

VOLUME TWO OF SIX

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

VOLUME TWO
501 - 1000

Appeal from Greenville County

RECEIVED

J. C. Buddy Nicholson, Jr., Circuit Court Judge

APR 21 2010

S.C. SUPREME COURT

BRAD KEITH SIGMON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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1 aggravated murder, if a jury found that there was no
2 mitigating evidence, they could still give a life
3 sentence. Do you understand that?

4 MR. MCDUFFEE: Yes, sir.

5 THE COURT: Okay. If you were on a case and you
6 thought the appropriate sentence was life, could you
7 give a live sentence?

8 MR. MCDUFFEE: Yes.

9 THE COURT: And if you thought the appropriate
10 sentence was death, could give -- vote for the death
11 penalty?

12 MR. MCDUFFEE: Yes, sir.

13 THE COURT: If you were on a jury and if the
14 sentence were -- if you thought the appropriate sentence
15 was death, then you would have to sign your name to the
16 verdict form. Each individual juror would have to sign
17 their name. Do you understand that?

18 MR. MCDUFFEE: Yes.

19 THE COURT: If you thought that was the appropriate
20 sentence, could you sign that form?

21 MR. MCDUFFEE: Yes, sir.

22 THE COURT: All right. Now, if you were sitting on
23 a jury in a case like this, would you give careful
24 consideration and respect to the opinions of fellow
25 jurors?

1 MR. MCDUFFEE: Yes.

2 THE COURT: All right. In other words, the jury
3 process is a give and take process. If you were in the
4 majority and there was one or two that were in the
5 minority on the issue of either guilt or innocence, or
6 life or death, would you give their consideration --
7 give consideration and respect to their opinions?

8 MR. MCDUFFEE: Yes.

9 THE COURT: All right. Mr. Abdalla?

10 MR. ABDALLA: Thank you, Your Honor.

11 THE COURT: I introduced these gentlemen yesterday.
12 This is Mr. Abdalla, he's one of the persons
13 representing the defendant. And Mr. Ariail, the
14 Solicitor, will talk to you after he gets done.

15 MR. MCDUFFEE: Okay.

16 QUESTIONING BY MR. ABDALLA:

17 Q Good morning. I would like to thank for you
18 serving, because I understand that you could have gotten
19 out of jury service.

20 A That's correct.

21 Q Of course my job is now to find out some of your
22 views, to see that we can get a fair trial. Would you
23 tell me what your views are on the death penalty?

24 A Well, if it's a heinous crime, involves murder or
25 rape, something like that, I feel it's justified.

1 Q All right. Now, you feel it's justified you say.
2 Tell me a little bit about -- let me back up a bit, or
3 change gears I should say. Do you understand, and I'm
4 not trying to embarrass you here, because this is unique
5 to a capital case, do you understand the procedure that
6 you will go through if you become a juror, what the
7 Court will have to do, what the jury will have to find?
8 It's a two-step process. Could you explain that to me?
9 How -- what you're understanding of that is?

10 A You mean finding the defendant guilty and then ---

11 Q Yes, sir.

12 A --- announcing sentence?

13 Q Yes, sir. You know if you find him guilty in the
14 first phase, you would then move onto the sentence
15 phase?

16 A Yes.

17 Q Which is a separate proceeding. You do know it
18 would be a separate hearing?

19 A Yes.

20 Q Now, you understand that in the trial phase, if the
21 charge is murder and you find him guilty of murder, you
22 are not left with any excuses, like self-defense, you've
23 already excluded those. You do understand that, right?

24 A Yes.

25 MR. ABDALLA: Excuse me for one moment.

1 BY MR. ABDALLA:

2 Q And explain the -- the trial phase a bit?

3 A Well, I have never been through this, but I would
4 assume you listen to all of the evidence and try to
5 weigh the facts and arrive at a conclusion, you know.

6 Q Okay. Now, if you do come to that juncture, will
7 you then move onto the sentence phase, can you -- is it
8 your belief that the aggravating factors were met, you
9 would be -- what's your views at that point if you find
10 aggravating factors, murder with aggravating factors?

11 A Well, you would have to look at those, I guess, to
12 try to determine how much they influenced what happened.

13 Q I'm sorry. What do you mean by that? I apologize.

14 A Well, you're talking about aggravating factors,
15 and ---

16 Q Like the judge gave --

17 A I ---

18 Q Oh, go ahead.

19 A What degree did they contribute to the crime, you
20 know.

21 Q For instance if it was a murder and the aggravating
22 factor was armed robbery, and you've already found him
23 guilty that -- you've already found the defendant guilt
24 of those two crimes ---

25 A Um-hm.

1 Q --- you now have the aggravating factor, you have
2 the underlying murder, what is your position then with
3 regard to sentencing? How would you evaluate a sentence
4 at that point is what I'm asking?

5 MR. ARIAIL: Your Honor, I think that's an
6 inappropriate question, the way it's framed. It needs
7 to be framed in terms of overall economical proceed that
8 he's got to go through, not just isolating him at that
9 point

10 MR. MCDUFFEE: It's tough to answer that really.

11 THE COURT: All right. I'll let -- allow the
12 question. He's answered it. Go ahead. Next question.

13 BY MR. ABDALLA:

14 Q Could you give meaningful consideration to a life
15 sentence at that point?

16 A Could I give equal consideration?

17 Q Meaningful consideration to ---

18 A Meaningful? I believe so, yes.

19 Q Could you explain that a little bit, that --
20 I'm ---

21 A Well ---

22 Q You said you believe so, and I'm ---

23 A It's kind of a vague question, I think. Could I
24 give meaningful consideration is ---

25 Q Well, you rephrased it as equal consideration. Can

1 you give equal consideration?

2 A Maybe I didn't hear you exactly, was it meaningful?

3 Q That's what I said, but that seemed to be vague to
4 you. So if equal consideration is better.

5 A All right, we'll go with meaningful.

6 Q All right?

7 A Yes.

8 Q Okay. Do you have -- I saw on your questionnaire
9 something about being a member of MADD. My question is
10 going to be ---

11 A Yep.

12 Q I'm sorry?

13 THE COURT: He said yes, he's a member of MADD, I
14 think is what he said.

15 MR. MCDUFFEE: That's right.

16 BY MR. ABDALLA:

17 Q All right. Would that keep you from giving a fair
18 trial to my client if alcohol, or drugs or anything were
19 involved in the case?

20 A I don't believe so, no.

21 Q If after you found that a client is guilty and the
22 family were to get up there as part of the victim impact
23 testimony, and you're going to see some -- you're going
24 to see some evidence that is quite graphic, you'll hear
25 some people quite upset over what's happened, are you

1 saying you can still give meaningful consideration to a
2 life without parole sentence?

3 A I think so, yes.

4 Q You think so. Okay. What does that mean?

5 A Well, I would give meaningful consideration. I'm
6 not sure ---

7 THE COURT: We're not asking you to vote ---

8 MR. McDUFFEE: --- on the decision.

9 THE COURT: --- a particular case. Anything else?

10 MR. ABDALLA: Yes, Your Honor.

11 BY MR. ABDALLA:

12 Q Do you think life without parole is adequate
13 punishment for a case that involves the death penalty?

14 MR. ARIAIL: Your Honor, I'm going to object.

15 THE COURT: I will sustain the objection.

16 BY MR. ABDALLA:

17 Q Do you think -- what are your views on life without
18 parole?

19 A It's a tough decision, death penalty or life
20 without parole. I'm not absolutely sure until I have
21 heard a case which way I would go.

22 Q No, and I'm sorry, I wasn't asking which way you
23 would go. I was trying to find out what your view is
24 about life without parole. What you think of that as a
25 possible sentence. In a case with aggravating factors,

1 I should qualify that question.

2 A Would you repeat that?

3 Q In a case with -- where you as a juror were to find
4 aggravating factors, in addition to a murder, what is
5 your position about -- your theory about life without
6 parole?

7 A I would say that it's justified.

8 Q All right. And if there was a juror on the -- if
9 you were in the jury room deliberating and there were 10
10 or 11 jurors on one side and one or two people on the --
11 in the other position, would you be able to stick to
12 your convictions but yet respect those views of the
13 other jurors?

14 A Yes.

15 MR. ABDALLA: Thank you.

16 THE COURT: Who started? Mr. Ariail.

17 MR. ARIAIL: Mr. McDuffee, my name is Bob Ariail,
18 and I'm the Solicitor for Greenville and Pickens
19 Counties, and I will be representing the State in this
20 case, along with my Deputy, Ms. Strom, in the white
21 suit, and one of my assistants, Ms. Hervey, and we
22 appreciate your answers, and we have no questions.
23 Thank you, Your Honor.

24 THE COURT: All right. Anything from the State,
25 yes or no?

1 MR. ARIAIL: No.

2 THE COURT: Anything from the defense, yes or no?

3 MR. ABDALLA: No, Your Honor.

4 THE COURT: All right. Let me give you this
5 letter. Mr. McDuffee, you are qualified to serve as a
6 juror. That does not mean that you will actually serve.
7 It simply means you are qualified. We're in the process
8 of trying to gather a group of some 40 or so qualified
9 jurors from which we'll pick the jury. I imagine that's
10 going to take into tomorrow, maybe even into Thursday.
11 When we are close to getting to that number, Madam Clerk
12 will call the jurors and tell them when to report back
13 to court.

14 When you come back to court, you need to bring a
15 suitcase packed for seven or eight days to stay in a
16 motel. Bring comfortable clothes. Bring any
17 medications you may have.

18 If you would, when you come back, park in the Hyatt
19 parking garage. I imagine you parked there yesterday
20 morning?

21 MR. MCDUFFEE: Yes, sir.

22 THE COURT: The Hyatt entrance is the -- there's
23 one on College Street, but you probably went in on
24 Spring Street, that's the street between the courthouse
25 and here?

1 MR. MCDUFFEE: Yes.

2 THE COURT: Right across from that entrance is the
3 Spring -- is the entrance to our parking garage. In
4 order to keep the jury separated from the public
5 corridors, I'm asking all jurors to meet there at the
6 appointed time. Bailiffs will be there. They'll meet
7 you and bring you up to the courtroom. Don't bring your
8 suitcase, leave your suitcase in the car, because most
9 of the jurors that come back will not be serving. Then
10 those that are will retrieve their suitcases after we
11 pick the jury.

12 You will not be able to have any contact with
13 family during the course of the trial, any direct
14 contact. If you need to get a message to them, we can
15 do that by taking a name and a number and bailiff -- and
16 the message, and the bailiff will call and deliver any
17 message. There are emergency numbers on that sheet to
18 give family members if there is an emergency where they
19 need to contact you. That's not an information hotline.
20 If they want to know how long you're going to be
21 serving, they just need to watch the local media, but
22 that's for emergencies only.

23 My usual admonitions, do not talk about this case
24 with anyone. If someone tries to talk with you, then
25 tell them you're a juror, you can't talk about it, but

1 you need to take their name and report that to the
2 bailiff. Also, don't watch any news accounts on TV,
3 listen to the radio about this case, don't read anything
4 in the paper about this case. Do you have any
5 questions?

6 MR. MCDUFFEE: No, sir.

7 THE COURT: Okay. I will see you probably
8 tomorrow afternoon or Thursday.

9 MR. MCDUFFEE: Okay. Thank you very much.

10 THE COURT: Thank you.

11 (Mr. McDuffee exited the courtroom.)

12 THE COURT: All right. We ready for the next one?

13 MR. ABDALLA: Yes, sir.

14 THE COURT: You're standing. Any reason?

15 MR. ARIAIL: Just my back.

16 THE COURT: Okay. Curran Kay.

17 MR. EPPES: She had heard about the case, Your
18 Honor.

19 THE COURT: Yeah, I got that. Is there anything
20 else in there?

21 (Ms. Kay entered the courtroom.)

22 THE COURT: Hey, Ms. Kay. As you make yourself
23 comfortable, pull your chair up close to the microphone.
24 That way we can make sure your voice is amplified.
25 Okay. You are Curran Kay?

1 MS. KAY: Yes, sir.

2 THE COURT: And Ms. Kay, have you complied with my
3 instructions yesterday not to talk about this case with
4 anyone?

5 MS. KAY: Yes, sir.

6 THE COURT: All right. I believe yesterday you
7 told me that you recalled reading something, or seeing
8 something about this case, or possibly talking to people
9 about it. You knew something about the facts of the
10 case, is that correct?

11 MS. KAY: Somewhat.

12 THE COURT: All right. Can you just tell us
13 briefly what it is do you recall about the case?

14 MS. KAY: I teach at a private school and our
15 school was locked down during that time, and we were
16 informed there had been a murder in the area and someone
17 was -- could be suspected in the area. So we were
18 locked down.

19 THE COURT: What school do you teach at?

20 MS. KAY: Taylors First Baptist.

21 THE COURT: Okay. And so police came by when it
22 happened?

23 MS. KAY: Um-hm, yes, sir.

24 THE COURT: Okay. Was there a lot talk about it at
25 that time?

1 MS. KAY: Not really.

2 THE COURT: Do you live ---

3 MS. KAY: Because we are with young children.

4 THE COURT: Do you live in that area?

5 MS. KAY: I live about five miles from that area.

6 THE COURT: Did you know any of the victims, or the
7 defendant, or anything family members?

8 MS. KAY: No, sir.

9 THE COURT: Okay. Let me ask you this, have you
10 formed my opinions about this case from what happened
11 when you were at your school and the talk that went on
12 and any media that you watched?

13 MS. KAY: Yes.

14 THE COURT: All right. And have you formed an
15 opinion as to the guilt or the innocence of this
16 defendant?

17 MS. KAY: Somewhat.

18 THE COURT: Okay, what is that opinion?

19 MS. KAY: Guilty.

20 THE COURT: All right. Tell me how came upon that
21 opinion, just from hearing stuff on the -- people
22 talking about it?

23 MS. KAY: It just seemed in the media that the
24 person that had been accused of -- committed this crime
25 they had found him to be the one, or to be guilty.

1 THE COURT: All right. And you believe everything
2 that's in the media?

3 MS. KAY: Not always.

4 THE COURT: Okay. But you have in this particular
5 case?

6 MS. KAY: Yes, sir.

7 THE COURT: All right. Let me ask you to step
8 outside for just a minute, please, ma'am.

9 (Ms. Kay exited the courtroom.)

10 THE COURT: Anything from the State?

11 MR. ARIAIL: You didn't ask her if she could set it
12 aside. You did that with the last juror. I know the
13 second question sort of went to that, but ---

14 THE COURT: All right. What's y'all's position?

15 MR. ABDALLA: My position, Your Honor, she was very
16 honest and forthright and ---

17 THE COURT: And strong.

18 MR. ABDALLA: And strong and says he's guilty.

19 THE COURT: All right. I'll ask her that, but I
20 don't think she's going to answer it right for you. All
21 right. Bring her in.

22 (Ms. Key entered the courtroom.)

23 THE COURT: You don't have to sit down. Ms. Kay,
24 you seem pretty strong in the opinion you've formed.
25 Can you set that opinion aside and listen to the

1 evidence that's -- that comes forth in this courtroom
2 and judge the case only on the evidence from this
3 courtroom?

4 MS. KAY: Yes.

5 THE COURT: You can do that?

6 MS. KAY: I think.

7 THE COURT: Well, have a seat. I need better than
8 I think, do you understand what I'm saying?

9 MS. KAY: Yeah. I'm just -- I'm human and --
10 and ---

11 THE COURT: That's fine.

12 MS. KAY: I will try.

13 THE COURT: And there's no right answers, and
14 there's no wrong answers, but if there is a chance that
15 the opinions you've formed about the guilt is going to
16 interfere with service in this case -- you know, we've
17 got plenty of jurors, you understand that?

18 MS. KAY: Yeah, I do.

19 THE COURT: My question is, having formed an
20 opinion that the defendant is probably guilty, can you
21 set that aside and judge this case only on the evidence
22 that's presented in this courtroom?

23 MS. KAY: Probably not.

24 THE COURT: Okay. That's fine. I'll excuse you
25 from serving on this case. Let me ask just one last

1 question. You have not talked about this case with --
2 your opinions with any of the other jurors who are in
3 the other courtroom?

4 MS. KAY: No.

5 THE COURT: All right. Then, I'm going to let you
6 go at this time. Thank you very much.

7 MS. KAY: Okay.

8 (Ms. Kay exited the courtroom.)

9 THE COURT: All right. We're on Michelle Martin,
10 Shelly Martin. Anything on this one I need to know
11 about, other than she heard the facts.

12 MS. STROM: And she didn't sign, Your Honor.

13 THE COURT: She didn't sign, okay. All right.
14 Shelly Martin.

15 (Ms. Martin entered the courtroom.)

16 THE COURT: Hey, Ms. Martin.

17 MS. MARTIN: Hi.

18 THE COURT: Have a seat right there. And as you
19 get comfortable slide the chair forward so you can speak
20 right into that microphone, please, ma'am. You are
21 Michelle L. Martin?

22 MS. MARTIN: Yes.

23 THE COURT: All right. You go by Shelly?

24 MS. MARTIN: Shelly, um-hm.

25 THE COURT: And have you complied with my

1 instructions not to discuss this case with anyone?

2 MS. MARTIN: Yes.

3 THE COURT: All right. Yesterday you indicated
4 that you recalled hearing some facts about this case?

5 MS. MARTIN: Yes.

6 THE COURT: Tell me what you recall hearing?

7 MS. MARTIN: When you mentioned that schools being
8 on lock down, because they were looking for a fugitive,
9 or -- that's -- that's what I remember.

10 THE COURT: All right. Do you have school age
11 children?

12 MS. MARTIN: Yes.

13 THE COURT: All right. And were they involved in
14 any schools that were locked down, as you recall?

15 MS. MARTIN: No, but employees' children were.

16 THE COURT: Okay. And do you recall seeing
17 anything in the paper or reading -- or on the TV about
18 this case when it happened?

19 MS. MARTIN: Very little, not -- not really
20 detailed.

21 THE COURT: All right. Ms. Martin, from what you
22 saw and the discussions you had with other people, have
23 you had formed any opinions about this case?

24 MS. MARTIN: Not really.

25 THE COURT: Let me ask you specifically, have you

1 formed any opinions about the guilt or innocence of this
2 defendant?

3 MS. MARTIN: If I had any opinion, I guess just
4 like I would, just by hearing that, I guess running -- I
5 mean if you're running and being searched for ---

6 THE COURT: They might be guilty?

7 MS. MARTIN: They might be guilty.

8 THE COURT: Okay. That's fine. Can you set that
9 opinion aside and judge this case solely on the facts
10 and the evidence you hear in this courtroom?

11 MS. MARTIN: Yes.

12 THE COURT: Okay. In other words, it's perfectly
13 all right to have heard something. It's okay to have
14 formed opinions as long as you can assure everyone here
15 that -- that you would judge the case not on what you
16 heard earlier or saw earlier, but only on the facts that
17 you hear in the courtroom. Do you understand that?

18 MS. MARTIN: Yes.

19 THE COURT: And you're telling me that you could do
20 that?

21 MS. MARTIN: Yes.

22 THE COURT: All right. I'm going to ask you a
23 number of questions and the attorneys will ask you
24 questions. They will seem of a person nature. I'm sure
25 we do not mean to invade your privacy, but we do need to

1. talk about some things in order to make sure we get a
2. fair jury. Do you understand that?

3. MS. MARTIN: Yes.

4. THE COURT: And there are no right answers. There
5. are no wrong answers. Everyone will respect whatever
6. opinions you have, but we do need your open, and honest,
7. and full answers to these questions. Do you understand
8. that?

9. MS. MARTIN: Yes.

10. THE COURT: The main thing that I will be talking
11. with you about is penalty. I need to tell you up front,
12. and it's very important that you understand, that just
13. because we talk about penalty that does not indicate
14. anything about the defendant. Do you understand that?

15. MS. MARTIN: Yes.

16. THE COURT: In other words, he's presumed to be
17. innocent as he sits there, but we have to talk about
18. penalty in order to make sure we get a fair jury. Do
19. you understand that?

20. MS. MARTIN: Yes.

21. THE COURT: Before I talk with you about penalty,
22. let me ask you this, if you were sitting on a criminal
23. trial, would you listen to the law and accept and apply
24. the law that the judge instructs you to?

25. MS. MARTIN: Yes.

1 THE COURT: Would you do that even though you might
2 not agree with the law or you thought the law was
3 something different before you came to court?

4 MS. MARTIN: Yes, I ---

5 THE COURT: Let me just give you an example.

6 MS. MARTIN: Okay.

7 THE COURT: Some people come in and they may think,
8 well, you know, I know what the law on DUI is, and
9 they're sitting on a driving under the influence jury,
10 and the law is a little bit different than what they
11 thought it was. That's perfectly fine for them to have
12 thought that, but the question is, can they set that
13 aside and accept the law that the judge gives them. Do
14 you understand that?

15 MS. MARTIN: Yes.

16 THE COURT: And could you do that?

17 MS. MARTIN: Yes.

18 THE COURT: Another example might be someone who
19 thinks marijuana should be legal. They have, you know,
20 a strong opinion, but they're asked to sit on a drug
21 trial, a marijuana trial. The question is, could they
22 set aside their feeling that marijuana should be legal
23 and accept the law that the judge gives to them that
24 it's illegal and apply that law. Do you understand
25 that?

1 MS. MARTIN: Yes.

2 THE COURT: And so could you accept the law and
3 apply the law even if you perhaps did not agree with it?

4 MS. MARTIN: Yes.

5 THE COURT: All right. You understand that the
6 burden of proof in a criminal case is upon the State.
7 They've got to prove somebody guilty beyond a reasonable
8 doubt. Do you understand that?

9 MS. MARTIN: Yes.

10 THE COURT: And if you were sitting on a case and
11 if you found that the State had not met their burden,
12 they had not proved somebody guilty beyond a reasonable
13 doubt, would you vote not guilty in that case?

14 MS. MARTIN: Yes.

15 THE COURT: And if you found that they had met
16 their case and proved their case beyond any reasonable
17 doubt, would you vote for guilty?

18 MS. MARTIN: Yes.

19 THE COURT: Now, I gave you a letter yesterday.
20 Did you have an opportunity to look at it? It was about
21 the death penalty.

22 MS. MARTIN: Yes.

23 THE COURT: Did you know we had a death penalty in
24 South Carolina?

25 MS. MARTIN: Yes.

1 THE COURT: Did you know, or do you understand now
2 I guess, that it's not every murder case that is subject
3 to the death penalty?

4 MS. MARTIN: Yes.

5 THE COURT: It's only in these cases of murder plus
6 something else. And the examples I gave are murder plus
7 an armed robbery, or murder plus a rape, or something
8 like that. Do you understand that?

9 MS. MARTIN: Yes.

10 THE COURT: And even we talk about aggravated
11 murders, this murder plus something else, do you
12 understand that the penalty is not automatic? That
13 simply means that the State can seek the death penalty
14 and then the jury decides what the proper punishment is.
15 Do you understand that?

16 MS. MARTIN: Yes.

17 THE COURT: Before a jury decides the proper
18 punishment, they move from the trial phase, where they
19 say they found somebody guilty, they move to the penalty
20 phase, and they're asked to listen to and consider
21 evidence from the State and from the defense before they
22 make a decision as to punishment. There are two types
23 of evidence that are presented in a penalty phase of a
24 trial. The first type of evidence is evidence in
25 aggravation. That's evidence that is put up by the

1 State, and the State is putting this evidence in to try
2 to convince the jury to vote for the death penalty,
3 which in South Carolina is electrocution or lethal
4 injection. Do you understand that?

5 MS. MARTIN: Yes.

6 THE COURT: And the defense is putting in evidence
7 in mitigation. Evidence in mitigation is evidence -- it
8 can be a number of things, but it's evidence they're
9 putting in to try to convince the jury that the proper
10 punishment is life without any possibility of parole.
11 Do you understand that?

12 MS. MARTIN: Yes.

13 THE COURT: Now, evidence in aggravation might be
14 evidence of, about the character of the defendant, maybe
15 he's got a history of violence, or maybe he's got a
16 record of committing crimes, things like that. The
17 other evidence in aggravation might be the victim impact
18 evidence. In other words, the family members of the
19 victim might testify as to what the loss has meant to
20 them, things like that. Evidence in mitigation is
21 evidence about the defendant generally. In other words,
22 maybe he had some mental problem when he committed the
23 crime. Maybe he had a very horrible upbringing. Maybe
24 he was under the influence of someone else when he
25 committed the crime, things like that, something that

1 would mitigate what his punishment should be. Do you
2 understand that concept?

3 MS. MARTIN: Yes.

4 THE COURT: Understanding this -- this bifurcated
5 trial and understanding the jury's role in it, I'm sure
6 you can now understand why we need to understand your
7 position on the capital punishment. Can you tell us
8 generally would you say you're in favor of capital
9 punishment, generally are you against capital
10 punishment, how do you feel generally?

11 MS. MARTIN: Generally, I'm -- I'm kind of for it
12 when it's not me involved.

13 THE COURT: Okay. All right. That's a fair
14 answer. Do you mean by that -- do you think there is a
15 proper place in society for capital punishment?

16 MS. MARTIN: Yes.

17 THE COURT: All right. And do you think that it's
18 an appropriate sentence in all aggravated murder cases,
19 or some aggravated murder cases, what is your position?

20 MS. MARTIN: Some.

21 THE COURT: Okay.

22 MS. MARTIN: Only if it -- I'm totally positive,
23 you know.

24 THE COURT: Okay. All right. Do you understand
25 that -- well, let me ask you this. If you were sitting

1 on a jury and thought the appropriate punishment was a
2 life sentence, could you vote for a life sentence?

3 MS. MARTIN: Yes.

4 THE COURT: All right. And if you thought the
5 appropriate punishment was death, could you vote for a
6 death sentence?

7 MS. MARTIN: I -- I don't -- I don't know with
8 it ---

9 THE COURT: All right. Let me ask you this, you
10 understand that if the -- if you thought that the
11 appropriate sentence was death, you would have to sign
12 the verdict form in the case. Do you understand that?

13 MS. MARTIN: Um-hm.

14 THE COURT: In other words all jurors would have to
15 affix their names to the verdict form. If you thought
16 that death was the appropriate punishment, could you do
17 that?

18 MS. MARTIN: I don't think so.

19 THE COURT: All right. Are you telling me that
20 there are no circumstances under which you could sign
21 the verdict form if you thought that death was the
22 appropriate punishment? I understand -- let -- let me
23 just put it this way. It should be different, you know,
24 it's not something that anybody would take lightly, but
25 the question is, could you participate in this process

1 and if you thought that the appropriate sentence was
2 death, even the other jurors, could you affix your name
3 to that verdict form?

4 MS. MARTIN: It really would take a lot of -- I
5 guess a lot of evidence and make sure -- because it
6 would take a lot of emotional toll on me to sentence
7 anybody to death, knowing that I was ---

8 THE COURT: Well, it should be -- it should not be
9 something that is taken lightly, no question about that.
10 But are you telling me that under some circumstances you
11 could do that?

12 MS. MARTIN: I'm really not sure.

13 THE COURT: All right. Well, let me just do it
14 this way. You're on a jury and you and the other jurors
15 have convicted this person beyond any reasonable doubt
16 of murder plus an aggravated circumstance. You have
17 listened to all the evidence in aggravation, and you
18 have found beyond a reasonable doubt an aggravating
19 circumstance. You have listened to mitigating evidence
20 and you've given meaningful consideration to both types
21 of evidence, and you are convinced that the proper
22 punishment is death. Could you sign your name to that
23 form, if you thought that was the appropriate sentence?

24 MS. MARTIN: I don't think so.

25 THE COURT: Okay.

1 MS. MARTIN: I don't ---

2 THE COURT: Are there -- I'm sorry, I interrupted
3 you again.

4 MS. MARTIN: I think the way the personality I am,
5 I would feel guilty the rest of my life, even though the
6 person is guilty. I don't know if I could.

7 THE COURT: Because of that feeling are you telling
8 me that if you were given a choice between life and
9 death, you would always vote for life?

10 MS. MARTIN: Like I say, me personally, I probably
11 without -- you know, with any possibility of parole,
12 like I say when it's on the other shoe and somebody else
13 has decided it, then I'm -- I'm almost okay for it, but
14 when it's this personal and I'm the party deciding, I
15 don't think I could.

16 THE COURT: Right. Whose go is it? Let me just
17 ask you step outside for just a minute. Okay.

18 (Ms. Martin exited the courtroom.)

19 THE COURT: All right. I think I know your
20 position. What ---

21 MR. ARIAIL: Well, I mean it's just that this woman
22 is just so overwrought by the thought of even -- I mean,
23 you jumped onto the hard part. The hard part is -- you
24 jumped over the part and said can you vote -- can you
25 sign the form, the hard part is that woman cannot even

1 consider talking about the death penalty.

2 THE COURT: I think I asked her, could she vote for
3 it, and she hesitated just like she's hesitant on -- all
4 right. Y'all want to talk to her? What's your position?

5 MR. ABDALLA: Yeah, I mean, I would like to talk to
6 her, Your Honor. I think it would be tough for her to
7 give the death penalty and that's exactly ---

8 THE COURT: Right now it's impossible for her to,
9 but I'll be glad for you to talk to her. All right.
10 Bring her back in. All right.

11 (Ms. Martin entered the courtroom.)

12 THE COURT: All right. This is Solicitor Ariail,
13 he's going to ask you some questions. Mr. Abdalla, with
14 the mustache and the cup, he's going to ask you some
15 questions after the Solicitor gets through.

16 QUESTIONING BY MR. ARIAIL:

17 Q Ms. Martin, my name is Bob Ariail. I'm the
18 Solicitor, which in South Carolina is the State's
19 attorney who would be representing the State seeking --
20 in any criminal case in which the State seeks the death
21 penalty, the Solicitor is the one responsible for
22 bringing the case to the jury. And obviously what we're
23 looking for in this process is to get people who can
24 fairly consider both sides of the decision, that is life
25 in prison and of course death. That's the whole process

1 we go through. Not just in this case, but let's don't
2 be specific to this one, just any death penalty case in
3 which the Solicitor has elected to pursue the death
4 sentence, the process is to focus on your ability, your
5 ability to be fair to vote both sides. And what --
6 what -- what I want to find out is, because when you
7 said -- the first thing you said that I caught that came
8 out was that the death penalty was okay when I'm not
9 involved, and I took that to mean it was okay if
10 somebody else was doing it, but if you had to get
11 involved you couldn't do it?

12 A Huh-uh.

13 Q All right. Now, if you were put on a jury and put
14 in a jury box that was going to have to decide two
15 things, first you're going to have to decide the
16 defendant's guilt, then the secondly after you determine
17 his guilt, assuming he's -- he's found guilty, you're
18 going to have to choose between life in prison without
19 parole is one sentence, and the death sentence as the
20 other alternative. Could you ever give the death
21 sentence a fair and meaningful consideration? And let
22 me -- before you answer that, let me go throw something
23 else at you, would the fact that you knew that you had
24 to make that decision ultimately from the very
25 beginning, would that so influence your perspective on

1 A Good morning.

2 Q My name is John Abdalla, and I represent Mr.
3 Sigmon along with my co-counsel Frank Eppes. I know you
4 seem -- it appears you're uncomfortable.

5 A Um-hm.

6 Q This is all part of being an American citizen,
7 isn't it?

8 A Yes.

9 Q And how do you view your civic responsibility, as
10 far as being a juror?

11 A I would want -- I would be as honest as I possibly
12 can, that's why I'm being -- you know.

13 Q And I think you are.

14 A Because it is a bunch of lives that are involved
15 and -- on both sides.

16 Q True. You understand part of the civic
17 responsibility is to serve as a juror, which you of
18 course volunteered -- you've not tried to get out of?

19 MR. ARIAIL: I'm going to object to that. I think
20 pandering to the juror, and putting a different light on
21 it.

22 THE COURT: I sustain the objection.

23 BY MR. ABDALLA:

24 Q Okay. Part of the duties of being a juror is to
25 give fair consideration to all options, is that correct?

1 Do you understand that?

2 A Yes.

3 Q Okay. And I believe you said you can give fair
4 consideration in the trial phase of this trial, as far
5 as with respect to finding the client -- a defendant
6 guilty or not guilty. Did I understand that correctly?

7 A Yes.

8 Q Now, in the -- you understand that then moves onto
9 the sentencing phase?

10 A Yes.

11 Q And if you find aggravating factors, your options
12 then would be imposition of the life without parole or
13 the death sentence. You understand that option -- those
14 two options exist?

15 A Yes.

16 MR. ABDALLA: Is there no set of circumstances so
17 bad that you could at least give fair consideration to
18 the imposition of the death sentence? Let me just say
19 this, before you answer. You don't -- can I just say
20 this, Judge? What I want to say is, it doesn't mean you
21 have to say -- you give the death penalty necessarily
22 because it's never your duty to give the death penalty,
23 it should be a gut wrenching decision. That's what it
24 is all about. What I'm asking is is there a set of
25 factors -- I don't want to know what those factors are,

1 but is there a situation where you could say, you know,
2 I could give fair consideration to the death penalty as
3 an option to punishment for this case.

4 MR. ARIAIL: I'm going to object as a misstatement
5 of the law.

6 THE COURT: Overruled. Go ahead. You can answer
7 the question.

8 MS. MARTIN: I -- I guess it would have to be so --
9 something so brutal and maybe eye witnessed and -- but
10 still, I can't give a firm answer on that. I mean, like
11 I said, it's easy for me to say, well, he should have,
12 you know, given the death penalty when it's not me
13 personally on the thing, but when I'm being honest, to
14 me personally it -- I can't honestly say I could. I
15 mean, just honestly say ---

16 BY MR. ABDALLA:

17 Q I not here to make you feel uncomfortable. I
18 apologize for that. But what I'm trying to find out is
19 if there's a set of circumstances. You said if there
20 was an eye witness, and you knew the person was guilty
21 beyond a reasonably, can you then give fair
22 consideration if it's gruesome? I believe that was your
23 word. I'm not trying to put words in your mouth.

24 A Possibly, but I still think it would -- it would --
25 I would still feel like I had, I guess, the blood of

1 somebody else on my hands. I mean, that's just how I
2 am.

3 MR. ABDALLA: Okay. I appreciate that. Let me
4 have one moment.

5 THE COURT: Anything else?

6 MR. ABDALLA: Nothing else, Your Honor.

7 THE COURT: All right. Ms. Martin, when I -- no,
8 you got to -- I got to ask you some more questions.
9 When I was talking with you I was under the impression
10 that if given the choice between life and death, that
11 you would always vote for the life, but during
12 questioning by the Solicitor and by Mr. Abdalla, you
13 used the term, you know, that you would be for life, or
14 that you would lean for life. We understand your
15 position on the death penalty, but the real question is,
16 can you participate in this process? So the question
17 is, if you thought the appropriate sentence was death,
18 could you vote for death? I need a yes or no answer.

19 MS. MARTIN: There is no maybe in there?

20 THE COURT: No.

21 MS. MARTIN: No.

22 THE COURT: All right. Thank you, ma'am. Let me
23 ask you to step out in the hallway, please.

24 (Ms. Martin exited the courtroom.)

25 THE COURT: State's position is she is

1 disqualified?

2 MR. ARIAIL: Yes.

3 THE COURT: And the defense?

4 MR. EPPE: I think she can give consideration.

5 THE COURT: All right. I find that this juror's
6 views are -- about personally participating in this
7 process, would prevent her, if not substantially impair
8 her performance of her duties, and that she could not
9 follow her oath and the instructions of the Court and --
10 and consider a death sentence in this case. And you
11 know, the record doesn't show, if there's ever a
12 transcript of this, the record doesn't show how long it
13 took her to answer these questions. I mean, there were
14 gaps of 30, 45, 60 seconds as she tried to grapple with
15 her answers. But it is my definite impression that she
16 could not return a verdict according to the law. So I'm
17 going to disqualify her. Bring her in, please.

18 (Ms. Martin entered the courtroom.)

19 THE COURT: All right. You don't even need to sit
20 down. Ms. Martin, I'm going to excuse you in this case.

21 MS. MARTIN: Okay.

22 THE COURT: You are free to go. Thank you for your
23 honesty.

24 MS. MARTIN: Okay.

25 THE COURT: And nobody is challenging your

1 position. We certainly understand it.

2 MS. MARTIN: Okay.

3 THE COURT: Thank you very much.

4 MS. MARTIN: Thank you.

5 (Ms. Martin exited the courtroom.)

6 THE COURT: All right. Cynthia Elmore.

7 MS. STROM: She responded on pretrial publicity and
8 knowing the witness.

9 THE COURT: All right. And she's got a friend that
10 was the victim of a violent crime. All right. Bring in
11 Cindy Elmore.

12 (Ms. Elmore entered the courtroom.)

13 THE COURT: Hey, you're Ms. Elmore?

14 MS. ELMORE: Yes, sir.

15 THE COURT: Come up and have a seat. As you get
16 comfortable, pull your chair close to the microphone
17 that way we can amplify your voice.

18 MS. ELMORE: Okay.

19 THE COURT: All right. Ms. Elmore, I'm Joe Watson.
20 Have you complied with my instructions yesterday not to
21 discuss this case with anyone?

22 MS. ELMORE: Yes.

23 THE COURT: All right. You indicated yesterday
24 that you had heard some of the facts of this case. Can
25 you tell us what you recall hearing or seeing on TV

1 or ---

2 MS. ELMORE: Yes, I live right off State Park Road,
3 which is a short distance from where this took place.
4 So at the time it happened, I stayed, you know, abreast
5 of the news.

6 THE COURT: All right.

7 MS. ELMORE: Because I lived there.

8 THE COURT: All right. Do your children go to any
9 of the schools in the area that were closed down?

10 MS. ELMORE: No.

11 THE COURT: Okay. Do you know any of the family
12 members of victim or the defendant?

13 MS. ELMORE: No.

14 THE COURT: All right. You did indicate that you
15 knew a witness in this case. Who was that?

16 MS. ELMORE: Wanda Tollison.

17 THE COURT: All right. I don't have my witness
18 list. How do you know Wanda Tollison?

19 MS. ELMORE: Through her employment with the school
20 district.

21 THE COURT: And she works at the school district?

22 MS. ELMORE: Yes, sir.

23 THE COURT: All right. And other than through
24 employment, would you classify yourself as good friends
25 or ---

1 MS. ELMORE: Just acquaintances.

2 THE COURT: All right. One of -- what a jury has
3 to do is to decide the facts of a case. There is always
4 a dispute as to what facts are, in a civil case or a
5 criminal case. And so the jury has to decide what
6 weight to put on the witness' testimony, their
7 believability, their credibility and in doing that there
8 are common sense factors, you look at whether they have
9 an interest in the outcome of a case, a bias, you look
10 at whether their testimony is consistent, or maybe they
11 gave a prior statement that is inconsistent or maybe
12 their own testimony is inconsistent. You look at
13 whether their testimony is supported by the other facts
14 and evidence, or maybe it's weakened by the other facts
15 and evidence. Do you understand that role?

