thank

GENERAL QUALIFICATION OF JURORS

17

1 you

2 580, Chester Skowronski (The juror stands)

3 Thank you

4 592, Sandra Smith (The juror stands) Thank you

5 586, Gene Smith (The juror stands) Thank you

6 594, Sandra Snyder (The juror stands) Thank

7 you

8 597, Joyce Spengler (The juror stands) Thank

9 you

10 598, James Spivey (The juror stands) Thank you

11 600, Barbara Stanley (The juror stands) Thank

12 you

13 601, Waverly Stanley (The juror stands) Thank

14 you

15 602, Susan Starr (The juror stands) Thank you

16 607, Katherine Steighner (The juror stands)

17 Thank you

18 608 I'm not sure how to pronounce the first name

19 -- Stevens

20 MS STEVENS (The juror stands) Siobhan

21 THE CLERK Siobhan Okay, thank you

22 610, Pauline Strickland (The juror stands)

23 Thank you

24 612, Deborah Stuhlemmer (The juror stands)

25 Thank you

1 615, Robert Summers (The juror stands) Thank
2 you
3 621, Christopher Templeton (The juror stands)
4 Thank you
5 622, Beverly Thalman (The juror stands) Thank
6 you
7 625, William Thomas (The juror stands) Thank
8 you
9 631, Danny Todd (The juror stands) Thank you
10 628, Betty Todd (The juror stands) Thank you
11 632, Bernard Tomayko (The juror stands) Thank
12 you
13 633, David Towers (The juror stands) Thank you
14 634, Kyna Triplett (The juror stands) Thank
15 you
16 637, Diane Tyler (The juror stands) Thank you
17 638, Kathryn Ubel (The juror stands) Thank you
18 639, Jill Uhland (The juror stands) Thank you
19 642, Velvadean Vaught (The juror stands) Thank
20 you
21 647, Heidi Vukov (The juror stands) Thank you
22 654, Michael Walsh (The juror stands) Thank
23 you
24 656, Susan Ward (The juror stands) Thank you
25 658, Kristal Warren (The juror stands) Thank

GENERAL QUALIFICATION OF JURORS

19

1 you
2 659, Nikkia Washington (The juror stands) Thank
3 you
4 660, Sylvia Waterston (The juror stands) Thank
5 you
6 662, Jimmy Watson (The juror stands) Thank you
7 664, Dennis Webb (The juror stands) Thank you
8 667, Eatha Wells (The juror stands) Thank you
9 668, Jeremie West (The juror stands) Thank you
10 669, Larry West (The juror stands) Thank you
11 670, Eddie Westbury (The juror stands) Thank
12 you
13 672, Elaine Wheaton (The juror stands) Thank
14 you
15 682, Alexandra Wilcken (The juror stands) Thank
16 you
17 683, Easter Wilder (The juror stands) Thank
18 you
19 685, Stephen Williams (The juror stands) Thank
20 you
21 686, Barbara Williamson (The juror stands)
22 Thank you
23 688, Amanda Wilson (The juror stands) Thank
24 you
25 690, Delphia Wilson (The juror stands) Thank

1 you

2 693, Thomas Wood (The juror stands) Thank you

3 695, Teresa Woolard (The juror stands) Thank

4 you

5 Did I miss anyone? If I did, please stand (No

6 jurors stand)

7 THE COURT All right, thank you

8 All right, ladies and gentlemen, in this particular

9 matter, you can see this is not the usual case You

10 have been called by the officials of Horry County to

11 perform an important task In this particular matter,

12 your civic duty and responsibility will be called upon

13 for your service as potential jurors in this case, that

14 being the State of South Carolina versus Stephen C

15 Stanko

16 Now, the State of South Carolina has charged Mr

17 Stanko with the crimes of murder and armed robbery

18 This trial has potentially two parts The first part

19 would be that the jury would be called upon to

20 unanimously decide whether or not the State of South

21 Carolina has proved beyond a reasonable doubt that Mr

22 Stanko is guilty of murder or armed robbery, or both

23 If the jury unanimously finds Mr Stanko guilty of both

24 crimes, we would then proceed to the second stage of the

25 trial in which the jury would be called upon to decide a

GENERAL QUALIFICATION OF JURORS

21

1 sentence, death or life in prison without the
2 possibility of parole

3 After we finish the general qualification process
4 today, you will be assigned to certain panels by random
5 drawing, and the Clerk will tell you when, and what day
6 and time you will report back next week

7 When you report back, you will be given two sheets
8 of paper On one of those, you will be asked to circle
9 the juror category which best describes you The second
10 will be a potential witness list and you will be asked
11 to circle anyone you might possibly know You will then
12 be asked to sign and date each page

13 I understand, the participants in this important
14 trial understand, the time, effort, and sacrifice
15 ultimately the twelve jurors and the four alternates
16 will be asked to make to serve on this case and perform
17 this civic task I thank all of you and the officials
18 of Horry County thank you for your time, and attention,
19 and sacrifice The justice system of this State cannot
20 operate without the help and cooperation of its
21 citizens

22 Now, some of you may have already served on a jury
23 before, but experience will tell us that this case or
24 this matter is something new for the vast majority of
25 you Experience also tells us that some of you are

1 apprehensive, worried, or scared about being called, and
2 these are natural feelings, normal feelings Don't let
3 that bother you I believe by the time we finish this
4 process you will feel comfortable and good about being
5 called for this matter, whether or not you actually were
6 selected to serve on the jury

7 I've heard it said many times and I really believe
8 this to be true, other than serving your country in a
9 time of war, serving on a jury, being called for jury
10 duty, is your highest service that you can give to your
11 community

12 Since the State of South Carolina in this
13 particular matter is seeking the death penalty against
14 Mr Stanko, this case is not like cases, most cases,
15 where someone is charged with a crime This process
16 allows the lawyers and the Court to ask you questions,
17 so it may take several days for us to actually pick a
18 jury and start the trial of the case

19 By asking you these questions, I assure you, the
20 participants assure you, we're not trying to invade your
21 personal lives, but you understand that this is a very
22 serious matter and it is necessary that we learn about
23 your thoughts, beliefs, and opinions

24 Now, you may have already read or heard about some
25 items in this case, and there's nothing wrong with that

GENERAL QUALIFICATION OF JURORS

23

1 If you do know something about the case or heard
2 something about it, when you are individually
3 questioned, the Court will ask you if you can set that
4 aside and reach a fair and impartial verdict This is
5 important because obviously in every criminal matter,
6 the defendant comes into the Court presumed innocent of
7 the crime charged The burden of proof is on the State
8 of South Carolina to prove the defendant guilty beyond a
9 reasonable doubt

10 A defendant never has to call witnesses A
11 defendant has nothing to prove to you The burden is
12 always upon the State of South Carolina to prove the
13 defendant guilty beyond a reasonable doubt The
14 question will be whether or not you have formed or
15 expressed an opinion concerning this particular matter
16 In other words, do you know of any reasons why you
17 cannot give the Defendant and the State a fair trial, if
18 there's any reason that you cannot be a fair and
19 impartial juror in this particular matter

20 As I indicated, obviously some of you may have
21 already have some knowledge or heard about this case
22 From this point on, I am instructing all of you that you
23 may not, you are prohibited from reading any news
24 accounts You may not watch or listen to T V accounts
25 about this particular matter You may not look up

1 anything on the Internet You may not do any research
2 on your own

3 Do not talk to your fellow prospective jurors about
4 this case Do not talk to anyone about this case That
5 includes your family members or friends If anyone
6 tries to contact you about this case, if you can in
7 relative safety, you find out who that person is and the
8 Court will deal with them

9 I need to ask you has every single member of the
10 jury panel in this courtroom filled out the juror
11 questionnaire form That was the fifty-question form
12 that was mailed to you sometime ago by the Clerk's
13 Office If you did not fill out that questionnaire
14 form, raise your hand now (No response)

15 I'm going to go into the general qualification
16 questions These are the general qualification
17 questions that we ask any jury any time a panel is
18 brought before the Court If you need to respond to any
19 of these general qualification questions after I ask the
20 question, I will ask that you stand, identify yourself,
21 tell us who you are, and your juror number, please

22 Is there any member of the jury panel who is not
23 eighteen years of age? (No response)

24 Any member of the jury panel who is not a citizen
25 of the United States of America? (No response)

GENERAL QUALIFICATION OF JURORS

25

1 Any member of the jury panel who is not a citizen
2 -- resident of Horry County? (No response)

3 The next question, ladies and gentlemen, has three
4 parts If you've got one of the items, you are
5 qualified to be a juror At the end of the question if
6 for some reason you don't have any one of them at all,
7 then I'll ask that you stand and identify yourself, so
8 is there any member of the jury panel who is not a
9 qualified elector? That is, are you registered to vote?
10 If we had an election in Horry County today, could you
11 vote, or do you have a South Carolina driver's license,
12 or do you have an identification card issued by the
13 State of South Carolina? If you've got one of them, you
14 are qualified If you don't have any at all, please
15 stand (No response)