16 MS. ELMORE: Yes, sir.

17 THE COURT: And the question is, would you submit
18 Ms. Tollison's testimony, if she is a witness in this
19 case, to the same standards of believability and
20 credibility as you would all other witnesses?

21 MS. ELMORE: Yes, sir.

22 THE COURT: And would you favor -- I don't even
23 know which side she's on, but would you favor one side
24 or the other because she testified for that side?

25 MS. ELMORE: No, sir.

1 THE COURT: All right. Now, having lived in the
2 area and followed the facts of this case, have you
3 formed any opinions about this case? Specifically, have
4 you formed any opinions about the guilt or the innocence
5 of this defendant?

6 MS. ELMORE: Yes, sir.

7 THE COURT: All right. And what his that opinion?

8 MS. ELMORE: Guilty.

9 THE COURT: All right. Can you set that opinion
10 aside and judge this case solely on the testimony and
11 the evidence that's been presented in this court?

12 MS. ELMORE: Yes, sir.

13 THE COURT: All right. It's okay if you have read
14 something. It's okay if you've formed opinions, but we
15 need to be assured that you can set aside any extraneous
16 matters, and judge this case solely on the testimony and
17 evidence that's been presented. You're telling me you
18 can?

19 MS. ELMORE: Yes.

20 THE COURT: No question about that?

21 MS. ELMORE: Yes, sir.

22 THE COURT: All right. I'm going to be asking you
23 a number of questions as I already have, and the
24 attorneys will be asking you questions, and we don't
25 mean to invade your privacy. If we offend you, hold it

1 against me, don't hold it against the State or against
2 the defendant in this case. There are no wrong answers.
3 There are no right answers, but we do need your honest
4 and full answers to these question. And obviously one
5 of the things we're going to be talking about is
6 penalty. In a case like this, in order to assure both
7 sides that we have a fair and impartial jury that will
8 consider the punishment in this case, we have to talk
9 about the death penalty. Do you understand that?

10 MS. ELMORE: Yes.

11 THE COURT: By I tell you up front, that should not
12 indicate anything about this defendant. Do you
13 understand that? Obviously through this process we have
14 to talk about penalty. Do you understand that as he
15 sits there he's presumed to be innocent?

16 MS. ELMORE: Right.

17 THE COURT: And you would follow that presumption
18 as the law of this state?

19 MS. ELMORE: Yes, sir.

20 THE COURT: Now, if you were sitting on a criminal
21 case, would you listen to the law that the judge gives
22 to you and accept that law and apply that law?

23 MS. ELMORE: Yes, sir.

24 THE COURT: Would you do that even though you might
25 disagree with that law?

1 MS. ELMORE: Yes, sir.

2 THE COURT: In other words ---

3 COURT REPORTER: Hold on one second.

4 (The court reporter turned her tape over.)

5 THE COURT: Ready?

6 COURT REPORTER: Yes, sir.

7 THE COURT: The reason I ask that, is some people,
8 you know, think they know what the law is, but when the
9 judge charges it, it's different, or they may come to
10 court with a preconceived notion, and both of those
11 things are fine as long they can set that aside. And
12 you have told us you would do that, is that correct?

13 MS. ELMORE: Yes, sir.

14 THE COURT: And do you understand the State has the
15 burden of proving a defendant guilty beyond a reasonable
16 doubt?

17 MS. ELMORE: Yes, sir.

18 THE COURT: If you were sitting on a criminal case
19 and if you thought the State had not proved somebody
20 guilty beyond a reasonable doubt, could you vote not
21 guilty?

22 MS. ELMORE: Yes, sir.

23 THE COURT: If you thought the State had proved
24 their case, would you vote guilty?

25 MS. ELMORE: Yes.

1 THE COURT: All right. Now, did you read my letter
2 about the -- a capital case in general yesterday?

3 MS. ELMORE: Yes.

4 THE COURT: Did you understand that -- did you know
5 anything about the death penalty in South Carolina
6 before?

7 MS. ELMORE: I knew that it was allowed in South
8 Carolina.

9 THE COURT: All right.

10 MS. ELMORE: But I didn't know much further than
11 that.

12 THE COURT: Most people think that it's every
13 murder case that is subject to the death penalty. Did
14 you think that, or did you know that we -- it had to be
15 one of the aggravated murders that is subject to the
16 death penalty?

17 MS. ELMORE: I didn't know that.

18 THE COURT: Okay. You understand now that it's got
19 to be murder plus something else? It can be murder of a
20 small child. The examples I gave in my letter are
21 murder during an armed robbery, murder during a rape,
22 something like that.

23 MS. ELMORE: Yes.

24 THE COURT: You understand that even when we talk
25 about an aggravated murder, the penalty is not

1 automatic. If somebody is convicted of an aggravated
2 murder, then the jury moves to a second trial, known as
3 the penalty phase, and there they decide what the
4 penalty is. The only two choices are life without any
5 possibility of parole or death by electrocution or
6 lethal injection. Do you understand that?

7 MS. ELMORE: Yes.

8 THE COURT: Now, before a jury makes up its mind as
9 to penalty, the person has already been convicted beyond
10 any reasonable doubt of murder plus something else, they
11 would listen to additional testimony and evidence.
12 There are two types of evidence and testimony that a
13 juror would be required to listen to. One is
14 aggravating evidence put up by the State. The other is
15 mitigating evidence put up by the defense. Aggravating
16 evidence is put up by the State in order to try to
17 convince the jury to vote for the death penalty.
18 Mitigating evidence is evidence put up by the defense in
19 order to convince the jury to vote for life. Do you
20 understand that?

21 MS. ELMORE: Yes.

22 THE COURT: There are any numbers of examples of
23 what might be aggravated circumstances and there are any
24 number of examples of what might be mitigating
25 circumstances. Aggravated circumstances might be about

1 the character of the defendant. Maybe he's just a mean
2 character, or maybe he's got a long history of crimes of
3 violence. Also in the penalty phase the State would put
4 up evidence of victim impact, what the loss of the
5 victim meant to the family members and to the community,
6 things like that. Mitigating evidence is, again,
7 evidence that would convince the jury to lessen -- not
8 lessen the person's guilt, but lessen the punishment
9 they would receive. It might be things like the
10 defendant was suffering from a mental problem when he
11 committed the crimes. It might be that he had a
12 horrible upbringing. It might be that he's got no
13 history at all of any crimes before, things like that.
14 Do you understand that?

15 MS. ELMORE: (Witness nodded her head.)

16 THE COURT: All right. And understanding that
17 whole procedure, the bifurcated trial and the
18 aggravating and mitigating evidence that's put in, do
19 you understand that we need to get to know your feelings
20 about capital punishment. Can you tell us, would you
21 generally favor capital punishment, do you generally
22 oppose capital punishment, how did you generally feel
23 about the death penalty?

24 MS. ELMORE: I would favor it.

25 THE COURT: All right. When you say you would

1 favor it, would favor it in every case of aggravated
2 murder?

3 MS. ELMORE: No.

4 THE COURT: All right. Would you listen to all the
5 evidence in aggravation and listen to all the evidence
6 in mitigation and give meaningful consideration to that
7 before you reached a decision of life or death?

8 MS. ELMORE: Yes.

9 THE COURT: All right. If you were seated on a
10 jury, and if you thought the appropriate sentence was
11 life, would you vote for a life sentence?

12 MS. ELMORE: Yes.

13 THE COURT: And if you thought the appropriate
14 sentence was death, would you for a death sentence?

15 MS. ELMORE: Yes.

16 THE COURT: If you voted for death, if you thought
17 the appropriate sentence was death, you would have to
18 sign your name to the verdict form. Each individual
19 juror would have to do that. Sometimes it's called the
20 death warrant, because it's the piece of paper that
21 ultimately enables the State to execute that person. Do
22 you understand that?

23 MS. ELMORE: Yes.

24 THE COURT: If you thought the appropriate sentence
25 was death, could you sign that document?

1 MS. ELMORE: Yes.

2 THE COURT: Now, do you understand that the
3 decision of a jury is a give and take decision? In the
4 words, the whole process is to talk with each other and
5 to explore each other's ideas?

6 MS. ELMORE: Yes.

7 THE COURT: All right. Would you give respect to
8 and careful consideration to the opinions of your fellow
9 jurors?

10 MS. ELMORE: Yes.

11 THE COURT: If you were in the majority and there
12 were one or two other jurors in the minority, would you
13 give respect to their opinion?

14 MS. ELMORE: Yes, sir.

15 THE COURT: All right. Now, who's up?

16 MR. ABDALLA: I am.

17 THE COURT: I'm sorry, hold on just a minute. I'm
18 sorry, there was one other question I noted your form.
19 Your friends -- you said you had a friend that was a
20 victim of a crime?

21 MS. ELMORE: Yes, sir.

22 THE COURT: I don't want to -- was it a homicide?

23 MS. ELMORE: It was a rape case.

24 THE COURT: All right. And was that in Greenville?

25 MS. ELMORE: Yes.

1 THE COURT: Was there someone who was arrested?

2 MS. ELMORE: No.

3 THE COURT: Okay. How long ago did that happen?

4 MS. ELMORE: It's been several years. I would say
5 12 years, about 12 years.

6 THE COURT: Would that experience affect your
7 ability to be fair and impartial in this case?

8 MS. ELMORE: No, sir.

9 THE COURT: In other words, did you form any
10 opinions about the police, any opinions about the
11 Solicitor's office, any opinions that -- that might
12 affect your ability to be fair to the State and to the
13 defendant in this case?

14 MS. ELMORE: No, sir.

15 THE COURT: Okay. All right. Mr. -- I'm sorry. I
16 introduced these gentlemen yesterday. This is Mr.
17 Abdalla. He's one of the attorneys representing the
18 defendant. He's going to ask you questions first. Then
19 Mr. Ariail, the Solicitor will ask you some questions.
20 Mr. Abdalla.

21 MR. ABDALLA: Thank you, Your Honor.

22 QUESTIONING BY MR. ABDALLA:

23 Q Good morning, Ms. Elmore.

24 A Good morning.

25 Q Frank Eppes is my co-counsel, and my client is Mr.

1 Sigmon seated over there. I understand that you said
2 you are for the death penalty?

3 A Yes, sir.

4 Q Is that correct? Tell me about your views on the
5 death penalty, if you would?

6 A You just want me to elaborate?

7 Q Yes, please.

8 A I just feel that if the case is proven and the
9 defendant is proven guilty, and you seek and show cause
10 for the death penalty, I have no problem with it being
11 invoked.

12 Q Okay. And I don't know exactly what you mean by --
13 does that mean if the person is found guilty of say,
14 murder and a rape, and then the death penalty becomes an
15 option, is that something you believe would be fairly
16 automatic, what do you mean there? I don't want to put
17 words ---

18 MR. ARIAIL: I'm going to object to the form of
19 that question, Your Honor. He's asking her to be
20 specific, and he's staking around, is the way she thinks
21 it's important.

22 THE COURT: Overruled. Go ahead. The question is,
23 would you automatically vote for the death penalty in
24 that case, or would you give consideration to all the
25 other evidence in the case?

1 MS. ELMORE: I would give consideration to the
2 evidence.

3 BY MR. ABDALLA:

4 Q And could you vote for life without parole given
5 that?

6 A Could I have vote for that, if that were an option?

7 Q Yes, sir (sic).

8 A Yes, sir.

9 Q Okay. All right. You understand in the case of a
10 bifurcated trial that the first phase will be simply the
11 guilt or innocence phase, correct?

12 A (Witness nodded her head.)

13 Q I understand you have a friend, an acquaintance who
14 was involved peripherally in this case, is that correct?

15 A That's correct.

16 Q What is your knowledge of that?

17 A Specifically?

18 Q Yes?

19 A I understand from what she has told me, I
20 understand that there was a possibility that the
21 defendant hid in her basement of her home.

22 Q And how does that make you feel?

23 A I have had an incident where my home was broken
24 into, so I have some empathizing feelings of invasion.

25 Q If you were sitting on the jury in this case, in

1 just the trial phase, would you feel bad if you -- will
2 you be able to be impartial finding -- weighing the
3 evidence to either convict or find my client not guilty
4 in this situation knowing that your friend was a
5 possible -- had a possible involvement in this?

6 A I believe I would.

7 Q Feel guilty about that, I'm sorry?

8 A I'm sorry. I thought you asked ---

9 Q And I mean -- and I forget the way I phrased it.
10 What would your feelings be like since you have a friend
11 involved?

12 A I believe I could still look at it objectively,
13 yes.

14 Q Okay. Are you saying you wouldn't feel bad or it
15 wouldn't interfere with your ability to render a verdict
16 consistent with the evidence?

17 A Correct.

18 Q All right. Now, let's say you move onto the next
19 phase, and the aggravating factors have been found and
20 he's convicted. There's going to be victim impact
21 evidence, that would be victims of -- the family coming
22 up, a lot of graphic details, in that situation can you
23 still consider a sentence of life without parole?

24 A Yes.

25 Q What do you think about a sentence of life without

1 parole?

2 A I don't have any strong feelings about it. If the
3 case warrants that, I have no problem voting for that.

4 Q Okay. Now, when you say the case warrants it, I'm
5 not sure what you mean by that? Because you understand
6 you have two choices? If it gets to the sentencing
7 phase, you have a choice between life and death?

8 A Right.

9 Q And no mitigating circumstances were shown to you,
10 can you still consider life without parole?

11 A I can consider it.

12 Q Can you give it reasonable consideration?

13 A It would depend on the facts of the case.

14 Q When this first happened you said -- did you say
15 you knew about it when it first happened?

16 A Yes.

17 Q Were you personally scared during that time at
18 all?

19 A A little.

20 Q And how long would you say were remained fearful?

21 A Two or three days.

22 Q And you're now saying -- are you beyond all that?

23 A Yes, sir.

24 MR. ABDALLA: Let me have one moment, please.

25 THE COURT: Yes, sir.

1 BY MR. ABDALLA:

2 Q With regard to Ms. Tollison, I understood that the
3 person may have been hiding in the basement, I believe?

4 A That was my understanding.

5 Q What else do you know about that? What else --
6 have you talked to other people in your neighborhood?
7 You said you lived not too far from this scene?

8 A No, a close friend of mine is also an acquaintance
9 of hers, and that's where I heard the information.

10 Q A friend of yours is an acquaintance of Ms.
11 Tollison, is that what you're saying?

12 A Yes.

13 Q So how many people did you hear information about
14 this case from?

15 A At that time, several.

16 Q Three, five, ten, somewhere in there?

17 A An estimate would be 10 to 15.

18 Q So 10 to 15. What kind of other things did you
19 hear about the case?

20 A Well, mainly because I worked with the school
21 district and a couple schools were closed down. Any
22 time that happens, all the schools immediate are put on
23 an alert.

24 Q Was your school put on an alert?

25 A Yes.

1 Q Which school is that?

2 A Pelham Road Elementary.

3 Q I'm sorry?

4 A Pelham Road Elementary.

5 Q How long was it put on alert, do you recall?

6 A Just for the day. And I think it was done at the
7 local school level not through the district office.

8 Q Okay. So the school wasn't closed down, it was
9 just on alert

10 A No, it was just on alert.

11 Q All right. You told me that your friend had
12 somebody believed, could have been our client, in her
13 basement, and you talked to several people about the
14 situation. What else did you know about other than the
15 fact that he may have been in the basement?

16 MR. ARIAIL: Object, Your Honor, not relevant to
17 this proceeding.

18 MR. ABDALLA: Your Honor, she said she knows a lot
19 about the case from a lot of different people -- or she
20 said she information about the case from several people,
21 so ---

22 THE COURT: I thought you explored it, but go
23 ahead. Any other information other than -- than your
24 school was closed down and the perpetrator might have
25 been in that person's basement?

1 MS. ELMORE: Just through media reports.

2 THE COURT: What do you recall from the media
3 reports, other than what you've already ---

4 MS. ELMORE: Just newspaper articles that I read,
5 and television reports reporting the case at the time.

6 THE COURT: Do you recall any details, I guess is
7 what I'm asking, from those reports?

8 MS. ELMORE: No.

9 THE COURT: Okay. Anything else, Mr. Abdalla?

10 MR. ABDALLA: Nothing. Thank you, Judge.

11 THE COURT: Who started?

12 MS. STROM: Mr. Abdalla started.

13 THE COURT: All right. Solicitor.

14 MR. ARIAIL: Ms. Elmore, my name is Bob Ariail.

15 I'm the Solicitor for Greenville and Pickens Counties,
16 and I will be representing the State in this case, along
17 my Deputy, Ms. Strom, and Ms. Hervey, who is an
18 assistant. She's out of the room right now. But we
19 appreciate your answers to those questions. We don't
20 have any questions.

21 THE COURT: All right. Anything from the State?

22 MR. ARIAIL: No.

23 THE COURT: Anything from the defense?

24 MR. EPPES: Yes, Your Honor.

25 THE COURT: All right. Let me ask you step out in

1 the hallway for just a minute and we'll be with you very
2 shortly.

3 (Ms. Elmore exited the courtroom.)

4 THE COURT: All right. Mr. Abdalla.

5 MR. ABDALLA: Your Honor, I would just argue that
6 she couldn't be fair because she already said he was
7 guilty when you were questioning her, and she said that
8 the defendant was in the basement, and I think her
9 knowledge of the case is going to exclude her from being
10 fair to my client.

11 THE COURT: All right. She clearly said she could
12 set that opinion aside. She clearly said she could
13 judge the case from the facts in the courtroom and
14 separate out what she might have heard from people or
15 from the media. And quite frankly, she didn't seem to
16 have a whole lot of information.

17 All right. I find that this juror is qualified,
18 and she can serve. Bring her back in, please.

19 (Ms. Elmore entered the courtroom.)

20 THE COURT: All right. I'm going to give you a
21 letter. I'm going to go over it with you. You're
22 qualified to serve on this jury. That does not mean you
23 will serve. That simply means that you will be one of a
24 number of 40 or so jurors that we will bring back
25 probably tomorrow or Thursday, and then we'll pick a

1 jury from that number. Do you understand?

2 MS. ELMORE: Yes.

3 THE COURT: It does mean that you need to be
4 prepared to serve, which means you need to go home and
5 go ahead and pack a suitcase for about a week, eight
6 day's worth of clothing. You need to gather any
7 medications, you know, things like that that you will
8 need for a weeks stay in a hotel. Madam Clerk will call
9 all qualified jurors sometime and tell them when to be
10 back.

11 When you come back bring your suitcase, park over
12 in the Hyatt parking garage. Did you park there
13 yesterday morning?

14 MS. ELMORE: Yes.

15 THE COURT: Do you know if you went in the College
16 Street entrance or Spring Street?

17 MS. ELMORE: College Street.

18 THE COURT: Okay. Spring Street is the road
19 between the courthouse and the Hyatt garage. If you
20 come out that exit to the garage, directly across the
21 street is the garage entrance to this courthouse. What
22 I want jurors to do is come to that entrance. The
23 reason that I'm doing that is to keep y'all out of the
24 public corridors. What we'll do is have bailiffs there
25 to meet you. They will take you to courtroom 7.

1 Whenever everybody is here, we'll bring you over here
2 and pick a jury. Leave your suitcase in the car,
3 because most of the jurors won't serve. Do you
4 understand that? Those that do, the SLED agents will
5 help them retrieve their luggage.

6 While you're on this jury, if you're on this jury,
7 you will not have any direct contract with employers or
8 with family members. If you need to get a message to
9 anyone, we can accomplish that. You can write down the
10 name and the message and the number, and then the
11 bailiff will call and we'll communicate any message. In
12 other words, if you forget something, need something at
13 the hotel, or something. Also on this sheet are
14 emergency numbers where family can reach you day or
15 night. So if something happens, you know, you will have
16 contact with them, it just wouldn't be direct contact.
17 We can handle any emergencies that come up.

18 I think that's it. Other than to tell you, don't
19 look at any papers, don't read anything about this case,
20 don't watch anything on TV about this case, don't talk
21 with anyone about the case. Obviously you can tell your
22 employer you're a juror and you've got to serve, you can
23 tell you family members that, just don't talk about the
24 substantive fact of this case. If anyone tries to talk
25 to you, just tell them you're a juror and you can't talk

1 about it, but also get their name and report that to the
2 bailiff. We would need to know that.

3 MS. ELMORE: Okay.

4 THE COURT: All right. Do you have any questions?

5 MS. ELMORE: No.

6 THE COURT: All right. I'll see you sometime
7 tomorrow or Thursday.

8 MS. ELMORE: Okay.

9 THE COURT: Thank you, ma'am.

10 (Ms. Elmore exited the courtroom.)

11 THE COURT: All right. We'll be at ease until 11
12 o'clock when we start the next panel.

13 (A short recess was taken, after which, the trial
14 continued as follows:)

15 THE COURT: All right. Where's Mr. Abdalla?

16 MR. EPPES: Your Honor, we can start without him,
17 If you want to. I'll go get him.

18 THE COURT: Well, he's lead counsel. What is --
19 there's a difference between the State and the defense.

20 MR. EPPES: I understand.

21 THE COURT: All right. Let's get Mr. Abdalla in
22 here, please.

23 MR. EPPES: Yes, sir. He's on his way, Your Honor.

24 THE COURT: Can't find him?

25 MR. EPPES: No, he's on his way, I spoke to him.

1 He's downstairs.

2 MS. STROM: Just as to this next juror, Your Honor,
3 he indicated that he had pretrial publicity. He also
4 stood up when you asked if anyone had formed an opinion.
5 Then as to his answer -- I'm sorry, she, as to the
6 answer to question number 20. I didn't know if you
7 wanted to explore that.

8 THE COURT: All right. I had all three of those.
9 Thanks.

10 MS. STROM: Um-hm.

11 THE COURT: All right. Bring in Ms. Herring.

12 MR. ABDALLA: My apologies to the Court, Your
13 Honor. I didn't know I had to be in here.

14 THE COURT: I think as lead counsel you probably
15 need to be here.

16 MR. ABDALLA: I understand.

17 (Ms. Herring entered the courtroom.)

18 THE COURT: Hey. You're Carol Herring?

19 MS. HERRING: I'm Carol Herring.

20 THE COURT: All right. As you get comfortable in
21 your chair, if you would, slide it forward so you can
22 speak directly into the microphone, that way we can make
23 sure your voice is amplified.

24 MS. HERRING: Okay.

25 THE COURT: All right. Ms. Herring, have you

1 complied with my -- your oath and my instructions not to
2 talk about this case?

3 MS. HERRING: Well, I think I did. I mean, I
4 talked to my husband and my kids, not about the case.
5 I'm familiar with the case from reading it in the paper
6 last year.

7 THE COURT: All right. I'll get to that in just a
8 minute, but you have not talked about the substantive
9 facts of this case with anyone?

10 MS. HERRING: No.

11 THE COURT: You understand you're still under oath
12 from yesterday?

13 MS. HERRING: Right.

14 THE COURT: Now, I need to ask about some of the
15 things you responded to yesterday. You said that you
16 recall this case, you heard some facts?

17 MS. HERRING: Um-hm.

18 THE COURT: Was that from the TV, radio, newspaper,
19 or ---

20 MS. HERRING: From the newspaper last year.

21 THE COURT: All right. Can you tell me what you
22 recall reading?

23 MS. HERRING: That he bludgeoned these two -- this
24 couple to death and that he was involved with their
25 daughter, and I don't know if he's living with her,

1 married to her, recently divorced, you know, I don't
2 remember those facts. And that after he killed these
3 two people that he went after her, and I remember him
4 having her in the car and she either was pushed from the
5 car or she jumped from the car while it was moving and
6 he shot at her, and I think the bullet went in her leg
7 or her foot. I remember that. I'm a history major so
8 it's kind of what I do. I remember things that I read.

9 THE COURT: Okay. All right. And from what you
10 have read, have you formed any opinions about this case?

11 MS. HERRING: Oh, absolutely, absolutely.

12 THE COURT: Have you formed an opinion as to the
13 guilt of the defendant?

14 MS. HERRING: I think he's absolutely guilty.

15 THE COURT: All right. And you do that from just
16 reading it in the newspaper?

17 MS. HERRING: Yes, yes.

18 THE COURT: All right. And you form opinions like
19 that from -- you believe everything you read in the
20 paper?

21 MS. HERRING: No.

22 THE COURT: All right. Then how could you form an
23 opinion in this case from what you read in the paper?

24 MS. HERRING: I just -- I just -- I suppose my
25 intuition, years of experience. I'm 41. I lived in a

1 military house for -- and just heard and seen a lot of
2 things. I just think this man is guilty, and I'd
3 convict him today and I would sentence him to death, and
4 I would ---

5 THE COURT: All right.

6 MS. HERRING: The only thing ---

7 THE COURT: Let me ask you this. Can you set that
8 opinion that aside?

9 MS. HERRING: Yes -- no, no. The only -- the only
10 way I would set that aside is if some other individual
11 came forward and confessed to this crime. That would
12 be the only way.

13 THE COURT: All right. Any questions?

14 MR. ARIAIL: I think she's qualified.

15 THE COURT: All right. Ms. Herring, you're
16 excused.

17 MS. HERRING: Thank you.

18 (Ms. Herring exited the courtroom.)

19 THE COURT: Now, do y'all believe that, or do you
20 believe she just wanted off jury duty?

21 MR. EPPES: Both. Your Honor -- okay.

22 THE COURT: All right. Yeah.

23 MR. EPPES: Your Honor, Ms. Hillman, the next juror
24 was robbed at gun point, tied up in a back room, the
25 robber tried to shoot her in the head but the gun

1 jammed.

2 THE COURT: Okay.

3 MR. EPPES: Your Honor, she's already asked to be
4 off the jury this week.

5 THE COURT: She asked to be off because she was a
6 school administrator.

7 MR. EPPES: Okay.

8 THE COURT: She was asked to be back on and she was
9 put back on. She opted not to exercise her exemption.

10 MR. EPPES: Your Honor, I just -- I think she's
11 already got a very big problem. It's going to be very
12 difficult for her to set aside any opinion. I would
13 just ask that you not rehabilitate her and just strike
14 her for cause.

15 THE COURT: Without talking to her?

16 MR. EPPES: You can talk to her, but if she was
17 robbed at gun point and shot -- the guy was popping a
18 gun at her head, her opinions on crime are going to be
19 in the stratosphere.

20 THE COURT: Why don't we find out? Why don't we
21 question her. Bring the juror, please.

22 (Ms. Hillman entered the courtroom.)

23 THE COURT: You are Brenda Hillman?

24 MS. HILLMAN: That's correct.

25 THE COURT: Hey, I'm Joe Watson. And if you would,

1 as you get -- make yourself comfortable, slide close to
2 that microphone so we can hear and amplify your voice.

3 MS. HILLMAN: All right.

4 THE COURT: Not too close. All right.

5 MS. HILLMAN: Thank you.

6 THE COURT: Now, you understand you're still under
7 oath?

8 MS. HILLMAN: I do.

9 THE COURT: And have you complied with my
10 instructions yesterday not to talk with anyone about
11 this case?

12 MS. HILLMAN: Yes, I have.

13 THE COURT: All right. I believe yesterday when I
14 asked the question you did not respond that you recall
15 anything about this case, didn't know any witnesses, is
16 that correct?

17 MS. HILLMAN: No, sir, I was out of town.

18 THE COURT: Okay. Now, I'm going to ask you a
19 number of questions, and the attorneys will be asking
20 you questions. Some of these may seem to be invading
21 your privacy. If we offend you, hold it against me,
22 don't hold it against the State, don't hold it against
23 the defendant. I will tell you that there are no right
24 answers. There are no wrong answers. We'll respect
25 your opinions on these issues, but we do need you to

1 answer these questions openly and honestly. All right.
2 One of the things we're going to be talking about, the
3 main thing we'll be talking about is penalty. Do you
4 understand that?

5 MS. HILLMAN: I do.

6 THE COURT: Just because we talk about penalty,
7 that doesn't indicate anything about the guilt or the
8 innocence of this defendant. Do you understand that?

9 MS. HILLMAN: I do.

10 THE COURT: All right. He sits there presumed to
11 be innocent. Do you understand that?

12 MS. HILLMAN: I do.

13 THE COURT: All right. Obviously to get a fair
14 jury we have to talk about penalty even though the
15 person is presumed to be innocent. Do you understand
16 that?

17 MS. HILLMAN: I do.

18 THE COURT: Before I talk to you about penalty, let
19 me back up and ask you generally about sitting on a
20 criminal jury. If you were seated on a jury, could you
21 listen to the law that the judge charges and accept that
22 law and apply that law in the case?

23 MS. HILLMAN: Yes, I could.

24 THE COURT: Could you do that even though you may
25 not necessarily agree with that law?

1 MS. HILLMAN: I could.

2 THE COURT: All right. Because sometimes people
3 come in and they think they have a notion as to what the
4 law is but it's different than what they thought, and
5 then sometimes people come to court and they have a
6 notion as to what they wish the law is, and that's all
7 fine, as long as they can set that aside and accept the
8 law the judge gives as the proper law and apply that
9 law. Do you understand that?

10 MS. HILLMAN: I do.

11 THE COURT: And you tell me you could do that?

12 MS. HILLMAN: I could.

13 THE COURT: Do you understand that the State has
14 the burden of proving any defendant guilty beyond a
15 reasonable doubt?

16 MS. HILLMAN: I do.

17 THE COURT: That's the standard, and if you sat on
18 a case and if you found that the State had met their
19 burden, they had proved somebody guilty beyond a
20 reasonable doubt, would you vote guilty?

21 MS. HILLMAN: I would.

22 THE COURT: And if you found that they had not met
23 their burden of proof, would you vote not guilty?

24 MS. HILLMAN: No question.

25 THE COURT: Okay. Also, before I get into

1 penalties about -- I mean questions about penalties, I
2 noticed from your questionnaire that you were the victim
3 of a robbery, is that correct?

4 MS. HILLMAN: That's correct.

5 THE COURT: Was that in Greenville?

6 MS. HILLMAN: No, it was in Atlanta.

7 THE COURT: Okay. Were the perpetrators arrested?

8 MS. HILLMAN: Yes.

9 THE COURT: Were they prosecuted?

10 MS. HILLMAN: They slipped bail.

11 THE COURT: They what?

12 MS. HILLMAN: They left on bail. They were out on
13 bail and they disappeared.

14 THE COURT: Okay. So there was never a trial?

15 MS. HILLMAN: Nope, it's still open.

16 THE COURT: Did -- did you have any -- how long ago
17 did this happen?

18 MS. HILLMAN: Nine years.

19 THE COURT: Okay. Did you have any dealings with
20 the DAS office, or the Solicitor's Office down there
21 during the course of the ---

22 MS. HILLMAN: Never got that far, strictly
23 Sheriff's Office.

24 THE COURT: Okay. All right. And as I understand,
25 it's a little bit more aggravated than just being --

1 suffering of a robbery, they actually tied you up and
2 attempted to shoot you, is that correct?

3 MS. HILLMAN: That's correct.

4 THE COURT: All right. That's a pretty traumatic
5 experience. Would your experience affect your ability
6 to be fair in this case?

7 MS. HILLMAN: Not in this case. The defendant does
8 not fit the profile.

9 THE COURT: Okay. Well, you don't really know that
10 much about this case, so I don't know -- I don't know
11 what you mean exactly by that, but my question is, from
12 your experience of dealing with law enforcement, from
13 your experience as a victim, would that in any way
14 affect your ability to be fair to the State? Let me
15 just do it that way first.

16 MS. HILLMAN: No.

17 THE COURT: Would it affect your ability to be fair
18 to this defendant?

19 MS. HILLMAN: No.

20 THE COURT: Okay. Now, did you read my letter
21 yesterday about a capital case?

22 MS. HILLMAN: I did.

23 THE COURT: And did you know -- you've been in
24 South Carolina nine years or ---

25 MS. HILLMAN: Five.

1 THE COURT: Five years. Did you know that we have
2 the death penalty in South Carolina?

3 MS. HILLMAN: Not under those parameters, I did
4 not. I knew you had it. I did not realize the
5 parameters.

6 THE COURT: Okay. And so you understand now that
7 it's only an aggravated murder case, a murder plus a
8 rape, or a murder plus an armed robbery, that's even
9 subject to the death penalty?

10 MS. HILLMAN: Correct.

11 THE COURT: And do you understand that even when we
12 talk about someone convicted of an aggravated murder,
13 the penalty is not automatic. Do you understand that?

14 MS. HILLMAN: I do understand that.

15 THE COURT: If somebody is convicted of an
16 aggravated murder, a murder plus something else, then a
17 jury has -- the same jury that found guilt goes to the
18 second phase, the second trial, and they hear more
19 evidence before they decide that issue of life or death.
20 Do you understand that?

21 MS. HILLMAN: I do.

22 THE COURT: The only possible punishment for
23 somebody convicted of aggravated murder would be life
24 without any possibility of parole, or death, which in
25 South Carolina is by electrocution or lethal injection.

1 Do you understand that?

2 MS. HILLMAN: I do.

3 THE COURT: And before a jury makes the decision of
4 life or death, they have this second trial, and the
5 State presents evidence and the defense presents
6 evidence. And the State presents evidence of what we
7 call aggravated circumstances, and that can be any
8 number of things. It might be evidence about a person's
9 heinous prior record. In other words, they've got a
10 long record of crimes of violence against someone, or
11 maybe they're just a mean character. They would also
12 put in victim impact evidence, evidence from the
13 surviving family members about what the loss of the
14 victims means to them, and to the community. All that
15 type of evidence is presented by the State in order to
16 convince a jury to vote for the death penalty. Do you
17 understand that?

18 MS. HILLMAN: (Witness nodded her head.)

19 THE COURT: Then the defense puts up mitigating
20 evidence. It's not evidence that forgives what the
21 person did, because he's already convicted, but it's
22 evidence that might mitigate what punishment he should
23 receive. And it can be any number of things. It could
24 be the fact that the person was under some mental or
25 emotional disturbance at the time the crime occurred, or

1 it might be that they were under the influence of some
2 one else when they committed the crime. It might be
3 that he had absolutely no bad record, you know, lived a
4 clean life. It might be any number of things. Do you
5 understand that?

6 MS. HILLMAN: I do.

7 THE COURT: And understanding that process, we
8 need -- I'm sure you understand we need to get to know
9 your feelings about capital punishment. Would you say
10 that you are generally for capital punishment, generally
11 against capital punishment, just generally how do you
12 feel?

13 MS. HILLMAN: Generally I do feel capital
14 punishment has a place in our judicial system.

15 THE COURT: All right. Do you think it should be
16 applied in every aggravated murder case or do you think
17 that you should look at the evidence in aggravation and
18 the evidence in mitigation before you would decide on
19 life or death?

20 MS. HILLMAN: I definitely would want to see all
21 the circumstances involved.

22 THE COURT: All right. You understand that before
23 a jury can vote to invoke the death penalty they have to
24 find beyond a reasonable doubt the existence of at least
25 one aggravating circumstance. Do you understand that?

1 MS. HILLMAN: I do. Correct.

2 THE COURT: And even though there is an aggravating
3 circumstance, that does not mean that State -- that the
4 jury has to vote for the death penalty. Do you
5 understand that?

6 MS. HILLMAN: I do understand that.

7 THE COURT: Even if there is an aggravating
8 circumstance and even if there is no mitigating
9 circumstances, do you understand that the jury can still
10 give a life sentence?

11 MS. HILLMAN: I do.

12 THE COURT: Okay. Now, if you were on a jury and
13 if you thought the proper sentence was life, could you
14 vote for a life sentence?

15 MS. HILLMAN: Definitely.

16 THE COURT: And if you were on a jury and you
17 thought the proper sentence was death, could you vote
18 for the death sentence?

19 MS. HILLMAN: Yes, I could.

20 THE COURT: All right. Now, you sort of hesitated,
21 but let me just ask you, if you thought the proper
22 sentence was death, you would, and the fellow jurors
23 would have to sign the verdict form individually, each
24 person's signature would have to be signed to it.
25 Sometimes it's referred to as the death warrant, because

1 that's the piece of paper that -- that ultimately
2 enables the State to execute this person. If you
3 thought that the proper sentence was death, could you
4 sign that verdict form?

5 MS. HILLMAN: I could.

6 THE COURT: All right. Now, before you decided on
7 life or death, would you give meaningful consideration
8 to the mitigating circumstances as put up by the defense
9 and as charged by the judge?

10 MS. HILLMAN: Yes.

11 THE COURT: Okay. All right. I'm through. So I'm
12 going to let -- this is Solicitor Ariail. He's going to
13 ask you some questions. And then this is Frank Eppes.
14 He'll follow up with questions.

15 QUESTIONING BY MR. ARIAIL:

16 Q Ms. Hillman, my name is Bob Ariail, and I'm the
17 Solicitor for Greenville and Pickens Counties.

18 That's -- in the State of South Carolina that's the
19 District Attorney. We still call them the Solicitor.
20 Myself and Betty Strom, my Deputy, will be assisting in
21 this case. Do you know of any reason, whether it be
22 religious, moral, political, emotional, or whatever,
23 that might interfere with your ability to fairly
24 consider the imposition of the death penalty in a case
25 where you thought the facts justified it?

1 A I do not think so, sir.

2 Q Okay. And the judge asked you, and I want to make
3 sure that you understand, after the case is concluded,
4 if the jury finds that the proper sentence is death,
5 that you would have to actually sign a document that
6 would go forward to the Department of Corrections to
7 carry out the execution, sometimes referred to as the
8 death warrant. Would you have any hesitancy about
9 signing that document if you had concluded that the
10 death sentence was appropriate?

11 A I hesitated because it is not as cut and dry. I
12 take it very seriously. Yes, I could if I felt that
13 that is what was warranted.