16 All right, is there any member of the jury panel
17 who is a commissioned law enforcement officer with the
18 powers of arrest? If so, please stand (No response)

19 Any member of the jury panel who is a prison guard
20 in the State or the Federal system? If so, please
21 stand (No response)

22 The next four questions, ladies and gentlemen, I'm
23 going to ask these four questions together At the end
24 of these four questions, if any one of those four
25 questions pertains to you, then I'll ask that you stand

1 and identify yourself

2 Now, is there any member of the jury panel who has
3 less than a sixth grade education or its equivalent? If
4 you are currently employed, have been for some
5 significant period of time, or were employed for some
6 significant period of time, most likely I'm going to
7 find that to be the equivalent

8 Is there any member of the jury panel who is unable
9 to read, write, speak, or understand the English
10 language?

11 Any member of the jury panel who has been convicted
12 or pled guilty in a State or a Federal Court of a crime
13 punishable by imprisonment for more than one year and
14 your civil rights have not been restored by pardon or
15 amnesty? Now, this doesn't mean you actually had to
16 serve the year in jail What it means is your possible
17 punishment, your potential punishment could have been
18 more than one year You could have gotten probation or
19 some other kind of alternative sentence

20 And the fourth question is, is there any member of
21 the jury panel by reason of a physical or a mental
22 infirmity unable to render efficient jury service? The
23 Legislature has determined that this excuse needs to be
24 in writing It has to be authored by a medical doctor,
25 a medical professional, stating what your problem is and

1 why you cannot render efficient jury service, so any
2 member of the jury panel that needs to respond to any of
3 those four questions, if so, please stand at this time

4 All right, we have three people Anyone else other
5 than these three -- four? Anyone else? One, two,
6 three, four -- anybody else? Five If you need to
7 respond, stand now There are five people Anybody
8 else? (No response)

9 All right, Mr Bailiff, form a line right there,
10 please, sir Thank you

11 (Juror 487, Salvatore N Panepinto, approached the
12 Bench and after a conference with the Court, Juror 487
13 was placed on panel for further voir dire at a later
14 date - medical reason with doctor's excuse)

15 (Juror 580, Chester R Skowronski, approached the
16 Bench and after a conference with the Court, Juror 580
17 was placed on panel for further voir dire at a later
18 date - power of arrest)

19 (Juror 573, Dorothy Simpson, approached the Bench
20 and after a conference with the Court, Juror 573 was not
21 excused by the Court - needs statement from doctor
22 Juror to be informed of status later)

23 (Juror 149, Ronaldo De Los Reyes, approached the
24 Bench and after a conference with the Court, Juror 149
25 was not excused by the Court - needs statement from

1 doctor Juror to be informed of status later)

2 (Juror 667, Eatha M Wells, approached the Bench
3 and after a conference with the Court, Juror 667 was
4 excused by the Court - Over sixty-five)

5 (Juror 542, Victor Romano, approached the Bench and
6 after a conference with the Court, Juror 542 was placed
7 on panel for further voir dire at a later date -
8 criminal record)

9 (Juror 183, Tamira Elvis, approached the Bench and
10 after a conference with the Court, Juror 183 was placed
11 on panel for further voir dire at a later date - Juror
12 is pregnant)

13 (Juror 378, Tonya L Leidig, approached the Bench
14 and after a conference with the Court, Juror 378 was
15 placed on panel for further voir dire at a later date -
16 husband is ill)

17 (Juror 44, Madgie Bell, approached the Bench and
18 after a conference with the Court, Juror 44 was placed
19 on panel for further voir dire at a later date - does
20 not drive)

21 (Juror 485, Karen R Owens, approached the Bench
22 and after a conference with the Court, Juror 485 was
23 placed on panel - statement from doctor - Juror to be
24 informed of status later)

25 (Juror 503, Hoaly T Pham, approached the Bench and

GENERAL QUALIFICATION OF JURORS

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1 after a conference with the Court, Juror 503 was placed
2 on panel for further voir dire at a later date - From
3 Viet Nam - does not speak English fluently)

4 (Juror 601, Waverly L Stanley, approached the
5 Bench and after a conference with the Court, Juror 601
6 was placed on panel for further voir dire at a later
7 date - criminal record)

8 (Juror 102, Johnny M Chestnut, approached the
9 Bench and after a conference with the Court, Juror 102
10 was placed on panel for further voir dire at a later
11 date - needs statement from doctor)

12 (Juror 530, Nicholas O Rider, approached the Bench
13 and after a conference with the Court, Juror 530 was
14 excused by the Court - On P T I for crime, assisted by
15 Chief Deputy Solicitor Humphries)

16 (Juror 150, Vance A Defelice, approached the Bench
17 and after a conference with the Court, Juror 150 was
18 placed on panel for further voir dire at a later date -
19 medical needs, diabetic)

20 (Juror 529, Jay M Riddell, approached the Bench
21 and after a conference with the Court, Juror 529 was
22 placed on panel for further voir dire at a later date -
23 criminal record)

24 (Juror 375, Michael L Laughter, approached the
25 Bench and after a conference with the Court, Juror 375

1 was placed on panel for further voir dire at a later
2 date - medical needs)

3 (Juror 41, Daniel C Becker, approached the Bench
4 and after a conference with the Court, Juror 41 was
5 placed on panel for further voir dire at a later date -
6 criminal record)

7 THE COURT All right, ladies and gentlemen, what
8 I'm going to do now is I am going to go over certain
9 legislative exemptions What we'll do is if you fall
10 within one of these categories, it will be noted and it
11 will be -- you will still be placed on one of the
12 individual panels, or one of the panels, and then when
13 you are questioned individually by the Court and the
14 attorneys, then we will deal with the matter at that
15 point in time What I need for you to do now is after I
16 go through the exemption, if it does pertain to you, I
17 need for you to stand, identify yourself, and we'll note
18 that information

19 All right, is there any member of the jury panel
20 who is more than sixty-five years of age? If so, please
21 stand All right, yes, ma'am, your name and juror
22 number, please

23 JUROR 510 Juror 510, Jane Powell

24 THE COURT All right, thank you, ma'am Yes,
25 sir

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1 JUROR 70 Earnest Brown

2 THE COURT And your juror number is?

3 JUROR 70 70

4 THE COURT 70, all right Thank you, sir Yes,
5 ma'am

6 JUROR 363 Norine Klebach, 363

7 THE COURT All right, thank you, ma'am Yes,
8 ma'am

9 JUROR 597 Joyce Spengler, 597

10 THE COURT All right, thank you Yes, ma'am

11 JUROR 686 Barbara Williamson, 686

12 THE COURT All right, ma'am Yes, ma'am

13 JUROR 265 Sandra Hardin, 265

14 THE COURT All right, and yes, ma'am

15 JUROR 90 Barbara Carr

16 THE COURT Yes, ma'am, and what's your juror
17 number?

18 JUROR 90 90

19 THE COURT 90 Thank you, ma'am

20 All right, is there any member of the jury panel
21 who has already served in circuit court within the past
22 three years? That means you would have come to this
23 courthouse Most likely you would have come downstairs
24 to the jury assembly room That is within the past
25 three years It doesn't count if it was city court, or

1 magistrate's court, or even federal court, but if you
2 came to this building for circuit court jury duty within
3 the past three years, if so, please stand at this time

4 All right, yes, ma'am, over there on the side, your
5 name and juror number

6 JUROR 243 Nancy Goss, it is 243

7 THE COURT And when is it that you believe the
8 served, ma'am?

9 JUROR 243 It was about a year and a half ago

10 THE COURT All right, thank you, ma'am Yes,
11 sir

12 JUROR 11 Number 11, Wesley Allen, about two and
13 a half years ago

14 THE COURT Thank you, sir Yes, ma'am

15 JUROR 570 Joan Silvestri It was last summer

16 THE COURT All right, and your juror number is?

17 JUROR 570 570

18 THE COURT 570 Thank you, ma'am Yes, sir

19 JUROR 199 William Files, 199

20 THE COURT All right, sir, and approximately
21 when?

22 JUROR 199 I think a couple of years

23 THE COURT All right, very good Thank you, sir

24 All right, is there any member of the jury panel

25 who has served on the Horry County Grand Jury within the

GENERAL QUALIFICATION OF JURORS

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1 past five years? If so, please stand, the Grand Jury
2 within five years

3 Yes, ma'am, your name and juror number, please

4 JUROR 76 Brenda Butler, 76

5 THE COURT All right, ma'am, and when is it that
6 you think that you served?

7 JUROR 76 It was in the old courthouse

8 THE COURT In the old courthouse?

9 JUROR 76 In the old courthouse

10 THE COURT All right Thank you, ma'am

11 Madam Clerk, if you'll just check that out Thank
12 you

13 All right, is there any member of the jury panel
14 who has a child under the age of seven for whom you have
15 the legal custody and duty of care, and the final part
16 of that is you do not work outside the home You stay
17 at home full-time and take care of that child under the
18 age of seven If so, please stand