14 Q All right. My question would be, I guess in the
15 reverse of that ---

16 A Yes, I could sign it.

17 Q Could sign it?

18 A I could sign it.

19 Q Would the fact that you had to sign it cause you to
20 hesitate in what decision you would make?

21 A If I'd gotten to the point where I was ready to
22 sign it, I've made the decision.

23 Q Okay. You would wouldn't be looking forward,
24 saying, I don't want to sign that thing?

25 A No, sir.

1 Q Okay. You would look at the facts and give
2 consideration to the overall ---

3 A Most definitely.

4 Q --- evidence, the mitigating factors, everything
5 before making that decision?

6 A That is correct.

7 MR. ARIAIL: All right. Thank you very much.

8 THE COURT: All right. This is Frank Eppes.
9 He's one of the attorneys representing the defendant.

10 QUESTIONING BY MR. EPPES:

11 Q Good morning, Ms. Hillman.

12 A Good morning.

13 Q This is my co-counsel John Abdalla, and my client,
14 Brad Sigmon. You said a couple things that I want to
15 follow up on.

16 A Sure.

17 Q When the judge asked you what you thought about the
18 death penalty, you said that it had a place in our
19 society. What is the place it has?

20 A I do feel that there are times where a scenario
21 is -- an act has been so heinous that there has no
22 doubt been a lack of respect for human life, that the
23 facts could lead a group to decide that the best thing
24 for civilized society would be to take the life.

25 Q To take the life of a citizen?

1 A That is correct.

2 Q Why -- what purpose do you think this serves?

3 A The purpose of the death penalty, is that what
4 you're asking me, sir?

5 Q Yes. Yes. I'm asking you, what's the purpose of
6 this within the society?

7 A Resolution for the living.

8 Q Anything else?

9 A (Witness shook her head.)

10 Q That's the only purpose the death penalty serves?

11 A I think the death penalty functions for the living.

12 Q For the living?

13 A That's correct.

14 Q Okay. One of the things you will hear in this case
15 will be victim impact evidence, from the people who had
16 suffered the loss. Would you be able to remain fair and
17 impartial upon hearing this evidence of the living, or
18 is that going to be something that sways you more than
19 other evidence?

20 A The defendant is living, sir, I would take that
21 very seriously.

22 Q You would take it very seriously?

23 A Most definitely.

24 Q Okay. You mentioned your crime -- the crime
25 against you ---

1 A Correct.

2 Q --- in Atlanta. And one of things you said there
3 was that the defendant does not fit the profile?

4 A That is correct.

5 Q Could you tell me what you mean by that?

6 A Five nine, 140, black male with glasses, would
7 be -- would make me very nervous. They would bring my
8 emotions into play. I'm straight up about that.

9 Q Okay. How about the character of the crime, does
10 that -- would that have an influence on you?

11 A I don't believe so, sir.

12 Q The Solicitor asked you about -- about this death
13 warrant?

14 A Correct.

15 Q Okay. If you were on the jury and 11 other members
16 of the jury had signed the death warrant, would you feel
17 compelled to sign it, would you just stop and go ahead
18 and sign it?

19 A I would with my signature, no one else's.

20 Q Okay. Do you understand ---

21 A I do.

22 Q --- that each of these jurors is a separate judge?

23 A That is correct.

24 Q Okay. Now, on the flip side of that, if you were
25 on the jury and if you were one of the 11 that believed

1 that someone should die instead of having life without
2 parole, would you respect the -- would you respect the
3 beliefs and the wishes of the one person that was
4 against that?

5 A Yes.

6 Q Now, they've talk about -- you've have heard a lot
7 about mitigation, and I've tried to note whether the
8 judge asked you this every time, but I'm not sure. You
9 understand that the jury, regardless of the facts shown,
10 would have no obligation to sentence someone that was
11 found guilty in the first part of the trial, would have
12 no obligation to sentence that person to death?

13 A That's correct. I do understand that, sir.

14 Q You understand that?

15 A Yes.

16 Q So even if someone was found guilty of a crime, and
17 the Solicitor showed you heinous materials about that
18 person, and they just have -- again, this is the
19 Solicitor's case, walk out of the courtroom, you
20 understand that you would have to give meaningful
21 consideration to a sentence of life without parole?

22 A I do understand that, yes.

23 Q Okay. You'd be able to do that?

24 A Most definitely.

25 Q Sit tight one second, okay.

1 A Okay.

2 Q One more issue. If you go to the penalty phase, as
3 part of the aggravation -- let me say it this way, would
4 you be able to be fair and impartial in your decision
5 making process if as part of this evidence you were
6 faced with horrific gruesome photos of the crime? Would
7 you be able to distance yourself from that and remain
8 fair and impartial as you listen to mitigating evidence
9 and other evidence about this case?

10 MR. ARIAIL: Object, Your Honor, it's case
11 specific.

12 THE COURT: Sustain the objection. Any other
13 questions?

14 BY MR. EPPES:

15 Q Do you understand that life without parole means
16 without parole, you ---

17 A That's correct, I do understand that.

18 Q --- understand -- you understand he's leaving in a
19 pine box, you understand that?

20 A I do understand that.

21 MR. EPPES: Thank you, ma'am.

22 THE COURT: All right. I'm going to give you a
23 letter. If you would just sort of scan it as I go over
24 it with you. You are qualified to serve on this jury.
25 That does not mean that you will actually serve on the

1 jury. We are in the process of getting a panel of some
2 40 jurors. And then once we have that panel, we'll
3 bring them all up here and we'll select a jury from that
4 panel. It does mean you need to be prepared to serve.
5 That means you need to go home and go ahead and pack a
6 suitcase for 7 or 8 days. I would suggest that you wear
7 comfortable clothes. Bring any medications, any other
8 needs that you have. And when you come back, when we're
9 ready to bring everybody back, the Clerk will call each
10 juror, tell them when to come. When you're told to come
11 back, if you would, park in the Hyatt parking garage.
12 Did you park there yesterday?

13 MS. HILLMAN: Yes, I did.

14 THE COURT: Then come out the Spring Street exit,
15 or entrance, and come across the street to the entrance
16 to the parking garage for this courthouse.

17 MS. HILLMAN: Underneath, okay.

18 THE COURT: The reason I'm doing that is to keep
19 jurors separate and out of the public hallway. So
20 bailiffs will be down there to meet you. During the
21 course of the trial -- leave your suitcase in the car.
22 During the course of the trial you will not be able to
23 have any direct contact with family, or employees. You
24 will be able to get messages to them if necessary, by
25 giving -- writing down a message, name and phone number,

1 and the bailiffs will call. Also, there are emergency
2 numbers on there that you can give family members if
3 someone needs to contact you.

4 My admonitions are, do not talk about this case
5 with anyone. If somebody tries to contact you, or
6 talk to you, tell them you are a juror, you can't talk
7 about it, take their name and report that to bailiff
8 if that happens. Also, do not watch anything on TV,
9 listen to the radio, read anything in the newspaper
10 about this case, because there will be media coverage.
11 Okay?

12 MS. HILLMAN: Okay.

13 THE COURT: Do you have any questions?

14 MS. HILLMAN: No.

15 THE COURT: All right. I'll see you tomorrow or
16 Thursday.

17 MS. HILLMAN: Okay.

18 THE COURT: Thank you very much.

19 (Ms. Hillman exited the courtroom.)

20 THE COURT: All right. Anything with regard to
21 this juror from the State?

22 MR. ARIAIL: We think she's qualified.

23 THE COURT: From the defense?

24 MR. EPPES: Nothing, Your Honor.

25 THE COURT: All right. Robert Evans. Go ahead.

1 (Mr. Evans entered the courtroom.)

2 THE COURT: Go ahead and have a seat, Mr. Evans.

3 You are Bob Evans?

4 MR. EVANS: Yes, sir.

5 THE COURT: All right. If you would, make yourself
6 comfortable. As you do, pull your chair close to the
7 microphone so we can amplify your voice.

8 MR. EVANS: All right.

9 THE COURT: All right. You understand that you're
10 still under oath?

11 MR. EVANS: Yes, sir.

12 THE COURT: Have you complied with my instructions
13 not to discuss this case with anyone?

14 MR. EVANS: Yes, sir.

15 THE COURT: All right. Yesterday you indicated
16 that you had heard some of the facts about this case, is
17 that correct?

18 MR. EVANS: Yes, sir.

19 THE COURT: Where did you gather that information
20 from, the news media, or from people on the street, or
21 just ---

22 MR. EVANS: On the news and in the newspaper.

23 THE COURT: Okay. Do you recall any details from
24 what you read in the paper or saw on the news?

25 MR. EVANS: More than I want to, yeah.

1 THE COURT: All right. Tell me what some of the
2 facts are that you recall?

3 MR. EVANS: That someone killed two people and
4 kidnapped their daughter or something, and shot her in
5 the foot. That's all I remember.

6 THE COURT: Okay. All right. From that -- what
7 you read when this thing happened, have you formed any
8 opinions about this case, and specifically, have you
9 formed any opinions about the guilt or the innocence of
10 this defendant?

11 MR. EVANS: I'm sorry, it's hard not to.

12 THE COURT: All right. And you say you have formed
13 an opinion?

14 MR. EVANS: Yeah, sort of.

15 THE COURT: All right. What is that opinion?

16 MR. EVANS: Well, it just sounds like he's guilty.

17 THE COURT: Now, that's perfectly all right. The
18 question is, can you set that opinion aside and judge
19 this case solely on the evidence you hear in the
20 courtroom and disregard what you may have read in the
21 paper or seen on TV?

22 MR. EVANS: I can try.

23 THE COURT: Well, I need more than you can try.
24 Would you agree that everything you read in the
25 newspaper is not true?

1 MR. EVANS: Yes, sir.

2 THE COURT: And do you agree that everything you
3 see on TV may not be true?

4 MR. EVANS: Oh, yes, sir, that's right.

5 THE COURT: All right. Well, what a jury is asked
6 to do, or required to do is to judge the case solely on
7 the evidence that is presented in the courtroom, and if
8 they've heard anything extraneous about the case, they
9 have to set that aside. Do you understand that?

10 MR. EVANS: Yes, sir.

11 THE COURT: And my question is, can you do that?

12 MR. EVANS: The only thing that sticks in my mind,
13 that makes me not tell you yes, is that the fact of the
14 kidnapping part of it just ---

15 THE COURT: And what is --

16 MR. EVANS: I mean, if that's true, that's hard --
17 it's not hard to think about it.

18 THE COURT: Well, you understand that if there was
19 a kidnapping, there would be evidence of that put up in
20 trial?

21 MR. EVANS: That would be charged, that's something
22 I didn't understand until yesterday.

23 THE COURT: Okay. Well, my question is, just
24 because you saw something in the paper about kidnapping,
25 or saw something on TV have about a kidnapping, could

1 you set that aside and judge this case from the facts
2 that you hear in the courtroom?

3 MR. EVANS: Yes.

4 THE COURT: All right. And going to back to, you
5 say you had an opinion that he's probably guilty, again,
6 can you set that aside and judge the case solely on what
7 you hear in this courtroom?

8 MR. EVANS: Yes, sir.

9 THE COURT: All right. Now, Mr. Evans, one of the
10 things that we're going to be talking about is penalty.
11 Obviously to pick a jury in this case -- type of case we
12 have to talk about penalty. And the penalties, if
13 someone is convicted, is life without any possibility of
14 parole. Do you understand that?

15 MR. EVANS: Yes, sir.

16 THE COURT: And the other possible penalty would be
17 death, which in South Carolina is by electrocution or by
18 lethal injection. Do you understand that?

19 MR. EVANS: Yes, sir.

20 THE COURT: All right. Now, just because we talk
21 about penalty, you understand that does not indicate
22 anything about this defendant. As he sits there, he's
23 presumed to be innocence. Do you understand that?

24 MR. EVANS: Yes, sir.

25 THE COURT: And do you agree with that?

1 MR. EVANS: Yes, sir.

2 THE COURT: All right. If you were seated on a
3 jury in a criminal case, would you listen to the law
4 that the judge charges and accept and apply that law as
5 the proper law of the State of South Carolina?

6 MR. EVANS: Yes.

7 THE COURT: All right. Would you do that even
8 though you may not agree with what the judge said?

9 MR. EVANS: I don't understand the statement.

10 THE COURT: Okay. Well, let me give you an
11 example. Sometimes people come to court and they think
12 they know what the law is, but when the judge tells them
13 the law, it is different than what they thought the law
14 was, and that's fine as long as they can set aside what
15 they thought the law was and accept and apply the law
16 that the judge gives them. Could you do that?

17 MR. EVANS: Yes, sir.

18 THE COURT: Also, some people come to court with a
19 preconceived notion as to what they think the law should
20 be. An example would be somebody thinks that marijuana
21 should be legal. That's fine as long as they can set
22 that aside and accept the law that the judge gives them.
23 So if that person was sitting on a marijuana case, a
24 drug case, they would have to accept the law of South
25 Carolina that marijuana is illegal. Do you understand

1 that?

2 MR. EVANS: Um-hm.

3 THE COURT: Could you accept the -- and apply the
4 law even if you disagreed with it?

5 MR. EVANS: Yes, sir.

6 THE COURT: You understand that the State has the
7 burden of proving a defendant guilty?

8 MR. EVANS: Yes, sir.

9 THE COURT: And they have to meet that burden by
10 proving that person guilty beyond any reasonable doubt.
11 If you sat on a jury and if you thought the State had
12 not proved somebody guilty beyond a reasonable doubt,
13 would you vote not guilty in that case?

14 MR. EVANS: It wasn't proven, yes, sir.

15 THE COURT: All right. And on the contrary to
16 that, if you thought the State had proved somebody
17 guilty beyond a reasonable doubt, would you vote guilty?

18 MR. EVANS: Yes, sir.

19 THE COURT: Now, did you read my letter about the
20 death penalty yesterday?

21 MR. EVANS: Yes, sir.

22 THE COURT: And did you find that helpful to
23 understanding how the case proceeds? Did you know
24 anything about the death penalty in South Carolina?

25 MR. EVANS: Not really.

1 THE COURT: Did you know we had a death penalty?

2 MR. EVANS: I don't -- didn't really think about
3 it. The only place I know had it was in Texas. I never
4 thought about South Carolina.

5 THE COURT: And how did you know about Texas?

6 MR. EVANS: Because of George Bush.

7 THE COURT: Okay. All right. Do you understand
8 that we have a death penalty, and you understand that
9 it's not every murder case that's subject to the death
10 penalty?

11 MR. EVANS: Yes, sir.

12 THE COURT: It has to be an aggravated murder. The
13 example I gave would be a murder during the course of a
14 robbery, or a murder during the course of a rape. Do
15 you understand that?

16 MR. EVANS: Yes, sir.

17 THE COURT: And another example might be the murder
18 of a small child. But even when we talk about one of
19 these aggravated murder cases, do you understand that
20 the penalty is not automatic? Do you understand that?

21 MR. EVANS: I didn't know that, no.

22 THE COURT: Okay. Well, do you understand that
23 now?

24 MR. EVANS: Yes, sir.

25 THE COURT: In other words, the jury in a case

1 where someone is convicted of aggravated murder, the
2 jury decided what the proper punishment is. They decide
3 if the proper punishment is life without parole or
4 death. But before they make that decision of what the
5 proper punishment is, there is a second trial, or a
6 second phase. And before they make the decision, they
7 hear additional evidence and additional testimony. They
8 hear evidence from the State, and that's called
9 aggravating evidence. That would be things like the
10 person -- might be about the character of the defendant.
11 In other words, he's a mean person, or maybe he's got a
12 long history of crimes of violence. They also would
13 hear evidence about victim impact, the loss to the
14 family and the community with the death of the victims.
15 And the State would present that evidence in an attempt
16 to convince the jury that the proper punishment was
17 death. And then the defense would put up evidence in
18 mitigation. Mitigating evidence does not excuse what
19 the person did, but it is evidence that would lessen
20 what the punishment he should receive. In other words,
21 mitigating evidence might be that the defendant was
22 suffering from some mental problem at the time of the
23 crimes, or maybe the defendant was under the influence
24 of someone else when they committed the crime, or maybe
25 he had a very clean record. And that evidence would be

1 presented to convince the jury that the proper
2 punishment is life without parole. Do you understand
3 this process?

4 MR. EVANS: Yes, sir.

5 THE COURT: All right. Mr. Evans, understanding
6 this process, I'm sure you understand that we need to
7 know your feelings about capital punishment. Would you
8 say that you are generally for the death penalty,
9 generally against the death penalty, just how do you
10 feel?

11 MR. EVANS: Against.

12 THE COURT: All right. And are you against it in
13 every case?

14 MR. EVANS: That's very hard to answer. Normally I
15 would say yes.

16 THE COURT: All right.

17 MR. EVANS: But in some bad situations, I don't
18 know what I would do.

19 THE COURT: All right. What you're saying then is
20 if the case is aggravated enough, you could -- you think
21 it was proper for the death penalty?

22 MR. EVANS: Yeah.

23 THE COURT: And if you sat on a jury and if you
24 thought that life was the appropriate sentence, could
25 you vote for life?

1 MR. EVANS: Yes, sir.

2 THE COURT: And if you thought death was the
3 appropriate sentence, could you vote for death?

4 MR. EVANS: That would be very hard for me to do,
5 but I've -- it would have to be very aggravated
6 circumstances.

7 THE COURT: But if it was aggravated enough, you
8 could, is what you're telling me?

9 MR. EVANS: Yes.

10 THE COURT: All right. If you were on such a jury
11 and if you thought the proper sentence was death, you
12 would have to sign the verdict form. Do you understand
13 that? You and other jurors would have to affix your
14 name to the verdict form. Do you understand that?

15 MR. EVANS: I do now.

16 THE COURT: Okay. Well, I'm telling you now. All
17 right. And if you thought the case was proper for the
18 death penalty, and if your vote was for the death
19 penalty, could you sign your name?

20 MR. EVANS: Yes, sir.

21 THE COURT: Okay. All right. Who's up? All
22 right. Mr. Eppes. This is Frank Eppes. He's one
23 of the attorneys representing the defendant. And
24 then Mr. Ariail, the Solicitor, will ask you some
25 questions.

1 QUESTIONING BY MR. EPPES:

2 Q Mr. Evans, hey, how are you?

3 A Fine, sir.

4 Q I'm Frank Eppes, and my co-counsel is John Abdalla,
5 and this is my client, Brad Sigmon. We appreciate you
6 being here today. We have to ask you questions to get
7 your opinion on the death penalty and other issues in
8 the case to make sure that you'd be good, fair,
9 impartial juror who would give consideration to both
10 sides of the case, both in the, you know, guilt phase,
11 when you're trying to find out if somebody is guilty,
12 and again in the sentencing phase. Do you understand
13 that?

14 A Yes, sir.

15 Q And you understand that if a jury finds my client
16 guilty -- or if a jury finds a person guilty, then you
17 move onto the sentencing phase, where you have to
18 consider the punishment. Do you understand that?

19 A Um-hm.

20 Q You understand when you have to consider punishment
21 in a case where the State's asking for the death
22 penalty, your two choices of punishment are a death
23 sentence or life without parole?

24 A Yes, sir.

25 Q Do you understand that? And you understand that

1 the State will present evidence -- the State will
2 present evidence of aggravation, about how horrible the
3 crime was. You understand that?

4 A Yes, sir.

5 Q You understand that the defense will present
6 evidence in mitigation, evidence that says -- not making
7 excuses for the crime but evidence that will show this
8 is a person that might deserve a chance to -- that does
9 deserve a chance to live. Do you understand that?

10 A Yes, sir.

11 Q You understand you are never required to give the
12 death penalty? The law doesn't say if A, B, C, and D
13 happen you will have to give the death penalty. Do you
14 understand that?

15 A Yes, sir.

16 Q Now understanding all of that, will you be able to
17 give fair consideration to the State of South Carolina,
18 if they were to show you evidence of aggravation, and
19 also to -- to the defendant, if they were showing
20 evidence of mitigation? Would you be able to give fair
21 consideration to all evidence submitted in the penalty
22 phase of the trial?

23 A I'd do it to the best of my ability.

24 Q Would you be able give fair consideration to that
25 evidence? If you're submitted with evidence, would you

1 be able to consider it fairly?

2 A To the best of my ability.

3 Q Yes, sir. Okay. And at the end of that trial, if
4 you were in a situation where the case was so heinous
5 and so aggravating that you believe the death penalty
6 was the appropriate sentence, would be able to sign that
7 death penalty form, if you believe the death penalty to
8 be the appropriate sentence?

9 A If I believed it, I would be able to sign it,
10 but ---

11 MR. EPPEs: Thank you, sir.

12 MR. EVANS: All right.

13 THE COURT: Mr. Ariail.

14 QUESTIONING BY MR. ARIAIL:

15 Q Mr. Evans, my name is Bob Ariail, and I'm the
16 Solicitor for Greenville and Pickens Counties, and as
17 such I represent the State in any criminal prosecutions
18 in these two counties. And in this case I would be
19 representing the State along with my Deputy, Ms. Strom
20 in the white suit, and one of my assistants, Ms. Hervey
21 seated here at the counsel table. What -- at the end
22 you said but?

23 A My but was I don't believe in the death penalty.

24 Q All right.

25 A I don't believe there should be one. That's just

1 my ---

2 Q You don't believe in the death penalty and you
3 don't think there should be one?

4 A Right.

5 Q All right. That's what I want to talk about,
6 because -- and there is absolutely nothing wrong with
7 that view. There are a lot of people that hold that
8 view. And I want -- what we want to make sure is that
9 in a case in which you're going to have to make a
10 choice, or potentially going to have to make a choice,
11 if the defendant is found guilty, between life
12 imprisonment and the death penalty, that if you got to
13 make that decision you're going to have to do it fairly.
14 This is not something where we're giving lip service,
15 but the defendant is entitled to a fair consideration of
16 his position that he would be entitled to life
17 imprisonment, and the State is entitled to fair
18 consideration of the evidence of the death penalty being
19 the proper sentence.

20 Now, if we ask these questions in a vacuum, you
21 come up with a different answer, but the real answer I
22 want to explore is, if you're faced with that decision
23 making process, you got to decide one or the other,
24 there's no where to go but one of those two, are you
25 going to really consider applying the death sentence in

1 any case, or is your belief that it is not a proper
2 sentence, and should not be part of our law going to
3 take over? Is it going to go back to what the judge
4 asked you in the beginning, where he said, you know,
5 people come in with a view of how the law is, nothing
6 wrong with that, but just want to identify those people
7 and make sure they can set that aside and give both
8 parties, and if you can't set it aside, then the proper
9 answer would be, I can't set it aside and there is
10 nothing wrong with that, and ---

11 A I don't believe in the death penalty, I'm -- that's
12 just me.

13 Q All right. And not believing in the death penalty
14 could you -- do you believe you could vote to impose the
15 death penalty?

16 MR. EPPES: Objection, Your Honor, he's asking him
17 a specific question.

18 THE COURT: No, he hasn't. Overruled.

19 BY MR. ARIAIL:

20 Q Could you vote for the death penalty?

21 A It would be very hard.

22 Q All right. Does that mean you could do it?

23 A There's a whole lot of things you can do. You
24 don't know whether you can do it or not. I haven't
25 heard the case, I don't know the circumstances. I think

1 if it was really bad, if I thought it was really bad,
2 yeah I would, but ---

3 Q All right. If you thought ---

4 A Overall, from what I know what goes on in the
5 United States, I don't believe we should have the death
6 penalty. That's just my feelings.

7 Q All right.

8 A Too many DNA cases come back and say, somebody
9 didn't do whatever they said they did.

10 Q But if you had a case in which you felt that the
11 circumstances were so aggravated and the guilt of the
12 defendant was so proven ---

13 A Yes, sir.

14 Q --- that there was no question, you think in that
15 case you could impose -- vote for the death penalty?

16 A If it is so heinous that it's repulsing me, yes.

17 Q You could do that?

18 A Yes.

19 Q All right. And that's a good honest answer. And
20 the question -- then the question I have is, you don't
21 believe you would get in that jury box and say, oooh, I
22 thought I could do this, but can't do it now, and I'm
23 just not going to listen to what y'all are talking
24 about, I'm just going to sit in the corner until it's
25 over?

1 A I don't know the question.

2 Q Or would you participate?

3 A I would ---

4 Q And would you listen with the intent to go forward
5 to vote for the death penalty?

6 MR. EPPES: Objection, Your Honor.

7 MR. ARIAIL: If it was appropriate under the
8 evidence?

9 THE COURT: What's the objection?

10 MR. EPPES: He said would you listen and go forward
11 to vote for the death penalty.

12 THE COURT: If it was appropriate under the
13 circumstances. Overruled.

14 MR. EVANS: I would be as fair I could be. That's
15 the best answer I can tell you. I mean, my opinion
16 still hasn't changed.

17 BY MR. ARIAIL:

18 Q Okay. That's all I wanted. You would be fair?

19 A Yes, sir.

20 MR. ARIAIL: Thank you.

21 THE COURT: All right. Let me give your this, sir.
22 Mr. Evans, you are qualified to serve as a juror in this
23 case. That does not mean you will serve. That simply
24 means that you are qualified. We are attempting to
25 gather about 40 or so qualified jurors from which we

1 will select our jury. We will probably get to that
2 number sometime on Wednesday, maybe Thursday. The clerk
3 will call all qualified jurors and tell them when to
4 return to court. So when you are called, you need to
5 come back with a suitcase packed, leave your suitcase in
6 your car, go ahead and pack a suitcase for seven or
7 eight days stay in a hotel. Bring any kind of
8 medications, anything like that you need. Then when you
9 come back if you would park over in the Hyatt garage.
10 Did you park there on Monday morning?

11 MR. EVANS: Yes, sir.

12 THE COURT: All right. Then the Spring Street
13 entrance to that garage is the -- Spring Street is
14 between the courthouse and the garage. Directly across
15 from that entrance is the garage entrance to this
16 courthouse. I want the jurors to come there. I'm
17 trying to keep them out of the public corridors. The
18 bailiff will meet the jurors down there, and they'll
19 bring them back up here to the courtroom. Do you
20 understand that?

21 MR. EVANS: So you want me to park in the Hyatt?

22 THE COURT: Park in the Hyatt, leave your suitcase
23 in the car, and then walk over to the parking garage.
24 You will be escorted from there up.

25 MR. EVANS: Okay.

1 THE COURT: When you are on this jury, you will
2 not be able to contact any family member, or any
3 employers or employees. You will be able to get a
4 message to them if you need to. You can write down the
5 name and number of the person and the message, and the
6 bailiffs can call them. Also, there are two emergency
7 numbers that anyone can contact you, or they won't
8 contact you directly but they can get an emergency
9 message to you. Do you have any questions about any of
10 this?

11 MR. EVANS: Not really.

12 THE COURT: All right. The clerk will call you
13 probably Wednesday or Thursday. Do not talk about this
14 case with anyone. If someone tries to talk to you, take
15 their name, tell them you are on the jury panel, and you
16 can't talk about the case. Also don't watch any TV
17 about this case, or read anything in the paper. All
18 right?

19 MR. EVANS: Yes, sir.

20 THE COURT: We'll see you either Wednesday or
21 Thursday. Thank you very much.

22 (Mr. Evans exited the courtroom.)

23 THE COURT: All right. Next juror, Steve Hester.

24 MR. ARIAIL: He's got an issue, Your Honor.

25 THE COURT: I understand he was out on the public

1 side of the corridor.

2 MR. ARIAIL: He what?

3 THE COURT: That wasn't the issue? Oh, you got an
4 issue, what?

5 MR. ARIAIL: The issue is he was convicted of
6 breach of trust with fraudulent intent, received a three
7 year sentence, and -- in 1999, and he did not come
8 forward at the time of this.

9 THE COURT: Okay.

10 MR. ABDALLA: Your Honor, may I -- I'd just like to
11 say something. I don't have that information. I
12 thought we had -- do we have the full NCIC provided to
13 us?

14 THE COURT: Let me have the NCIC.

15 MR. ABDALLA: I just want to make sure it wasn't a
16 mistake on our part.

17 THE COURT: Have you shown ---

18 MS. STROM: I'm sorry. I thought ---

19 THE COURT: I'm sorry. Yeah, I did want you to
20 show it to them first. As I under this person also
21 showed up on the public side, is that correct? Was out
22 in the hallway?

23 MR. ABDALLA: I don't know what he looks like.

24 MR. EPPES: Somebody was out in the hallway, Your
25 Honor, but I don't know who it was.

1 MR. ABDALLA: And I had to get the bailiff,
2 because I said, I'm sorry, let me get a bailiff, I
3 didn't want -- I say there was no improper contact but
4 for the fact the man ---

5 THE COURT: I'm not saying there was improper
6 contact, I'm just going to ask him if he overheard
7 anything, or -- I thought you were the one that brought
8 it to the attention of the Court?

9 MR. ABDALLA: I did.

10 THE COURT: All right.

11 MR. EPPES: Your Honor, I don't really have any
12 dispute about the NCIC, but I thought we had them all,
13 and clearly we don't have this one.

14 MR. ARIAIL: You do.

15 THE COURT: Why -- I mean why would they keep it
16 from you?

17 MR. EPPES: I don't know. I don't know. I just
18 don't understand why we don't have it.

19 THE COURT: All right. Let me have that, please,
20 ma'am. Hand it to the clerk. All right. Do you agree
21 that if this is the same person, that would disqualify
22 him?

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

24 THE COURT: All right. I don't see a -- where do
25 you read the Social Security number, the date of birth

1 on these.

2 MS. STROM: It would be the first page, Your Honor,
3 it should be.

4 THE COURT: All right. Well, I'm looking.

5 MS. HERVEY: Actually it's probably on the second
6 page it comes up. He's got two dates of birth, a Social
7 Security number it will be between the two rows, and it has
8 his birthday as being and I think , and his
9 Social Security on the far right-hand side. It begins
10 like

11 MR. ARIAIL: Oooh, I know who this guy is.

12 THE COURT: I don't care if you know him. Just
13 somebody point to me the Social Security number so I can
14 ask him if that's his Social Security number. Here's --
15 you got any information on his return, date of birth,
16 Social Security number, things like that?

17 MS. PLUMLEY: Yeah.

18 MS. HERVEY: Two dates of birth. The '57 matches
19 the one that he gave us on his questionnaire.

20 THE COURT: All right. Do you have Social Security
21 numbers on jurors?

22 MS. PLUMLEY: Yes, sir.

23 THE COURT: All right. Tell me his Social Security
24 number, please, ma'am.

25 MS. PLUMLEY:

1 THE COURT: Okay. All right. What is -- what do
2 you show as his date of birth?

3 MS. PLUMLEY:

4 THE COURT: Okay. All right. Bring in Mr. Hester.
5 (Mr. Hester entered the courtroom.)

6 THE COURT: Hey, you're Steve Hester?

7 MR. HESTER: Yes, sir.

8 THE COURT: Hey, I'm Judge Watson. Before I even
9 get started, I just need to ask you some questions. You
10 can have a seat. What is your Social Security number?

11 MR. HESTER:

12 THE COURT: And is your date of birth

13 MR. HESTER:

14 THE COURT:

15 MR. HESTER: Yes, sir.

16 THE COURT: All right. I don't want to embarrass
17 you, but were you convicted back in '99 of breach of
18 trust with fraudulent intent?

19 MR. HESTER: Yes, sir.

20 THE COURT: You got a three year sentence
21 subpoenaed to one year probation?

22 MR. HESTER: I just paid the restitution on that.

23 THE COURT: Okay. But the sentence was, I see,
24 three years suspended to one year, or \$350. They didn't
25 even put you on probation?

1 MR. HESTER: No.

2 THE COURT: All right. Breach of trust actually
3 carries more than a year's penalty.

4 MR. HESTER: Yes, sir.

5 THE COURT: That disqualifies you from serving.

6 MR. HESTER: Oh, okay.

7 THE COURT: Okay. I don't know. You might want to
8 give some consideration to getting that off your record
9 sometime.

10 MR. HESTER: I should, yeah.

11 THE COURT: But in any event that would disqualify
12 you.

13 MR. HESTER: How do I do that?

14 THE COURT: You would need to talk to an attorney
15 and get a pardon, something like that. Let me just have
16 you step in the hallway for just a minute and let me
17 talk -- step right outside that door, and let me talk to
18 the attorneys.

19 (Mr. Hester exited the courtroom.)

20 THE COURT: Anything further from the State on this
21 juror?

22 MR. ARIAIL: No.

23 THE COURT: From the defense?

24 MR. EPPES: Nothing, Your Honor.

25 THE COURT: Okay. All right. Hand that back to

1 Madam Solicitor. All right. Go ahead and bring him in.

2 (Mr. Hester entered the courtroom.)

3 THE COURT: All right. You don't need to sit down.

4 I -- that will disqualify, so I'm going to let you go.

5 Good luck to you. Thank you.

6 MR. HESTER: Thank you.

7 THE COURT: All right. Let me just ask you this,
8 are there any people in next 20 or so that have records
9 that that's going to come up on, to your knowledge?

10 MS. HERVEY: I don't believe the next one is until
11 juror number 50.

12 THE COURT: Okay. That ---

13 MS. HERVEY: So far that's what I got.

14 THE COURT: Do you have the record on juror number
15 50?

16 MS. HERVEY: Yeah.

17 MR. EPPES: We don't have it in the room, Your
18 Honor. We've only got the one. We'll check on it.

19 THE COURT: Just check and make sure. If you don't
20 they'll give you another copy. All right. Kenneth --
21 anybody want to take like a quick break?

22 MR. EPPES: Sure.

23 THE COURT: I need a quick break. We'll take about
24 a two or three minute break.

25 (A short recess was taken, after which, the trial

1 continued as follows:)

2 THE COURT: All right. Anything about this juror?

3 MS. ARIAIL: Publicity and he knew a witness,
4 that's all I have.

5 THE COURT: Did he know a witness? I missed that.

6 MS. STROM: I have that he stood up.

7 MS. HERVEY: I have that he knew a witness as well.

8 THE COURT: Okay. Go ahead and bring him in.

9 (Mr. Chastain entered the courtroom.)

10 THE COURT: Hey, come on up. You're Kenneth
11 Chastain?

12 MR. CHASTAIN: Yes, sir.

13 THE COURT: As you have a seat, make yourself
14 comfortable, go ahead and slide your chair up to the
15 microphone so we amplify your voice.

16 MR. CHASTAIN: Okay.

17 THE COURT: All right. You understand that you're
18 still under oath, Mr. Chastain, from yesterday? You
19 understand you're still under oath?

20 MR. CHASTAIN: Yes, sir.

21 THE COURT: And when I ask questions or when the
22 attorneys ask questions, if you will, don't nod your
23 head or shake your head, because the back-up system has
24 got to hear your voice. That's why the microphone is
25 there. All right. Have you complied with my prior

1 instructions not to talk about this case with anyone?

2 MR. CHASTAIN: Yes, sir.

3 THE COURT: All right. You indicated yesterday
4 that you might know a witness in this case, is that
5 correct?

6 MR. CHASTAIN: Yes, sir.

7 THE COURT: Who is that witness?

8 MR. CHASTAIN: That would be Darryl Larke.

9 THE COURT: Darryl, tell me the last name again?

10 MR. CHASTAIN: It's Larke.

11 THE COURT: Larke. All right. And is that a
12 family member?

13 MR. CHASTAIN: No, sir.

14 THE COURT: Okay. Is Darryl Larke a family member
15 in this case?

16 MS. STROM: Yes, sir.

17 MR. EPPES: Yes, sir.

18 THE COURT: Is that -- you're Mr. Darryl Larke?

19 MR. LARKE: Yes, sir.

20 THE COURT: And is that the Darryl Lake you know?

21 MR. CHASTAIN: Yes, sir.

22 THE COURT: Okay. All right. The -- how do you
23 know Mr. Larke?

24 MR. CHASTAIN: He's the preacher at the church I go
25 to.

1 THE COURT: Okay. You also indicated you had heard
2 facts about this case, is that correct?

3 MR. CHASTAIN: Yes, sir.

4 THE COURT: All right. Tell me what facts you
5 recall about this case?

6 MR. CHASTAIN: Well, I -- I had heard, you know,
7 about what happened and -- to his mother and father, and
8 when it happened, my fiance, she's been going to that
9 church for a long time, and ---

10 THE COURT: Your fiance and her family?

11 MR. CHASTAIN: Yes.

12 THE COURT: Okay.

13 MR. CHASTAIN: And she just told me basically, you
14 know, told me what happened when it happened.

15 THE COURT: All right. From -- from talking
16 with -- have you ever talked to Mr. Larke, your preacher
17 about the case?

18 MR. CHASTAIN: No, sir.

19 THE COURT: All right. From talking with your
20 girlfriend and the family about the case, have you
21 formed any opinions about this case?

22 MR. CHASTAIN: Yes, sir.

23 THE COURT: Have you formed any opinions as to
24 guilt or innocence of this defendant?

25 MR. CHASTAIN: No, sir.

1 THE COURT: All right. What opinions have you
2 formed?

3 MR. CHASTAIN: I just -- you know, I just pretty
4 much said that it was wrong, you know, that they -- that
5 I prayed for him.

6 THE COURT: Prayed for the defendant, prayed for
7 the family?

8 MR. CHASTAIN: Yes, sir.

9 THE COURT: All right. Well, besides those
10 opinions, any other opinions?

11 MR. CHASTAIN: No.

12 THE COURT: All right. You understand -- well, let
13 me ask you this, can you set aside what you have heard
14 about this case, and if you're selected on the jury,
15 could you judge this case solely from the testimony and
16 evidence that's presented in this courtroom?

17 MR. CHASTAIN: No, no, sir.

18 THE COURT: All right. You could not?

19 MR. CHASTAIN: No.

20 THE COURT: All right. In other words, tell me
21 what -- what -- what facts or evidence have you heard
22 that -- I mean, it didn't sound like you heard a whole
23 lot, tell me what you heard?

24 MR. CHASTAIN: Well, I just -- I heard, you know,
25 about the, like I said, what happened. You know, I

1 wouldn't be partial to -- I mean, I would be partial to
2 the -- what the sentence, you know, would be.

3 THE COURT: And you would be partial how? What do
4 you mean? Are you saying you're pre-disposed as to what
5 the sentence should be in this case?

6 MR. CHASTAIN: Well, pretty pre-disposed.

7 THE COURT: All right. Have you already formed an
8 opinion as to what the sentence should be in this case?

9 MR. CHASTAIN: Yes, sir.

10 THE COURT: And what is that opinion?

11 MR. CHASTAIN: That would be the death penalty.

12 THE COURT: Okay. Are you in favor of the death
13 penalty?

14 MR. CHASTAIN: Yes, sir.

15 THE COURT: All right. And I guess my question is,
16 could you set aside that opinion and listen to the
17 evidence and facts of this case before you made a
18 decision as to what the penalty should be, or would
19 hearing about it and having already formed an opinion,
20 would that taint you so much that you could not set that
21 opinion aside?