19 All right, yes, sir, your name and juror number,
20 please

21 JUROR 507 Benjamin Pinckney, number 507

22 THE COURT All right, sir You have children
23 under the age of seven?

24 JUROR 507 Yes, sir

25 THE COURT And what's your situation?

1 JUROR 507 I'm a licensed foster parent and I
2 just -- as of today, I've got the paperwork here, I'm
3 picking up twins They're five years old, a boy and a
4 girl, and I also have custody of my eight year old boy,
5 as well

6 THE COURT All right, sir Madam Clerk, you'll
7 note that information and we will deal with it in the
8 individual questions Thank you very much

9 Yes, ma'am, your name and juror number, please

10 JUROR 473 Andrea Nobles, 473

11 THE COURT 473, ma'am?

12 JUROR 473 Yes

13 THE COURT All right, yes, ma'am

14 JUROR 473 I have a year and a half old little
15 boy

16 THE COURT All right, ma'am, and you do not work
17 outside the home?

18 JUROR 473 (Nods in the negative)

19 THE COURT All right, very good Madam Clerk,
20 you will note that information Thank you Yes, ma'am

21 JUROR 659 Nikkia Washington I have three kids

22 THE COURT And what ages, please, ma'am?

23 JUROR 659 Two, four, and six

24 THE COURT All right, ma'am You will note that
25 information, Madam Clerk, please Thank you Yes,

GENERAL QUALIFICATION OF JURORS

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1 ma'am

2 JUROR 101 Allyson Chambers, juror number 101,
3 and I have a five year old, a kindergartner

4 THE COURT All right, ma'am Please note that
5 Thank you Yes, ma'am

6 JUROR 415 Anne Mateer, number 415 I have a two
7 and a half year old Thank you, ma'am Yes, ma'am

8 JUROR 382 382, Dreama Lentz I have a six year
9 old

10 THE COURT Thank you, ma'am

11 JUROR 275 Shannon Headley, 275 I have a seven
12 week old

13 THE COURT All right, thank you very much Yes,
14 ma'am, your name and juror number

15 JUROR 477 Sandra Norton, 477 I have a five
16 year old

17 THE COURT All right, thank you, ma'am

18 All right, is there any member of the jury panel as
19 a whole who is the primary caretaker of a person who is
20 sixty-five years of age or older and that person cannot
21 take care of themselves, or you are the primary
22 caretaker of a severely disabled person, and once again,
23 this is your sole job and responsibility You take care
24 of that person that cannot take care of themselves You
25 are not otherwise employed If so, please stand (No

1 response)

2 All right, is there any member of the jury panel
3 who is a full-time student or a full-time teacher? If
4 so, please stand Yes, ma'am, your name and juror
5 number, please

6 JUROR 515 515, Stacey Prosser

7 THE COURT And you are a student or teacher?

8 JUROR 515 A computer teacher at South Conway
9 Elementary

10 THE COURT All right, thank you, ma'am Yes,
11 ma'am

12 JUROR 682 Alexandra Wilcken, 682 I am a full-
13 time student at Southern Vermont It's in Vermont
14 It's a low residency program

15 THE COURT Where at, please, ma'am?

16 JUROR 682 Southern Vermont

17 THE COURT I'm sorry, I did not hear where,
18 nor ---

19 JUROR 682 Southern Vermont It's a low
20 residency program

21 THE COURT All right, thank you, ma'am Yes,
22 ma'am

23 JUROR 594 Sandra Snyder I am 594 I am a high
24 school teacher at Conway

25 THE COURT Thank you, ma'am Yes, ma'am

GENERAL QUALIFICATION OF JURORS

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1 JUROR 408 Giuseppe Maglione, 408 I am a full-
2 time student at Horry-Georgetown Tech

3 THE COURT Thank you, sir Yes, ma'am

4 JUROR 213 Jamie Franklin, 213, and I'm a
5 teacher

6 THE COURT Where at?

7 JUROR 213 Myrtle Beach High School

8 THE COURT Myrtle Beach High School All right,
9 thank you, ma'am Yes, ma'am

10 JUROR 258 Virginia Grissett at Conway High
11 School

12 THE COURT All right Thank you very much,
13 ma'am

14 MR HUMPHRIES Her number?

15 THE COURT Oh, I'm sorry Ms Grissett, what's
16 your number, your juror number?

17 JUROR 258 258

18 THE COURT Thank you very much

19 All right, at the present time, because of the
20 number of jurors that are here, I will not go through
21 the next category Let me just tell you that if there
22 is some issue with your service, if there is something
23 extraordinary, or something very exceptional going on in
24 your personal life, or in your business employment,
25 obviously it must be certainly out of the ordinary, when

1 you are individually questioned by the Court and the
2 lawyers, you may bring that up at that point in time, so
3 if there is some reason or something that you want the
4 Court to address, please remember when you are called in
5 on a panel and you have something that you want to
6 inform the Court about, please do so at that point in
7 time because later on it will obviously be too late, so
8 when you are called in on a panel and you have some
9 matter that you want to address, please make sure you
10 bring that to the Court's attention at that point in
11 time

12 If you feel more comfortable writing it out ahead
13 of time and bringing it with you, that will certainly be
14 fine, and handing it to the Court at that time, be glad
15 for you to do that, but I just want to emphasize to you
16 that's your opportunity to bring it up You've got to
17 bring it up then because I won't be able to do anything
18 about it later on All right, thank you very much

19 All right, I'm going to go over some more
20 particular questions that have to do either with this
21 particular case or your service in a criminal case in
22 general rather than these general qualification
23 questions

24 The first one would be is there any member of the
25 jury panel that's related by blood or marriage, close

GENERAL QUALIFICATION OF JURORS

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1 personal friend, acquaintances of the defendant, Stephen
2 C Stanko, or members of his immediate family? If so,
3 please stand (No response)

4 Is there any member of the jury panel who is
5 related by blood or marriage, close personal friends,
6 acquaintances of the family of Henry Lee Turner or prior
7 to his death were related or personal friends of Henry
8 Lee Turner? If so, please stand (No response)

9 Is there any member of the jury panel, either you,
10 yourself, or a member of your immediate family ever had
11 any matters of any kind handled by the Fifteenth Circuit
12 Solicitor's Office? Remember, that's the prosecuting
13 office that covers the Fifteenth Circuit, which is Horry
14 and Georgetown Counties If so, please stand

15 UNIDENTIFIED JUROR Can you repeat that question

16 THE COURT Yes, ma'am Is there any member of
17 the jury panel or a member of your immediate family has
18 ever had any matters in any way effected or handled by
19 the Fifteenth Circuit Solicitor's Office? That's the
20 prosecuting office for Horry and Georgetown Counties,
21 and if you need to respond to the questions, let me just
22 caution you now, I just need for you to tell me yes, and
23 don't tell me any details Don't bring up anything
24 We'll talk about that when you're individually
25 questioned

GENERAL QUALIFICATION OF JURORS

1 Ma'am, your name and jury number, please
2 JUROR 402 Rebecca Lyons, 402
3 THE COURT All right, ma'am, thank you very much
4 Yes, sir
5 JUROR 102 Johnny Chestnut, 102
6 THE COURT Thank you very much Yes, ma'am
7 JUROR 35 Mary Bates, number 35
8 THE COURT Thank you, ma'am Yes, sir
9 JUROR 372 Andrew Langway, 372
10 THE COURT Thank you, sir Yes, ma'am
11 JUROR 208 Jill Fowler, 208
12 THE COURT Thank you, ma'am Yes, sir
13 JUROR 685 Stephen Williams, 685
14 THE COURT Thank you very much Yes, ma'am
15 JUROR 115 Darlene Novak, 115
16 THE COURT I'm sorry, ma'am, I didn't hear you
17 JUROR 115 Darlene Novak, 115
18 THE COURT Thank you, ma'am Yes, sir
19 JUROR 397 John Lopes, 397
20 THE COURT Thank you, sir Yes, ma'am
21 JUROR 172 Lynn Edmonds, 172
22 THE COURT Thank you Yes, sir
23 JUROR 131 Walter Cumbow, 131
24 THE COURT Thank you, sir Yes, sir
25 JUROR 199 William Files, 199

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1 THE COURT Thank you Yes, sir
2 JUROR 41 Daniel Becker, number 41
3 THE COURT All right, sir Yes, ma'am
4 JUROR 386 Barbara Linderman, 386
5 THE COURT Next Yes, ma'am
6 JUROR 424 Lisa McGee, 424
7 THE COURT Thank you, ma'am The fellow behind
8 her
9 JUROR 342 Bradley Jordan, 342
10 THE COURT Thank you, sir Yes, ma'am
11 JUROR 183 Tamira Elvis, 183
12 THE COURT Thank you very much
13 All right, Solicitor, if you'd stand and identify
14 yourself, please
15 MR HUMPHRIES My name is Fran Humphries I'm
16 the Chief Deputy Solicitor in the Fifteenth Circuit
17 Along with me is Solicitor Greg Hembree, and Senior
18 Assistant Solicitor, Jimmy Richardson
19 THE COURT All right, very good
20 All right, Mr Diggs and Ms Williams, if y'all
21 would stand and identify yourselves and your firms,
22 please
23 MR DIGGS My name is Bill Diggs I practice law
24 in Myrtle Beach, South Carolina I am here in the
25 courtroom today with a paralegal from my office, Ms