22 MR. CHASTAIN: Yes, sir, it would.

23 THE COURT: Okay. All right. Any questions from
24 the State?

25 MR. ARIAIL: No.

1 THE COURT: Anything from the defense?

2 MR. EPPES: No, sir.

3 THE COURT: All right. I will have to excuse you
4 from service in this case because of that. You will get
5 paid for the two days you have been here. You're free
6 to go. All right. Thank you very much.

7 MR. CHASTAIN: Thank you.

8 (Mr. Chastain exited the courtroom.)

9 THE COURT: All right. Anything on Mr. Harmon I
10 need to know about?

11 MS. STROM: He knew the attorneys.

12 MS. HERVEY: He just indicated he had been
13 introduced to them as members of the bar. I think he's
14 an attorney.

15 THE COURT: He's a lawyer. All right. Okay.

16 MR. EPPES: Right.

17 THE COURT: Did you y'all know him? Does anybody
18 got an association with him?

19 MR. EPPES: I have met him, Your Honor, that's all.

20 THE COURT: Well, I met him, I guess I'll put it on
21 the record. He apparently knows Judge Few, and came up
22 on Monday. As a matter of fact y'all came in and he was
23 in my office, and I told y'all not to talk about it. He
24 had a hearing in front of Judge Simmons and wanted to
25 know if this -- if he would be able to be at his hearing on

1 Thursday, and I simply told him I didn't know, but you
2 know, he wasn't going to get excused from jury service
3 because of a hearing in another court. All right.
4 Bring in Mr. Harmon.

5 (Mr. Harmon entered the courtroom.)

6 THE COURT: Hey, come on up. All right. You
7 understand you're still under oath from yesterday?

8 MR. HARMON: Yes, Your Honor.

9 THE COURT: And have you complied with my prior
10 instructions not to talk about this case with anyone?

11 MR. HARMON: I have, Your Honor.

12 THE COURT: All right. I believe that you
13 indicated that you did not know any witnesses or did not
14 recall any facts of the case, but you knew some of the
15 attorneys involved in the case, is that correct?

16 MR. HARMON: That's correct.

17 THE COURT: All right. And who is it that you're
18 acquainted with? All of them, or ---

19 MR. HARMON: I have met Mr. Eppes in the past and I
20 have probably met Mr. Ariail at some point in the past.

21 THE COURT: All right. Would your acquaintance
22 with Mr. Ariail or Mr. Eppes affect your ability to be
23 fair and impartial in this case?

24 MR. HARMON: No, it would not.

25 THE COURT: All right. We obviously are going to

1 talk with you about a number of issues. At times you're
2 going to feel like we're invading your privacy, and we
3 probably are, but if you are upset at that, hold it
4 against me, don't hold it against the State or the
5 defendant. There are no right answers, no wrong
6 answers, but because of the nature of this case, we need
7 to ask these questions, and we need to have your open
8 and honest answers to these questions. The main thing
9 that we will be talking about with you is penalty. Of
10 course I will talk to you and then the attorneys will
11 get a chance to talk to you. You understand that we
12 need to talk with jurors about penalty but that in no
13 way indicates anything about the guilt or the innocence
14 of this defendant. Do you understand that?

15 MR. HARMON: I understand.

16 THE COURT: You understand as he sits there, he is
17 presumed to be innocent?

18 MR. HARMON: I understand that.

19 THE COURT: Let me back up and before I talk with
20 you about penalty, do you understand that -- well, let
21 me ask you this. If you were sitting on a case, would
22 you listen to the law that the judge charged and accept
23 that law and apply that law to the case?

24 MR. HARMON: I would, yes.

25 THE COURT: And you would do it even if you did not

1 necessarily agree with the law that the judge charged?

2 MR. HARMON: I would.

3 THE COURT: All right. You understand that the
4 State has the burden of proving a defendant guilty
5 beyond a reasonable doubt?

6 MR. HARMON: Yes.

7 THE COURT: If you were sitting on a jury and you
8 found that the State had not met their burden of proving
9 someone guilty beyond a reasonable doubt, would you vote
10 not guilty?

11 MR. HARMON: I would.

12 THE COURT: And the converse of that is if you
13 found that the State had proved their case beyond a
14 reasonable doubt, would you vote guilty?

15 MR. HARMON: I would.

16 THE COURT: Now, did you read my letter yesterday
17 about the death penalty and capital cases in general?

18 MR. HARMON: I did.

19 THE COURT: And you understand that it's not every
20 murder case that is subject to the death penalty?

21 MR. HARMON: I do.

22 THE COURT: And you understand that only in
23 aggravating murder cases, I think my example was a
24 murder plus an armed robbery, murder plus a rape, only
25 in those type of cases can the State even seek the death

1 penalty, you understand that?

2 MR. HARMON: Yes.

3 THE COURT: All right. And even if those cases the
4 penalty is not automatic by any means, that simply means
5 the State can seek the death penalty, and then if a jury
6 convicts at the trial phase they would have two options,
7 they would have the option of sentencing someone to
8 either life without any possibility of parole or to
9 death, which in South Carolina is by lethal injection or
10 electrocution. Do you understand that?

11 MR. HARMON: I understand that.

12 THE COURT: All right. Now, understanding this --
13 well, let me back up. In that penalty phase, the -- you
14 would hear more testimony and more evidence. The State
15 is introducing evidence in aggravation. They are
16 introducing evidence like character of the defendant,
17 maybe he's a real mean character. They would introduce
18 things like he had a long history of crimes of violence,
19 they would introduce victim impact evidence, testimony
20 from family members about the loss they have suffered
21 personally and the community's loss by the death of the
22 victims, any number of things might be evidence in
23 aggravation. And they're introducing that evidence in
24 order to attempt to convince the jury that the proper
25 sentence is death. Do you understand that?

1 MR. HARMON: I do.

2 THE COURT: And then the defense introduces
3 evidence in mitigation, and again that can any number of
4 things. It can be, for example, the defendant suffers
5 from a mental problem -- or suffered from a mental
6 problem at the time of the murder, or maybe he has a
7 clean record, he's never been in trouble before, or
8 maybe he was under the influence of someone else when he
9 committed the offenses. Do you understand that concept
10 of mitigation?

11 MR. HARMON: I do.

12 THE COURT: And they would be attempting to
13 convince the jury -- mitigating evidence doesn't excuse
14 the crime, but it may mitigate what punishment the
15 person should receive. Do you understand that?

16 MR. HARMON: Yes.

17 THE COURT: All right. Understanding this
18 procedure, you understand that I and these attorneys
19 need to understand, or get to know what your feelings
20 are about capital punishment. Would you generally say
21 that you are for the death penalty, generally you are
22 against the death penalty, generally how do you feel?

23 MR. HARMON: In the proper circumstances, I -- I
24 would favor the death penalty.

25 THE COURT: All right. Do you mean by that you

1 think there is a proper place in our society for the
2 death penalty?

3 MR. HARMON: I do and I think that's been
4 determined by the Legislature.

5 THE COURT: Yeah. All right. Are you saying that
6 you think it's proper in every case of aggravated murder
7 or are you saying that only in some cases of aggravated
8 murder depending the facts and circumstances?

9 MR. HARMON: I think it depends on the facts and
10 circumstances of the particular case.

11 THE COURT: All right. Would you give meaningful
12 consideration to the aggravating evidence as presented
13 by the State and charged by the judge in making up your
14 mind whether death is the proper sentence?

15 MR. HARMON: I would.

16 THE COURT: And would give meaningful consideration
17 to mitigating evidence, that is evidence put up by the
18 defense and charged by the judge in considering a life
19 sentence?

20 MR. HARMON: I would.

21 THE COURT: All right. If you thought the proper
22 sentence was death, would you vote for death?

23 MR. HARMON: I would.

24 THE COURT: And if you thought the proper sentence
25 was life, would you vote for life?

1 MR. HARMON: I would.

2 THE COURT: The last thing I need -- well, a couple
3 things. You understand -- let me tell you, if you
4 thought the proper sentence was death, then and the
5 other jurors would have to sign their name individually
6 to the verdict form, sometimes that's called a death
7 warrant. If you thought the proper sentence was death,
8 would you be able to sign that form?

9 MR. HARMON: I would.

10 THE COURT: Okay. All right. Whose go is it? All
11 right.

12 QUESTIONING BY MR. ARIAIL:

13 Q Mr. Harmon, I want to introduce you to my Deputy,
14 Betty Strom, who will be assisting me. She's in the
15 white suit. Ms. Hervey, Mindy Hervey, who is one of my
16 assistants, who will be also on this case. I think
17 you've got a grasp of what we're talking about, and what
18 I want to make sure is that we understand is that --
19 well, first let me go back and ask, do you know of
20 anything in your background, whether it be political
21 belief, moral belief, religious upbringing, or ethical
22 considerations, or anything that would come to bear on
23 your decision making process in regard to whether to
24 impose the death penalty that we might not have
25 discussed, might not have been brought out? Any views

1 you may have other than ---

2 A I don't know of anything in particular, no.

3 Q All right. Well, and I know generally your whole
4 upbringing is going to have some -- life experience is
5 going to have some impact on that, but I'm talking about
6 something that you may could identify, but as I

7 understand what you're saying, you would listen to the

8 case, assuming guilt, we -- assume guilt to go to the

9 second phase. We're in the second phase, put ourselves

10 there in the hypothetical, you're going to hear evidence

11 in aggravation. Evidence in aggravation may be proof

12 that certain circumstances that the law calls

13 aggravators, and then there might be real aggravation.

14 There maybe some other evidence that people in

15 colloquial terms would consider aggravating. And then

16 you're going to hear evidence of mitigation. And after

17 all you've heard of that, then you're going to go back

18 to the jury room and that's when you really make your

19 decision as to whether or not, after you've assimilated

20 all that, what the proper sentence is. You don't hear

21 part and then make your decision, or hear one part of it

22 and another part of it, then reverse that decision. You

23 hear it all, and you know, it's a decision, so you

24 understand that part of it?

25 A I do.

1 Q All right. And -- and in reviewing that process
2 you believe that you would be able to fairly consider,
3 based on the circumstances of the case, the State's
4 request for the imposition of the death penalty?

5 A I believe that I would.

6 Q And that you would -- you can vote for the death
7 penalty if you felt that the nature of the crime, the
8 circumstances, et cetera, were appropriate for that
9 particular sentence?

10 A Yes.

11 Q No hesitancy about signing the form after you have
12 come to the decision to vote for it?

13 A I was not aware that that was required, but I would
14 be able to do that, yes.

15 Q Well, let's talk just for a minute about that.
16 That form is called -- sometimes referred to as the
17 death warrant. And that's the form that goes with the
18 defendant to the Department of Corrections for -- that
19 the State uses as the actual document to carry out the
20 execution. Does that nature of that form, and the fact
21 that you've got to sign it, would that cause you to
22 hesitate?

23 A No.

24 MR. ARIAIL: All right. That's all I have. Thank
25 you very much.

1 THE COURT: All right. Mr. Eppes.

2 MR. ARIAIL: Just one ---

3 THE COURT: Hold on, Mr. Eppes.

4 BY MR. ARIAIL:

5 Q Do you do criminal work?

6 A I do not.

7 MR. ARIAIL: Okay. I didn't think so. Thank you.

8 THE COURT: Mr. Eppes.

9 QUESTIONING BY MR. EPPES:

10 Q Hey, Mr. Harmon.

11 A Good afternoon.

12 Q This is John Abdalla, my co-counsel, and Brad
13 Sigmon, my client. You said you thought the death
14 penalty was appropriate in proper circumstances. Why?

15 A Because it's the law of this State.

16 Q Just because it's law of the State, you hadn't
17 given it anymore thought than that? Or let me ask the
18 question after I say this. You can think anything you
19 want about the death penalty. There is nothing wrong
20 with what you think. I just need to know your views on
21 it. Are there any other reasons you think it's right in
22 the proper circumstance, except for the fact that it's
23 the law of the State?

24 A I think it is an appropriate penalty under
25 appropriate circumstances.

1 Q What type of circumstances might those be?

2 MR. ARIAIL: Object.

3 THE COURT: Sustained.

4 BY MR. EPPES:

5 Q Why do you think it's appropriate under certain
6 circumstances?

7 MR. ARIAIL: I'm going to object to that. I think
8 it's just a back door way of asking ---

9 THE COURT: Let me -- I don't want to interfere
10 with you, but -- but let's give him a gamut. I mean, do
11 you think it's -- do you think it's proper as
12 retribution, do you think it's a deterrent, I mean, as
13 opposed to an open-ended ---

14 BY MR. EPPES:

15 Q Do you think the death penalty is appropriate as a
16 matter of retribution in the State of South Carolina?

17 A I think it is an appropriate penalty under the
18 appropriate circumstances as retribution, yes.

19 Q Do you think it's an appropriate penalty to ease
20 pain of the family?

21 A I don't know so much about easing the pain of the
22 family. I think it is an appropriate penalty for
23 retribution, for deterrence. I think it does have some
24 deterrence effect.

25 Q What other reasons for it that you're aware of?

1 A I don't know that I can articulate a specific
2 reason at this point.

3 Q Do you think it's an appropriate penalty based upon
4 efficiency of the penal system?

5 A By that do you mean the speed in which it's
6 administered?

7 Q The speed in which it's administered, the fact that
8 someone is killed instead of kept in prison for the rest
9 of their lives, any of those factors?

10 MR. ARIAIL: I'm going to object, and -- and my
11 basis for the objection is he's attempting to steak out
12 a witness on a specific point that would be a part of
13 the case -- the juror, excuse me.

14 THE COURT: All right. I may not let you -- let me
15 think about that. I'll let this juror answer, but I
16 think I might not allow that question in the future, but
17 go ahead and rephrase the question, Mr. Eppes.

18 BY MR. EPPES:

19 Q Do you think that the death penalty is an
20 appropriate because of efficiency implications for the
21 State of South Carolina and the Department of
22 Corrections?

23 A I don't see efficiency as weighing in that one way
24 or the other.

25 Q Okay. Okay. Now, explain to me what you

1 understand the process to be if you are selected for a
2 jury after having been qualified on a case that's a
3 potential death penalty case?

4 A The general procedural process?

5 Q Yes.

6 A I understand that there would be a penalty phase of
7 the trial where both the prosecution and the defense
8 would offer evidence. Obviously the prosecution has to
9 offer evidence. The defense may choose not to offer
10 evidence, and then the jury would make a decision on --
11 on guilt or innocence at that point. And then there
12 would be a second phase, or penalty phase of the trial
13 to follow that, if -- if the verdict were guilty.

14 Q What would happen in the penalty phase?

15 A Exactly what we've been talking about. I would
16 take it that evidence would be presented with respect to
17 aggravating factors. And the defense could present
18 evidence in mitigation, whatever it has to present in
19 that regard, and then the jury would be required to make
20 a decision on the penalty.

21 Q What if the prosecution presented several
22 aggravating factors and the defense submitted --
23 presented nothing, no mitigating factors? What would
24 the jury's options be on the sentence?

25 A I'm not sure. I would ---

1 THE COURT: Let me just tell you ---

2 MR. HARMON: I think I would need to hear the
3 charge from the judge before I would be able to ---

4 THE COURT: I did not put that in my letter and --
5 but I will tell you that, first of all, the State --
6 excuse me, first of all, the jury never has to vote for
7 the death penalty. Do you understand that?

8 MR. HARMON: I do.

9 THE COURT: And if the -- they can never vote for
10 the death penalty unless they found beyond a reasonable
11 doubt the existence of aggravating circumstances. Do
12 you understand that?

13 MR. HARMON: I do.

14 THE COURT: Even if they found aggravating
15 circumstances and found no mitigating circumstances, do
16 you understand that the jury could return a verdict of
17 life?

18 MR. HARMON: Yes.

19 THE COURT: Okay. All right. Go ahead, Mr. Eppes.

20 MR. EPPES: Thank you, Your Honor.

21 BY MR. EPPES:

22 Q So that being said, we mentioned it before this --
23 this death warrant that you have to sign. If you were
24 in the jury box -- or in the jury room after having had
25 discussions concerning the case and you had reached your

1 decision concerning the case, say you had reached a
2 decision that you thought life without parole was the
3 appropriate sentence, in that case if the 11 other
4 jurors had already signed the death warrant and wanted
5 you to sign it, how would you react?

6 A If I had reached the conclusion that life without
7 parole were the appropriate punishment?

8 Q Um-hm?

9 A I would not sign the death warrant under those
10 circumstances.

11 Q Do you believe you can be in a circumstance where
12 11 other jurors had reached a conclusion that death was
13 the appropriate sentence, that you would reach the
14 opposite conclusion?

15 A I believe there is a set of circumstances where
16 that could occur, yes.

17 Q Okay. Likewise, if you were in a situation where
18 you and 10 other jurors believed that one sentence was
19 appropriate, whether life or death, how would you react
20 to a juror who disagreed with you if the majority agreed
21 one way and a juror -- one juror was holding out on
22 either side of the issue, would you respect that juror's
23 beliefs, or would you try to sway them with any means
24 you could?

25 A I would respect the juror's belief that they held.

1 However, I would assume that there would -- although
2 I've never sat on a jury before, that there would be
3 discussions about the case and about what the
4 appropriate penalty would be.

5 Q Okay. Now, one thing that is different about a
6 death penalty case from another case, is once you get to
7 this sentencing phase, penalty phase you called it, at
8 that point the defendant has no more defenses, you're an
9 attorney, I usually try to use another word, but no more
10 defenses. There's no self-defense. There's no alibi.
11 There's no insanity. There's no accident. There's no
12 somebody else did it. At that point you are in this
13 jury box staring at a convicted murderer. Whatever he's
14 charged with, a convicted murderer, and at that point --
15 at that point you're probably -- you're going to have to
16 hear evidence and you're going to hear evidence to even
17 consider death beyond a reasonable doubt that this was
18 an aggravated murder. Do you understand that?

19 A I do.

20 Q Okay. So there is no excuse for it, there's no
21 defense to it, this murderer, you're going to have to
22 find, has committed an aggravated murder. At that point
23 are you still going to be able to give fair
24 consideration to issues, I think the judge discussed, a
25 bad background, poor family history, alcohol use, drug

1 abuse, are you still going to be able to give fair
2 consideration to those and consider a sentence of life
3 without parole?

4 A I would seek to give fair consideration to that,
5 yes.

6 Q But you said you would seek to, would you be able
7 to?

8 A I would think I would under the appropriate
9 circumstances -- under the facts that may be presented.

10 Q Okay. At that -- at that juncture, at the juncture
11 when -- if you were to find aggravated murder, if you
12 were to find -- have this person already guilty, then
13 you were to find an aggravated murder, which way would
14 you be leaning? Do you have an opinion on that?

15 A I don't know that I would lean one way or the other
16 until I heard the evidence that was presented.

17 Q Okay. Well, after you heard the aggravating
18 evidence, but before you heard the mitigating evidence,
19 do you think you would be leaning at that point?

20 MR. ARIAIL: Object to that question, Your Honor.

21 THE COURT: I sustain the objection.

22 BY MR. EPPES:

23 Q All right. Do you think that life imprisonment
24 without parole serves a retribution purpose?

25 A I think it probably does, yes.

1 Q Okay. How would you -- how would you describe the
2 difference between the penalty of life without parole
3 and the death penalty? Is there a difference in your
4 mind between the two punishments?

5 A Well, yes, there is -- there is a difference
6 between the two. I mean there's an obvious difference.
7 In one the defendant is allowed to live and in the other
8 he receives a death sentence.

9 Q Okay. But is there any difference to society?

10 MR. ARIAIL: Object, Your Honor. This is getting
11 beyond the scope of what this proceeding is for.

12 THE COURT: I'm going to sustain the objection, Mr.
13 Eppes. The question is can he give meaning
14 consideration to the mitigating circumstances and vote
15 for life or death.

16 MR. EPPES: Your Honor, I would -- I believe I have
17 a right ---

18 THE COURT: I have ruled.

19 MR. EPPES: Yes, sir.

20 BY MR. EPPES:

21 Q Have you ever discussed the death penalty with your
22 friends or family?

23 A I don't recollect any particular discussions of the
24 death penalty, no.

25 Q Did you ever discuss it in law school?

1 A Yes, I believe so.

2 Q What do you remember about your discussions of it
3 in law school?

4 A I remember it in the context of a criminal law
5 course that I took, with regard to it having retribution
6 effects, deterrent effects, that type of thing. And
7 quite frankly I don't recall much more than that about
8 it.

9 Q Okay.

10 A I do however recall it being discussed while I
11 clerked for the Staff Counsel's Office of the 11th
12 Circuit, because of the number of habeas appeals in that
13 circuit coming from Georgia, Florida and Alabama.

14 Q What do you recall of those discussions?

15 A I recall that one of the assistant staff
16 counsels -- counsel in the office pretty much handled
17 all of those, as a -- on a special project basis.
18 Others in the office worked on other matters including
19 myself. I was never involved in that. I recall many
20 times seeing television cameras at the courthouse door
21 waiting on a decision when the death penalty was about
22 to be imposed in one of those three states. Other than
23 that, I did not have any real part to play in that.

24 Q Would any of that knowledge interfere with your
25 ability to be a fair and impartial juror?

1 A No, it would not.

2 MR. EPPE: Okay. Thanks, Mr. Harmon. I
3 appreciate it.

4 MR. HARMON: Thank you.

5 THE COURT: Let me give you this, Mr. Harmon. You
6 are qualified to serve as a juror in this case. That
7 obviously does not mean you will actually serve. It
8 means you need to be prepared to serve if you are
9 called. We're in the process of qualifying some 40
10 jurors, and that will probably take through tomorrow,
11 maybe into Thursday. When we are sufficiently close, we
12 will make a determination as to when to call all jurors
13 back. Madam Clerk will call all jurors. When you come
14 back, you need to be packed for seven or eight days in a
15 hotel. I would suggest comfortable clothes. If you --
16 I think you would want to be more comfortable than a
17 coat and tie, but that's up to you.

18 In any event, when you return, if you would park
19 your car in the Hyatt parking garage. Then if you would
20 come to the Spring Street garage entrance to the
21 courthouse, right below us. I'm going to have the
22 bailiffs meet all jurors there. That will keep them out
23 of the public hallways. They will bring you upstairs
24 and we'll pick a jury at that time.

25 If you are selected you will not be able to have

1 any direct contact with any family members, or
2 employees, or anything. You will be able to get
3 messages to them if need be through a bailiff. In other
4 words, you can write down a message, a number, and a
5 name, and they can call and relay anything to business
6 people or family. There are two emergency numbers on
7 this letter. That's in case of emergency only, if
8 someone needs to contact you, a family member during the
9 day time or the night time.

10 Do not discuss this case with anyone. If anyone
11 tries to discuss it with you, tell them you're a
12 potential juror, you can't talk about it. If someone
13 does persist in talking to you, then take their name and
14 report that to a bailiff. Also, don't read anything in
15 the paper, or watch anything on TV about it. There will
16 be news coverage of this case so make sure you don't
17 watch anything on -- about that. Do you have any
18 questions?

19 MR. HARMON: No, Your Honor.

20 THE COURT: All right. You had indicated earlier
21 about having a hearing in front of Judge Simmons?

22 MR. HARMON: Yes.

23 THE COURT: Have you cleared that with him, that
24 you may not be able to do that?

25 MR. HARMON: I have -- I talked with him yesterday

1 and he is aware of the circumstances, yes.

2 THE COURT: Well, the -- I don't know if we'll
3 bring you back Wednesday afternoon or Thursday morning.
4 I can't remember what time you're hearing was, but if
5 you're not selected then you possibly could be available
6 for that hearing, but I just can't tell you at this
7 point in time, so ---

8 MR. HARMON: I understand.

9 THE COURT: All right. Thank you very much. We'll
10 see you tomorrow or Thursday.

11 MR. HARMON: Thank you.

12 (Mr. Harmon exited the courtroom.)

13 THE COURT: Anything with regard to this juror from
14 the State?

15 MR. ARIAIL: No, sir.

16 THE COURT: From the defense?

17 MR. EPPES: Nothing, Your Honor.

18 THE COURT: All right. We'll be in recess until
19 two o'clock.

20 MR. EPPES: Your Honor, could I raise one issue
21 before that?

22 THE COURT: Yes, sir.

23 MR. EPPES: Your Honor, it seems like we are making
24 pretty good progress through the jury, and I know it
25 might place some difficulty on the Clerk's office, but

1 is there some way we could not pull between 6:00 and
2 8:00 tonight to give us some time to prepare for the
3 case?

4 THE COURT: Not pull, I'm sorry, between 6:00 and
5 8:00?

6 MR. EPPES: Yeah, don't we have -- aren't we going
7 2:00, 4:00 and 6:00 this afternoon, isn't that what ---

8 THE COURT: Yeah.

9 MR. EPPES: Is there any way we could cancel the
10 six o'clock one, Your Honor?

11 THE COURT: No.

12 MR. EPPES: Okay.

13 THE COURT: I mean, the only problem with that is
14 in order to take them in order, which I think is the
15 absolutely only fair way to do it, is you would have to
16 move everybody back, which is going to entail them
17 calling everybody, or we would tell -- well, I mean, I
18 guess we could do them at seven o'clock in the morning,
19 and then pick back up at 9:00.

20 MR. EPPES: That's pretty much six of one, half
21 dozen of the other.

22 THE COURT: Well, I mean ---

23 MR. EPPES: Or go to sleep at 1:00 instead of
24 12:00.

25 THE COURT: Let me do this, and I don't know what

1 the answer is. I always thought that both of you needed
2 to be in the courtroom when court was going on. Now, if
3 you tell me that's not necessary and we put it on the
4 record that your attorney -- your client understands it,
5 then I will consider ---

6 MR. EPPES: We are -- no, sir, we're not going to
7 do that. That was just going to be a brief -- Mr.
8 Abdalla was only going to be out a brief period.

9 THE COURT: Okay. Unless we do that, then I want
10 both of you back in the courtroom promptly. I'm not
11 fussing, but I just want to make sure you understand
12 that.

13 MR. EPPES: Yes, sir.

14 THE COURT: Okay. Two o'clock.

15 (A lunch recess was taken, after which, the trial
16 continued as follows:)

17 THE COURT: Anything before we start?

18 MR. ABDALLA: Nothing from the defense.

19 MS. STROM: Knew the attorneys and publicity.

20 THE COURT: All right.

21 (Mr. Shoopman entered the courtroom.)

22 THE COURT: Hey. You're Phillip Shoopman?

23 MR. SHOOPMAN: Yes, sir.

24 THE COURT: All right. Have a seat. As you get
25 comfortable, pull your chair close to the microphone and

1 speak into the microphone that way your voice will be
2 amplified.

3 MR. SHOOPMAN: Okay.

4 THE COURT: All right. I will remind you that
5 you're still under oath, you understand that?

6 MR. SHOOPMAN: Yes, sir.

7 THE COURT: And have you complied with my
8 instructions of yesterday, that is not to talk with
9 anyone about this case?

10 MR. SHOOPMAN: Yes, I have.

11 THE COURT: You indicated yesterday morning that
12 you had heard some of the facts, heard about this case?

13 MR. SHOOPMAN: Yes.

14 THE COURT: All right. Can you tell me what you
15 recall hearing?

16 MR. SHOOPMAN: I listen -- I listen to talk radio
17 and I read the newspaper, so I had -- I recall hearing
18 something about a relationship between, I guess the
19 defendant and his girlfriend and her parents, and I know
20 that -- or I had heard that the person left the state.

21 THE COURT: Okay.

22 MR. SHOOPMAN: I don't really -- it's sketchy
23 because there's -- as someone who follows the news,
24 there's other incidents, if you will, occurring that I
25 can't discern exactly.

1 THE COURT: Right. You might be remembering some
2 other case.

3 MR. SHOOPMAN: Exactly, yes, sir.

4 THE COURT: All right. Well, that's fine. Let me
5 ask you this. From -- from what you recall -- was it
6 reading or listening to it on the radio back when it
7 happened, or any media coverage in the last few days,
8 leading up to jury service that you might have seen or
9 read?

10 MR. SHOOPMAN: I will tell the day -- yesterday
11 when we came down, yesterday morning, when I was
12 listening to the talk radio, they mentioned on the news
13 that jury selection began today. And to be honest with
14 you I did not connect the dots until I came to the
15 courtroom yesterday and then you give your instructions.

16 THE COURT: And then you went ha-ha.

17 MR. SHOOPMAN: And then in fact I know they were
18 going to talk about it on the news last night so I
19 didn't watch it.

20 THE COURT: Okay. All right. Now, from what you
21 recall seeing, or reading, or hearing back when this
22 case happened and any other coverage that you saw, have
23 you formed any opinions about this case? Specifically I
24 mean, have you formed any opinions about the guilt or
25 innocence of this defendant?

1 MR. SHOOPMAN: No, I have not. No, I have not.

2 THE COURT: Could you set aside anything that you
3 may recall from hearing on the radio, reading in the
4 paper, seeing on TV and judge this case solely on the
5 facts and evidence that are presented in the courtroom?

6 MR. SHOOPMAN: I believe I could, yes.

7 THE COURT: All right. Do you think you would have
8 any trouble doing that?

9 MR. SHOOPMAN: No.

10 THE COURT: Okay. You also indicated that you knew
11 one of the attorneys involved in this case?

12 MR. SHOOPMAN: Well, I would -- to be hopefully
13 open to you I wanted you to know that I have both been
14 exposed to the Solicitor as well as Mr. Eppes, even
15 though they probably don't remember it, but I did want
16 you to know everything.

17 THE COURT: All right. Well, let's explore that a
18 little bit. How -- when you say the Solicitor, you mean
19 the Solicitor's office in general, how ---

20 MR. SHOOPMAN: No.

21 THE COURT: Just Bob Ariail himself?

22 MR. SHOOPMAN: Bob Ariail himself, because I'm a
23 member and Vice Chairman of Greenville County Republican
24 Party, I attended a meeting called First Monday which
25 Mr. Ariail attends once in a while, and there have been

1 times when we have sat at the same table during the
2 lunch. And also at a meeting a couple of months ago it
3 was -- I asked to get up before the group, if you will,
4 of our meeting, the executive committee of the party and
5 mentioned that we send our condolences to Mr. Ariail
6 from his recent surgery.

7 THE COURT: Okay. All right. Would your
8 association with Mr. Ariail affect in any way your
9 ability to be fair and impartial in this case?

10 MR. SHOOPMAN: No, again we have not -- I'll tell
11 you that, but on the flip side of that we've never sat
12 down and talked face to face more than hello, but I did
13 want you to know at least that that was there.

14 THE COURT: Okay. And as far as Mr. Eppes, what's
15 your association with him?

16 MR. SHOOPMAN: I was vice chairman for the
17 Greenville County Board of Zoning Appeals, and over the
18 years Mr. Eppes has attended once for sure, maybe twice,
19 and brought a case before us. He was representing
20 someone asking for something, and I remember at least in
21 one incident we ruled against him.

22 THE COURT: Okay. Would your association with him
23 affect your ability to be fair and impartial?

24 MR. SHOOPMAN: No, again in that same instance, me
25 and Mr. Eppes have never sat down and talked face to

1 face, but I did want you to know, again, the full
2 exposure to both sides.

3 THE COURT: Right. And that brings me to my next
4 point, is that we are going to be asking you a number of
5 questions, some of these are going to seem like we're
6 invading your privacy, but I'm sure you understand our
7 need to ask you these questions in order to empanel a
8 fair jury in this case, fair to the State and fair to
9 the defendant. And in that regard, I tell you there are
10 no right answers or wrong answers, but I also tell you
11 we do need your full, open and honest answers to these
12 questions. Most of what we're going to talk about deals
13 with penalty, and in a case like this, the -- if the
14 person is convicted of an aggravated murder the penalty
15 is either life in prison without any possibility of
16 parole or death, which in South Carolina is by
17 electrocution or lethal injection, but I tell you the
18 mere fact that we're talking about penalty should not
19 and cannot indicate anything about the guilt of this
20 defendant. Do you understand that?

21 MR. SHOOPMAN: Yes, sir. Yes, I do.

22 THE COURT: It's sort of a backward process,
23 because in order to make sure we have a fair jury, we
24 have to talk about this, but as the defendant sits there
25 you understand he is presumed to be innocent?

1 MR. SHOOPMAN: Yes, sir, I understand that.

2 THE COURT: All right. Before I get into the
3 questions about the penalty, let me ask you this, if you
4 were sitting on a criminal case would you listen to the
5 law that the judge charges and accept that law and apply
6 that law in the case?

7 MR. SHOOPMAN: Yes, I would.

8 THE COURT: Would you do that even though you
9 perhaps did not agree with the law?

10 MR. SHOOPMAN: Yes, sir.

11 THE COURT: Okay. You understand that the State
12 must prove a defendant guilty beyond a reasonable doubt?

13 MR. SHOOPMAN: Yes, sir, I understand that.

14 THE COURT: All right. And if you sat on a
15 criminal case, and you were not convinced beyond a
16 reasonable doubt of the guilt of the defendant, would
17 you find him not guilty?

18 MR. SHOOPMAN: Yes, I would.

19 THE COURT: All right. And the converse, if you
20 found that the State had proved -- had meet their burden
21 of proof beyond a reasonable doubt, would you find him
22 guilty?

23 MR. SHOOPMAN: Yes, sir. Yes, I would.

24 THE COURT: All right. Now, with regard to
25 penalty, did you read my letter yesterday about the

1 death penalty in general?

2 MR. SHOOPMAN: Yes, I did.

3 THE COURT: And did you know much about the death
4 penalty in South Carolina before you came to court?

5 MR. SHOOPMAN: No, I didn't.

6 THE COURT: Did you know South Carolina had a death
7 penalty?

8 MR. SHOOPMAN: Oh, yes, yes, sir.

9 THE COURT: Do you understand know that it is not
10 every murder case that is subject to the death penalty,
11 it's only when we talk about an aggravated murder that
12 the State can seek the death penalty. Do you understand
13 that?

14 MR. SHOOPMAN: Yes, I do understand.

15 THE COURT: And even when we talk about an
16 aggravated murder, you understand that the penalty is
17 not automatic? That simply means the State can seek the
18 death penalty if a defendant is convicted of a murder
19 and the jury finds beyond a reasonable doubt the
20 aggravating circumstance. I think the example I gave
21 was an armed robbery or rape. If they find that, then
22 the possible -- the only possible penalties would be
23 life without parole or death. Do you understand that?

24 MR. SHOOPMAN: Yes.

25 THE COURT: And this is a bifurcated trial. The

1 first part is just like any other case, the question
2 is -- the issue is guilty or not guilty. Then if you --
3 if not guilty, everybody goes home, but if the defendant
4 is found guilty, the same jury -- there's a short
5 waiting period, but the same jury comes back and they
6 hear more testimony and evidence to assist them in
7 making the decision of life or death. Do you understand
8 that?

9 MR. SHOOPMAN: Yes, I do.

10 THE COURT: There would be two types of evidence
11 that would be presented in that phase of the trial.
12 There would be evidence in aggravation. That is
13 evidence put up by the State in order to try to convince
14 the jury that death is the appropriate sentence. There
15 would be evidence in mitigation put up by the defense in
16 order to convince the jury that the proper punishment
17 would be life imprisonment. Mitigating evidence doesn't
18 excuse what happened, it simply mitigates what
19 punishment should be imposed. Do you understand that?

20 MR. SHOOPMAN: Yes, I do.

21 THE COURT: All right. Examples of aggravating
22 evidence, and we're not talking about any case
23 specifics, but an example of aggravating evidence might
24 be that the person has a long history of committing
25 violent crimes against people. Other evidence in

1 aggravation generally presented in a trial might be
2 victim impact. In other words, family members would be
3 able to testify as to what the loss of victims means to
4 them personally and what it means to the community.
5 Mitigating evidence can be any number of things. It
6 could be the fact that the person has a very clean
7 record. It might be the fact that the person suffers
8 from some mental disability at the time of the crimes.
9 It might be that -- anything like that, poor upbringing.
10 Do you understand this concept?

11 MR. SHOOPMAN: Yes, I do.

12 THE COURT: All right.

13 MR. SHOOPMAN: Yes, I do.

14 THE COURT: All right. And understanding this
15 concept of a bifurcated trial, and understanding the
16 concept of aggravating evidence and mitigating evidence,
17 I'm sure you understand that we need to get to know
18 generally what your feelings are about capital
19 punishment. Would you say that you are generally for,
20 generally against, just how do you feel about the death
21 penalty?

22 MR. SHOOPMAN: I agree with it. I agree that
23 it's -- it's a recognized punishment, or accepted
24 punishment.

25 THE COURT: All right. And you agree that it has a

1 proper place in our society?

2 MR. SHOOPMAN: Yes, absolutely.

3 THE COURT: All right. If you're on a jury -- let
4 me just ask it this way. Do you think it's proper
5 punishment in every case of aggravated murder?

6 MR. SHOOPMAN: Every case of aggravated murder?

7 THE COURT: Let me do it this way. Would you vote
8 for the death penalty in every case of aggravated
9 murder, or would you give meaningful consideration to a
10 life sentence in a death penalty case?

11 MR. SHOOPMAN: I would probably do the later, and I
12 can't speak in full gamut, aggravation I guess is -- I
13 guess honestly I would -- there is a certain level of
14 aggravation, I guess. There is a level of aggravation,
15 I guess is what I'm alluding to.

16 THE COURT: Well, we're talking about a legally
17 aggravating circumstance, something that the Legislature
18 designates as setting a part a regular murder, if you
19 will, from a legally aggravated murder. And there are
20 only like 9 or 10 examples, like the killing of a small
21 child, something like that. I probably did not ask that
22 question well. Let me just ask you this. Before you
23 made up your mind as to life or death, would you listen
24 to and give meaningful consideration to the
25 circumstances of aggravation that were presented by the

1 State and charged by the judge?

2 MR. SHOOPMAN: Yes, sir. Yes, sir.

3 THE COURT: And before making your decision, would
4 you give meaningful consideration to the mitigating
5 circumstances that are presented by the defense and
6 charged by the judge?

7 MR. SHOOPMAN: Yes, sir.

8 THE COURT: All right.

9 MR. SHOOPMAN: Yes, sir I would.

10 THE COURT: So you would not automatically vote
11 either way for life or death?

12 MR. SHOOPMAN: No.

13 THE COURT: If you thought the appropriate sentence
14 was life, would you vote for a life sentence?

15 MR. SHOOPMAN: Yes, sir.

16 THE COURT: And if you thought the appropriate
17 sentence was death, would you vote for a death sentence?

18 MR. SHOOPMAN: Yes, sir.

19 THE COURT: Do you understand that -- let me
20 explain it to you. Before a jury can sentence someone
21 to death they have to find beyond a reasonable doubt the
22 aggravating circumstance. Do you understand that?

23 MR. SHOOPMAN: Yes, sir.

24 THE COURT: But even then the jury never has to
25 invoke the death sentence. In other words, in a case

1 where there is an aggravating circumstance, the jury can
2 find no mitigating circumstances, and they can still
3 impose a life sentence. Do you understand that?

4 MR. SHOOPMAN: Yes, sir.

5 THE COURT: All right. If you thought the
6 appropriate sentence was death, you and the fellow
7 jurors would have to sign the verdict form. Each
8 individual person would have to affix their signature to
9 that form. Sometimes that's referred to as the death
10 warrant. If you thought that was the appropriate
11 punishment, could you do that?

12 MR. SHOOPMAN: Yes, sir.

13 THE COURT: All right. I'm through. It is now
14 time for the attorneys to talk with you. Mr. Abdalla,
15 you're up first I believe?

16 MR. ABDALLA: That's correct, Your Honor.

17 THE COURT: This John Abdalla. He's one of the
18 attorneys representing the defendant. And then Mr.
19 Ariail will ask you some questions.

20 QUESTIONING BY MR. ABDALLA:

21 Q Good afternoon, Mr. Shoopman.

22 A Yes, sir.

23 Q My co-counsel is Frank Eppes, and my client is Brad
24 Sigmon.

25 A Yes.

1 Q You seem to be quite articulate, so I want to ask
2 you some questions about your views on the death
3 penalty.

4 A Okay.

5 Q Tell me what your views are about death? Give me a
6 little history of what you -- how long you've thought
7 about the death penalty, ever discussed it, things like
8 that?

9 A I haven't spent a lot time thinking about it, to be
10 honest. I have come to the understanding that is a -- I
11 don't believe it's cruel or unusual. I do believe it is
12 a necessary deterrent, but it is definitely the -- it's
13 definitely something that requires a lot of -- a lot of
14 thought, a lot of time focusing on that, thinking about
15 it, mitigating circumstance, all -- I don't know how --
16 it's not something to be taken lightly. In fact, it's a
17 thing to be taken least likely, if you will. It's a
18 very severe punishment.

19 Q Okay. You said it's a necessary deterrent. So
20 would -- that means you believe the death penalty does
21 deter crime?

22 A Well, I say it's -- do I believe it deters crime?
23 It from -- it definitely would spook me. I definitely
24 would not want to be in that circumstance.

25 Q And ---

1 A I don't know how -- when you say deterrent, I don't
2 have any statistics, I haven't read any reports that it
3 has yielded a result, but as -- I think punishment
4 serves to some degree of knowing that there are certain
5 levels of punishment out there should scare people away
6 from doing something, and in that regard I would
7 consider it a deterrent. So -- but I don't have any
8 statistics to say that it's ---

9 Q I didn't mean to put you in that situation. I was
10 just curious to know if your own philosophy was that you
11 thought it was a deterrent, because that was your words.

12 A Yes.

13 Q And I wanted to know how you meant it, how you
14 intended it.

15 A Well, again, any jail is a deterrent.

16 Q That's what I was going to ask you. What do you
17 think about life without the possibility of parole?

18 A That's another. That is definitely something that
19 is -- I mean the rest of your life, so that obviously is
20 another -- something I would not want to be in.

21 Q If you were to sit on a jury and if the jury you
22 were on were to find a person guilty of murder and
23 guilty of rape, or whatever the aggravating factor was,
24 do you understand that that ---

25 A Sure.

1 Q --- sends you into the next round?

2 A Sure, I understand.

3 Q All right. Now after that all the defenses are
4 gone. There is no longer a matter of, well, it really
5 wasn't an intended crime, you've already found him
6 guilty?

7 A That's right, I understand that.

8 Q He's guilty of murder which means the intentional
9 killing of another, am I right, with malice, you've
10 already determined that. At that point can you sit on a
11 jury and entertain a life without parole as well a death
12 penalty sentence since they're both legal sentences?

13 A Yes.

14 Q All right.

15 A Yes.

16 Q Would you give meaningful consideration to any
17 mitigation that was presented? Do you understand what I
18 mean by mitigation?

19 A Yes, I do. Yes, I do.

20 Q For instance if the defendant, I'm still going to
21 go into a bit just in case, has a drug problem, has
22 family problems, any type of explanation versus excuse,
23 and there is a difference there. An excuse would make
24 it acceptable versus just, well, here's an explanation.
25 It's not going to excuse it under any circumstances.

1 What I'm asking you is can you look at inexcusable act,
2 how would you arrive at making your decision for an
3 inexcusable act and ---

4 MR. ARIAIL: Your Honor, I'm going to object to the
5 form of that question. He's staking him out, profiling
6 filing him out, seeking information that's ---

7 THE COURT: Well, the question sort of rambled, and
8 the first part I would agree gave specific facts, but
9 let me just ask you to restate it because ---

10 MR. ABDALLA: All right.

11 THE COURT: I'm going to stop -- tell both of you,
12 and I probably would be doing the same thing if I was
13 down there, but a lot times y'all ask compound questions
14 and run-on questions and it's real hard, I'm up here
15 trying to pay attention to make sure it's a valid
16 question, but I would just ask y'all to ask simple
17 questions and not be run-on or compound.

18 MR. ABDALLA: And I apologize. I'm guilty at that.

19 THE COURT: I'm not fussing, it just would simpler
20 to do it that way. Restate your question.

21 BY MR. ABDALLA:

22 Q All right. What I want to find out is, if you're
23 faced with a situation with an aggravated killing, how
24 would go about making a decision on whether life or
25 death were the appropriate sentence? Would you give --

1 how would your consideration be toward the mitigation,
2 the aggravating factors, et cetera?

3 A Well, I would -- if the Legislature has defined
4 aggravation -- aggravating circumstances, which I
5 believe the judge has indicated.

6 THE COURT: Correct.

7 MR. SHOOPMAN: And it meant that, that would in my
8 mind carry the decision as far as the aggravated
9 circumstance was met. I think that if the legality of
10 it, if the legislation of it is such that it's very cut
11 and dry, then I would take the cut and dry. The
12 mitigating factors, I believe, are the -- again, it
13 depends, it really would depend on what it was. Would I
14 be listening for mitigating circumstance, yes, but as
15 far as weighing them, it would depend on what those are.

16 BY MR. ABDALLA:

17 Q Okay. I'm not meaning to split hairs here, you
18 said the Legislature had defined those statutory
19 aggravating circumstances, which they do, and the only
20 way we're going to get to the sentencing phase is if in
21 fact those criteria are met. All right.

22 A All right.

23 Q So let's assume you've met those.

24 A Um-hm.

25 Q Then what I'm asking you is, can you still give

1 equal consideration to a life without parole sentence
2 versus death, whether there is mitigation or not?

3 A I'll be honest, I would -- you're saying if
4 everything -- if all the definition has been met?

5 Q Correct?

6 A To go beyond that and consider mitigating
7 circumstances?

8 Q Well, not necessarily. If there -- mitigation
9 isn't demanded. If there was no mitigation, can you
10 still ---

11 A Could I consider life without parole?

12 Q Yeah.

13 A It's my understanding that with aggravation it's
14 not mandatory that the death penalty be imposed, it's
15 just an option.

16 Q Right.

17 A And that's how I would see it.

18 Q I didn't know how you would see it, if you saw it
19 as an option, or if you saw it as automatic?

20 A Oh, no, it's one of the two options. It's my
21 understanding, unless the legality says it's mandatory,
22 then it's an option.

23 Q And it does say that.

24 THE COURT: And I just want to clear that up. You
25 understand that the death penalty is never required?

1 MR. SHOOPMAN: Yes, sir.

2 THE COURT: Again, the jury can find aggravating
3 circumstances, they can find multiple aggravating
4 circumstances, they can find no mitigating
5 circumstances, and still give life, okay?

6 MR. SHOOPMAN: Okay.

7 THE COURT: I thought you understood that, but I
8 wanted to make sure.

9 BY MR. ABDALLA:

10 Q One more thing I wanted to ask you is, would you be
11 able to still evaluate this situation fairly knowing
12 that there will be victim impact evidence presented by
13 the prosecutor, which is going to be family members --
14 who will include family members who have lost a loved
15 one or ones?

16 MR. ARIAIL: I'm going to object to the form of
17 that question. He can ask him -- fairly evaluate is not
18 the proper way. Will he still be able to consider
19 evidence in mitigation.

20 MR. ABDALLA: I will rephrase that.

21 BY MR. ABDALLA:

22 Q Would you still be able to consider either sentence
23 in light of those facts?

24 A I believe so.

25 Q You believe so?

1 A Yes. You're asking me about an experience, one,
2 I've never experienced, you're asking me to base on what
3 I know about my character, and I think I could go
4 through that. Yes, I don't have -- I can't sit here and
5 say, well, yes, for sure, because I've never been
6 through that, but I can tell you my character. If the
7 judge charges us to do something, then we'll do that, I
8 will do that.

9 Q All right. I apologize from coming on kind of
10 strong.

11 A No, you're not, you're fine.

12 Q But I just have to find out what your views would
13 be, if you could give consideration to all sentences?

14 A I understand.

15 MR. ABDALLA: If I could have one moment? Nothing
16 further.

17 THE COURT: All right. Mr. Ariail.

18 MR. ARIAIL: Mr. Shoopman, of course we've met
19 before. I would like to introduce Betty Strom, my
20 Deputy who will be assisting me, along with Mindy
21 Hervey, one of my assistants. And I do appreciate your
22 answers. We have no questions.

23 THE COURT: All right. Anything from the State,
24 yes or no?

25 MR. ARIAIL: No.

1 THE COURT: From the defense?

2 MR. ABDALLA: Can ask I ask one more question, Your
3 Honor?

4 THE COURT: Sure.

5 MR. ABDALLA: I forgot. I actually have it written
6 down, I forgot it. If you're in a situation where
7 you're on a jury and either you're one of the only ones
8 holding a view or somebody else is, can you either
9 respect that lone dissenter's view, and on the other
10 hand, this is a two-part question.

11 THE COURT: Well, I'm going to tell you, don't
12 compound the question.

13 MR. ABDALLA: All right. If there is an 11 to 1,
14 or 10 to 2 situation, and you're in the majority, would
15 you be able to respect those people's descent, or would
16 you not able to do that?

17 MR. SHOOPMAN: Yes, I believe I would. We're all
18 charged with assessing the facts.

19 MR. ABDALLA: And the other side of the coin, if
20 you were the loan juror or one of two jurors holding out
21 for a particular sentence, would you be able to stick to
22 your guns?

23 MR. SHOOPMAN: Yes, sir.

24 MR. ABDALLA: Thank you. I have nothing else.

25 THE COURT: Anything else with regard to this

1 juror, from the defense?

2 MR. ABDALLA: No.

3 THE COURT: All right. Mr. Shoopman, let me give
4 you this letter. I'm qualifying you as a juror to serve
5 on this case. This does not mean that you will serve.
6 We're trying to accumulate about 40 or so jurors from
7 which we'll pick a jury, and a couple three alternates.
8 This process will take into tomorrow, maybe even into
9 Thursday. When we have accumulated a panel, the clerk
10 will call all qualified jurors and ask them to return to
11 court. You will have some forewarning to that, but what
12 you need to do is go ahead and pack a suitcase as if you
13 were going to serve. Go ahead and pack comfortable
14 clothes. Plan to be sequestered for some seven or eight
15 days. Bring any medications, any other needs you may
16 have, things like that. When you are told to return to
17 court, park in the Hyatt parking garage. I guess you
18 parked there Monday morning?

19 MR. SHOOPMAN: (Witness nodded his head.)

20 THE COURT: If would come out the Spring Street
21 garage entrance, and then across the street is our
22 garage entrance to this building. Spring Street is the
23 street that goes between the Hyatt parking garage and
24 the courthouse.

25 MR. SHOOPMAN: Yes.

1 THE COURT: Come to that garage entrance, and then
2 I'll have bailiffs meet the jurors and bring them up the
3 back way. That keeps y'all out of the public corridors
4 in this courthouse. When everybody is here, we'll bring
5 you in and we'll pick the jury. And then if -- leave
6 your suitcase in the car, then if you are selected then
7 the SLED agents will escort you down to get your
8 suitcase. If not, you will go home, or go back to work,
9 or whatever. You need to go ahead and tell all
10 co-workers, and family members, you will have no direct
11 contact while you are sequestered. If you need to get a
12 message to someone, that can be accomplished. You can
13 write out a message, name and number, and the bailiffs
14 will communicate anything you need to communicate. On
15 an emergency basis, family members could contact you at
16 the two numbers that I have there. Do you have any
17 questions?

18 MR. SHOOPMAN: It's my understanding I can go home
19 now?

20 THE COURT: You can go home, or go back to work.

21 MR. SHOOPMAN: Or back to work.

22 THE COURT: And Madam Clerk will go with -- out
23 with you. Where's Andrea? Andrea will go out with you
24 and make -- confirm that she has every telephone number
25 that we need to get you day or night. If we need to

1 call you at home say be here Thursday morning at nine
2 o'clock, or whatever.

3 MR. SHOOPMAN: I understand. I understand what
4 you're saying.

5 THE COURT: She may call you Wednesday morning and
6 say be here Wednesday afternoon. I have no idea what
7 progress we're going to make.

8 MR. SHOOPMAN: And how long to pack for duration?

9 THE COURT: About seven or eight days. Okay. Do
10 not read anything in the paper. Don't listen to your
11 radio. Don't -- I mean, listen to your radio but if
12 something comes on about the trial, cut it off
13 immediately. Don't watch any TV accounts of this trial.
14 And there will be media cover of the trial. Also, don't
15 talk about the case with anyone. If someone tries to
16 talk to you about it, tell them that you're a potential
17 juror, and you cannot talk about it. If they persist
18 then take their name and report that to the bailiffs
19 when you return.

20 MR. SHOOPMAN: Okay.

21 THE COURT: All right. Thank you very much.

22 MR. SHOOPMAN: Thank you.

23 (Mr. Shoopman exited the courtroom.)

24 THE COURT: Anything on Ms. McCarthy?

25 MR. ARIAIL: No, sir.

1 THE COURT: All right. Bring in Tracy McCarthy.
2 Is it a man or a woman?

3 MS. HERVEY: It's a man.

4 THE COURT: A man?

5 MR. ARIAIL: Yes.

6 MS. HERVEY: A man.

7 (Mr. McCarthy entered the courtroom.)

8 THE COURT: Okay. Hey, come on in Mr. McCarthy.
9 How you doing? I'm Joe Watson. Go ahead and pull your
10 chair close to that microphone. And speak directly
11 into the microphone that way we know your voice is
12 amplified.

13 MR. McCARTHY: I didn't know there would be a crowd
14 in here.

15 THE COURT: Well -- and every juror that comes in
16 is nervous. I know this is a strange process to you,
17 but I think you will appreciate the need for us to go
18 through this as we explain the process to you. First of
19 all, do you -- I will remind you you're under oath. You
20 took an oath yesterday so we need your truthful answers
21 to these questions as well as your full and open
22 answers. I don't believe you said you had recalled
23 reading anything about this case, or seeing anything on
24 TV?

25 MR. McCARTHY: No, I never heard anything about it.

1 THE COURT: Okay. The -- we're going to ask you a
2 number of -- let me ask you this. Have you complied
3 with my instructions not to talk about this case with
4 anyone?

5 MR. MCCARTHY: That's right, I haven't.

6 THE COURT: All right. I'm going to ask you a
7 number of questions. Some of these questions are going
8 to seem like they are of a personal nature, but if
9 you're offended in any way, hold it against me, don't
10 hold it against the State of South Carolina or the
11 defendant in this case. There are no right answers.
12 There are no wrong answers. Everybody will respect any
13 opinions that you have, but we do need to ask you a
14 number of questions. And most of these questions are
15 going to deal with penalty. And I need to tell you that
16 just because we're talking about penalty, it should not
17 indicate anything about the guilt or the innocence of
18 this defendant. Do you understand that? In other
19 words, as he sits there he is presumed to be innocent.
20 Do you understand that?

21 MR. MCCARTHY: Um-hm.

22 THE COURT: All right. And I'm going to tell you
23 that I need -- there are two systems that are taking
24 down everything that is said. The court reporter is
25 taking down everything, but there is also a back up

1 system recording, so if you would answer verbally any
2 questions I ask or these attorneys ask. Don't nod your
3 head, or shake your head, just say yes or no. Now, did
4 you have -- well, let me back up. If you were selected
5 to serve on a criminal case, would you listen to the law
6 that the judge instructs you and would you accept that
7 law and apply that law in the case?

8 MR. MCCARTHY: Yes, I would.

9 THE COURT: All right. Would you do that even
10 though you may not agree with the law?

11 MR. MCCARTHY: Yes, I would.

12 THE COURT: Okay. The reason I ask that is
13 sometimes people come to court with a preconceived
14 notion of what the law is. Or sometimes people come to
15 court with a preconceived notion as to what they think
16 the law should be, and either one of those situations is
17 fine as long as under their oath they can set that aside
18 and accept the law that the judge gives as the proper
19 law and apply that law. Do you understand that?

20 MR. MCCARTHY: Yes, sir.

21 THE COURT: Okay. And you're telling me you could
22 do that?

23 MR. MCCARTHY: I believe so.

24 THE COURT: All right. You understand that a
25 defendant -- that the State must prove any criminal

1 defendant guilty beyond any reasonable doubt?

2 MR. MCCARTHY: Yes, sir.

3 THE COURT: All right. If you were sitting on a
4 case and you listened to the testimony and the evidence.
5 And after the testimony was presented you felt like the
6 State had not met their burden of proof beyond a
7 reasonable doubt, would you vote not guilty in that
8 case?

9 MR. MCCARTHY: Absolutely.

10 THE COURT: All right. And if you found that the
11 State had met their burden of proof, would you vote for
12 guilty?

13 MR. MCCARTHY: Absolutely.

14 THE COURT: All right. Now, I'm going to talk to
15 you a little bit about penalties in a death penalty
16 trial. Did you have a chance to read my letter?

17 MR. MCCARTHY: I did.

18 THE COURT: All right. And do you understand
19 that -- did you know we had the death penalty in South
20 Carolina?

21 MR. MCCARTHY: No, actually I haven't heard of
22 anyone getting it.

23 THE COURT: All right.

24 MR. MCCARTHY: Read about it.

25 THE COURT: Now, have you -- have you lived in

1 South Carolina long?

2 MR. McCARTHY: Several years.

3 THE COURT: Okay. Do you understand that it is not
4 every murder case that is subject to the death penalty,
5 it has to be what we call an aggravated murder? The
6 examples I gave were murder plus a rape, or murder plus
7 an armed robbery. Do you understand that?

8 MR. McCARTHY: Yes, sir.

9 THE COURT: Even when we talk about aggravated
10 murder, do you understand the penalty is not automatic,
11 that the jury decides what the penalty is if a person is
12 convicted of one of these aggravated murders. And the
13 two possible penalties would be life without any
14 possibility of parole, or it would be death, which in
15 South Carolina is either by electrocution or lethal
16 injection. Do you understand that?

17 MR. McCARTHY: That's up to the discretion of the
18 jury?

19 THE COURT: Yes, sir.

20 MR. McCARTHY: Okay.

21 THE COURT: Okay. In other words, it's a two part
22 trial. The first part is like any other criminal case.
23 The jury sits and they listen to the evidence that has
24 been presented and they decide if the person is guilty
25 or not guilty. If they decide the person is not guilty.

1 then everybody goes home, but if they decide that the
2 defendant is guilty, then that same jury, there is a
3 little waiting period, but that same jury comes back,
4 and there's a second part of the trial. It's a two part
5 trial. And at that second part the jury listens to more
6 testimony and evidence from both sides and then
7 listening to that evidence they decide on the penalty.
8 And again, the only penalty -- the person stands
9 convicted of a cold blooded murder. Do you understand
10 that?

11 MR. MCCARTHY: Yes, sir.

12 THE COURT: And the aggravating circumstance. And
13 the only issue left would be what penalty the defendant
14 should face, but before the jury decides what penalty,
15 they listen to more testimony and evidence. The State
16 present testimony and evidence in aggravation. That's
17 evidence that perhaps about the defendant, about his
18 character, maybe he's a mean person, or maybe he has a
19 long history of crimes of violence. There are a number
20 of things that might be aggravated circumstances. They
21 would also present victim impact evidence. Evidence
22 from the family members of the victim as far as what the
23 loss has meant to them, meant to the community. And all
24 of this of aggravating evidence is presented by the
25 State in an effort to convince the jury that death is

1 the appropriate sentence. Do you understand that?

2 MR. McCARTHY: Okay. Yes.

3 THE COURT: And then the defense puts up evidence
4 in mitigation. Evidence in mitigation doesn't excuse
5 what the person has done. In other words, he's already
6 been convicted of that murder, but it might effect or
7 lessen the penalty he should receive. So they would put
8 up evidence perhaps -- we're not talking about this
9 case, but perhaps the person suffers from a mental
10 disability, or perhaps that person was under the
11 influence of someone else, or perhaps that person had a
12 very clean record, or perhaps that person had a horrible
13 upbringing. Any -- there are all kinds of things that
14 can be mitigation. And the defense is putting that
15 evidence in to convince the jury that the proper
16 sentence is not death but life without parole. Do you
17 understand that?

18 MR. McCARTHY: Okay. Yes.

19 THE COURT: All right. Now, understanding that
20 whole procedure, you probably understand we need to
21 generally know what your feelings are about capital
22 punishment. Would you say that you are generally for
23 capital punishment, generally against capital
24 punishment, how do you feel?

25 MR. McCARTHY: Well, I had always thought that, you

1 know, reading about different things in the paper that
2 some people seemed like they might should get the death
3 penalty. I mean, some really serious things you read
4 about.

5 THE COURT: Okay. So you've read actual cases,
6 maybe not from here but from other places, and you
7 thought, well, gee, that person was really bad, he
8 probably did serve the death penalty?

9 MR. MCCARTHY: Yes, something like those, you know,
10 like Jeffery Dahmer, eating people and stuff and ---

11 THE COURT: Okay. All right. Do you think that
12 the death penalty is a proper form of punishment in our
13 society in some cases? Is that what you are telling me,
14 I guess is what I'm asking?

15 MR. MCCARTHY: I would think in rare cases it would
16 probably be.

17 THE COURT: All right. If the case was aggravated
18 enough, do you think that the death penalty is the
19 proper form of punishment, let me put it that way?

20 MR. MCCARTHY: Could you repeat that?

21 THE COURT: If you thought the case was aggravated
22 enough, do you think that the death penalty is a proper
23 punishment?

24 MR. MCCARTHY: Under certain circumstances I would
25 think so.

1 THE COURT: Okay. All right. If you were sitting
2 on a jury and you thought that the proper sentence was
3 life, could you vote for a life sentence?

4 MR. MCCARTHY: Oh, yes, sir.

5 THE COURT: All right. And if you were on a jury
6 and you thought the proper sentence was death, could you
7 vote for the death penalty?

8 MR. MCCARTHY: I think I could. I mean, I never
9 really put myself in that position. I thought about it
10 a while ago before I came in, and I -- you know, I guess
11 you don't know until you do it.

12 THE COURT: Right. Well, it is never supposed to
13 be an easy decision. It's supposed to be a very
14 thoughtful decision. But the question is, in some
15 cases, if the case was aggravated enough, could you vote
16 to impose the death penalty?

17 MR. MCCARTHY: I think I could.

18 THE COURT: All right. And if you thought the
19 death penalty was the proper punishment, could you sign
20 the verdict form, which is part of the process? In
21 other words, if the jury votes that the death penalty is
22 the appropriate punishment, then each juror signs his
23 name to that verdict form. Do you understand that?

24 MR. MCCARTHY: Yes, sir.

25 THE COURT: And if you thought the proper

1 punishment was death, could you sign that verdict form?

2 MR. McCARTHY: I could if I was certain.

3 THE COURT: All right. All right. Before you
4 decide the issue of life or death, you understand that
5 in the penalty phase, there is two types of evidence,
6 the aggravating evidence and the mitigating evidence.
7 Before you made your mind up as to what the proper
8 punishment was, would you give meaningful consideration
9 to both the life sentence and the death sentence? Would
10 you give meaningful consideration to the evidence in
11 aggravation that was presented and meaningful
12 consideration to the mitigating evidence that was
13 presented before you made up your mind?

14 MR. McCARTHY: I would.

15 THE COURT: Okay. All right. Do you understand
16 that a jury is never compelled to sentence someone to
17 death. They can always sentence someone to life. In
18 other words, they could find beyond a reasonable doubt
19 that this was an aggravated murder. They could find
20 several aggravating circumstances, and they could find
21 no mitigating circumstances and they can still sentence
22 someone to life imprisonment. Do you understand that?

23 MR. McCARTHY: Now, I do.

24 THE COURT: Okay. All right. Let me -- who's up?
25 All right. Solicitor. This is Bob Ariail, the

1 Solicitor. He's prosecuting this case. And then John
2 Abdalla, the gentleman with the mustache. He's one of
3 the attorneys for the defendant. They're going to ask
4 you questions now.

5 QUESTIONING BY MR. ARIAIL:

6 Q Mr. McCarthy, the judge introduced me. I'm Bob
7 Ariail, and I'm the Solicitor for Greenville and Pickens
8 Counties. And Betty Strom, my Deputy, will be assisting
9 on this case, along with Mindy Hervey, one of my
10 assistants. And as you can see from where we've been
11 and the judge's questioning, what we're looking for is
12 to determine jurors that can fairly consider both forms
13 of punishment in the event we reach the penalty phase.

14 A Yes, sir.

15 Q All right. And what I'm mostly interested in at
16 this time is whether or not you believe that you would
17 be able, after hearing all the evidence, to vote for the
18 death penalty? Actually cast a vote, because as His
19 Honor says, if you can meaningfully consider it that's
20 one thing, but if -- I'm asking or the State is asking
21 for you to consider the death penalty, and you can
22 consider it but you are never going to vote for it, then
23 you're really not going to -- you can't give it
24 consideration if you know ahead you're not going to vote
25 for it. Does that make sense?

1 A Yeah. I don't know that I couldn't do it. I mean,
2 I'm not saying I can't do it, because I probably could.

3 Q All right. Probably could?

4 A I probably could.

5 Q Based upon the nature of the case, the facts and
6 circumstances, the type of crime, after you had heard
7 all of the evidence?

8 A Exactly.

9 Q All right. So if I'm listening when he's asking --
10 when the judge is asking you these questions and I'm
11 listening, and I -- I'm feeling some sort of maybe
12 hesitancy on your part, is that hesitancy more you just
13 don't know what the case is about that you would be
14 asked to decide on?

15 A Well, that's got a great deal to do with it,
16 because I really don't know what the case is about.

17 Q All right. That's a fair response. My question
18 is, I want to make sure that you didn't have some either
19 religious, or moral, or ethical, or some other part of
20 your background that would hold you back from voting for
21 the death penalty?

22 A No, I don't have any. If somebody, you know, did
23 something super heinous, I guess, you know, I could see
24 the death penalty in some circumstances.

25 Q Okay. And you could vote for it?

1 A I believe so.

2 Q All right. And did you understand the judge to
3 tell you that if you did vote for it and you found that
4 that was the appropriate sentence under the facts of the
5 case and you had voted for the death penalty, you would
6 also have to sign a document, sometimes referred to as
7 the death warrant.

8 MR. ABDALLA: Objection, Your Honor, that was ---

9 MR. ARIAIL: You and every other juror ---

10 THE COURT: What is that?

11 MR. ABDALLA: I would object, that was already
12 discussed.

13 MR. ARIAIL: I'm sorry, I couldn't hear him.

14 MR. ABDALLA: I was objecting to ---

15 THE COURT: He said you had already asked that
16 about the signing of the verdict form. I can't remember
17 if you did or not.

18 MR. ARIAIL: I hadn't.

19 THE COURT: Was that the objection, that he's
20 already covered it?

21 MR. ABDALLA: Yeah.

22 THE COURT: Go ahead.

23 BY MR. ARIAIL:

24 Q You understand you would have to sign the form that
25 would be used to carry out the execution, you along with

1 every other juror, that would be an act that you would
2 have to carry out. Would you be able to sign that
3 document if you had determined that the death penalty
4 was the appropriate form of punishment?

5 A It would be the same as my word, I would if -- if I
6 said it, I would sign it.

7 Q Okay. Would the fact you had to sign it, wouldn't
8 cause you ---

9 A No, no.

10 Q -- cause you some hesitancy?

11 A No.

12 MR. ARIAIL: Okay.

13 THE COURT: Mr. Abdalla.

14 QUESTIONING BY MR. ABDALLA:

15 Q Tracy McCarthy?

16 A Yes, sir.

17 Q Good afternoon. I know this is quite an ordeal for
18 having to go through this, and we appreciate your
19 service. My name is John Abdalla and I have been
20 introduced by the judge. Mr. Eppes is my co-counsel and
21 my client is Mr. Sigmon seated next to him. I just want
22 to make sure I understand you correctly, if -- in this
23 case if you were on the jury that found the person
24 guilty of murder, then were to find aggravating factors,
25 are you saying you can give equal consideration both to

1 a life sentence without the possibility of parole and
2 you can give consideration to the death sentence?

3 A Absolutely.

4 MR. ABDALLA: Thank you.

5 THE COURT: All right. Let me give you this,
6 please, sir. Mr. McCarthy, you are qualified to serve
7 on this case. That does not mean you will actually be a
8 juror. We are trying to empanel a group ever 40 or so
9 jurors to pick our jury from. It does mean you need to
10 be prepared to serve if you are selected. After we get
11 a panel of 40 jurors, we will -- Madam Clerk will call
12 all the jurors and tell them to come back to court. You
13 need to go ahead and pack a suitcase for seven or eight
14 days stay. Pack comfortable clothes. Pack any
15 medications, things like that that you need. And when
16 Madam Clerk calls you to return, if you would park in
17 the Hyatt Garage. Did you park over there on Monday?

18 MR. MCCARTHY: I did.

19 THE COURT: Okay. And Spring Street is the street
20 between the Hyatt garage and the courthouse.

21 MR. MCCARTHY: Um-hm.

22 THE COURT: And the Spring Street garage entrance
23 to the Hyatt is directly across from the entrance of --
24 the garage entrance to our courthouse. The reason I
25 tell you that is I want all jurors to go in the garage

1 entrance, because we don't have enough parking out here
2 for all the jurors, so we're going to put you over
3 there. But the bailiffs will meet you at that garage
4 entrance and they'll escort you up here. That keeps you
5 out of the public corridors away from any media, or
6 family members, things like that that might be out
7 there. Leave your suitcase in your car and come on up,
8 and then if you are selected to serve, then we'll go
9 back and retrieve your suitcase. If not then your
10 simply go home. That's why we don't want you to bring
11 your suitcase up here.

12 While you're sequestered, you will not have any
13 kind of direct contact with your employment, or with
14 your family. You can get a message to someone if you
15 need to by dealing with the bailiffs. Write down the
16 name and a number and a message, and they can call
17 anyone. Also on that letter are two emergency numbers
18 if someone needs to contact you. It's not an
19 information hotline. They're not going to be able to
20 find out how long the trial is going to last, when
21 you're going to come home, or anything like that, but
22 any type of emergency we can handle. Do you have any
23 questions so far?

24 MR. McCARTHY: If I do get sequestered, could I
25 have my wife come get my car?

1 THE COURT: Yes, we'll handle that. Actually I
2 forgot to put that in the letter. You can do one of two
3 things. You can -- does she work?

4 MR. MCCARTHY: No, she doesn't.

5 THE COURT: She can actually come up here with you.
6 She may not be able to come into the courtroom just
7 depending on how crowded it is, because we're going to
8 have the jury on one side and there will be spectators.
9 But then if you're selected, the SLED agents will go out
10 and get your suitcase, and she can go ahead and take
11 your car home, or you can leave it up here and she can
12 come and get it later. It's however you want to do it,
13 but you probably don't want to leave it over there for a
14 week or so. If you do, that's fine, we'll pay for it.
15 I mean -- but in any event, any other questions?

16 MR. MCCARTHY: Any idea when y'all will call me?

17 THE COURT: It will probably -- it definitely will
18 be sometime tomorrow or Thursday. We're making pretty
19 good progress here, but you know, I can't tell you
20 exactly. It won't be before tomorrow afternoon, and it
21 probably won't be past Thursday.

22 MR. MCCARTHY: And I will have to come over right
23 away, or do I have time to ---

24 THE COURT: We'll give you some lead time. We may
25 call you at 10 or 11 o'clock in morning and say be here

1 at 2:00. We may call you at six o'clock at night and
2 tell you to be here tomorrow morning at nine o'clock.
3 We'll give ---

4 MR. McCARTHY: I was just wondering. I will be at
5 work during the day.

6 THE COURT: We're going to make sure we have every
7 number we need to get you.

8 MR. McCARTHY: Okay.

9 THE COURT: Okay. We'll give you enough lead time
10 to get you here. All right.

11 MR. McCARTHY: Is it going to be on film?

12 THE COURT: You will not be. Yeah, I'm sorry. I'm
13 glad you said that. My last admonition is, don't read
14 anything in the paper, don't watch TV. There will be
15 media coverage of this trial. Also, don't talk to
16 anybody about this case. If someone tries to talk to
17 you, simply tell them, I'm a perspective juror, I'm not
18 allowed to talk about it. If they persist trying to
19 talk to you, then take their names and give that to the
20 bailiff, and we'll handle it. The -- nothing is on TV
21 now and -- and the rules of the Court are TVs cannot
22 show any jurors. That's why the camera is pointed that
23 way. It may catch a shoulder of a juror or something,
24 but the jurors are never on TV. All right?

25 MR. McCARTHY: Okay.

1 THE COURT: All right. We'll see you either
2 Wednesday or Thursday. Thank you very much.

3 MR. MCCARTHY: Thank you.

4 (Mr. McCarthy exited the courtroom.)

5 THE COURT: Anything from the State regarding that
6 juror?

7 MR. ARIAIL: No.

8 THE COURT: Anything from the defense?

9 MR. ABDALLA: None, Your Honor.

10 THE COURT: All right. Anything about Mr. Garven
11 (sic), other than he has heard about the case?

12 MR. ABDALLA: Yes, Your Honor.

13 THE COURT: Anything -- a member of the church was
14 killed?

15 MR. ABDALLA: That was the last death penalty cas,
16 I believe ---

17 MR. ARIAIL: Last year.

18 MR. ABDALLA: The one before that, last year.

19 THE COURT: Dot Hancock?

20 MR. EPPES: Your Honor, she was one of the lady
21 victims. In addition, Your Honor, that church had a
22 very strong interest in the case. They had a lot of
23 activity involving the case, and he's a deacon of the
24 church.

25 THE COURT: Okay. All right. Bring in Mr.

1 Garven -- excuse me, Mr. Cannon.

2 (Mr. Cannon entered the courtroom.)

3 THE COURT: Hey, Mr. Cannon, come on up. Make
4 yourself comfortable, and as you do, pull that chair up
5 sort of close to the microphone, and if you will, speak
6 into the microphone, that way we can make sure your
7 voice is amplified. I would remind you -- first of all,
8 I'm Joe Watson. I will remind you that you're under
9 oath. First thing I need to ask you is, have you
10 complied with my instructions not to talk with anyone
11 about this case?

12 MR. CANNON: Yes, I have.

13 THE COURT: All right. And I believe on your --
14 yesterday morning you had indicated that you had heard
15 some of the -- about this case, either from news media
16 or something?

17 MR. CANNON: Yeah, just vaguely from last year when
18 it was on the news.

19 THE COURT: All right. Do you remember any
20 details? Do you recall anything specifically you might
21 have ---

22 MR. CANNON: No, just the fact that the case --
23 what was going on. I mean, no particular details about
24 it.

25 THE COURT: Okay. Did you form any opinions at

1 that time? Specifically did you or have you formed any
2 opinions about the guilt or the innocence of this
3 defendant?

4 MR. CANNON: No, I have not.

5 THE COURT: All right. I'm going to ask you a
6 number of questions and then the attorneys are going to
7 ask some questions. These questions may seem an
8 invasion of your privacy, but I hope you will appreciate
9 that we need to ask these questions in order to make
10 sure that a fair jury is empaneled in this case. There
11 are no right answers. There are no wrong answers.
12 Whatever opinions you may have we will respect those
13 opinions, but we do need your open, and honest, and full
14 answers to these questions.

15 Now, most of the questions are going to deal with
16 penalty. And I need to tell you up front that just
17 because we're talking about possible penalties that is
18 not any indication of the guilt or the innocence of this
19 defendant. Do you understand that?

20 MR. CANNON: Yes.

21 THE COURT: In other words, it's sort of a
22 backwards process. We have to talk about penalty in
23 order to get a fair jury. But do you understand that he
24 is innocent as he sits there?

25 MR. CANNON: Yes.

1 THE COURT: He is presumed to be innocent.

2 MR. CANNON: Yes.

3 THE COURT: All right. Now, I'm -- before we talk
4 about penalty, I need to ask you generally about sitting
5 on a criminal trial jury. If you were selected on a
6 jury, would you listen to the law and accept the law and
7 apply the law that the judge instructed you to?

8 MR. CANNON: Yes, I would.

9 THE COURT: Would you do that even though you may
10 not agree with that law?

11 MR. CANNON: Yes, I would.

12 THE COURT: All right. Do you understand that the
13 State has the burden of proving a defendant guilty
14 beyond a reasonable doubt?

15 MR. CANNON: Yes.

16 THE COURT: And if you sat on a jury and you felt
17 like the State had not met its burden of proving someone
18 guilty beyond a reasonable doubt, would vote not guilty
19 in that case?

20 MR. CANNON: Yes, I would.

21 THE COURT: And if you thought they had met their
22 burden of proof, would you vote guilty?

23 MR. CANNON: Yes.

24 THE COURT: Now, did you read my letter yesterday
25 about capital cases?

1 MR. CANNON: Yes.

2 THE COURT: Did you know much about the death
3 penalty before this case?

4 MR. CANNON: No.

5 THE COURT: All right. I noticed that -- it says
6 Dot Hancock was a member of your church and she was
7 killed?

8 MR. CANNON: Yes.

9 THE COURT: Did you follow that case at all?

10 MR. CANNON: Not that closely.

11 THE COURT: Okay. Because I believe that might
12 have been a death penalty case in this county. She was
13 killed I believe by a person named Laney. Do you
14 remember that?