1 Joanna Beaufort, and from time to time, I also practice
2 with my son, Parnell Diggs, whose office is at Garden
3 City, south of Myrtle Beach

4 THE COURT Thank you, sir Yes, ma'am

5 MS WILLIAMS My name is Brana Williams I have
6 my own office here in Conway, and I practice by myself

7 THE COURT Thank you All right, is there any
8 member of the jury panel that is related by blood or
9 marriage, close personal friends, acquaintances of the
10 lawyers that have been identified to you, and in regards
11 to Mr Diggs and Ms Williams, have you ever been
12 clients of theirs either in the past or currently? If
13 you need to respond to any part of that question, please
14 stand at this time

15 All right, yes, ma'am, over here, your name and
16 juror number

17 JUROR 557 Lisa Sapochak, 557

18 THE COURT And who do you know?

19 JUROR 557 Ms Beaufort

20 THE COURT All right Thank you very much Yes,
21 sir

22 JUROR 372 Andrew Langway, 372 My family is in
23 the legal business

24 THE COURT Very good Thank you very much All
25 right, yes, ma'am, over here

GENERAL QUALIFICATION OF JURORS

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1 JUROR 93 Number 93, Lisa Carver I know all the
2 attorneys involved

3 THE COURT Thank you very much Yes, ma'am

4 JUROR 101 Juror number 101, Allyson Chambers,
5 acquaintances of these attorneys

6 THE COURT Thank you very much, ma'am Yes,
7 ma'am, in the back

8 JUROR 647 Heidi Vukov, 647 I know the
9 Hembrees

10 THE COURT Thank you very much Yes, sir

11 JUROR 512 Number 512, Dave Priest I am an
12 acquaintance of Greg Hembree

13 THE COURT All right, sir, and you were juror
14 number 512?

15 JUROR 512 Yes, sir

16 THE COURT All right, thank you, sir All right,
17 Yes, ma'am, in the back there

18 JUROR 60 I am Gina Boggs, number 60, Greg
19 Hembree, acquaintance

20 THE COURT Thank you very much, ma'am Yes,
21 ma'am

22 JUROR 213 Jamie Franklin, 213 I taught Mr
23 Hembree's children at North Myrtle Beach Middle School

24 THE COURT Thank you, ma'am Yes, ma'am

25 JUROR 378 Juror number 378, Tonja Leidig I go

1 to church with Greg Hembree and his family

2 THE COURT All right, thank you, ma'am Yes,
3 ma'am

4 JUROR 236 Judy Glymph, 236, and I am a neighbor
5 of Greg Hembree and also attend a church with them

6 THE COURT All right, thank you, ma'am Yes,
7 sir

8 JUROR 580 580, Chester Skowronski I work with
9 Mr Hembree and Ms Brana Williams

10 THE COURT All right, thank you, sir

11 All right, the next question, ladies and gentlemen,
12 is going to be noted for the Court's information and the
13 information of the lawyers I will not question you
14 further at this point in time If you respond to this
15 question, we would wait for that until your individual
16 questioning

17 Does any member of the jury panel believe you have
18 any kind of personal, political, religious,
19 philosophical belief that you believe would prevent you
20 from being a fair and impartial juror? If so, please
21 stand

22 Yes, ma'am, your name and juror number

23 JUROR 35 Mary Bates, number 35

24 THE COURT Thank you, ma'am

25 JUROR 372 Andrew Langway, 372

GENERAL QUALIFICATION OF JURORS

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1 THE COURT Thank you, sir Yes, ma'am
2 JUROR 284 Arcissia Herndon, 284
3 THE COURT I'm sorry, I didn't hear your name
4 JUROR 284 Arcissia Herndon, 284
5 THE COURT Thank you, ma'am Yes, sir
6 JUROR 631 631, Danny Todd
7 THE COURT Thank you, sir
8 JUROR 397 John Lopes, 397
9 THE COURT All right, behind him
10 JUROR 237 Kimberley Goh, 237
11 THE COURT Thank you, ma'am Yes, ma'am, right
12 here
13 JUROR 281 Tammy Henderson, 281
14 THE COURT Thank you
15 JUROR 477 Sandra Norton, 477
16 THE COURT Thank you
17 JUROR 602 602, Susan Starr
18 THE COURT Thank you Yes, ma'am
19 JUROR 290 Brenda Holderfield, 290
20 THE COURT I'm sorry, you need to repeat that,
21 ma'am I didn't hear you
22 JUROR 290 Brenda Holderfield, 290
23 THE COURT Thank you, ma'am Yes, sir
24 JUROR 41 Daniel Becker, 41
25 THE COURT All right Yes, sir

GENERAL QUALIFICATION OF JURORS

1 JUROR 494 Carey Payne, 494
2 THE COURT Thank you, sir
3 JUROR 386 Barbara Linderman, 386
4 THE COURT Thank you
5 JUROR 307 Bonnie Hutto, 307
6 THE COURT Thank you, ma'am Yes, sir, in the
7 aisle
8 JUROR 462 Joseph Morrow, 462
9 THE COURT Thank you, sir In the back
10 JUROR 580 Chester Skowronski, 580
11 THE COURT Thank you, sir Ma'am, in the back
12 JUROR 195 Donna Ferrebee, 195
13 THE COURT Thank you Yes, sir
14 JUROR 351 Brian Keane, 351
15 THE COURT Thank you, sir In the back, ma'am
16 JUROR 549 Linda Russ, 549
17 THE COURT Thank you Yes, ma'am
18 JUROR 60 Gina Boggs, 60
19 THE COURT Thank you All right, in the back,
20 ma'am
21 JUROR 68 Susan Briggs, 68
22 THE COURT Thank you Next to her
23 JUROR 668 Jeremie West, 668
24 THE COURT All right, sir Yes, sir, right
25 there

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1 JUROR 149 Ronaldo De Los Reyes, 149
2 THE COURT Thank you Going across
3 JUROR 539 Ryan Rodriguez, 539
4 THE COURT Thank you Yes, ma'am, there on the
5 side
6 JUROR 208 Jill Fowler, 208
7 THE COURT All right, yes, ma'am, again on the
8 side
9 JUROR 326 326, Amanda Johnson
10 THE COURT Thank you Yes, sir
11 JUROR 234 John Gira, 234
12 THE COURT Thank you Yes, ma'am
13 JUROR 57 Gwen Blondmonville, 57
14 THE COURT Thank you Yes, ma'am
15 JUROR 607 607, Katherine Steighner
16 THE COURT Thank you, ma'am Yes, sir
17 JUROR 150 Vance Defelice, 150
18 THE COURT Thank you, sir Yes, sir
19 JUROR 377 Paul Leckie, 377
20 THE COURT Thank you very much, sir
21 UNIDENTIFIED JUROR Judge, could you please say
22 that again I kind of got ---
23 THE COURT All right The question is, and I'm
24 just reminding everybody I'm not looking for anything
25 other than your name and your juror number because we

1 would question you further in your individual
2 questioning Does any member of the jury panel have any
3 kind of religious, philosophical, personal belief that
4 you believe would prevent you from being a fair and
5 impartial juror?

6 Yes, sir, your name and juror number

7 JUROR 320 Lewis Janes, 320

8 THE COURT Thank you Yes, ma'am

9 JUROR 690 Delphia Wilson, 690

10 THE COURT Thank you

11 JUROR 115 Darlene Novak, 115

12 THE COURT Thank you

13 JUROR 243 Nancy Goss, 243

14 THE COURT Thank you

15 JUROR 693 Thomas Wood, 693

16 THE COURT Thank you, sir

17 JUROR 393 Christopher Lombardi, 393

18 THE COURT Thank you

19 JUROR 575 William Simril, 575

20 THE COURT Thank you

21 JUROR 682 Alexandra Wilcken, 682

22 THE COURT Thank you

23 JUROR 342 Bradley Jordan, 342

24 THE COURT I'm sorry, sir I didn't hear you

25 JUROR 342 Bradley Jordan, 342

GENERAL QUALIFICATION OF JURORS

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1 THE COURT Thank you

2 JUROR 564 Lisa Sellers, 564

3 THE COURT Thank you

4 JUROR 573 Dorothy Simpson, 573

5 THE COURT 573, ma'am?

6 JUROR 573 Yes

7 THE COURT Thank you Yes, ma'am

8 JUROR 329 Glenda Johnson, 329

9 THE COURT Thank you

10 JUROR 4 Anntanette Aklın, 4

11 THE COURT All right, thank you, ma'am, and I

12 will state for the record, and everyone would

13 understand, obviously having personal opinions and

14 beliefs is not a disqualification

15 Is there any member of a -- any member of the jury
16 panel that either you, yourself, or a member of your
17 immediate family was a former law enforcement officer or
18 you've got a family member who is a current law
19 enforcement officer, so it's either you in the past were
20 a former law enforcement officer or you've got family
21 members who in the past or are currently law enforcement
22 officers?

23 All right, we'll start over here Yes, sir, your
24 name and juror number, please

25 JUROR 13 Number 13, James Alvey

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1 THE COURT All right, sir, and who -- was it
2 yourself or someone else?

3 JUROR 13 Yes, it was me

4 THE COURT All right, sir, and where were you a
5 law enforcement officer?

6 JUROR 13 Military police

7 THE COURT Thank you very much Yes, ma'am

8 JUROR 215 Lynn Frick, 215, retired South
9 Carolina Highway Patrol

10 THE COURT All right, thank you, ma'am Yes,
11 sir

12 JUROR 246 Norman Graham, 246, got a nephew, and
13 my niece's husband is in law enforcement

14 THE COURT And where might they be officers,
15 please?

16 JUROR 246 Horry County in the Sheriff's
17 Department

18 THE COURT Thank you very much

19 JUROR 121 Thomas Cooper, 121 My son is a
20 police officer for the City of Conway

21 THE COURT Thank you Yes, sir

22 JUROR 418 Richard McAbee, 418, a former Myrtle
23 Beach city police officer

24 THE COURT Thank you Yes, ma'am

25 JUROR 35 Mary Bates, number 35 My father

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1 retired from the City of North Myrtle Beach

2 THE COURT Thank you Yes, sir

3 JUROR 396 Billy Lookabill, 396 I was a former
4 police officer with the City of Nichols

5 THE COURT The City where?

6 JUROR 396 Nichols, South Carolina

7 THE COURT Thank you Yes, sir

8 JUROR 372 Andrew Langway, 372, a brother-in-law
9 in Pennsylvania

10 THE COURT And what type of law enforcement?

11 JUROR 372 A police officer

12 THE COURT But, I mean, highway patrol, state
13 police, or ---

14 JUROR 372 The city, I believe, sir

15 THE COURT All right, very good Thank you
16 Yes, sir

17 JUROR 389 David Lloyd, 389 I have two brother-
18 in-laws in Horry County, Myrtle Beach police officers

19 THE COURT Thank you very much Yes, sir

20 JUROR 181 Gerald Ellis, 181, retired police
21 officer, City of Myrtle Beach

22 THE COURT Thank you very much Behind him,
23 ma'am

24 JUROR 391 Linda Lockner, 391 The father of my
25 children who has been a police officer in the State of

1 New York and a Sheriff in Texas

2 THE COURT All right, and what relationship was
3 that, please, ma'am?

4 JUROR 391 The father of my children

5 MR DIGGS Your Honor, could we get the number
6 for the last juror, please, sir

7 THE COURT I'm sorry Could you tell us your
8 juror number again, please, ma'am

9 JUROR 391 391

10 THE COURT Thank you, ma'am Yes, ma'am, behind
11 her

12 JUROR 448 Vickie Miller, 448 My son is with
13 the County, my niece is with the County, my brother-in-
14 law is with Wildlife

15 THE COURT All right, thank you All right,
16 across the aisle right here

17 JUROR 247 Terry Graham, 247 My husband was an
18 ex-jailer at the J Reuben Long Detention Center

19 THE COURT Thank you, ma'am Behind

20 JUROR 166 Sybil Dupie, 166 My ex-husband was a
21 cop for the City of Myrtle Beach

22 THE COURT All right, thank you Yes, sir

23 JUROR 255 Richard Gregory, 255 My dad was a
24 cop in New Jersey

25 THE COURT Thank you very much All right, just

GENERAL QUALIFICATION OF JURORS

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1 starting at the wall and going across over there

2 JUROR 208 Jill Fowler, 208 My father-in-law
3 was ---

4 THE COURT I'm sorry, your father-in-law was
5 what, ma'am?

6 JUROR 208 He's the chief of police in a little
7 town just north of Florence currently My brother-in-
8 law is currently active military police

9 THE COURT Thank you very much Yes, sir

10 JUROR 539 Ryan Rodriguez, 539 My uncle is a
11 prosecuting attorney for the State of Florida

12 THE COURT Thank you The next one

13 JUROR 333 Karen Johnson, 333 ---

14 THE COURT Who was that, ma'am?

15 JUROR 333 My son is an Horry County police
16 officer

17 THE COURT Thank you, ma'am Yes, sir

18 JUROR 149 Ronaldo De Los Reyes, 149

19 THE COURT I'm sorry, sir, I didn't hear you

20 JUROR 149 I was a United States Marshal in
21 Washington, D C

22 THE COURT Thank you, sir Yes, sir

23 JUROR 320 Lewis Janes, 320 My brother is a
24 retired police officer, City of Atlantic City, New
25 Jersey

GENERAL QUALIFICATION OF JURORS

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1 THE COURT Thank you

2 JUROR 99 Johnny Causey, juror number 99 My
3 father was a police officer for forty-three years for
4 the City of North Myrtle Beach

5 THE COURT Thank you very much Yes, ma'am

6 JUROR 549 Linda Russ, 549 My nephew was with
7 the police in Iowa

8 THE COURT Could you repeat your name and jury
9 number, please, ma'am

10 JUROR 549 Linda Russ, 549

11 THE COURT Thank you, ma'am Yes, ma'am

12 JUROR 569 Brenda Shoemaker, 569, was a state
13 police officer in New Hampshire

14 THE COURT Thank you Yes, sir, right here in
15 the front row

16 JUROR 375 Michael Laughter, 375, and I have two
17 son-in-laws that's with Horry County and Conway Police
18 Department

19 THE COURT All right What's your juror number
20 again?

21 JUROR 375 375

22 THE COURT Thank you, sir Yes, ma'am

23 JUROR 3 Gwendolyn Agripino, number 3 My
24 brother-in-law is a police officer

25 THE COURT Thank you Yes, sir

GENERAL QUALIFICATION OF JURORS

55

1 JUROR 632 Bernard Tomayko, 632, a retired police
2 officer in Pennsylvania

3 THE COURT Thank you, very good Right behind
4 him

5 JUROR 261 Donna Hallaran, 261 My brother-in-
6 laws, one is retired and one is a police officer on Long
7 Island

8 THE COURT Thank you very much Yes, ma'am

9 JUROR 577 Joyce Singleton My number is 577
10 My brother-in-law is ---

11 THE COURT All right 567, ma'am?

12 JUROR 577 577

13 THE COURT 577 All right, thank you Yes, sir

14 JUROR 397 397, John Lopes, an uncle

15 THE COURT All right, thank you Yes, ma'am

16 JUROR 158 Tiffany Dixon, 158 My husband is a
17 City of Conway police officer

18 THE COURT Thank you Yes, ma'am

19 JUROR 612 Deborah Stuhlemmer, 612 My nephew is
20 a policeman

21 THE COURT Thank you Yes

22 JUROR 415 Anne Mateer 415 I was a dispatcher
23 in New Jersey, and I have four brothers who are police
24 officers in Jersey City

25 THE COURT All right, thank you Yes, ma'am

GENERAL QUALIFICATION OF JURORS

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1 JUROR 172 Lynn Edmonds, 172 My brother-in-law
2 was the ex-police chief of Briarcliffe Acres
3 THE COURT And your number again, please, ma'am
4 JUROR 172 172
5 THE COURT All right Behind her
6 JUROR 428 Melvin McKinney, 428 Retired from
7 County Police
8 THE COURT Here in Horry County?
9 JUROR 428 Horry County
10 THE COURT Thank you very much Yes, ma'am
11 JUROR 294 294 My husband is a detective with
12 Myrtle Beach
13 THE COURT Thank you, ma'am Yes, sir
14 JUROR 370 David Lally, 370, retired from the New
15 Jersey Police Department Both of my sons are on the
16 Police Department
17 THE COURT Thank you Yes, ma'am, next to him
18 JUROR 44 Madgie Bell, 44 My nephew is an Horry
19 County Police
20 THE COURT What is your number, please, ma'am?
21 JUROR 44 44
22 THE COURT Thank you, ma'am In the back there
23 JUROR 33 Margaret Bartomeo, my number is 33 My
24 son is a Myrtle Beach police officer
25 THE COURT Thank you Yes, sir

GENERAL QUALIFICATION OF JURORS

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1 JUROR 377 Paul Leckie, 377 My brother is a
2 retired police officer in Pittsburgh

3 THE COURT Thank you Yes, ma'am

4 JUROR 329 Glenda Johnson, 329 I have a nephew
5 that works for the Sheriff's Department

6 THE COURT Thank you very much Yes, sir

7 JUROR 580 Chester Skowronski, 580 I worked for
8 Myrtle Beach City Police, Horry County Police, and South
9 Carolina Highway Patrol