15 MR. CANNON: Yeah, I believe that was the name.

16 THE COURT: Okay. But you didn't attend that
17 trial, or ---

18 MR. CANNON: No.

19 THE COURT: All right. And so did you know her
20 other than through your church?

21 MR. CANNON: No, just through church.

22 THE COURT: And were you close to her through
23 church, or just ---

24 MR. CANNON: I was her deacon, but other than that,
25 I mean, just through church.

1 THE COURT: Had you ever been in her home or ---

2 MR. CANNON: No, I had not.

3 THE COURT: Had she ever been in your home?

4 MR. CANNON: No.

5 THE COURT: Okay. Would that experience affect
6 your ability to be fair and impartial in this case?

7 MR. CANNON: No, it would not.

8 THE COURT: Okay. Now, going back to the death
9 penalty in general, you understand that it's not every
10 murder case that is subject to the death penalty, it has
11 to be one of these aggravated murders?

12 MR. CANNON: Yes, after I read your letter I
13 understood that.

14 THE COURT: Most people think that any murder case
15 is subject to the death penalty, but that is a
16 misconception. It is only aggravated murder cases and
17 there are some 9 or 10 instances when the State can seek
18 the death penalty. If a police officer is killed or a
19 judge is killed, that's one time. If a small child is
20 killed. The examples I gave, murder during an armed
21 robbery, or a rape, something like that. Do you
22 understand that even when we talk about aggravated
23 murders, the penalty is not automatic, that just allows
24 the State to seek the death penalty, and the decision on
25 whether to invoke the death penalty is up to the jury.

1 MR. CANNON: Yes.

2 THE COURT: All right. It's a bifurcated trial
3 process. The first part of the trial, the trial phase,
4 is like any other case, and the issue is whether the
5 person is guilty or not guilty. If the person is found
6 not guilty then everybody goes home. If the person is
7 found guilty then the same jury returns after a brief
8 waiting period and they hear additional evidence in
9 helping them come to their decision of life or death.
10 Do you understand that?

11 MR. CANNON: Yes.

12 THE COURT: If you're on a jury and if you're in
13 the penalty phase, that person has already been
14 convicted of murder plus some aggravating circumstance.
15 Do you understand that?

16 MR. CANNON: Yes.

17 THE COURT: The State will present evidence in
18 aggravation and the defense will present evidence in
19 mitigation. Evidence in aggravation can be a number of
20 things. It might be the fact that a defendant is a
21 particularly violent person, maybe he's got a criminal
22 record of committing violent acts. The State may put up
23 victim impact evidence. That would be evidence from the
24 family members of the victims as to what the deaths has
25 meant to them, and meant to the community. All this

1 evidence that the State is presenting is in an attempt
2 to convince the jury that death is the appropriate
3 sentence. Do you understand that?

4 MR. CANNON: Yes.

5 THE COURT: And then the defense puts up mitigating
6 evidence. And again, there are any number of things
7 that might be mitigating. And a mitigating circumstance
8 does not forgive the person, it simply mitigates what
9 punishment they might receive. In other words, they
10 might -- the least they're going to get is a life
11 sentence. Do you understand that?

12 MR. CANNON: Yes.

13 THE COURT: That means life without parole. But it
14 might be that the person was suffering from some mental
15 disability at the time he committed the crimes. It
16 might be the person has a very clean record, never been
17 in trouble with the police. It might be that he was
18 under the influence of some other person, something like
19 that. And what the jury is asked to do is to look at
20 the aggravating circumstances, look at the mitigating
21 circumstances, and give both meaningful consideration as
22 they reach a proper sentence in the case. Do you
23 understand that?

24 MR. CANNON: Yes, I do.

25 THE COURT: A jury is never required under any

1 circumstances to give the death penalty. In other
2 words, a jury can find the existence of aggravating
3 circumstances or even multiple aggravating
4 circumstances, and they may find no mitigating
5 circumstances whatsoever, but they still may give a life
6 sentence. Do you understand that?

7 MR. CANNON: Yes, I do.

8 THE COURT: Understanding this whole process, this
9 bifurcated trial and this concept of aggravated evidence
10 and mitigating evidence, I'm sure you understand that we
11 need to get to know your general feelings about capital
12 punishment. Would you say that you are generally for
13 capital punishment, that you're generally against
14 capital punishment, just how do you feel, Mr. Cannon?

15 MR. CANNON: Just basically neutral. If
16 circumstances were to require capital punishment, I
17 would have no problem with it.

18 THE COURT: All right. So you think that there is
19 a proper place in society for capital punishment?

20 MR. CANNON: That's correct.

21 THE COURT: And you think that if the case is
22 aggravated enough that you -- that capital punishment
23 might be the appropriate punishment?

24 MR. CANNON: Yes.

25 THE COURT: All right. Would you automatically

1 vote one way or the other, for life or death in a case
2 of aggravated murder?

3 MR. CANNON: Yes.

4 THE COURT: Would you automatically vote one way or
5 the other?

6 MR. CANNON: I'm not ---

7 THE COURT: I'm sorry. I guess you have to vote
8 one way or the other, because there's only two choices.
9 Let me -- would you automatically vote for life in a
10 case of aggravated murder?

11 MR. CANNON: Not necessarily.

12 THE COURT: And would you automatically vote for
13 death in a case of aggravated murder?

14 MR. CANNON: Not necessarily.

15 THE COURT: Okay. Would you give -- would you
16 listen to all the evidence and give meaningful
17 consideration to the aggravating circumstances and give
18 meaningful consideration to the mitigating circumstances
19 before you decided what the proper punishment would be?

20 MR. CANNON: Yes, I would.

21 THE COURT: All right. If you thought the case was
22 proper for death, would -- could you vote for the death
23 penalty?

24 MR. CANNON: Yes.

25 THE COURT: And if you thought the proper sentence

1 was life, could you vote for life?

2 MR. CANNON: Yes.

3 THE COURT: If you thought the proper sentence was
4 death, you would be asked to sign a verdict form along
5 with the other jurors. If that was the proper sentence
6 in your mind, could you sign that form?

7 MR. CANNON: Yes, I could.

8 THE COURT: All right. Okay. Mr. Abdalla. This
9 is John Abdalla, he's one of the attorneys representing
10 the defendant. He's going to ask you some questions and
11 then Mr. Ariail, the Solicitor, is going to ask you some
12 questions.

13 MR. CANNON: All right.

14 QUESTIONING BY MR. ABDALLA:

15 Q Mr. Garven -- Mr. Cannon, I'm sorry.

16 A I'm doing fine.

17 Q Mr. Eppes is my co-counsel, Frank Eppes, and Mr.
18 Sigmon is our client seated next to him. A couple
19 things strike me. You attended the church where Ms.
20 Hancock attended?

21 A Yes, I'm still a member there.

22 Q You're still a member there. And you're fairly
23 active in that church, is that safe?

24 A Yes.

25 Q So did you know her quite well?

1 A I did not know her that well. I was her deacon
2 for about only one year. This is my first term of
3 serving as deacon at that church, and at the time of
4 what was going on at her funeral, I was actually out of
5 town, so ---

6 Q Okay. So during the couple weeks period of the
7 trial you weren't around or am I miss ---

8 A I was in town but could not attend any of those
9 proceedings or anything.

10 Q All right. And I guess what concerns me is it
11 seems it would have been difficult to have been so --
12 been involved with somebody and have that kind of thing
13 happen and be able to keep an open mind, but can you
14 tell us that you are open minded about penalties?

15 A Yes, I am.

16 Q All right. When the judge asked you about your
17 views on capital punishment, unless I wrote incorrectly,
18 you said if the circumstances required capital
19 punishment you could be for it?

20 A Yes, I could.

21 Q Could you explain what that means, if it requires
22 it?

23 A Well, if evidence shows that the person was guilty
24 and that there was basically, you know, no problems, no,
25 as the judge said, aggravated circumstances, and after

1 listening to all the evidence I would have no problem
2 with voting for capital punishment.

3 Q Right. So if, in a trial, you were on a jury that
4 convicted a person of murder, the excuses are gone, if
5 there was any defense during the trial phase, it's gone
6 now, there is no alibi, there is no self-defense, you
7 have now determined he's guilty of murder, if you want
8 call it cold blooded, whatever you want to call it, and
9 the aggravating factor is found, if it's an armed
10 robbery, and there is no dispute that the person
11 committed the armed robbery and the murder, and now is
12 eligible for the death penalty, and you would evaluate
13 that case, are you saying then that the death penalty
14 just comes into play or it's -- how would you say --
15 what are your views on it at that point?

16 A At that point I would say that capital punishment
17 would be probably the way I would have to vote, if there
18 no was other -- nothing else that would come to mind
19 that would make me change my mind. I mean, if it's
20 aggravated and all the evidence points to it, then that
21 would be how I would have to vote.

22 Q Well, I just heard you say if aggravation was
23 found, and if you were certain it was the person, that
24 you would vote for death?

25 A Yes.

1 MR. ABDALLA: One moment, please.

2 BY MR. ABDALLA:

3 Q Now, the judge will instruct you that the State has
4 to prove certain aggravating factors, and as I already
5 went over, not to be redundant, but we're making an
6 assumption that you get to the point where you have
7 found the aggravating factors, and the judge will also
8 instruct you that the defense may put up some
9 mitigation. And you understand that the mitigating
10 factors could be, he had a bad childhood, he's -- has a
11 drug problem. Could you take those kind of things into
12 consideration?

13 A Yes, I would.

14 Q And could you that change your opinion about
15 whether the death sentence would be in order?

16 A Certainly.

17 Q Okay. I guess what concerns me is just a bit ago
18 you said that if the circumstances required it, you said
19 you would vote for death and you seem to indicate that
20 life could be a possibility. Did I misunderstand you?

21 A Repeat what you were saying.

22 Q All right. Before when I asked the question about
23 it, it seemed to me, and maybe you're just confused
24 because all of this is new to you, that when I proposed
25 to you the fact of aggravating factors being found, and

1 the guilt on a murder, I thought you then said I would
2 have to vote death?

3 A Yes, I said that.

4 Q But then you say if mitigation is presented?

5 A Well, maybe I'm misunderstanding.

6 Q And maybe I'm not clear.

7 A Mitigation and some aggravation to -- when they're
8 saying some aggravated point along that line, then that
9 to me means that there was no chance of, like a problem
10 with childhood or ---

11 Q Okay. Then I didn't understand your terms, and I
12 apologize for not making it clear. All right. Again,
13 you found all the aggravating factors, and there is no
14 legal excuse for what's happened, okay. That's a done
15 deal, we can't undo that. Now, however, the defense
16 says, all right, we either have no mitigating factors,
17 or we're going to present some mitigating factors,
18 including he's had a drug problem, bad childhood,
19 whatever. My question to you is, at that point what
20 would the process be for you as a juror? What do you
21 see your duty to be?

22 A My opinion at that point would be to review the
23 evidence of the mitigating factors and base my opinion
24 on that. If there is some possible reason as to why
25 this would have happened, other than like you said, just

1 outright cold murder, cold blooded murder, of course I
2 would have to consider that and possibly not vote for
3 the death penalty, maybe life imprisonment.

4 Q Do you consider life without the possibility of
5 parole to be an appropriate sentence for a murder with
6 aggravating factors?

7 A It can be, yes.

8 Q Do you consider it to be appropriate?

9 A I guess in certain circumstances.

10 Q I'm not asking for your vote on any particular
11 circumstance, but what I'm asking, is that something you
12 can consider?

13 A Yes, I can consider that, yes.

14 Q All right. If you found aggravating factors and
15 the defense -- I mean the prosecution is then going to
16 present some victim impact evidence. There'll be family
17 members up here and there'll be people talking about
18 what it means to -- what it means to them, the loss
19 they're suffering, the loss of these people to the
20 community. Are you saying you could still entertain
21 seriously -- give serious consideration to life without
22 parole?

23 A Yes.

24 MR. ABDALLA: Thank you.

25 THE COURT: Solicitor.

1 MR. ARIAIL: Thank you, Your Honor. Mr. Cannon, my
2 name is Bob Ariail. I'm the Solicitor for Greenville
3 and Pickens County, that's the State's attorney. And I
4 along with my Deputy, Ms. Strom here, would be
5 representing the State in this case in presenting the
6 evidence. And we appreciate your answers to these
7 questions. Judge, I don't have anything else to ask
8 him.

9 THE COURT: All right. Let me give you this,
10 please, sir. Let me get a copy of it. Mr. Cannon, you
11 are qualified to be a juror in this case. That does not
12 mean that you will be selected. That simply means that
13 you're going to be one of 40 some jurors we're going to
14 bring back. From that panel we will select our jury of
15 12 and several alternates. Now, you do need to be
16 prepared to serve. That means you need to go ahead and
17 pack a suitcase for seven or eight days, pack
18 comfortable clothes, pack any medications, anything like
19 that you may need. When we have qualified enough
20 jurors, Madam Clerk will call each qualified juror and
21 assign them a time -- or tell them to come back to
22 court. We'll give you plenty of lead time, at least
23 several hours, probably over night. When you return,
24 have your suitcase in your car, but don't bring it into
25 the courthouse. Go ahead and park in the Hyatt parking

1 garage. Did you park there Monday morning?

2 MR. CANNON: Yeah.

3 THE COURT: And then came across the street, across
4 Spring Street to the garage entrance to this courthouse.
5 And that way I can keep the jury out of the public
6 corridors, where the press may be and family members on
7 both sides will be. The bailiffs will meet you at the
8 garage entrance, bring all the jurors up and then we'll
9 select a jury at that time.

10 Now, if you are selected, you will be sequestered,
11 which means your family will not able to have any direct
12 contact with you. If you need to get a message to them,
13 or to your business, that can be accomplished. You can
14 simply write out a message, phone number, name, and the
15 bailiffs can communicate something to somebody. There
16 are emergency numbers on this letter. There's a day
17 time number and a night time number, so we can handle
18 any emergencies if some one needs to contact you.
19 Again, they wouldn't have any direct contact with you,
20 but -- now, do you have any questions about that?

21 MR. CANNON: No, I don't.

22 THE COURT: All right. One thing I did not cover
23 in this letter, and the last juror asked it -- and Madam
24 Clerk, I need -- we're going to need to decide what
25 we're going to tell each juror. If you're selected,

1 that means your car is going to be in the Hyatt garage.
2 So someone could come get it. Someone could come out to
3 the hotel and get the keys from the SLED agents and go
4 get it. If you want to bring someone with you, they
5 can -- they won't be able to come in the private exit,
6 but they come around and come to the third floor. It
7 might be crowded in the courtroom because we're going to
8 have to save about half the side for the jury. So they
9 may not be able to get in to watch the actual jury
10 selection, but if you want to bring someone with you,
11 and then if you are selected, the SLED agents would
12 escort you back to get your suitcase, and then that
13 person could take your car. I'll just let you decide
14 how to handle it. You can leave it there.

15 MR. CANNON: Okay. It would be okay to leave it in
16 there?

17 THE COURT: You can leave it in there for a week or
18 so and we'll certainly pick up the tab for the car.
19 Just however you want to do it.

20 MR. CANNON: All right.

21 THE COURT: Any other questions?

22 MR. CANNON: No.

23 THE COURT: Do not read anything in the newspaper,
24 don't watch any TV accounts, or listen to the radio
25 about this case. Don't talk to anyone about this case.

1 If someone tries to talk to you about it, simply tell
2 them you're a perspective juror and you can't talk about
3 it. If they persist then take their name and report
4 that to the bailiff when you return. All right. This
5 process will take into tomorrow for sure, maybe into
6 Thursday. But I will probably see you back here on
7 Wednesday or Thursday.

8 MR. CANNON: Okay. As far as sequestering, then
9 would you that begin sometime this week, over the
10 weekend?

11 THE COURT: Yes. That will begin whenever we pick
12 the jury. You'll be taken into custody by the bailiffs
13 and the SLED agents at that time, and that will, again,
14 be Wednesday or Thursday.

15 MR. CANNON: Okay.

16 THE COURT: All right. Thank you. We'll see you
17 either tomorrow or Thursday.

18 MR. CANNON: All right.

19 (Mr. Cannon exited the courtroom.)

20 THE COURT: All right. Anything with regard to the
21 last juror from the State?

22 MS. STROM: No, sir.

23 THE COURT: From the defense?

24 MR. ABDALLA: No, Your Honor.

25 THE COURT: All right. Alice Sham. Knows a

1 potential witness. Is there anything else that I need
2 to handle from the bench?

3 MS. STROM: No, sir.

4 MR. ABDALLA: No, Your Honor.

5 THE COURT: All right. Bring in Ms. Sham.

6 (Ms. Sham entered the courtroom.)

7 THE COURT: All right. You are Alice Sham.

8 MS. SHAM: Yes, I am.

9 THE COURT: All right. I'm Joe Watson. I will
10 reintroduce myself. I will remind you that you're under
11 oath. Have you followed my instructions not to talk
12 about this case with anyone?

13 MS. SHAM: Yes.

14 THE COURT: All right. You indicated yesterday
15 morning that you knew a potential witness in this case?

16 MS. SHAM: Yes.

17 THE COURT: All right. Who was that witness?

18 MS. SHAM: It was police officer Doug Wannemacher.

19 THE COURT: All right.

20 MS. SHAM: He's -- he lives right directly across
21 the street from me.

22 THE COURT: All right. Other than being -- living
23 across the street, is he a close friend?

24 MS. SHAM: Yes, he is.

25 THE COURT: All right. Would that affect your

1 ability to be fair and impartial in this case?

2 MS. SHAM: I'm not sure. He had talked about some
3 cases that he had handled and I'm not sure if this is
4 one of them.

5 THE COURT: All right. Well, do you remember any
6 facts about this case?

7 MS. SHAM: The facts that of the case I know of
8 is -- were a gentleman, is his girlfriend left her
9 and -- left him rather, and he went -- she went back to
10 her parents and then this gentleman went over to the
11 parents house and beat them to death, the parents, with
12 a baseball bat.

13 THE COURT: Okay.

14 MS. SHAM: And then she -- he took her with him and
15 she tried to get away from him, and I think at a gas
16 station, and he shot at her.

17 THE COURT: Okay. Now, did you get those facts
18 from talking to the person -- the witness you know or
19 from the news media, or ---

20 MS. SHAM: From -- I was talking with the neighbor,
21 and that was when it happened, and there was like ---

22 THE COURT: With this neighbor who's a witness in
23 the case or another neighbor?

24 MS. SHAM: Oh, another neighbor too.

25 THE COURT: Okay.

1 MS. SHAM: And then he had mentioned different
2 cases with -- with the same incident.

3 THE COURT: Okay. So I guess my question is, did
4 he mention this particular case?

5 MS. SHAM: No names were mentioned, but this was
6 the facts that I heard about the one case, because it
7 was happening around our area.

8 THE COURT: Okay. It was happening, or was not
9 happening?

10 MS. SHAM: It was happening around our area,
11 because the helicopters were going overhead and
12 that's -- I was wondering what was going on.

13 THE COURT: What neighborhood do you live in? In
14 Taylors?

15 MS. SHAM: Yes, Taylors.

16 THE COURT: All right. Well, you bought up two
17 issues. So I'm going to separate them out and I'm going
18 to ask you some questions. A jury has to decide what
19 the true facts of a case are. In any case, whether it's
20 a civil case or a criminal case, there is a dispute as
21 to what the facts are. In other words, there might be
22 testimony that is -- contradicts each other. Do you
23 understand that?

24 MS. SHAM: Um-hm.

25 THE COURT: And so a jury is asked to decide what

1 the true facts are, and in deciding what the true facts
2 are, they have to pass upon the believability and the
3 credibility of witnesses. In other words, they have to
4 decide what weight to give a witness' testimony. And in
5 passing upon credibility and believability, they look at
6 common sense things, like the demeanor of the witness,
7 maybe the witness was hesitant when they were answering
8 the questions, or maybe they testified very
9 straightforward. They look at whether a witness has an
10 interest in the outcome of a case, any reason to be
11 biased or prejudiced. They look at whether the witness'
12 testimony was consistent, or maybe it contained
13 discrepancies. They look at whether the testimony was
14 supported by the other evidence in the case, or was
15 weakened by other evidence. Do you understand these are
16 common sense things that a jury looks at when they're
17 listening to a witness. My question is, knowing a
18 witness in this case, would you submit that witness'
19 testimony to the same standard of believability and
20 credibility as you would all the other witnesses?

21 MS. SHAM: Yes.

22 THE COURT: All right. Would you automatically
23 favor the side that person testified for?

24 MS. SHAM: I guess if it's a police officer, I feel
25 they would know what they were talking about.

1 THE COURT: All right. Well, just because he's a
2 police officer, you're going to favor the side that he
3 testifies for, or are you going to be in favor of the
4 State just because he testifies on that side or -- the
5 question is, could you be fair not only to the State but
6 could you be fair to the defendant in this case?

7 MS. SHAM: I could hear the facts.

8 THE COURT: Well, I know you could hear -- you said
9 you could hear the facts, the question is, could you
10 fairly weigh the facts and evidence in the case and be
11 fair to the defendant?

12 MS. SHAM: I guess so.

13 THE COURT: All right. Now, the second issue
14 that -- that you brought up was hearing some facts about
15 this case, either from another neighbor, not that
16 witness. And I can't -- did you say you saw something
17 in the paper also or ---

18 MS. SHAM: No, no.

19 THE COURT: Okay. Just talked to ---

20 MS. SHAM: To the two people.

21 THE COURT: Okay. Now, can you set that aside and
22 judge this case solely on the testimony that's presented
23 in the courtroom from the witnesses and the other
24 evidence?

25 MS. SHAM: I don't know if I could because I heard

1 those facts, I guess.

2 THE COURT: Well, how do you know the facts they
3 gave are the correct facts?

4 MS. SHAM: I don't -- well, the one lady I talked
5 to, my neighbor, she was a school teacher of the two
6 children of the girlfriend, his girlfriend. She -- her
7 children were in her classroom.

8 THE COURT: The ---

9 MS. SHAM: This fellow's girlfriend.

10 THE COURT: Has two children?

11 MS. SHAM: His girlfriend has children, and she
12 goes -- the one child was in my neighbor's classroom.
13 She's a teacher.

14 THE COURT: All right. And so you're saying you
15 could not separate the facts that you heard outside of
16 the courtroom from the facts you heard inside the
17 courtroom?

18 MS. SHAM: I guess I'm open. I mean, I could ---

19 THE COURT: Well, I need more than you're open. In
20 other words, a jury is not allowed to consider any
21 extraneous matters. They have to listen to the evidence
22 from the witnesses, and from the exhibits that are
23 introduced, things like that. And it's okay if you've
24 heard something or talked about something, but the
25 question is, can you separate that out and judge the

1 case solely on the facts you heard in the courtroom?

2 MS. SHAM: I guess I could.

3 THE COURT: All right. Based on what you have
4 heard about this case, talking to other people, have you
5 formed any opinions about the case? Specifically have
6 you formed any opinions about the guilt or the innocence
7 of this defendant?

8 MS. SHAM: Oh, all I know is there was a manhunt
9 for him over in our area because people were saying he
10 was sleeping under porches. He was running away and the
11 police were after him. He was sleeping under porches
12 until they apprehended him, this particular fellow.

13 THE COURT: Okay. But the question is, can you
14 separate that out from what you've heard in courtroom? I
15 mean, that may be the testimony in court, I don't know.
16 I don't know that much about this case myself. But the
17 question is, can you separate out something you have
18 heard outside the courtroom and judge the case solely on
19 the testimony you have heard inside the courtroom?

20 MS. SHAM: I can try.

21 THE COURT: All right. I need more than you can
22 try. I need to know some assurance that you could do
23 that, because if you cannot do that, you know, it would
24 be not be fair to judge a case on extraneous matters
25 that don't come from somebody who is under oath. Do you

1 understand what I'm saying?

2 MS. SHAM: I probably wouldn't be a good person.

3 THE COURT: All right. Let me ask you to step
4 outside, please, ma'am.

5 (Ms. Sham exited the courtroom.)

6 THE COURT: All right. Does the State want to ask
7 her any questions?

8 MR. ARIAIL: Yes, sir. I'd like to ask what she
9 said, because we couldn't hear.

10 THE COURT: She -- I mean, she has said about four
11 or five times that she could not separate the facts she
12 heard out of court from the testimony in court. But the
13 last thing she said was she probably could not.

14 MR. ARIAIL: Okay.

15 THE COURT: I mean ---

16 MR. ARIAIL: Then we have no questions. We just
17 couldn't hear what she said.

18 THE COURT: Okay. Do y'all want to ask her any
19 questions.

20 MR. ABDALLA: No, I don't think she could.

21 THE COURT: Okay. All right. Bring her back in.
22 Now, do y'all agree she should not be qualified?

23 MR. ABDALLA: Correct.

24 MR. EPPES: Yes, Your Honor

25 (Ms. Sham entered the courtroom.)

1 THE COURT: All right. You don't even need to sit
2 down. Ms. Sham, because you have heard so much about
3 the case, I'm going to disqualify you from serving.

4 MS. SHAM: Okay.

5 THE COURT: That's perfectly all right. Nobody is
6 mad at you or anything, but we've got to make sure we
7 can empanel a jury that would be fair in this case, and
8 based on your knowledge of the case it might be
9 difficult. Okay.

10 MS. SHAM: Okay.

11 THE COURT: All right. Thank you very much.

12 MS. SHAM: Do I need to come back?

13 THE COURT: No, ma'am. You are free to go.

14 MS. SHAM: Okay. Thank you.

15 THE COURT: Let me make sure. You didn't talk to
16 anybody in the jury room while you were waiting, about
17 your knowledge of the case or anything like that?

18 MS. SHAM: No. No, we were just talking about
19 female things.

20 THE COURT: Okay. I won't ask about that.

21 MS. SHAM: Okay. Thank you.

22 (Ms. Sham exited the courtroom.)

23 THE COURT: All right. Now, I need to go back to
24 Mr. Shoopman, is that the one that's out there? Is this
25 Mr. Shoopman the first juror? Somebody informed --

1 somebody informed the bailiffs as they were leaving that
2 they would have difficulty. After they were qualified
3 they said they could not be off work. Was it Mr.
4 Shoopman?

5 THE BAILIFF: I don't know. I could find out.

6 THE COURT: Step out there and find out. It was
7 somebody.

8 THE BAILIFF: Yes, sir, it was Shoopman.

9 THE COURT: Is he out there?

10 THE BAILIFF: Yes, sir, he is.

11 THE COURT: Okay. Go ahead and bring him in.

12 (Mr. Shoopman entered the courtroom.)

13 THE COURT: Hey. Come back in. The bailiff
14 informed me that after you left you indicated that jury
15 service would be difficult because you would be missing
16 work?

17 MR. SHOOPMAN: Yes, sir. I am -- yesterday when we
18 talked it was indicated that -- a possibility of being
19 sequestered two to three days, and then today in the
20 letter and as you said at the very end, it could be up
21 to seven or eight days. And I am self-employed with no
22 other employees, and the work I miss cannot be made up.
23 I am working on projects with manufacturers. July is a
24 month when manufacturers are doing PM work. And again,
25 missing two to three days and sequestered would not have

1 been a hardship, but missing over a week of that will be
2 a significant hardship and I'm -- I would be -- I would
3 like, if I could -- I'm not opposed to serving on jury
4 duty, but something of a sequestered form is going to do
5 a significant impact to my livelihood that can't be made
6 up by anyone else.

7 THE COURT: All right. I appreciate that and if I
8 misinformed you yesterday, I apologize, but I have known
9 all along. And I can't say for sure it's going to be
10 seven or eight days, that's just -- historically they
11 have lasted that long. It could be shorter. There's a
12 possibility it could be longer. I can tell you that I
13 am generally a judge that moves things along pretty
14 quickly. I will also tell you that you will work on
15 weekends. In other words, we'll work on Saturday and
16 Sunday unless we're in some sort of waiting period.
17 Unfortunately, Mr. Shoopman, I cannot excuse you because
18 of that. You have been qualified as a juror, so I'm
19 going to keep you on the panel as a qualified juror.
20 You can go ahead and get as much work done between now
21 and the time you're called back. Again, you may not be
22 selected, but if you are selected, then you would have
23 to serve. Okay.

24 MR. SHOOPMAN: Okay.

25 THE COURT: Thank you very much.

1 (Mr. Shoopman exited the courtroom.)

2 THE COURT: All right. Mr. Powell.

3 MR. ABDALLA: Judge, can I put something on the
4 record, please?

5 THE COURT: What do you want to put on the record?

6 MR. ABDALLA: Just that we have no objection to his
7 being excused as we have excused other jurors for work
8 conflicts that were significant.

9 THE COURT: Okay. Mr. Powell.

10 (Mr. Powell entered the courtroom.)

11 THE COURT: Come on up here. You are John Powell?
12 I'm Joe Watson. I'll reintroduce myself. As you make
13 yourself comfortable, if you would go ahead and slide
14 your chair towards the microphone and speak into it so
15 that your voice is amplified. And as you answer
16 questions -- there are two systems. The court reporter
17 is taking down everything that is said, but there's also
18 a back-up system, so instead of nodding your head or
19 shaking your head if you would say yes or no, that will
20 make sure that the back-up system picks up everything
21 that goes on. I will remind you that you're under oath.
22 And also let me ask you, have you complied with my
23 instructions from yesterday not to talk to anyone about
24 this case?

25 MR. POWELL: Yes.

1 THE COURT: All right. When I asked yesterday the
2 questions at voir dire downstairs, you did not indicate
3 that you had seen anything, or heard anything about this
4 case, or knew anything about it?

5 MR. POWELL: Yes.

6 THE COURT: You don't know any of the witnesses, is
7 that correct?

8 MR. POWELL: That's correct.

9 THE COURT: All right. We're going to be asking
10 you a number of questions. I'll start and then the
11 Solicitor, Mr. Ariail, will ask some questions and Mr.
12 Abdalla, who represents the defendant. Some of these
13 questions will be of a personal nature. We don't mean
14 to offend you. I hope that you will appreciate the need
15 for us asking these questions as we go through this
16 process, but if anybody offends you, then hold it
17 against me, don't hold it against the State of South
18 Carolina or the defendant in this case. I will tell you
19 there are no wrong answers. There are no right answers.
20 Everyone will respect whatever opinions you have, but we
21 do need your open and honest and full answers to the
22 questions we ask. Most of the questions we will go
23 through deal with penalty, the death penalty in South
24 Carolina. I need to tell up front that because we are
25 talking about penalties that should not indicate

1 anything about this defendant. Do you understand that?
2 In other words, as he sits there he is presumed to be
3 innocent.

4 MR. POWELL: Yes.

5 THE COURT: All right. It's sort of a backwards
6 process because we have to talk about penalty before the
7 trial even starts, but again because of the nature of
8 the case, that's what we have to do. Now, before I talk
9 to you about capital cases and penalties in general,
10 let me ask you about sitting on a criminal case. If you
11 were selected to serve on a criminal case, would you
12 listen to the law that the judge charges and accept that
13 law and apply that law in the case?

14 MR. POWELL: Yes.

15 THE COURT: Would you do that even if you did not
16 agree with the that law?

17 MR. POWELL: Yes, to its fullest.

18 THE COURT: Okay. All right. That's good, because
19 there are some people who come in with some notion as to
20 what they think the law should be, or some
21 misconceptions of the law, and that's fine as long as
22 they can set it aside and accept the law that the judge
23 gives. And you have said you could do that. Do you
24 understand that in a criminal case the State has the
25 burden of proving a defendant guilty beyond a reasonable

1 doubt?

2 MR. POWELL: Yes.

3 THE COURT: All right. And if you sat on a jury
4 and if you were not convinced beyond a reasonable doubt
5 of the guilt of the defendant, would you find him not
6 guilty?

7 MR. POWELL: That's correct.

8 THE COURT: And if you sat on a jury and you
9 thought the State had proved the defendant guilty beyond
10 a reasonable doubt, would you vote for guilty?

11 MR. POWELL: That's correct.

12 THE COURT: All right. Did you read my letter, my
13 two-page letter yesterday?

14 MR. POWELL: I sure did.

15 THE COURT: And did you know much about the death
16 penalty? I notice you're from North Carolina. Do you
17 know if North Carolina has the death penalty?

18 MR. POWELL: They do.

19 THE COURT: And did you know South Carolina has the
20 death penalty?

21 MR. POWELL: Yes.

22 THE COURT: Do you understand that it is not every
23 murder case that is subject to the death penalty, it has
24 to be one of these aggravated murder cases?

25 MR. POWELL: That's the first time I had ---

1 THE COURT: Okay. Most people think that it's any
2 murder case that is subject to the death penalty.

3 MR. POWELL: Being from a different state,
4 certainly.

5 THE COURT: Okay. Do you understand that when we
6 talk about an aggravated murder, the example I gave is a
7 murder plus a rape, or murder plus an armed robbery, but
8 when we talk about an aggravated murder, do you
9 understand that the penalty is not automatic, that
10 simply allows the State to seek the death penalty?

11 MR. POWELL: (Witness nodded his head.)

12 THE COURT: You've got to say yes or ---

13 MR. POWELL: Yes.

14 THE COURT: All right. The trial of a capital case
15 is a bifurcated trial. The first stage is like any
16 other trial, the issue is whether or not the defendant
17 is guilty or not guilty. If he's not guilty, then
18 everybody goes home. If the defendant is convicted of
19 murder, then there is a second stage, and second trial,
20 where more evidence is introduced. Same jury comes back
21 and they listen to additional evidence from the State
22 and evidence from the defense. Evidence that the State
23 presents at that point in the case is called aggravating
24 evidence. It's evidence that the State puts up to try
25 to convince the jury that the appropriate sentence is

1 death. It can be character evidence of the defendant.
2 It might be the fact the defendant has a significant
3 history of prior crimes of violence, something like
4 that. Any number of things might be aggravating
5 circumstances. They will also put up what's known as
6 victim impact evidence, evidence from the victim's
7 family as to their losses, what the death has meant to
8 them and to the community around them, things like that.

9 The defense puts up mitigating everyday.
10 Mitigating circumstances is -- is not something that
11 excuses the murder, but it is something that mitigates
12 what punishment the defendant should receive. And again
13 example of mitigation may be a number of things. It
14 might be that the person was suffering from a mental
15 deficiency at the time he committed the crime. It might
16 be that he was under the influence of someone else when
17 he committed the crimes. It might be that he's got a
18 real clean record, never been in trouble before. It
19 might be that he has a horrible upbringing. Any number
20 of things might be presented in mitigation. Do you
21 understand that?

22 MR. POWELL: Yes.

23 THE COURT: In a capital case a jury is never
24 required to give the death penalty, even when they get
25 to that penalty phase. In other words, a jury may find

1 beyond a reasonable doubt the existence of an
2 aggravating circumstance, or the existence of several
3 aggravating circumstances, and may find that there are
4 no mitigating circumstances, but they still may give a
5 life sentence. Do you understand that?

6 MR. POWELL: Yes.

7 THE COURT: All right. And a life sentence means
8 life without absolutely no possibility of parole. Do
9 you understand that?

10 MR. POWELL: Yes.

11 THE COURT: And death in South Carolina is either
12 by electrocution or by lethal injection. Do you
13 understand that?

14 MR. POWELL: Yes.

15 THE COURT: Now, understanding this process, I'm
16 sure you understand that the attorneys and the Court
17 need to get to know generally what your feelings are
18 about capital punishment. Mr. Powell, would you say
19 generally you are for the death penalty, generally you
20 are against it, how do you feel generally?

21 MR. POWELL: Generally for it.

22 THE COURT: All right. If you are sitting on a
23 capital case, and if you thought the proper sentence was
24 death, you're telling me that you could vote for death?

25 MR. POWELL: Yes.

1 THE COURT: And if you were sitting on a capital
2 case and thought the proper sentence was life, could you
3 vote for life?

4 MR. POWELL: Yes.

5 THE COURT: Before you made that decision of life
6 or death, would you give meaningful consideration to the
7 mitigating circumstances as presented by the defense and
8 instructed by the Court?

9 MR. POWELL: Absolutely.

10 THE COURT: Would you give meaningful consideration
11 to the aggravating circumstances as presented by the
12 State and charged by the Court?

13 MR. POWELL: Yes.

14 THE COURT: The last question I need to ask you
15 is -- or tell you is that if you were on a jury and if
16 you thought the appropriate sentence was death, you and
17 your fellow jurors would be asked -- be required to sign
18 the verdict form. Each jurors has to affix his
19 individual signature. If you thought that was the
20 proper punishment, could you sign that form?

21 MR. POWELL: Yes.

22 THE COURT: All right. Now, who's up? Okay. Mr.
23 Ariail is prosecuting for the State, and this is Mr.
24 Abdalla, with the mustache, he's one of the attorneys
25 representing the defendant. Mr. Ariail is going to

1 start first, and then Mr. Abdalla.

2 QUESTIONING BY MR. ARIAIL:

3 Q Mr. Powell, my name is Bob Ariail and I'm what's
4 known as the Solicitor. That's the State's prosecuting
5 attorney in South Carolina. And in North Carolina
6 they're known as the District Attorney, but we call it
7 the Solicitor here. And in this case I will be
8 representing the State, along with my Deputy, Betty
9 Strom, in the white coat, and one of my assistants,
10 Mindy Hervey, in the black suit. And the judge has
11 explained the process to you. It's basically a double
12 trial. The first part of the trial takes place dealing
13 with guilt. And then the second part of the trial takes
14 place where the sentence is imposed. And because it is
15 a State seeking the death penalty, it's a little bit
16 different in that the jury is the -- the body that makes
17 the decision as to what the appropriate sentence is. So
18 if the jury reaches the decision that the defendant is
19 guilty and it goes into the sentencing phase, then you
20 will be asked to sit in the jury box and listen to
21 evidence of aggravation, meaning the State law has set
22 out different aggravating factors that if you find one
23 or more of those do exist, then the case is eligible for
24 the death penalty. Doesn't mean that you have to impose
25 the death penalty, just means it's eligible for it. And

1 thereafter as you begin your deliberation process, you
2 can consider the death penalty. If you don't find the
3 aggravating factor, then you don't go any further, but
4 if you find the aggravating factor, then you listen to
5 all of the information, both other aggravating
6 information and other mitigating information, and you as
7 a jury collectively decide what the proper sentence
8 could be. Do you understand how that process works?

9 A Yes, it seems pretty clear.

10 Q And under that circumstance if the -- or under that
11 process if the circumstances were appropriate you said
12 you could vote for the death penalty?

13 A That's correct.

14 Q If the -- based on the facts and circumstances of
15 the case, whatever other factors you found in the
16 evidence you could make that decision?

17 A Um-hm.

18 Q And the judge also asked you at that point -- or
19 told you you would have to sign a form indicating that's
20 what you had found, and that form is called -- sometimes
21 referred to as the death warrant. And you and every
22 juror would have to sign it. Would you hesitate to sign
23 that form in any way?

24 A No.

25 Q Is there anything in your background, either moral,

1 religiously -- religious, political, that would cause or
2 impair your ability to -- or limit or impair your
3 ability to consider the death penalty?

4 A No.

5 Q Okay. You also heard the judge instruct you you
6 don't have to impose the death penalty in any case
7 regardless of how aggravated it is, you can simply
8 impose life imprisonment, even as an act of mercy, if
9 you think that's appropriate?

10 A Yes.

11 Q You believe you still would be able to consider
12 giving a life sentence all the way through the entire
13 process until you came to that final decision at the
14 end?

15 A Yes.

16 MR. ARIAIL: Okay. Thank you.

17 THE COURT: Mr. Abdalla.

18 MR. ABDALLA: Thank you, Your Honor.

19 QUESTIONING BY MR. ABDALLA:

20 Q My name is John Abdalla, and my co-counsel is Frank
21 Eppes, seated at the table next to me, and next to him
22 is our client, Mr. Sigmon. Now, Mr. Powell, you say you
23 don't have a problem imposing the death penalty. I have
24 a few questions I want to ask you. What do you think
25 the purpose of the death penalty is? How do you see it?

1 A To deter crime.

2 Q Anything else?

3 A To prevent, I guess, further, you know ---

4 Q I'm sorry, I can't hear you.

5 A I guess to prevent further crimes.

6 Q Which would be deterrence?

7 A Basically, yes.

8 Q Okay. Any other reason for the death penalty?

9 A No.

10 Q How do you see a life sentence without the
11 possibility of parole?

12 A It would depend on the circumstance.

13 Q But if you were to answer it the same way, I mean,
14 you answered the death penalty, maybe I asked the
15 question incorrectly. If the death penalty deters crime
16 by not encouraging other crime, for lack of a better
17 phrase, what would life without parole be in your view?

18 A The same.

19 Q The same?

20 A Um-hm.

21 Q All right. Have you ever had conversations about
22 the death penalty, ever done a lot of thinking about it?

23 A Some.

24 Q Sat around with friends and talked about it, or a
25 minister or anything?

1 A Not often. It's more of a personal preference.

2 Q What types of conversations, without getting too
3 personal, have you had? What types of discussions?

4 A Nothing specific, other than just the fact that I
5 think it's necessary to deter crime in certain
6 situations.

7 Q All right. You understand that if with you were to
8 find somebody guilty of murder, and then find there were
9 aggravating factors -- am I clear on this? If you find
10 them guilty that means there's no defense, correct?

11 A I guess that's what you're ---

12 Q Yeah, I mean, if the trial phase is -- has ended,
13 the judge has explained to you, it's a bifurcated
14 system, we have a trial phase and then a penalty phase?

15 A Okay.

16 Q All right?

17 A Yes.

18 Q Now, after the trial phase, let's assume that you
19 have convicted somebody, you said, okay, this person is
20 guilty of murder, and let's say that person is also
21 guilty of armed robbery, which would also be an
22 aggravating factor.

23 A Okay.

24 Q So if you got to that point where you said, all
25 right, this murder occurred during the commission of an

1 armed robbery, or a situation like that, in other words
2 you found an aggravating factor, there was no legal
3 excuse for the killing.

4 A Okay.

5 Q You then are in a situation where the two possible
6 sentences are life without parole or death. Could you
7 give fair consideration to each of those, or do you see
8 it simply one way or the other?

9 A Depends on the nature of the crimes, whether it's
10 premeditated or not.

11 Q For the legal argument, of course murder is going
12 to be called premeditated.

13 MR. ARIAIL: Object to that, Your Honor.

14 MR. ABDALLA: Well, he says whether it's
15 premeditated. I just don't know how to continue with
16 that line without ---

17 THE COURT: Go ahead.

18 MR. ABDALLA: Thank you.

19 BY MR. ABDALLA:

20 Q If you found he was guilty of murder, and just for
21 the legal definition they said that was considered
22 premeditated, could you still consider life without the
23 possibility of parole?

24 A Yes.

25 Q You could? Now, you understand the defendant is

1 not obligated to put up mitigating circumstances?

2 A Yes.

3 Q You got through the first stage, you found there's
4 aggravating factors, if the defendant were to put up no
5 mitigating circumstances -- do you know what mitigating
6 circumstances are? What some them are, do you
7 understand that? Like he had a bad childhood, he was
8 under the influence of drugs, duress, somebody made him
9 do it, things like that.

10 A Yes.

11 Q Sounds a lot like an excuse but we're trying to get
12 away from -- it's not offering an excuse, it's offering
13 an explanation, because the excuses are gone, you've
14 already convicted him.

15 A Yes.

16 Q At that point if there were no mitigation, can you
17 entertain life without parole?

18 A Yes.

19 Q And if mitigation, I guess, would stand to reason
20 you could also consider life without the possibility of
21 parole?

22 A (Witness nodded his head.)

23 Q Have you thought about life without the possibility
24 of parole before? I asked you about the death penalty.

25 A Yes, it's certainly something to consider.

1 Q I'm sorry?

2 A It's something to consider.

3 Q Right, I know that, but I mean, I believe you said
4 you had talked about and thought about the death penalty
5 before ---

6 A Um-hm.

7 Q --- in a philosophical sense maybe. I was curious
8 to know if you've thought about life without parole,
9 since a lot of people don't know life means life without
10 parole. So had you thought about that previously or
11 not?

12 A That certainly would depend on the situation, but
13 you know, in these days when you have parole, it seem
14 like people are getting out a lot sooner.

15 THE COURT: All right. Let me just correct that
16 right now.

17 MR. POWELL: It's just kind of ---

18 THE COURT: I understand that, but I want to -- I
19 want to make every juror is absolutely aware that life
20 in this case means absolutely life without parole. A
21 defendant in a capital case, if the jury gives life,
22 that means until his death. Do you understand that?

23 MR. POWELL: Yes.

24 THE COURT: Okay. Go ahead.

25 MR. ABDALLA: All right. Thank you..

1 BY MR. ABDALLA:

2 Q That's basically it, I wanted to know if you had
3 ever considered that seriously before, since there is a
4 misconception on that?

5 A Yes.

6 MR. ABDALLA: Let me just have one moment before
7 I -- I did forget one thing.

8 BY MR. ABDALLA:

9 A If you're on the jury now and there is a 10 to 2,
10 or 11 to 1, whatever you want, a split in the jury, but
11 it's a significant imbalance, can you stick to your
12 convictions if the other jurors really want to go home?

13 A I will stick to what I believe in.

14 Q All right. And on the other hand, conversely, if
15 you're one of the majority, and it's 11 to 1, or 10 to
16 2, would you respect those -- that person's or those
17 persons' views, or would you harass them in the same?

18 A I would respect their views.

19 MR. ABDALLA: Thank you. I appreciate your
20 consideration.

21 THE COURT: All right. Mr. Powell, let me give you
22 this letter. You are qualified to serve as a juror in
23 this case. That does not mean you will be selected,
24 that simply means you are one of 40 or so that we are
25 going to qualify to pick our jury from. It does mean

1 that you need to be prepared to serve if you are
2 selected. You need to go ahead and pack a suitcase
3 for -- to be sequestered for seven or eight days. It
4 may not be that long. I can't anticipate exactly how
5 long it will be, but you need to be prepared to serve
6 for that long. Go ahead and pack any medications,
7 anything like that that you may need. When we have
8 accumulated a sufficient panel, the Clerk will call each
9 qualified juror and instruct them to return to court.
10 When you come, go ahead and bring your suitcase in your
11 car, but don't bring it into the courthouse. Leave it
12 in your car. When you park, go ahead and park over in
13 the Hyatt garage. Did you park there on Monday?

14 MR. POWELL: Yes.

15 THE COURT: All right. Spring Street is the street
16 between the Hyatt garage and the courthouse. When you
17 come out the Spring Street entrance to the Hyatt garage,
18 directly across the street is the garage entrance to
19 this courthouse. I want you to come to that entrance
20 and I will have bailiffs there waiting for all the
21 jurors. The reason I'm doing that is to keep you
22 separate from the public corridors where there might
23 family members on either side, or the press, or things
24 like that. Once all the jurors are -- the bailiffs will
25 bring the jurors upstairs, put them back into courtroom

1 7. Once all the jurors are here, we'll bring you back
2 over here in courtroom 8 and we'll pick the jury in the
3 case.

4 If you are selected as a juror in this case, you,
5 again, will be sequestered, which means you will not
6 have any contact with you family or with your work. If
7 you need to get a message out to someone, we can do
8 that. The bailiffs will call somebody for you, give a
9 message to someone. There are emergency numbers on this
10 letter. If someone needs to contact you in case of an
11 emergency, we can handle any -- any problems like that.
12 Do you have any questions?

13 MR. POWELL: Okay. No.

14 THE COURT: Okay. All right. One thing I did not
15 put in my letter, if you want to bring someone with you
16 to drive your car home, then that might be a good idea.
17 I don't know if you have anybody that can do that. The
18 person that comes with you will not be able to come up
19 the private entrance. They might be able to come in the
20 courtroom and watch the jury process. If you are
21 selected, then the SLED agents will take you to your car
22 to get your luggage, and then that person can take your
23 car home, or you can leave it in the Hyatt garage, or
24 you can make arrangements for somebody else to pick it
25 up later on, whatever you want to do.

1 Do not talk with anyone about this case. If
2 someone attempts to contact you, or talk with you about
3 it, tell them you're a perspective juror and you can't
4 talk about it. If they persist, then take their name
5 and report that to the bailiffs. Do not watch my news
6 accounts of this case, don't read anything in the paper,
7 watch TV, listen to the radio. Okay?

8 MR. POWELL: Okay.

9 THE COURT: We'll probably be picking a jury either
10 Wednesday afternoon or Thursday. I'm not sure how much
11 progress we're going to make, but I will see you back
12 probably Wednesday or Thursday. Okay?

13 MR. POWELL: Okay.

14 THE COURT: Thank you very much. You're free to
15 go.

16 (Mr. Powell exited the courtroom.)

17 THE COURT: All right. Anything with regard to
18 that juror from the State?

19 MR. ARIAIL: No.

20 THE COURT: From the defense?

21 MR. ABDALLA: No, Your Honor.

22 THE COURT: All right. We're on Judith Byrd.
23 Anything I need to know about her?

24 MR. EPPES: She didn't sign her form, Your Honor.

25 THE COURT: I forgot to ask that last juror about

1 that. If y'all can help me remember that I'll be glad
2 it ask them about that. Uncle murdered, son in jail
3 currently. Is that ---

4 MR. ABDALLA: I don't know. Doesn't explain it.

5 THE COURT: All right. Anything else about Ms.
6 Byrd before I bring her in?

7 MR. ARIAIL: No.

8 MR. ABDALLA: No.

9 THE COURT: All right. Bring the -- bring her in.
10 (Ms. Byrd entered the courtroom.)

11 THE COURT: Have a seat right here, please. You
12 are Judith Byrd?

13 MS. BYRD: Yes, sir.

14 THE COURT: If you would come up and have a seat.
15 As you make yourself comfortable, slide your chair up so
16 you can speak directly into the microphone so we can
17 amplify your voice, please, ma'am. Now, you understand
18 that you're still under oath?

19 MS. BYRD: Yes, sir.

20 THE COURT: Have you complied with my instructions
21 not to discuss this case with anyone?

22 MS. BYRD: Yes, I have.

23 THE COURT: All right. Yesterday you noted -- or I
24 noted that you said you had heard something about this
25 case before. Was that from the media?

1 MS. BYRD: Vaguely, yes.

2 THE COURT: All right. Tell us what you remember,
3 if you recall?

4 MS. BYRD: Just -- it's been over a year ago, and I
5 have just -- just vague recollection in my mind.

6 THE COURT: All right. All right. Based on what
7 you recall, have you formed any opinions about this
8 case?

9 MS. BYRD: No, I have not.

10 THE COURT: Have you formed any opinions about the
11 guilt or the innocence of the defendant in this case?

12 MS. BYRD: No, I haven't.

13 THE COURT: All right. Now, I noticed on your
14 return, a couple things I want to ask you about
15 specifically. You noted that your uncle was murdered?

16 MS. BYRD: Yes.

17 THE COURT: And how long ago was that?

18 MS. BYRD: That was in the '50s.

19 THE COURT: In the '50's. All right. Was that in
20 Greenville County?

21 MS. BYRD: It was not.

22 THE COURT: Okay. Were you living -- was -- were
23 you living in the same town he was or ---

24 MS. BYRD: I was living in the city, he lived in
25 the county.

1 THE COURT: Okay.

2 MS. BYRD: In Virginia.

3 THE COURT: You must have been a child then?

4 MS. BYRD: Yes, I was.

5 THE COURT: All right. Would that experience
6 affect your ability to be fair and impartial in this
7 case?

8 MS. BYRD: No, it wouldn't.

9 THE COURT: Do you know if someone was ever
10 arrested, or tried, or convicted in that case?

11 MS. BYRD: No.

12 THE COURT: No one was ever arrested?

13 MS. BYRD: No.

14 THE COURT: Okay. I also noticed that you have a
15 son that you say is currently in jail?

16 MS. BYRD: Yes. Yes, he is.

17 THE COURT: I don't want to embarrass you, but can
18 you tell me a little bit about that, please.

19 MS. BYRD: He violated his probation.

20 THE COURT: All right. And was that in Greenville
21 County?

22 MS. BYRD: Yes, it was.

23 THE COURT: All right. What was he on probation
24 for?

25 MS. BYRD: I'm trying to think of the exact word.

1 It was robbery.

2 THE COURT: Okay. He was on probation, and then
3 what did he do to violate his probation?

4 MS. BYRD: He went to Virginia. He went home and
5 got hit by a car.

6 THE COURT: Okay. Were you involved when his case
7 was prosecuted? I mean did you come to court with him?

8 MS. BYRD: Yes, I did.

9 THE COURT: All right. The -- and that was in
10 Greenville County?

11 MS. BYRD: Yes, it was.

12 THE COURT: All right. The Solicitor's office
13 would have prosecuted that case?

14 MS. BYRD: Yes, they did.

15 THE COURT: Someone from the Solicitor's office.
16 Do you recall who that person was?

17 MS. BYRD: No, I don't. It was a lady.

18 THE COURT: It was a lady Prosecutor?

19 MS. BYRD: Yes.

20 THE COURT: All right. Would that experience with
21 the Solicitor's office affect your ability to be fair
22 and impartial in this case?

23 MS. BYRD: No, it wouldn't.

24 THE COURT: All right. So you can be fair to the
25 State and you can be fair to the defendant?

1 MS. BYRD: Yes, I could.

2 THE COURT: Okay. Now, Ms. Byrd, let me tell you
3 that we're going to be talking with you about a number
4 of things, and there are no right answers, no wrong
5 answers. We will be asking question that may seem like
6 an invasion of your privacy. If you are upset, don't
7 hold it against the State, don't hold it against the
8 defendant, hold it against me. Okay?

9 MS. BYRD: Okay.

10 THE COURT: But we do need your honest, truthful
11 answers to these questions. There are no right answers
12 or no wrong answers. We'll certainly respect any
13 opinions that you have. Do you understand that?

14 MS. BYRD: I understand.

15 THE COURT: And what we're going to be talking
16 about most of the time is penalty, but I need to make
17 sure that you understand, the mere fact that we talk
18 about penalty should not indicated anything about this
19 defendant. Do you understand that?

20 MS. BYRD: Yes.

21 THE COURT: In other words, it's a little bit of a
22 backwards process, because before the trial even begins,
23 we have to talk about penalty. But as the defendant
24 sits there, do you understand that he is presumed to be
25 innocent?

1 MS. BYRD: Yes, I do.

2 THE COURT: All right. If you were selected as a
3 juror on a criminal case, would you listen to the law
4 that the judge charged you and accept that law and apply
5 that law to the case?

6 MS. BYRD: Yes, I would.

7 THE COURT: Would you do that even if you do not
8 necessarily believe that law, if you thought -- if you
9 didn't agree with the law? I say believe the law, say
10 you didn't agree with the law, would you still accept
11 the judge's charge and apply it?

12 MS. BYRD: Yes, I would.

13 THE COURT: Okay. An example might be someone
14 thinks marijuana should be legal, but -- and that's
15 okay, as long as when they came to court they can set
16 that aside and accept the law that the judge gives them.
17 Do you understand that?

18 MS. BYRD: Yes, I do.

19 THE COURT: All right. Now, you understand that
20 the State must prove a defendant guilty beyond any
21 reasonable doubt? Do you understand that?

22 MS. BYRD: Yes, I do.

23 THE COURT: All right. If you sat on a case and
24 you thought the State had not proved someone guilty
25 beyond a reasonable doubt, would you vote not guilty in

1 that case?

2 MS. BYRD: Yes, I would.

3 THE COURT: All right. And if thought the State
4 had proved someone guilty beyond a reasonable doubt,
5 would you vote guilty?

6 MS. BYRD: Yes, I would.

7 THE COURT: All right. Let me talk to you a little
8 bit about capital cases and the death penalty. Did you
9 read my letter that I handed to the jurors?

10 MS. BYRD: Yes, I did.

11 THE COURT: And did that -- was that helpful in
12 helping you understand how a capital case progresses?

13 MS. BYRD: Yes.

14 THE COURT: Do you understand that it is not every
15 murder case that is subject to the death penalty in
16 South Carolina?

17 MS. BYRD: Yes, I do.

18 THE COURT: And it has to be one of these
19 aggravated murders. The example I gave was murder plus
20 an armed robbery, or murder plus a rape. But you
21 understand that that simply means the State can seek the
22 death penalty, but the penalty that is imposed is not
23 automatic, even when we talk about an aggravated murder?
24 Do you understand that?

25 MS. BYRD: Yes.

1 THE COURT: All right. What a jury does is they
2 sit -- in a capital case they sit in the first phase
3 like any other case, the issue is is the defendant
4 guilty or not guilty. If the defendant is not guilty,
5 everybody goes home. But if the defendant is guilty,
6 then you move to the second phase. And in that second
7 phase the jury must decide punishment. The only two
8 options are life without any possibility of parole, or
9 death, which in South Carolina means death by
10 electrocution or lethal injection. Do you understand
11 that?

12 MS. BYRD: Yes.

13 THE COURT: All right. Now, before a jury decides
14 that issue of life or death, they sit in that second
15 phase or that second trial, and additional evidence is
16 presented. There is evidence in aggravation and
17 evidence in mitigation. Evidence in aggravation is
18 evidence put up by the State that they put up to attempt
19 to convince the jury the proper sentence would be death.
20 It may include the fact that the defendant has a very
21 bad character, or that he has a long history of violent
22 crimes. It might be that the State will put up evidence
23 of victim impact. In other words, family members may
24 testify as to the -- what the loss of their relatives
25 means to them, to the community. That's the type of

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1 evidence we're talking about in aggravation. Do you
2 understand that?

3 MS. BYRD: Yes.

4 THE COURT: And then in mitigation, the defense
5 would put up things about the defendant. For instance,
6 maybe the person was suffering from a mental problem at
7 the time of the crimes, or maybe he was under the
8 influence of someone else when he committed the crimes,
9 or maybe he's got a clean record, he's never done
10 anything, never been in trouble with the police, things
11 like that. Do you understand?

12 MS. BYRD: Yes.

13 THE COURT: Do you understand that a jury is never
14 required to vote for the death penalty, they can always
15 vote for life?

16 MS. BYRD: I didn't know that, but I do now.

17 THE COURT: All right. Let me explain. A jury,
18 even if they find an aggravated circumstance, or there
19 may be several aggravating circumstances that they find
20 beyond a reasonable doubt. And let's say the defense --
21 let's say the jury does not find any mitigating
22 circumstances, they can still give life. Do you
23 understand that?

24 MS. BYRD: Um-hm.

25 THE COURT: You have to say yes or no.

1 MS. BYRD: Yes, I do.

2 THE COURT: All right. Now, understanding this
3 whole process, we need to know generally how you feel
4 about capital punishment. Would you say you generally
5 are for the death penalty, generally against the death
6 penalty, how do you feel?

7 MS. BYRD: Generally I'm against it.

8 THE COURT: Okay. Does that mean you're against it
9 in every case?

10 MS. BYRD: No, it does not.

11 THE COURT: Okay. If the case was aggravated
12 enough, could you vote to invoke the death penalty?

13 MS. BYRD: Yes, I could.

14 THE COURT: All right. Now, before you voted for
15 life or death, would you listen to the evidence in
16 aggravation that is presented by the defense and charged
17 by the judge and give that evidence meaningful
18 consideration, and would you listen to the evidence in
19 mitigation as presented by the defense and charged by
20 the judge before you made that decision?

21 MS. BYRD: I would listen to both of them equally.

22 THE COURT: Okay.

23 MS. BYRD: Then make a decision.

24 THE COURT: All right. Now, I think you have
25 answered this, but let me just make sure. If you

1 thought the appropriate sentence was life, could you
2 vote for a life sentence?

3 MS. BYRD: Yes, I could.

4 THE COURT: All right. And if you thought the
5 appropriate sentence was death, could you vote for a
6 death sentence?

7 MS. BYRD: It would be difficult, but I could.

8 THE COURT: Okay. It should not be easy, you
9 understand that? It is a very serious process. If you
10 thought the appropriate sentence was death, and all the
11 other jurors thought so also, you would be required to
12 sign your name to the verdict form. Do you understand
13 that?

14 MS. BYRD: (Witness nodded her head.)

15 THE COURT: If you thought that was the appropriate
16 sentence, could you sign your name to the verdict form?

17 MS. BYRD: Yes.

18 THE COURT: Okay. Thank you very much. You're up,
19 Mr. Abdalla. Mr. Abdalla is one of the attorneys
20 representing the defendant in this case. He's going to
21 ask you some questions, and then Mr. Ariail, the
22 Solicitor, will ask you some questions.

23 MR. ABDALLA: Thank you, Your Honor.

24 QUESTIONING BY MR. ABDALLA:

25 Q Ms. Byrd, my name is John Abdalla, and Frank Eppes

1 is my co-counsel. Seated next to him is Mr. Sigmon,
2 who's our client. My understanding, you say you're --
3 you could give either a life or death sentence, is that
4 correct?

5 A Yes.

6 Q So -- I apologize for my lack of organization.
7 First of all, I want to tell you I understand that this
8 is inconvenient for you, and we appreciate your service
9 here.

10 A Thank you.

11 Q And these are difficult decisions and it seems
12 you're willing to take on those decisions. Now, do you
13 understand that if you're seated on a jury who convicts
14 a client of murder, and then aggravating factors are
15 found, the judge explained things to you about
16 aggravating factors, such as murder while in the
17 commission of an armed robbery, for example. At that
18 point, all the aggravation is met, the charge of murder
19 has been met. In other words, it's murder, it's not an
20 excusable killing. There is no defense left. It's not
21 a situation where it's self-defense, where it's
22 accident. You have already framed that issue in your
23 mind.

24 A Yes.

25 Q Can you still vote for a life sentence knowing that

1 the death penalty is an option?

2 A Yes, I could.

3 Q And you would take the mitigation -- would you take
4 mitigation into consideration, mitigation such as if the
5 client had a bad home life, or he had a drug problem,
6 things like that?

7 A Yes.

8 Q All right. And the prosecution may put up evidence
9 of victim impact evidence. They would have family
10 members talk about their loss, and it would be pretty
11 serious testimony. Will you still be able to consider a
12 life sentence in light of that?

13 A Yes.

14 Q You understand that life means life without the
15 possibility of parole?

16 A Yes, I do.

17 Q And you have the ability to stick to your
18 convictions no matter which way the rest of the jurors
19 feel?

20 A Yes, I do.

21 Q I'm sorry?

22 A Yes, I do.

23 MR. ABDALLA: One moment, please. Thank you.

24 THE COURT: All right. Solicitor.

25 MR. ARIAIL: Thank you, Judge.

1 QUESTIONING BY MR. ARIAIL:

2 Q Ms. Byrd, my name is Bob Ariail, and I'm the
3 Solicitor for Greenville and Pickens Counties, and the
4 Solicitor is the person who is responsible for
5 prosecuting all the criminal cases. I'll be assisted in
6 this case by Betty Strom, she's my Deputy Solicitor, and
7 Mindy Hervey, who's one of any Assistant Solicitors.
8 And as the judge explained to you, we'll -- in the
9 typical, hypothetical death penalty case, where the
10 State has elected to proceed to seek the death penalty,
11 if the defendant is found guilty, we proceed to a second
12 phase called the sentencing phase. Normally a judge
13 would be responsible for sentencing someone, but in a
14 death penalty case the jury is given that discretion.
15 And the jury is then presented different forms of
16 evidence in aggravation and evidence in mitigation. And
17 one side or the other, one side is seeking the
18 imposition of the death penalty, would be the State, and
19 the defense would be seeking life imprisonment. Now,
20 what we're looking for, obviously, is jurors that can
21 fairly and honestly consider imposing both penalties at
22 the end of that case, people who are not preconceived to
23 vote one way or the other. So what -- I want to go back
24 to the judge's question, and he said, would you be able
25 to vote in that situation for imposition of death

1 penalty if -- imposition of the death penalty if you
2 felt the facts and the circumstance of the case were
3 sufficient to warrant that punishment?

4 A Yes, I could.

5 Q All right. And you said that -- in one of the
6 answers you said you could, but it would be difficult.
7 Could you be a little bit more specific as to what --
8 why it would be difficult?

9 A Because life is valuable to me, regardless of the
10 situation, and it would be a difficult decision for me
11 to make, but if the evidence were there, I would make
12 it.

13 Q All right. So it would be -- it's a personal
14 thing, because life is valuable, and I understand that,
15 but it's not some political, or religious, or moral, or
16 ethical reason that may be limiting you, such as maybe
17 your religion doesn't believe in it, you would be
18 worried about your preacher, or something like that?

19 A No.

20 Q It's a personal thing?

21 A It is.

22 Q And putting value on human life?

23 A Yes.

24 Q All right. But you do recognize -- I assume from
25 what you're saying, there are circumstances in our

1 society in which it would be appropriate for the death
2 penalty to be imposed?

3 A Yes.

4 Q And you would -- if you recognized one of those and
5 felt the evidence supported that, you could vote for
6 that?

7 A Yes.

8 Q All right. And the judge also instructed or told
9 you that as part of that process, you would have to sign
10 this document, sometimes referred to as the death
11 warrant, if you found the appropriate penalty was the
12 death penalty. Assuming that you did find that the
13 death penalty was appropriate, would you be able to sign
14 that document, sign your name to that piece of paper?

15 A If I found it so, yes, sir. I imagine I would have
16 to.

17 Q Okay. Well, the -- I guess the flip side of that
18 is, would you be so -- would it be of such a concern to
19 you, that you had to sign it, that it may influence your
20 decision as to what penalty would be appropriate? In
21 other words, would you be thinking, I don't want to be
22 signing that form at the end, so I'm going to sort of
23 not consider the death penalty.

24 MR. ABDALLA: Objection, Your Honor.

25 THE COURT: Overruled. Go ahead. You can answer

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1 the question.

2 MS. BYRD: I don't know. I don't know. I think
3 that if I made the decision with the evidence, with the
4 evidence presented and this was the consensus, this is
5 what was decided amongst the jurors, and it was
6 unanimous, then I would.

7 MR. ARIAIL: All right. That's all I need to know.
8 Thank you very much.

9 THE COURT: All right.

10 MR. ARIAIL: Thank you, Judge.

11 THE COURT: Let me give you this paper, Ms. Byrd.
12 You are qualified to serve as a juror in this case.
13 That does not mean that you will be selected. That
14 simply means you would be one of a panel of 40 or so
15 jurors that we bring back and the jury will be selected
16 from that group. Do you understand that?

17 MS. BYRD: Yes.

18 THE COURT: Now, you need to be prepared to serve,
19 and by that I mean you need to go ahead and pack a
20 suitcase for about seven or eight days. You will be
21 sequestered. You need to go ahead and pack any
22 medications, things like that that you might need. The
23 clerk will call each qualified juror and tell them when
24 to return to court. That will probably be sometime
25 tomorrow or Thursday. When you come back, I want you to

1 park in the Hyatt parking garage across the street. Did
2 you park there yesterday morning?

3 MS. BYRD: Yes, I did.

4 THE COURT: All right. The street between the
5 Hyatt parking garage and the courthouse is Spring
6 Street. Directly across from the garage entrance to the
7 Hyatt parking garage is the garage entrance to the
8 courthouse. I don't know if you recall seeing that, but
9 anyway, it's directly across the street. I want jurors
10 to go to that location and bailiffs will be there to
11 meet them and bring them up. I don't have enough
12 parking back in this parking lot where you parked just
13 now. So I want you to park across the street. Leave
14 your suitcase in the car. Come in the garage entrance
15 and that will keep you from coming into the public
16 corridors where the families might be, the press might
17 be, things like that. Okay?

18 MS. BYRD: All right. There was one other thing.

19 THE COURT: All right. Let me finish then I'll
20 handle any problems. The -- while you're sequestered,
21 you will not have any direct contact with any employers,
22 or family members, but you will be able to get a message
23 to them, and they can call you in case of an emergency.
24 If you forgot something and you need it at the motel, or
25 you need to get a message to your family, then they

1 can -- you can give the message to the bailiff, and
2 they'll call your family members. And on this letter
3 are two emergency numbers, one day time and one night
4 time number. Now, you wanted to ask me something?

5 MS. BYRD: I'm in the process of a legal hearing,
6 and ---

7 THE COURT: Did you tell me about that earlier?

8 MS. BYRD: I didn't get to speak with you.

9 THE COURT: All right.

10 MS. BYRD: And I need to know whether or not my
11 attorney will be able to contact me if ---

12 THE COURT: Tell me -- I don't want to embarrass
13 you, but tell me the nature of that hearing?

14 MS. BYRD: I'm in the process of a divorce.

15 THE COURT: All right. Is there any kind of
16 hearing that is scheduled at this time?

17 MS. BYRD: I don't know.

18 THE COURT: Okay.

19 MS. BYRD: It should be.

20 THE COURT: All right. What you need to do is go
21 ahead and contact your -- who is your attorney?

22 MS. BYRD: Robert Rosenfeld.

23 THE COURT: All right. Go ahead and talk to Mr.
24 Rosenfeld today or tomorrow morning, and tell him what's
25 going on. Tell him if he's got any questions he can

1 call me. I know him very well. Okay. This would take
2 precedence over any hearing that you may have. Okay.
3 If there is some sort of -- are you waiting on some sort
4 of emergency hearing, or temporary hearing?

5 MS. BYRD: No, we should be into the final.

6 THE COURT: Okay. Well, if you had a final hearing
7 set, he would have told the day. So you probably don't
8 have a hearing set, but let me just tell you, I will do
9 anything I can to facilitate that process. In other
10 words, if you miss a hearing, I know every Family Court
11 judge, I will talk to them and see if they can't
12 expedite in resetting your hearing. In other words, I
13 don't want you to worry about that. It should not be a
14 problem, okay. But you go ahead and tell Mr. Rosenfeld.
15 You might not even be picked. I mean, so -- I mean,
16 don't -- but go ahead and tell him you might be picked,
17 but if you are selected then we're going to take
18 immediate possession of you, if you will. We are going
19 to sequester you at that time. Go ahead and talk to Mr.
20 Rosenfeld. If he's got any questions, tell him to give
21 me a call.

22 MS. BYRD: All right.

23 THE COURT: Any other questions?

24 MS. BYRD: No.

25 THE COURT: Let me tell you, don't talk about this

1 case with anyone. You can talk about the fact that
2 you're on the jury, you got to come, so when you talk to
3 Mr. Rosenfeld, you can tell him, you know, that you're
4 qualified as a juror, but don't talk about the
5 substantive facts of this case. Also, don't look at
6 anything on TV, don't read anything in the paper about
7 it. If someone tries to talk to you about the case,
8 tell them you're a potential juror, you can't talk about
9 it. If they persist, take their name and give that name
10 to the bailiff. Okay?

11 MS. BYRD: Yes, sir.

12 THE COURT: All right. We will see you either
13 tomorrow to the next day.

14 MS. BYRD: All right. Thank you.

15 THE COURT: Thank you, ma'am.

16 (Ms. Byrd exited the courtroom.)

17 THE COURT: All right. Let's take a break. We're
18 a little bit behind. Does anybody know the reporter
19 that was here, the new reporter? Have you had any
20 contact with him?

21 MR. EPPES: Andy Parris (phonetically)? The guy
22 with the mustache, Andy Parris?

23 THE COURT: Yeah.

24 MR. ARIAIL: I know him.

25 THE COURT: All right. He just left. I just want

1 to make sure -- would you see if you can get him and ask
2 him to step back in here? I just want to make sure he's
3 not going to write anything about that. I'm sure he's
4 not, but -- all right. Let's take about a five minute
5 break.

6 (A short recess was taken, after which, the trial
7 continued as follows:)

8 THE COURT: You heard that last juror's information
9 she gave me about being involved in another case, I just
10 want to make sure, you're not going to write anything
11 about that?

12 MR. PARRIS: No. We're not writing any of their
13 names either.

14 THE COURT: I understand. Okay. I just didn't
15 want her to be embarrassed. Okay. Thank you. All
16 right. Bring in Mr. Green.

17 MR. EPPES: He agrees with you on the
18 questionnaire, Judge.

19 (Mr. Green entered the courtroom.)

20 THE COURT: You are Danny Green?

21 MR. GREEN: Yes, sir.

22 THE COURT: All right. If you would, have a seat.
23 As you have a seat, make yourself comfortable, go ahead
24 and get close to that microphone. If you would, speak
25 into it that way your voice will be amplified and

1 everybody will be able to hear you. Okay?

2 MR. GREEN: Okay.

3 THE COURT: All right. You understand, Mr. Green,
4 that you are still under oath?

5 MR. GREEN: Yes.

6 THE COURT: And have you complied with my prior
7 instructions not to talk with anyone about this case?

8 MR. GREEN: Yes.

9 THE COURT: All right. I noticed downstairs
10 yesterday you responded that you knew a witness, that
11 you had heard the facts of the case and you had formed
12 an opinion. So I need to ask you about each of these
13 things before we go any further. When you say you've
14 heard the facts of the case, was that back when it
15 happened, or was that more recently?

16 MR. GREEN: Back when it happened.

17 THE COURT: All right. And was that source of
18 information from the news media?

19 MR. GREEN: Yes.

20 THE COURT: All right. Can you tell me what you
21 recall about the case?

22 MR. GREEN: Well, actually what I was referring to
23 was -- as -- is more -- as far as the sentencing phase,
24 as opposed to the actual case itself. That -- the
25 opinion I would have would be regarding that, not the

1 information that I might have obtained.

2 THE COURT: Okay. And I'm going to get to the
3 forming of an opinion in just a minute, but just let me
4 take them one at a time. You said you had heard some
5 facts of the case. Do you recall specifically what
6 facts you heard?

7 MR. GREEN: Nothing, other than the fact that the
8 defendant had murdered some lady's parents. That's all
9 I remember particularly.

10 THE COURT: All right. And from that, had you
11 formed an opinion about the guilt or the innocence of
12 this defendant?

13 MR. GREEN: I would say pretty much, yes.

14 THE COURT: And what is that opinion?

15 MR. GREEN: It would be probably guilty.

16 THE COURT: All right. Can you set that opinion
17 aside and judge the case solely on the evidence and
18 testimony that you heard in the courtroom?

19 MR. GREEN: I think it would be very difficult to.

20 THE COURT: All right. Well, you understand that I
21 would need for you to be able to tell me if you could do
22 that. In other words, it would not be fair to judge
23 somebody on something that somebody said, or something
24 the media said, because that evidence was not sworn to
25 in court. Do you understand what I'm saying?

1 MR. GREEN: Yes, I do.

2 THE COURT: All right. The question is, could you
3 set that aside and listen and judge the case only on the
4 facts as you heard ---

5 MR. GREEN: In court.

6 THE COURT: -- in court?

7 MR. GREEN: I don't believe I could.

8 THE COURT: Okay. All right. You say you know a
9 witness in this case?

10 MR. GREEN: Yes.

11 THE COURT: Who is that witness?

12 MR. GREEN: Parks Evans.

13 THE COURT: Okay. And he's the coroner?

14 MR. GREEN: Yes.

15 THE COURT: And how do you know him?

16 MR. GREEN: He used to be an assistant at the fire
17 station before he became the coroner.

18 THE COURT: Okay. And did you -- were you
19 associated with the fire department or ---

20 MR. GREEN: No, I was not, but I would have some
21 interaction with him because there were always wrecks in
22 front of my house.

23 THE COURT: Okay. All right. All right.

24 MR. GREEN: I live on a real sharp curve.

25 THE COURT: And you also said that you formed an

1 opinion, and I asked you about the opinion you had
2 formed as far as the guilt of this defendant. Is that
3 what you meant when you said you had formed an opinion,
4 or have you formed some other opinion?

5 MR. GREEN: I'm not quite sure of your question.

6 THE COURT: Well, you had said when I asked
7 yesterday, had you formed an opinion about the case, and
8 you said, yes, you had already formed an opinion. Were
9 you talking about the guilt of the defendant when you
10 said that?

11 MR. GREEN: Well, that -- yes, I have formed that
12 opinion, but there was also another opinion.

13 THE COURT: All right. Well, let me do this. Let
14 me ask you to step outside for just a minute. Let me
15 talk to the lawyers, and then we'll be back with you
16 shortly. Okay.

17 (Mr. Green exited the courtroom.)

18 THE COURT: All right. He says he's formed an
19 opinion and can't set it aside about the guilt of the
20 defendant. What's your position?

21 MR. EPPE: Your Honor, I would like to know what
22 the opinion is he's formed about the sentencing phase.
23 That's what he said.

24 THE COURT: Well, we're not to that point yet.
25 He's formed an opinion about the guilt of the defendant

1 and cannot set that aside.