10 THE COURT All right, very good Up front, yes,
11 sir

12 JUROR 466 Thomas Murray, 466, retired police
13 officer from New York

14 THE COURT Thank you Next to him

15 JUROR 662 I'm Jimmy Watson, 662 My brother is
16 a captain with the Horry County Police

17 THE COURT Thank you, sir Yes, ma'am

18 JUROR 451 451, Sherrie Mitchell My husband is
19 a police officer with Horry County

20 THE COURT Thank you Across the aisle

21 JUROR 21 Jennifer Araujo, number 21 My father
22 is a retired correctional officer in New York

23 THE COURT Thank you Next to her

24 JUROR 240 Donna Gore, 240, my brother-in-law is
25 a current police officer in Maryland

GENERAL QUALIFICATION OF JURORS

1 THE COURT Thank you Yes, ma'am

2 JUROR 275 Shannon Headley, 275 My husband is
3 an Horry County police officer

4 THE COURT Very good Across, yes, sir

5 JUROR 9 Layton Allen, number 9, a former North
6 Carolina police officer

7 THE COURT Thank you, sir Yes, ma'am, behind
8 him

9 JUROR 573 Dorothy Simpson, 573 My brother-in-
10 law is a retired detective, undercover

11 THE COURT Thank you, ma'am Yes

12 JUROR 424 Lisa McGee, 424 My nephew is an
13 officer for Myrtle Beach

14 THE COURT Could you tell me your juror number
15 again, please?

16 JUROR 424 424

17 THE COURT Thank you Yes, sir

18 JUROR 180 I'm Dale Ellis, juror number 180 My
19 father was in the Horry County Sheriff's Department and
20 the Horry County Police

21 THE COURT All right, thank you, sir Yes, sir

22 JUROR 433 Russel McMahon, 433 My brother is a
23 Deputy Sheriff in Pender County, North Carolina

24 THE COURT Thank you Yes, sir

25 JUROR 131 Walter Cumbow, 131 My uncle was

GENERAL QUALIFICATION OF JURORS

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1 captain in Bristol, Virginia, of the police force, and a
2 cousin was Chief of the Kingsport, Tennessee, police
3 force

4 THE COURT Thank you very much Yes, sir

5 JUROR 106 Zachary Clark, 106 My uncle worked
6 for the Myrtle Beach Police Department

7 THE COURT Thank you, sir Yes, ma'am

8 JUROR 250 Diane Graziano, number 250 My
9 grandpa was a police officer in New York

10 THE COURT Thank you, ma'am Yes, ma'am

11 JUROR 602 Susan Starr, number 602 My husband
12 is a former Horry County and City of Myrtle Beach police
13 officer

14 THE COURT Thank you, ma'am Behind her, yes,
15 sir

16 JUROR 88 My name is Sonny Cannon, number 88 My
17 father is a retired police officer

18 THE COURT All right, thank you Yes, ma'am

19 JUROR 343 Lakenya Jordan, 343 My husband is a
20 U S Marshal for Florence, and my dad is a North
21 Carolina police officer

22 THE COURT Thank you, ma'am

23 All right, we've got a couple more -- a couple more
24 questions here before we take a break All right, the
25 next -- the next question is, ladies and gentlemen, I'm

1 going to ask you whether you, yourself, or a member of
2 your immediate family has ever been the victim of a
3 crime Now, I don't want you to tell me anything about
4 it I don't want you to volunteer anything about what
5 happened I'm not going to ask you anything about it
6 It's going to be straightforward, was it yourself or a
7 family member, so is there any member of the jury panel
8 as a whole that either you, yourself, or a member of
9 your immediate family has ever been the victim of a
10 crime If so, please stand

11 Yes, ma'am, your name and juror number, please

12 JUROR 656 Susan Ward, 656

13 THE COURT Thank you, ma'am I'm sorry, was it
14 yourself or a family member?

15 MS WILLIAMS I'm sorry, I did not catch that

16 THE COURT All right Your name and juror number
17 again, please

18 JUROR 656 Susan Ward, 656

19 THE COURT Yourself or a family member?

20 JUROR 656 Myself

21 THE COURT All right, please be quiet We need
22 to hear Thank you We'll take a break shortly Thank
23 you Yes, ma'am

24 JUROR 473 Andrea Nobles, 473

25 THE COURT Yourself or a family member?

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1 JUROR 473 Myself
2 THE COURT Thank you Yes, sir
3 JUROR 300 Richard Hudson, number 300, myself
4 JUROR 102 Johnny Chestnut, 102, myself and
5 family members
6 THE COURT Thank you, sir Yes, sir
7 JUROR 83 Tim Caldwell, 83, myself
8 THE COURT Thank you Yes, sir
9 JUROR 372 Andrew Langway, 372, myself and
10 family
11 THE COURT Thank you, sir Yes, ma'am
12 JUROR 402 Rebecca Lyons, 402, a family member
13 THE COURT Thank you Yes, ma'am, on the side
14 JUROR 600 Barbara Stanley, 600, a family member
15 THE COURT Thank you, ma'am Yes, ma'am
16 JUROR 399 Catherine Lowery, 399, myself
17 THE COURT All right, thank you Yes, ma'am
18 JUROR 391 Linda Lockner, 391, self and family
19 THE COURT Thank you Yes, ma'am
20 JUROR 313 Melissa Isaacson, myself
21 THE COURT Thank you Yes, ma'am
22 JUROR 166 Sybil Dupie, 166, a family member
23 THE COURT Thank you Yes, ma'am
24 JUROR 31 Karen Barr, 31, myself and family
25 THE COURT Thank you Against the wall, please,

1 ma'am

2 JUROR 326 326, Amanda Johnson, myself

3 THE COURT Thank you Yes, sir

4 JUROR 234 John Gira, 234, a family member

5 THE COURT Thank you Yes, ma'am

6 JUROR 57 Gwen Blondmonville, 57, a family

7 member

8 THE COURT Thank you Yes, ma'am

9 JUROR 607 Katherine Steighner, 607, self

10 THE COURT Thank you, ma'am Against the wall,

11 please, ma'am

12 JUROR 208 Jill Fowler, 208, both

13 THE COURT Thank you Yes, ma'am, on the aisle

14 JUROR 45 Rosanne Bell, 45, both

15 THE COURT Thank you Yes, sir

16 JUROR 200 Steven Finley, 200, self

17 THE COURT Thank you Yes, sir, on the aisle

18 MS WILLIAMS Your Honor, I'm sorry I did

19 not ---

20 THE COURT All right, the last one, sir, you need

21 to repeat your name and your juror number again, please,

22 sir

23 JUROR 200 Steven Finley, 200, self

24 THE COURT All right, thank you In the back

25 JUROR 558 Linda Scheyd, 558, self

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1 THE COURT Thank you, ma'am On the aisle,
2 please
3 JUROR 119 Mike Cooper, 119, both
4 THE COURT Thank you, sir Behind him
5 JUROR 351 Brian Keane, 351, family member
6 THE COURT Thank you Behind that
7 JUROR 690 Delphia Wilson, 690, myself
8 THE COURT Thank you very much Yes, sir
9 JUROR 571 Robert Simeone, 571, self
10 THE COURT Next end, please, ma'am
11 JUROR 195 Donna Ferrebee, 195, both
12 THE COURT Thank you In the back, please,
13 ma'am
14 JUROR 115 Darlene Novak, 115, a family member
15 THE COURT Thank you Next to her
16 JUROR 647 Heidi Vukov, 647, self
17 THE COURT Thank you, ma'am Yes, ma'am, right
18 here
19 JUROR 378 378, Tonja Leidig, myself
20 THE COURT Thank you Yes, sir
21 JUROR 277 Martin Hemingway, number 277, both
22 THE COURT Thank you Yes, sir
23 JUROR 513 Samuel Pringle, 513, myself and my
24 family
25 THE COURT Thank you Yes, sir

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1 JUROR 392 Michael Loehr, 392, family
2 THE COURT Thank you Behind him
3 JUROR 466 Thomas Murray, 466, family
4 THE COURT Thank you Behind him
5 JUROR 446 Jane Miller, 446, family
6 THE COURT Thank you, ma'am Yes, ma'am, right
7 here in the aisle
8 JUROR 284 Arcissia Herndon, 284, family
9 THE COURT Thank you Right here at the end,
10 yes, sir
11 JUROR 397 John Lopes, 397, self
12 THE COURT Thank you Next, sir
13 JUROR 631 Danny Todd, 631, family
14 THE COURT Thank you, sir Yes, sir
15 JUROR 331 Joseph Johnson, 331, both
16 THE COURT Thank you At the end
17 JUROR 451 Sherrie Mitchell, 451, family
18 THE COURT Thank you Next
19 JUROR 346 Wanda Jordan, 346, family
20 THE COURT Yes, ma'am
21 JUROR 265 Sandra Hardin, 265, family
22 THE COURT Thank you very much Yes, ma'am,
23 right here
24 JUROR 552 Sharon Safford, 552, myself
25 THE COURT All right Right here in the middle,

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1 ma'am

2 JUROR 93 93, Lisa Carver, both

3 THE COURT Thank you, ma'am Right behind her

4 JUROR 237 Kimberley Goh, 237, self

5 THE COURT Thank you Behind her

6 JUROR 612 Deborah Stuhlemmer, 612, family

7 THE COURT Thank you, ma'am Behind her

8 JUROR 610 Pauline Strickland, 610, myself

9 THE COURT Thank you, ma'am Yes, ma'am

10 JUROR 172 Lynn Edmonds, 172, family

11 THE COURT Thank you Next to her

12 JUROR 42 Leroy Beckwith, 42, both

13 THE COURT I'm sorry, your juror number again,

14 please, sir

15 JUROR 42 42

16 THE COURT All right Yes, ma'am

17 JUROR 44 Madgie Bell, 44, family

18 THE COURT Thank you Yes, sir

19 JUROR 393 Christopher Lombardi, 393, both

20 THE COURT Thank you Next to him

21 JUROR 370 370, David Lally, family

22 THE COURT Thank you Behind

23 JUROR 592 Sandra Smith, 592, self

24 THE COURT Thank you, ma'am Yes, in the back

25 JUROR 638 Kathryn Ubel, 638, family

1 THE COURT And, I'm sorry, your number again was?
2 JUROR 638 638
3 THE COURT Thank you, ma'am Yes, ma'am
4 JUROR 183 Tamira Elvis, 183, family
5 THE COURT Thank you Yes, sir
6 JUROR 580 Chester Skowronski, 580, both
7 THE COURT Thank you very much Yes, ma'am,
8 right here on the end, ma'am
9 JUROR 472 Sara Newton, 472, a family member
10 THE COURT Thank you, ma'am Yes, sir
11 JUROR 131 Walter Cumbow, 131, both
12 THE COURT Thank you Yes, ma'am
13 JUROR 236 Judy Glymph, 236, myself and a family
14 member
15 THE COURT Thank you, ma'am Yes, sir, right
16 here
17 JUROR 199 William Files, 199, myself and family
18 members
19 THE COURT Thank you, sir Yes, ma'am, right
20 here
21 JUROR 388 Jeanetta Livingston, number 388, self
22 and family member
23 THE COURT Thank you
24 JUROR 477 Sandra Norton, 477, self
25 THE COURT All right Yes, ma'am

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1 JUROR 380 Sharon Lemon, 380, both
2 THE COURT Thank you, ma'am Yes, ma'am
3 JUROR 602 Susan Starr, 602, both
4 THE COURT Thank you Yes, sir
5 JUROR 88 Sonny Cannon, number 88, both
6 THE COURT Thank you Yes, ma'am
7 JUROR 634 Kyna Triplett, 634, self
8 THE COURT All right, right here at the end,
9 ma'am, please
10 JUROR 145 Laura Davis, 145, self
11 THE COURT Thank you Yes, ma'am
12 JUROR 179 Toni Elliott, juror number 179
13 THE COURT Was it yourself, ma'am?
14 JUROR 179 Family
15 THE COURT Family, I'm sorry Yes, ma'am
16 JUROR 480 Bonnie Oguin, 480, a family member
17 THE COURT Thank you, ma'am All right, yes,
18 sir, right here, you with your arms crossed
19 JUROR 664 Dennis Webb, 664, family
20 THE COURT Thank you, sir Yes, ma'am
21 JUROR 87 87, Amanda Cannon, family
22 THE COURT Thank you, ma'am Yes, ma'am, behind
23 her
24 JUROR 240 Donna Gore, 240, both
25 THE COURT Thank you Yes, sir

1 JUROR 494 Carey Payne, 494, both
2 THE COURT Thank you very much Yes, ma'am
3 JUROR 424 424, Lisa McGee, family
4 THE COURT Thank you
5 JUROR 90 Barbara Carr, 90, self
6 THE COURT I'm sorry, your juror number again
7 was?

8 JUROR 90 90
9 THE COURT Thank you, ma'am Yes, ma'am
10 JUROR 567 Renee Shaw, 567, both
11 THE COURT Thank you very much Yes, ma'am
12 JUROR 156 Rose Diaz, 156, both
13 THE COURT Thank you very much Anyone else?
14 (No response)

15 All right, is there any member of the jury panel
16 that you, yourself, or a member of your immediate family
17 has ever been the member of any kind of victims' rights
18 or law enforcement support organizations? Let me give
19 you some examples It's not an exhaustive list of any
20 kind It's just examples of what I'm talking about It
21 would be like Citizens Against Violent Crime, Mothers
22 Against Drunk Driving, the South Carolina Law
23 Enforcement Officers Association, South Carolina
24 Sheriff's Association Those are just examples, so some
25 kind of victims' rights or law enforcement support

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1 organization If you or a member of your immediate
2 family is a member, please stand

3 Yes, ma'am, name and juror number, please

4 JUROR 215 Lynn Frick, 215, member South
5 Carolina ---

6 THE COURT Law Enforcement Officers Association?

7 JUROR 215 --- Law Enforcement Officers
8 Association

9 THE COURT Very good, ma'am Yes, sir

10 UNIDENTIFIED JUROR Was it was a member at any
11 time, ---

12 THE COURT Yes

13 UNIDENTIFIED JUROR --- is that the question?

14 THE COURT It's currently, but since you've
15 already stood, why don't you stand and identify
16 yourself

17 UNIDENTIFIED JUROR Fraternal Order of Police in
18 Maryland My father was a member

19 THE COURT Very good Thank you, you, sir Yes,
20 sir

21 JUROR 181 Gerald Ellis, 181, F O P

22 THE COURT Thank you, sir Yes, sir

23 JUROR 632 Bernard Tomayko, 632, F O P 91, it
24 was South Carolina

25 THE COURT Thank you, sir Yes

1 JUROR 149 Ronaldo De Los Reyes, 149, Fraternal
2 Order of Police
3 THE COURT Thank you Yes, ma'am
4 JUROR 333 333, Karen Johnson, South Carolina Law
5 Enforcement
6 THE COURT Thank you, ma'am Yes, ma'am
7 JUROR 363 Norine Klebach, 363, South Carolina
8 Troopers
9 THE COURT Association Very good Thank you,
10 ma'am Yes, ma'am
11 JUROR 451 Sherrie Mitchell, 451, F O P
12 THE COURT Thank you, ma'am Yes, sir, in the
13 back
14 JUROR 370 David Lally, 370, T P A , New Jersey
15 THE COURT Thank you very much Yes, ma'am
16 JUROR 294 294, Andrea Hollembach, my husband,
17 South Carolina Law Enforcement
18 THE COURT Thank you very much Yes, sir
19 JUROR 428 Melvin McKinney, 428, Horry County
20 Crimestoppers Board of Directors, and F O P
21 THE COURT Thank you very much Yes, sir
22 JUROR 9 Layton Allen, number 9, F O P
23 THE COURT All right, sir
24 JUROR 53 James Berry, juror number 53, wife's a
25 Rape Crisis Counseling Center volunteer

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1 THE COURT All right, thank you, sir Yes,
2 ma'am, next to him

3 JUROR 275 Shannon Headley, 275, my husband is a
4 member of F O P

5 THE COURT Thank you very much Yes, sir, right
6 here

7 JUROR 466 Thomas Murray, P P A , New York

8 THE COURT Thank you very much In the back

9 JUROR 580 580, Chester Skowronski, P P A , South
10 Carolina Law Enforcement Association, ---

11 THE COURT All right, sir, thank you

12 JUROR 580 --- and Horry County Crimestoppers

13 THE COURT Very good Thank you, sir

14 All right, ladies and gentlemen, there's one other
15 question, but I'm not going to ask it at this time
16 because it is something that we would need to cover with
17 you in your individual questioning, so I'm just going to
18 state the question, and y'all think about it

19 Again, if there is necessity for you to bring it up
20 when you are individually questioned, you need to bring
21 it up to the Court and the lawyers If you don't do it
22 then, later on it's too late, so do you know of any
23 reason, have any question in your mind, any doubt in
24 your mind that you believe you cannot give to the State
25 of South Carolina and to the defendant a fair and

1 impartial trial? That is for any reason whatsoever you
2 believe you cannot be a fair and impartial juror

3 If that -- you need to respond to that question,
4 please remember, bring that up when you are individually
5 questioned by the Court and the lawyers That is the
6 time to bring it up

7 If you feel more comfortable writing something out
8 and handing it to the Court when you come, I'll be glad
9 for you to do that, but please remember, that's the time
10 to bring it up Later on, it's too late

11 All right, further questions in that category from
12 the State?

13 MR HUMPHRIES Nothing from the State, Your
14 Honor

15 THE COURT From the Defense?

16 MR DIGGS No, Your Honor

17 THE COURT Very good All right, ladies and
18 gentlemen, we're going to take a break The Clerk is
19 going to get organized to start putting you in panels,
20 so we'll let you know when you need to report back, and
21 I'll have a few other instructions that I must give you
22 at that point in time

23 All right, ladies and gentlemen, we're going to
24 take a break for about twenty minutes Y'all be back in
25 your seats in twenty minutes Thank you very much

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1 (OFF THE RECORD - 20 minute recess)

2 **ON THE RECORD**

3 (Reporter's Note Members of the South Carolina Law
4 Enforcement Division and members of law enforcement are
5 administered their oath by the Clerk and state their
6 names for the record)

7 Douglas Hyman, Lorraine Avant, Lounella Williams,
8 Glenn McClellan, Grady Richardson, Douglas Rogers,
9 Pamela Williamson, Roxanne Bethea, Steve Causey, Teresa
10 Fulton, Rebecca Graham, Wade Petty, Billy Howser,
11 Randall Truss, James K McKenzie, Philip Thompson,
12 Sherry Smith, Oliver Parmley, Sam Johnson, Brooks James,
13 Chris Graham, Ronnie Jordan, John Ellison, Roy
14 Hemingway, Dana Sarvis

15 THE CLERK Please raise your right hand Do you
16 swear that you will keep the jurors sworn of this jury
17 during the time you have them in your custody at the
18 motel or restaurant during the meal and then return the
19 jury to the jury room and that you will suffer no person
20 to speak to them, nor any of them, as it pertains to
21 this case while you have them in your custody, so help
22 you, God?

23 (All SLED agents and members of law enforcement respond
24 in the affirmative)

25 THE CLERK They are all under oath

1 A SLED AGENT You've got one more

2 THE CLERK Just state your name for the record

3 MR FLOYD Joe Floyd, Jr

4 THE CLERK Please raise your right hand

5 Do you swear that you will keep the jurors sworn of
6 this jury during the time you have them in your custody
7 at the motel or restaurant during the meal and then
8 return the jury to the jury room and that you will
9 suffer no person to speak to them, nor any of them, as
10 it pertains to this case while you have them in your
11 custody, so help you, God?

12 MR FLOYD I do

13 THE COURT You may be seated Thank y'all All
14 right, ladies and gentlemen, we are hopefully winding
15 down the process a little bit for today anyway There
16 are some other things I do need to go over with you

17 As you obviously realize, this case is a capital
18 case, and we will take time in a capital case to
19 question jurors individually and privately under oath,
20 and that process will take a couple of days before we
21 can actually select a jury for this particular case

22 Now, thus far, I've only asked you some questions
23 regarding basically your general eligibility as you are
24 in the process to serve as a juror in this case When
25 we question you individually, now we will be discussing

1 specific questions An example could be, as I told you
2 when you first come in, you're going to have a witness
3 list You're going to need to circle whether or not you
4 know any of the witnesses Obviously if you circle
5 somebody, then we'd need to ask you about that

6 Obviously we will want to know if you already know
7 anything about this case, or heard anything about this,
8 or recall anything about the press, and we expect that,
9 and certainly that's perfectly all right

10 We'll be asking you whether or not you've already
11 formed an opinion or have an opinion about the case,
12 whether or not you can be a fair and impartial juror,
13 because that's obviously what we need, fair and
14 impartial jurors

15 You will need to be able to accept the law that the
16 Court gives you, follow the law that the Court gives you
17 without regard to your personal feelings about it You
18 will need to follow the law as I direct you, follow the
19 law that I give you

20 It will be part of your oath to find the truth from
21 the evidence that is presented in the case, because the
22 jury that's ultimately selected is going to be the
23 judges of the facts The Court will give you no opinion
24 as to what I believe the facts of the case are That's
25 not my job That's the job of the jury, is to find the

1 truth from the evidence and see whether or not the State
2 carries its burden to prove the defendant guilty beyond
3 a reasonable doubt, and then we will further instruct
4 you if there is a second phase to this trial

5 There aren't any right or wrong answers We have
6 to know that when you answer a question, you are
7 answering that question honestly and truthfully, because
8 as I told you, we need fair and impartial jurors
9 That's what we have to have in this case

10 Now, what we're going to do is, and the Clerk --
11 and we'll call it out in just a second, the Clerk has
12 randomly selected through a computer program individual
13 panels of five jurors, and you're going to be assigned a
14 certain day and a certain time, and they'll have a
15 little piece of paper to give to you and tell you what
16 day and time you come in

17 What we're going to first do is have, I believe, a
18 hundred and thirty that are going to be given a day and
19 a time The rest of you will not be given a day and a
20 time, but that doesn't mean you're excused That means
21 that you are still in the process and are subject to be
22 called at any time during the process by the Clerk
23 We're just starting off with a hundred and thirty, so
24 everybody is still in the process

25 Now, we'll proceed in that fashion and going

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1 through those individual jurors until we get a jury
2 selected Now, when a jury is selected in this case,
3 when we've got our twelve jurors and our four
4 alternates, those individuals will be sequestered That
5 means you will be staying at a motel that the County has
6 selected at the County expense Your meals will be
7 provided

8 You will -- your lives during the course of this
9 trial will be governed by the process, and you will have
10 licensed agents from the South Carolina Law Enforcement
11 Division around you at all times Your access to other
12 people will be controlled, because again we have to have
13 a fair and impartial jury that is not influenced by any
14 outside matters This is a process that we have used in
15 capital cases since -- basically since we have had them
16 as a formal process in the State of South Carolina

17 Now, obviously nobody is going to be sequestered
18 until we actually select the jury, but from this moment
19 on, you may not read any news accounts You cannot
20 watch or listen to any television or radio accounts
21 about this case You may not talk about this case with
22 your prospective jurors or the other fellow jurors You
23 can't talk about it with anybody, your family, your
24 friends, anyone

25 Again, and this won't be the last time I tell you,

1 if anybody tries to contact you about this, if you can
2 do so, you find out who that person is and the Court
3 will deal with them Don't expose yourself to any
4 publicity about this particular case

5 What we're going to do now is the Clerk will call
6 out the randomly selected jurors for the panel As I
7 told you, that's going to be a hundred and thirty of
8 you She'll give you a little slip of paper that will
9 tell you to report on whatever day, whatever time, and
10 the remainder of you, please remember you remain on call
11 by the Clerk's Office, so don't -- though I don't need
12 to say this, probably will, please understand if you
13 don't report when we ask you to or you don't respond,
14 then what I have to do is ask one of the fine deputies
15 of the Horry County Sheriff's Office to go out and find
16 you and bring you in I don't want to do that, so
17 please cooperate with us, all right? Thank you

18 All right, at ease, at ease The Clerk's got to
19 call out the names, so you need to know

20 THE CLERK This is for 11/9 at nine o'clock
21 572, Robert Simmons ---

22 THE COURT That's Monday, Monday at nine o'clock

23 THE CLERK 612, Deborah Stuhlemmer, ---

24 THE COURT All right, wait a minute, ma'am Have
25 y'all got a slip of paper to hand to them?

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1 THE CLERK Yes, sir

2 THE COURT All right When your name is called,
3 stand up, and the Clerk is going to go and give you that
4 slip All right, start with the first name again, Madam
5 Clerk

6 THE CLERK Okay The first name is 572, Robert
7 Simmons Can you see him?

8 THE COURT 572, Robert Simmons Madam Clerk, did
9 he answer the rollcall this morning?

10 THE CLERK He must have He's on the list

11 THE COURT Check and see

12 MR HUMPHRIES He did He responded to one of
13 the individual questions

14 THE COURT Deputy ---

15 A BAILIFF Order in the Court

16 THE COURT All right, Madam Clerk, you contact
17 the Sheriff's Office You have them find that juror and
18 bring him in

19 Go to the next name

20 THE CLERK 612, Deborah Stuhlemmer 281, Tammy
21 Henderson 343, Lakenya Jordan 102, Johnny Chestnut
22 Okay, and that's nine o'clock Monday

23 Ten-fifteen, Monday 199, ---

24 When I call your name, instead of just standing up,
25 please come up here That would take less time, okay?

1 199, William Files 236, Judy Glymph 446, Jane
2 Miller 685, Stephen Williams 695, Teresa Woolard
3 Eleven-thirty, Monday 22, Matthew Arbaugh 564,
4 Lisa Sellers 231, Telia Gibbons 67, Bobby Branton
5 64, Brandon Boyd
6 Okay, one forty-five, Monday 33, Margaret
7 Bartomeo 53, James Berry 542, Victor Romano 479,
8 Francisco Nunez Okay, 479, Francisco Nunez That
9 might be ---
10 THE COURT Okay, Madam Clerk, write their name
11 down
12 THE CLERK 298, Elizabeth Holton
13 Three o'clock, Monday 466, Thomas Murray 137,
14 Lonnie Daniels 522, Michael Ray 115, Darlene Novak
15 258, Virginia Grissett
16 137, Lonnie Daniels, did he come up? All right,
17 137
18 THE COURT 137, Madam Clerk
19 THE CLERK Okay, just hold on to that
20 Four-fifteen, Monday 150, Vance Defelice 372,
21 Andrew Langway 122, Richard Corkum 5, Linda
22 Morrison, and 601, Waverly Stanley
23 Who do you have left?
24 CLERK'S ASSISTANT 122
25 THE CLERK 122, Richard Corkum