2 MR. EPPES: That's okay.

3 THE COURT: It wasn't okay for any other juror.

4 MR. EPPES: Your Honor, we don't know what other
5 opinions he's formed. I think he might can set it
6 aside. I don't know the answer.

7 THE COURT: Well, he cannot set it aside. I've
8 asked him several times. Are you telling me you think
9 he's qualified?

10 MR. EPPES: I'm not saying he's qualified. I
11 wanted to hear the other opinion before I ---

12 THE COURT: Well, I'm going to address this issue
13 first. Why would that not disqualify him?

14 MR. ARIAIL: The State's position is he's not
15 qualified.

16 THE COURT: All right.

17 MR. EPPES: Your Honor, if it applies across the
18 board, it certainly applies to him, and he's not
19 qualified.

20 THE COURT: All right. I agree. And I just ---

21 MR. EPPES: I would like to know his opinion,
22 though, as part of curiosity as anything.

23 THE COURT: Well, I mean, I'm going to tell you
24 something, he's got some.

25 MR. EPPES: That's what I want to know, Judge.

1 THE COURT: I think he ought to scare both sides,
2 quite frankly. All right.

3 MR. ARIAIL: Maybe you ought to scare him.

4 THE COURT: All right. I want to move on.

5 (Mr. Green entered the courtroom.)

6 THE COURT: Okay, sir. All right. You don't need
7 to even get on the stand, Mr. Green, because of -- you
8 told me you formed an opinion that you couldn't set
9 aside, that wouldn't be fair to anybody to let you
10 serve, so I'm going to disqualify you from this case. I
11 appreciate your honesty, and I appreciate your service
12 so far. You're free to go.

13 MR. GREEN: Okay. I appreciate it. Thank you.

14 THE COURT: Thank you very much.

15 (Mr. Green exited the courtroom.)

16 THE COURT: Anything on Mr. Harris I need to know
17 before I bring him in?

18 MR. ARIAIL: No.

19 THE COURT: All right. Bring in John Mark Harris.

20 (Mr. Harris entered the courtroom.)

21 THE COURT: Come in, have a seat, make yourself
22 comfortable in the chair. If you would, slide your
23 chair forward and that way you're close to the
24 microphone, and I'll need you to speak directly into the
25 microphone. You are John Mark Harris?

1 MR. HARRIS: Yes, sir.

2 THE COURT: All right. I would remind you, Mr.
3 Harris, that you are under oath. Do you understand
4 that?

5 MR. HARRIS: Yes.

6 THE COURT I asked jurors yesterday if they had
7 heard anything about this case or knew any witnesses,
8 and my records reflect you did not respond to any of
9 those questions, that you had heard anything about it or
10 anything?

11 MR. HARRIS: No, sir.

12 THE COURT: Okay. I'm going to be asking you a
13 number of questions and these lawyers are going to be
14 asking you questions. At some point in time you're
15 probably going to feel like we're invading your privacy.
16 We don't mean to do that, but if we offend you, hold it
17 against me, don't hold it against the State of South
18 Carolina and don't hold it against the defendant in this
19 case. There are no right answers. There are no wrong
20 answers, Mr. Harris, but we do need you to respond
21 openly, fully, and of course honestly to these
22 questions. Most of the questions that I will be asking
23 you and the lawyers will be asking you deal with the
24 death penalty. The options in this case, if this case
25 gets to the second phase, or the second trial, would be

1 either a life sentence, which means life without any
2 possibility of parole, or death, which in South Carolina
3 is death by electrocution or by lethal injection. But
4 because we're talking about possible penalties in this
5 case, that should not indicate anything about this
6 defendant. Do you understand that?

7 MR. HARRIS: (Witness nodded his head.)

8 THE COURT: He is presumed to be innocent as he
9 sits there.

10 MR. HARRIS: Right.

11 THE COURT: Obviously in order to get a fair jury
12 in a case like this, we've got to talk about penalty,
13 but it's sort of backwards because we're talking about
14 penalty before we -- you've heard anything about the
15 case, you understand that?

16 MR. HARRIS: Yes, sir.

17 THE COURT: All right. Another thing I need to get
18 you to do is say yes or no. She's taking down
19 everything that is said, but we have a back-up system
20 and so you can't nod your head or shake your head, you
21 need to answer yes or no, if you would, please.

22 MR. HARRIS: Yes, sir.

23 THE COURT: All right. Before I get into questions
24 about penalty, let me ask you this. If you were
25 selected as a juror on a criminal case, would you listen

1 to the law that the judge gives to the jury and would
2 you accept that law and apply that law to the case?

3 MR. HARRIS: Yes, I would.

4 THE COURT: All right. Would you do that even if
5 you perhaps did not agree with that law?

6 MR. HARRIS: Sure. Yes, I would have to.

7 THE COURT: Okay. Well, your oath would say you
8 had to, but in other words, some people come to court
9 and they think they know what the law is and then when
10 they hear the judge it's different, and that's fine, as
11 long as they set that aside. Other people might come to
12 court and they have a notion as to what they wish the
13 law was, or they think it should be, and again that's
14 fine, as long as they can set that aside and accept the
15 law that the judge gives them. Do you understand that?

16 MR. HARRIS: Yes.

17 THE COURT: You're telling me you would accept the
18 law that I give to you as the proper law and apply that
19 law?

20 MR. HARRIS: Yes, I would.

21 THE COURT: All right. Now, in a criminal case the
22 State has the burden of proving a defendant guilty.
23 That burden is beyond a reasonable doubt. Do you
24 understand that?

25 MR. HARRIS: Yes.

1 THE COURT: Now, if you were sitting on a case and
2 if you heard the evidence and you were not convinced
3 beyond a reasonable doubt of a defendant's guilt, would
4 you vote not guilty?

5 MR. HARRIS: Yes, I would.

6 THE COURT: And the converse of that is, if you
7 listened to the evidence and you were convinced beyond a
8 reasonable doubt that the defendant was guilty, would
9 you vote for guilty?

10 MR. HARRIS: Yes, I would.

11 THE COURT: All right. Now, did you read my letter
12 sort of explaining in a nutshell what a capital case is
13 about?

14 MR. HARRIS: Yes, I did.

15 THE COURT: Did you know we had the death penalty
16 in South Carolina?

17 MR. HARRIS: No, I did not.

18 THE COURT: Okay. You understand that we have the
19 death penalty, but it's not every murder case that is
20 subject to the death penalty, you understand that, it's
21 got to be one of ---

22 MR. HARRIS: I understand that now.

23 THE COURT: All right. Most people think that
24 every murder case might be subject to the death penalty,
25 but it's not, it's only these what we call aggravated

1 murder cases. And of course every murder case is
2 aggravated but these are statutory aggravating
3 circumstances. These are circumstances that our
4 Legislature says distinguishes these murders from other
5 murders and makes them subject to the death penalty. So
6 the examples I gave are murder of a -- during the
7 commission of a rape, or murder during the commission of
8 an armed robbery. In other words, it might be murder of
9 a small child, something like that. Do you understand
10 that even when we talk about aggravated murder, the
11 penalty is not automatic. That simply allows the State
12 to seek the death penalty, and what we do is empanel a
13 jury, and that jury makes the ultimate decision of what
14 the penalty should be. Do you understand that?

15 MR. HARRIS: Yes, I do.

16 THE COURT: All right. Now, the case -- a death
17 penalty case is what we call a bifurcated case, a
18 two-part case. The first part of the case is the trial
19 phase, which is like any other case, the issue is
20 whether the person is guilty or not guilty. If the
21 verdict is not guilty then everybody goes home. If the
22 verdict is guilty then there is a short waiting period,
23 and then that same jury comes back and it's like a new
24 trial, except the only issue in that trial is whether
25 the punishment should be life or death. Do you

1 understand that?

2 MR. HARRIS: Yes.

3 THE COURT: And in that new trial, you would hear
4 additional testimony and evidence. The State would be
5 putting up evidence in aggravation. And evidence in
6 aggravation can be many different things. It might be
7 the fact that the defendant has a significant history of
8 crimes of violence on his record. They more than likely
9 would put up evidence of victim impact. In other words,
10 testimony from family members about what the deaths of
11 the victims has meant to them personally and meant to
12 the community. And they will be putting up all this
13 aggravating evidence in an attempt to convince the jury
14 that death is the proper sentence. Do you understand
15 that?

16 MR. HARRIS: Yes, I do.

17 THE COURT: And in that same phase, the defense
18 would put up evidence in mitigation. Evidence in
19 mitigation is not something that would excuse what the
20 person did, but it's something that might mitigate what
21 punishment he should receive. So it might be something
22 like, again, the sky is the limit. I have no idea. You
23 know, every case is different, but it might be that
24 perhaps the person suffered from some mental problem
25 when he committed the crime. It might be that he has a

1 clean record, never been in trouble before. It might be
2 that the defendant is a particularly young person. It
3 might be that he was under the influence of some other
4 person when he committed the crimes. Any number of
5 things. And again, that evidence is presented to try to
6 convince the jury that life is the appropriate sentence.
7 Do you understand that?

8 MR. HARRIS: Yes, I do.

9 THE COURT: All right. A jury is never compelled
10 to give the death penalty. And by that I mean a jury
11 can find the existence of one or more, or several
12 aggravating circumstances beyond a reasonable doubt, and
13 they may find that there is no mitigating evidence, but
14 they can still give a life sentence. Do you understand
15 that?

16 MR. HARRIS: Yes.

17 THE COURT: All right. Now, understanding that
18 whole process, do you understand -- I'm sure you
19 understand we need to generally get to know what you're
20 feelings are about capital punishment. Would you say
21 generally you're in favor of the death penalty,
22 generally you're opposed to the death penalty, how do
23 you feel?

24 MR. HARRIS: I'm in favor of the death penalty.

25 THE COURT: All right. And does that mean that you

1 think that there is a proper place in our society for
2 capital punishment?

3 MR. HARRIS: I believe it.

4 THE COURT: Okay. Would vote for capital
5 punishment in every case of aggravated murder?

6 MR. HARRIS: No, I don't -- I guess my basic belief
7 on it is if -- if the person that committed the crime
8 without -- is obviously guilty of that crime and there
9 weren't any other major factors, of mental problems, I
10 think they should receive the death penalty.

11 THE COURT: Okay. Well, again, you understand that
12 there might be aggravating circumstances found beyond a
13 reasonable doubt, and the jury may not find any
14 mitigating circumstances, but they can still vote for
15 life, you understand that?

16 MR. HARRIS: Correct.

17 THE COURT: Okay. If you sat on a jury and if you
18 thought that the appropriate sentence was death, could
19 you vote for the death penalty?

20 MR. HARRIS: Yes, I could.

21 THE COURT: All right. And if sat on a jury and if
22 you thought the appropriate sentence was life, could you
23 vote for life imprisonment?

24 MR. HARRIS: Yes, I could.

25 THE COURT: All right. And would you, before you

1 made that decision of life or death, would you listen to
2 and give meaningful consideration to the aggravating
3 evidence that's presented by the State and charged by
4 the judge?

5 MR. HARRIS: Yes, I would.

6 THE COURT: And would you give meaningful
7 consideration to the mitigating evidence that's
8 presented by the defense and charged by the judge before
9 you made your decision?

10 MR. HARRIS: Yes, I would.

11 THE COURT: All right. Now, the last thing, Mr
12 Harris, is, if you are -- were sitting on this type of
13 case, and if you thought the proper sentence was death,
14 you would be required to sign the verdict form. All
15 jurors have to affix their individual signatures to the
16 verdict form if the sentence is death. Do you
17 understand that?

18 MR. HARRIS: Yes.

19 THE COURT: If you thought that was the proper
20 sentence, could you do that?

21 MR. HARRIS: Yes, I could.

22 THE COURT: Okay. All right. This is Ms. Strom.
23 She's assisting Solicitor Bob Ariail in this case.
24 She'll ask you some questions. And then this is Frank
25 Eppes, he is representing, along with Mr. Abdalla, the

1 defendant in this case. Ms. Strom.

2 QUESTIONING BY MS. STROM:

3 Q Good afternoon, Mr. Harris.

4 A Good afternoon.

5 Q We may sound like we're asking the same questions
6 the judge asked you, so just forgive us, okay. What I
7 got from what you were telling us is that you believe
8 that the death penalty has an appropriate place in our
9 society, right?

10 A Yes, I do.

11 Q Okay, but it's not in every case?

12 A Right.

13 Q Okay. The judge asked you about applying the law
14 and accepting the law as he gives it to you, and you
15 said you could do that?

16 A Right.

17 Q So if the judge were to instruct you, as the judges
18 do instruct, that you must consider any and all
19 mitigating circumstances before you come to a decision
20 on the death penalty, you would follow that instruction
21 and consider those -- that evidence before reaching a
22 decision?

23 A Yes, I would.

24 Q And I take from you what said earlier, that you
25 would actually want to do that, you would want to know

1 as much about this case as you possibly can before you
2 make that decision?

3 A Oh, yes.

4 Q And just because it is a murder plus an aggravating
5 circumstance, like the judge had given the example of
6 murder plus an armed robbery, murder plus a rape, just
7 because the aggravating circumstance was found, you
8 would not automatically vote for the death penalty?

9 A Not at all.

10 Q You would still want to hear everything you
11 possibly could before you made that decision?

12 A Yes.

13 Q Okay. Can you think of anything in your
14 background, or your religious beliefs, or your
15 employment, or anything like that that could -- that
16 would substantially impair your ability to consider a
17 death sentence?

18 A Well, I'm a pretty religious person. I went to Bob
19 Jones through elementary school, so I would have a
20 pretty strong belief, and so I don't think it would
21 impair my ability to make that decision though, either
22 way.

23 Q Bob Jones, the school does not take a position
24 against the death penalty, correct, or do you know?

25 A I do not know.

1 Q Okay. But you know of no reason in your background
2 or anything that would prevent you from considering the
3 death penalty?

4 A No, I don't believe.

5 Q What would you say is the purpose of the death
6 penalty?

7 A Well, I guess you can look at it two ways. It's
8 basically eye for an eye, and also you know, if that
9 person is not around anymore then you don't have to
10 worry about it, so it's kind of -- I guess that's the
11 way I look at it.

12 Q Okay. I want to on follow up one thing you said,
13 just to make sure that I understand it in the context of
14 everything else you said. You said an eye for an eye.
15 Based upon what you told me earlier, you're not meaning
16 just because somebody committed a murder then they
17 should also be killed in every circumstance?

18 A Well, if -- I guess in my opinion, it's -- if
19 somebody just goes out and kills somebody just to -- it
20 just happened, they didn't -- you know, they meant to do
21 it, then, you know, it's -- that's where I believe the
22 death penalty should be taken into consideration.

23 Q Taken into consideration?

24 A Well, it should be applied, but if -- obviously if
25 there's other factors that were involved, like a mental

1 disability, then you kind -- you've got to look at it,
2 and well, maybe that -- that isn't the right thing.

3 Q So there again, you would want to hear everything
4 before you actually made that decision?

5 A Correct.

6 Q Okay. And in the process of making that decision,
7 do you understand that there is give and take among the
8 jurors when they're back in the jury room deciding what
9 sentence to impose, or in fact what verdict to return,
10 there's give and take, everybody talks about their
11 position?

12 A Right.

13 Q Do you believe that you could hold to your personal
14 beliefs -- let me back up. If you had come to a
15 decision as to the appropriate penalty to impose, do you
16 think that you would just give up that opinion just to
17 go along with the majority, or would you hold your
18 ground?

19 A I would probably hold my ground.

20 Q Okay. And this is assuming after there has been an
21 appropriate give and take, exchange of ideas and that
22 type of thing. And if you were in the majority, would
23 you also respect the opinions and positions of the
24 people in the minority?

25 A Sure. Yes, I would.

1 MS. STROM: Court's indulgence? Nothing further.
2 Thank you.

3 THE COURT: All right. Mr. Eppes.

4 QUESTIONING BY MR. EPPES:

5 Q Hi, Mr. Harris. I'm Frank Eppes. This is John
6 Abdalla, and he's my co-counsel. This is Brad Sigmon.
7 He's the defendant in this case. Mr. Harris, first of
8 all, where's Wellesley Way?

9 A It's near the old Roper Mountain Science Center.

10 Q Yeah.

11 A It's in that area.

12 Q Okay. Thank you. I just didn't recognize it. I
13 thought I should for some reason. You mentioned -- you
14 mentioned mental problems as something you would want to
15 know about. By that do you mean the defense of
16 insanity, or do you mean something else?

17 A You mean like temporary insanity?

18 Q Well, what do you mean by mental problems when you
19 said you would want to know about mental problems.

20 MS. STROM: I'm going to object, Your Honor, case
21 specific and it's asking the juror to speculate as to
22 what he possibly would want to hear.

23 THE COURT: Well, I'm the one that said mental
24 problems is a possible mitigating circumstance. That's
25 just one example of a possible mitigating circumstance.

1 Do you understand that?

2 MR. HARRIS: Right.

3 THE COURT: All right. I'm going to sustain the
4 objection.

5 BY MR. EPPES:

6 Q Okay. You understand if there was a trial, that
7 there would be two parts to it. There would be a guilt
8 phase, a trial phase basically, where you decide on
9 someone's guilt and innocence?

10 A Right.

11 Q Okay. Do you understand that at that portion of
12 the trial, the defendant would put forward any defenses
13 that he had. He would say it was self-defense, they
14 attacked me. It was -- I had an alibi, I was somewhere
15 else, somebody did it -- somebody else did it. It was
16 an accident. He might say I was insane, you can't hold
17 me responsible for my actions. Do you understand that?

18 A Yes, I do.

19 Q Okay. Now, only after you as a juror had found
20 them guilty beyond a reasonable doubt, only after the
21 whole jury has said beyond a reasonable doubt we reject
22 insanity, we reject alibi, we reject self-defense, we
23 reject every defense allowed under law of the State --
24 State of South Carolina, only after that would that your
25 jury be ready to decide penalty. You understand that?

1 A Yes, I do.

2 Q So when you're deciding the penalty phase, when
3 you're deciding the penalty phase of this, the man
4 that's sitting there on trial is going to be a murderer,
5 guilty of murder, no questions asked. Do you understand
6 that?

7 A Yes, I do.

8 Q Okay. Now, at that point the State is going to
9 present aggravating circumstances, armed robbery --
10 murder and an armed robbery, murder and a rape,
11 something like that. There's going to be a defendant
12 who's sitting in the defendant's box guilty of
13 aggravated circumstances beyond a reasonable doubt. Do
14 you understand that?

15 A Yes, I do.

16 Q Okay. And you've said you would be willing to give
17 reasonable consideration to mitigating circumstances,
18 things like drug abuse, alcohol use, history of his
19 life, bad background, things like that?

20 A Yes.

21 Q You would be able to give that good and fair
22 consideration?

23 A Yes, I would.

24 Q Okay. What would you do if he presented no
25 mitigating evidence?

1 A Well, then I would probably -- I would vote for the
2 death penalty then.

3 Q If there was no mitigating evidence, you would give
4 him the death penalty?

5 A Sure.

6 Q You would?

7 A Yes, I would.

8 Q Absolutely?

9 A Yes.

10 Q No questions asked? If there was no mitigating
11 evidence, you would give him the death penalty?

12 A Yes, I would.

13 Q You would execute him?

14 MS. STROM: Objection, Your Honor.

15 THE COURT: Sustained.

16 BY MR. EPPES:

17 Q You said that one of the purposes of the death
18 penalty was to element someone from society, correct?

19 A Yes.

20 Q You understand that life without the possibility
21 parole takes them out of society? If they get life
22 without parole, they go home in a box, they never leave
23 the South Carolina, Department of Corrections. Do you
24 understand that?

25 A Yes, I do.

1 MR. EPPES: One minute, Your Honor. Mr. Harris,
2 thank you.

3 THE COURT: Let me ask you again, Mr. Harris, you
4 understand that a jury is never required to give the
5 death penalty?

6 MR. HARRIS: Yes.

7 THE COURT: And that a jury can find aggravating
8 circumstances beyond a reasonable doubt, they can also
9 find no mitigating circumstances and they can still vote
10 for life, just because they want to give mercy to the
11 defendant. Do you understand that? You have to say yes
12 or no

13 MR. HARRIS: Yes.

14 THE COURT: Could you follow that law in this case
15 if I instructed you that that was the proper law?

16 MR. HARRIS: Yes, I would.

17 THE COURT: All right. And could you give
18 meaningful consideration to any mitigating circumstances
19 that were presented by the defense before you made the
20 decision?

21 MR. HARRIS: Yes, I would.

22 THE COURT: All right. Thank you very much. Now,
23 Mr. Harris, I'm going to give you this letter. You are
24 qualified as a juror in this case. That does not mean
25 you're actually going to serve. That simply means that

JOHN HARRIS

1 you are one of a panel of jurors we will call back later
2 on to come in. When you come back, if you would, park
3 in the Hyatt garage. Did you park over there Monday
4 morning?

5 MR. HARRIS: Yes.

6 THE COURT: Okay. And the street that is between
7 the courthouse and the garage over there is Spring
8 Street. Directly across from the Spring Street garage
9 entrance to the Hyatt is the garage entrance to this
10 courthouse. I want the jurors to -- when they're told
11 to come back, to report there. Leave your suitcase in
12 the car. You need to go ahead, bring a suitcase packed
13 with seven or eights days worth of clothes, comfortable
14 clothes, and then leave your suitcase in the car.
15 Bailiffs will meet you down at the garage entrance.
16 They'll bring you up to the courtroom and then we'll
17 pick a jury at that time. Okay. Now, the reason I'm
18 doing that is to keep the jury out of the public
19 corridors, so they don't intermingle with family members
20 on either side, the press or things like that.

21 Now, if you are selected, you're going to be
22 sequestered, and you will not have any direct contact
23 with any family members or businesses. If you need to
24 get a message to someone, that can be accomplished. You
25 just won't be able to call them yourself. Also there

1 are some emergency numbers on that letter. If anybody
2 has an emergency and needs to contact you, they can do
3 that. It's not an information hotline. They cannot
4 find out how long the case is going to last, or you
5 know, how long you're going to be gone, but if there is
6 some sort of real emergency they can contact you at that
7 number. Do you have any questions?

8 MR. HARRIS: No, sir.

9 THE COURT: All right. We'll probably get a panel
10 sometime tomorrow or Thursday, and we'll call the jury
11 back at that time. I'm going to tell you again, don't
12 talk about this case with anyone. If someone tries to
13 talk with you about the case, tell them that you're on
14 the jury panel and that you can't talk about it. If
15 they persist, then take their name and we'll -- and
16 we'll handle it. You need to tell the bailiff and we'll
17 handle that situation. Also, don't watch any news
18 accounts, listen to the radio, read anything in the
19 paper about that case, okay?

20 MR. HARRIS: Yes.

21 THE COURT: All right. I will see you either
22 tomorrow afternoon or Thursday. All right. Thank you
23 very much.

24 (Mr. Harris exited the courtroom.)

25 THE COURT: All right. Anything from the State?

1 MS. STROM: No, sir.

2 THE COURT: Anything from the defense?

3 MR. EPPES: Yes, sir.

4 THE COURT: All right. We're on Wayne Griffin.

5 MR. EPPES: Your Honor, I've got something to put
6 on the record, please.

7 THE COURT: I thought you said there was nothing?

8 MR. EPPES: No, I said, yes, sir, there was
9 something.

10 THE COURT: Okay. I'm sorry. Tell me what it is,
11 please.

12 MR. EPPES: Wait one second, please. Your Honor,
13 when I inquired of Mr. Harris, I asked him if he would
14 always vote for the death penalty if there was no
15 evidence of mitigation ---

16 THE COURT: You said if the defendant did not offer
17 any evidence of mitigation.

18 MR. EPPES: I did say that.

19 THE COURT: Yes, sir.

20 MR. EPPES: And he said, yes, he would always vote
21 for the death penalty. I understand the Court's effort
22 to rehabilitate him, however the Court did not ask him
23 if he would consider the life sentence in the case -- a
24 life sentence in a case of no mitigating evidence, and I
25 think that that is the question that he should have been

1 asked, and I would object to the qualification of this
2 juror.

3 THE COURT: All right. Do you intend to offer
4 mitigation in this case if we get to the penalty phase?

5 MR. EPPES: I believe so, Your Honor.

6 THE COURT: All right. Well, the question you
7 posed to him is if there -- the defense offered no
8 mitigating evidence would he vote for death, but let me
9 go ahead and make my finding. I find this juror's views
10 would not prevent or substantially impair his
11 performance -- impair the performance of his duties as a
12 juror in this case in accordance with my instructions
13 and with his oath. He clearly stated over and over
14 again that he would carefully consider any mitigating
15 evidence that was presented before he reached a decision
16 of life or death in the case. I think that he will give
17 meaningful consideration to mitigating evidence as
18 presented by the defense and instructed by the Court,
19 and it is my definite impression that he would be able
20 to render a verdict in accordance with the law. So he
21 is qualified.

22 Anything about Mr. Griffin that I need to bring up?
23 All right. Bring in Mr. Griffin.

24 MR. MAULDIN: Your Honor, one moment.

25 THE COURT: No, sir. Bring in Mr. Griffin.

1 (Mr. Griffin entered the courtroom.)

2 THE COURT: Mr. Griffin, if you would, have a seat.
3 As you get comfortable, go ahead and slide your chair
4 forward so you can speak directly into that microphone,
5 please, sir. All right. Mr. Griffin, I will remind
6 you, you understand you're still under oath?

7 MR. GRIFFIN: Yes, sir.

8 THE COURT: All right. And have you complied with
9 my instructions not to talk with anyone about this case?

10 MR. GRIFFIN: Yes, sir.

11 THE COURT: All right. Now, I believe you stated
12 downstairs, or you didn't inform the Court that you had
13 read anything or heard anything about this case? You
14 didn't know any of the witnesses, is that correct?

15 MR. GRIFFIN: I stated that I didn't know any of
16 the witnesses, but I have read a great deal about this
17 case, because where it happened is right around the
18 corner from where my brother lives at. He lives up off
19 290.

20 THE COURT: Okay. Up in Blue Ridge area?

21 MR. GRIFFIN: In the Blue Ridge area, yes.

22 THE COURT: Tell me what you recall -- did you also
23 talk to your brother about the case?

24 MR. GRIFFIN: Not yesterday, but we had in ---

25 THE COURT: I'm talking about in the past?

1 MR. GRIFFIN: Yeah, in the past we had talked,
2 because you know, the -- the helicopters were flying
3 over his house a lot and everybody was afraid. And he
4 had a daughter too that was in Taylors school, and they
5 locked the school down.

6 THE COURT: Okay. All right. From your
7 conversations with your brother and from what you read
8 in the paper or saw on TV, have you formed any opinions
9 about this case?

10 MR. GRIFFIN: Yes, I have formed some opinions
11 about it. I don't think I could be fair -- a fair juror
12 in this case.

13 THE COURT: All right. What opinions have you
14 formed, Mr. Griffin?

15 MR. GRIFFIN: Well, we used to walk and I've spoken
16 to those people more than a time or two. They seemed to
17 be pretty nice people. I just ---

18 THE COURT: Those people meaning the victims?

19 MR. GRIFFIN: The victims that were killed.

20 THE COURT: All right. So you knew the victims in
21 the case?

22 MR. GRIFFIN: I didn't know them, but when we
23 walked by they used to speak and they guy -- the
24 brother ---

25 THE COURT: You're talking about walking by, up

1 in ---

2 MR. GRIFFIN: Up in, yeah, my daughter ---

3 THE COURT: --- in the Blue Ridge area?

4 MR. GRIFFIN: My brother lives over on -- right
5 around the corner from Darby Road. We used to walk down
6 through there and we used to speak to them. And even
7 his brother Raymond, who runs the garbage truck, had
8 been by my brother's house a time or two, and I had met
9 him. I just think my opinions is -- wouldn't allow me
10 to be fair in this case.

11 THE COURT: Well, tell me what those opinions are,
12 and let -- I will decide if you can be fair or not. How
13 about that?

14 MR. GRIFFIN: Well, I feel like he -- that he's
15 guilty.

16 THE COURT: All right. And are you telling me you
17 cannot set that aside?

18 MR. GRIFFIN: I couldn't set it aside.

19 THE COURT: All right. Let me ask you to step
20 outside real quick, please.

21 (Mr. Griffin exited the courtroom.)

22 THE COURT: He's campaigning for re-election and
23 wants to be out on the campaign trail. He wants to be
24 at a Municipal Association meeting next week, and ---

25 MR. ARIAIL: Why don't you order him to sit in and

1 watch the trial.

2 MR. ABDALLA: Order to him to stay and let him off
3 the jury.

4 THE COURT: Do you want me to inquire further as to
5 his qualifications, Mr. Solicitor -- Madam Strom?

6 MR. STROM: No, sir.

7 THE COURT: Mr. Eppes?

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

9 THE COURT: All right. Bring Mr. Griffin in.

10 (Mr. Griffin entered the courtroom.)

11 THE COURT: All right. You don't need to sit down,
12 Mr. Griffin. Because of what you have stated so far,
13 I -- I have found that you would not be qualified to
14 serve because of the opinions you formed. So I'm going
15 to excuse you from this case. Thank you very much for
16 your honesty.

17 MR. GRIFFIN: Okay.

18 (Mr. Griffin exited the courtroom.)

19 THE COURT: All right. Robert Holland. Is there
20 anything on him? Heard the facts, victim of a robbery.
21 Do you want me to inquire about that?

22 MR. EPPES: Yes, sir, please.

23 THE COURT: All right. Bring in Mr. Holland.

24 MR. EPPES: Your Honor, there were two incidents he
25 listed there on question 20.

1 THE COURT: What number -- question number is that?

2 MR. EPPE: Number 20.

3 (Mr. Holland entered the courtroom.)

4 THE COURT: You're Robert Wayne Holland?

5 MR. HOLLAND: Yes, I am.

6 THE COURT: As you get comfortable, go ahead and
7 pull your chair close to the microphone, and then speak
8 into the microphone. If you would, as you answer
9 questions, say yes or no, don't shake your head or nod
10 your head. The court reporter is taking down everything
11 that is said, but there is also a back-up system that is
12 recording everything, so obviously that system can't
13 record a nodded head or a shaking of the head. Okay?

14 MR. HOLLAND: Okay.

15 THE COURT: Now, I will remind you that you're
16 under oath. Do you understand that?

17 MR. HOLLAND: Yes, I do.

18 THE COURT: Have you complied with my instructions
19 yesterday not to talk with anyone, not to read anything
20 about this case?

21 MR. HOLLAND: Yes, I have.

22 THE COURT: All right. You indicated that you had
23 heard some facts about the case yesterday. Was that
24 through news media when the events happened or ---

25 MR. HOLLAND: Yes, sir, that was though the

1 newspaper.

2 THE COURT: All right. And can you recall any of
3 the details that you read about?

4 MR. HOLLAND: Very little. Only that I heard about
5 the murder and about the manhunt. I remember very
6 little else about it.

7 THE COURT: All right. Mr. Holland, from what you
8 recall reading about the case, have you formed any
9 opinions about the case? Specifically, have you formed
10 any opinions about the guilt or the innocence of this
11 defendant?

12 MR. HOLLAND: No, sir.

13 THE COURT: All right. Can you set aside what you
14 read about the case prior to coming to court, and judge
15 this case solely on the facts and the evidence that are
16 presented in the courtroom?

17 MR. HOLLAND: Yes, I can.

18 THE COURT: All right. Now, I also noticed that
19 you had been a victim -- it says your house was robbed
20 in Bishopville, and in Greenville County your house was
21 shot into?

22 MR. HOLLAND: Yes, sir.

23 THE COURT: All right. Let me take each one of
24 those things. How long ago did the Bishopville robbery
25 take place?

1 MR. HOLLAND: About 12 years ago.

2 THE COURT: All right. And was that a burglary, or
3 were you actually at home when somebody came in and they
4 robbed you -- in front of you or ---

5 MR. HOLLAND: It was a burglary, no one was home.

6 THE COURT: Okay. Did they ever catch anyone?

7 MR. HOLLAND: Yes, they did.

8 THE COURT: Did they prosecute that person?

9 MR. HOLLAND: Yes.

10 THE COURT: Did you have -- did you have any
11 particular contact with the Solicitor's Office when they
12 prosecuted that person?

13 MR. HOLLAND: No, sir. Only day -- they called and
14 told me they had captured the two juveniles that had
15 broken in and they were prosecuting.

16 THE COURT: Okay. And were they in Family Court
17 or ---

18 MR. HOLLAND: They were juveniles, is all I know.

19 THE COURT: Did you ever go to court and testify?

20 MR. HOLLAND: No, sir.

21 THE COURT: They just probably plead guilty or
22 something?

23 MR. HOLLAND: Yes, sir, that's correct.

24 THE COURT: All right. And on the shooting in
25 Greenville, about how long ago did that occur?

1 MR. HOLLAND: Approximately four years ago.

2 THE COURT: And do you have any idea who did that?
3 Was anybody arrested?

4 MR. HOLLAND: Yes, sir.

5 THE COURT: Okay. Were they prosecuted?

6 MR. HOLLAND: Yes, sir, they were.

7 THE COURT: And did they plead guilty or go to
8 trial?

9 MR. HOLLAND: No, sir, they plead.

10 THE COURT: Was it someone you knew that had done
11 that?

12 MR. HOLLAND: No, sir.

13 THE COURT: Okay. Did you have any association
14 with the Solicitor's Office when that occurred?

15 MR. HOLLAND: No, I did not.

16 THE COURT: The victim witness office of the
17 Solicitor's Office, anything like that?

18 MR. HOLLAND: No, sir, only the letter by mail.

19 THE COURT: Telling you what the disposition was?

20 MR. HOLLAND: That's correct.

21 THE COURT: Okay. Would either one of those
22 instances, your contact with the law enforcement, or the
23 judicial system, affect your ability to be fair and
24 impartial in this case?

25 MR. HOLLAND: No, sir.

1 THE COURT: Okay. In other words -- that's a
2 sufficient answer. Let me -- now that I've covered
3 those two things, let me get into what I really need to
4 talk to you about. I'm going to ask you a number of
5 questions and so are these attorneys. And you're going
6 to feel like at some point in time were invading your
7 privacy, and we don't mean to do that. There are no
8 right answers. There are no wrong answers. We'll
9 respect any opinions that you have. One of the things
10 that we're going to be talking about is penalty. And I
11 need you to understand, first of all, and this is very
12 important, but simply because we're talking about
13 penalty, that does not indicate anything about this
14 defendant. Do you understand that?

15 MR. HOLLAND: Yes, I do.

16 THE COURT: In other words, as he sits there, he's
17 presumed to be innocent. Do you understand that?

18 MR. HOLLAND: Yes.

19 THE COURT: It's sort of a backwards process, but
20 in order to make sure we get a fair jury, we have to
21 talk about penalty before the case has even started. Do
22 you understand that?

23 MR. HOLLAND: Yes, sir.

24 THE COURT: Now, if -- before I talk to you about
25 the death penalty in South Carolina, let me ask you

1 generally some things about being on a criminal case, a
2 juror on a criminal case. If you were selected on a
3 criminal case, could you listen to the law that the
4 judge charged to you, and accept and apply the law in
5 the case?

6 MR. HOLLAND: Yes.

7 THE COURT: Would you do that even though you may
8 not agree with that law?

9 MR. HOLLAND: Yes.

10 THE COURT: All right. You understand the State
11 has the burden of proving a defendant guilty beyond a
12 reasonable doubt?

13 MR. HOLLAND: Yes, sir.

14 THE COURT: If you sat on a case and you felt the
15 State had not proved someone guilty beyond a reasonable
16 doubt, would you vote not guilty?

17 MR. HOLLAND: Yes, sir, I would.

18 THE COURT: And the contrary -- the converse to
19 that, if you found the State had met its burden of
20 proof, and had proved someone guilty beyond a reasonable
21 doubt, would you vote guilty?

22 MR. HOLLAND: Yes.

23 THE COURT: Now, did you read my letter yesterday
24 about the death penalty?

25 MR. HOLLAND: Yes, I did.

1 THE COURT: Do you understand that in South
2 Carolina it is not every murder case that is subject to
3 the death penalty?

4 MR. HOLLAND: Yes, I do.

5 THE COURT: Okay. Did you know that before you
6 came to court?

7 MR. HOLLAND: Yes.

8 THE COURT: Oh, you did. Most people think it's
9 every murder case that is subject to the death penalty.
10 You understand it's only aggravated murder, and the --
11 our State law set out what circumstance are aggravated,
12 but the examples I gave were murder during an armed
13 robbery, murder during a rape, murder of a small child
14 is another one. Do you understand that even when we
15 talk about aggravated murder, the penalty is not
16 automatic. That simply means the -- the State can seek
17 the death penalty in a case like that. Do you
18 understand that?

19 MR. HOLLAND: Yes, I do.

20 THE COURT: In a capital trial, the trial is
21 divided into two phases, the trial phase, which is just
22 like any other trial. That's where the jury sits and
23 they listen to the evidence and decides whether or not
24 the defendant is guilty or not guilty. If the defendant
25 is found not guilty, then everyone goes home. If the

1 defendant is found guilty by the jury, then the case
2 moves to the second phase, and that same jury comes back
3 and they sit and they listen to additional evidence to
4 decide what is the proper punishment. Do you understand
5 that?

6 MR. HOLLAND: Yes.

7 THE COURT: They listen to two types of evidence in
8 the penalty phase. You listen to evidence in
9 aggravation and they listen to evidence in mitigation.
10 Evidence in aggravation is presented by the State. It
11 might be things about the defendant, about his
12 character. Maybe he's a really violent person. It
13 might be that he has a long history of committing other
14 violent crimes. The State may well present evidence of
15 victim impact, that is members of the victim's family
16 who would testify as to what the loss of the victims
17 meant to them, to the community. All this evidence
18 would be presented by the State in an effort to convince
19 the jury that the appropriate sentence is death. Do you
20 understand that?

21 MR. HOLLAND: Yes.

22 THE COURT: The defense would present evidence in
23 mitigation. Evidence in mitigation can be any number of
24 things. It could be the fact that the defendant
25 suffered from some mental problem at the time of the

1 killings. It might be that he's got a very clean
2 record, he's never been in trouble. It might be that he
3 was under the influence of someone else when he
4 committed the crime. Do you understand that concept of
5 mitigation?

6 MR. HOLLAND: Yes, I do.

7 THE COURT: And the defense is presenting that
8 evidence, not to excuse what the person did, because if
9 you're in the penalty phase, they've already been
10 convicted beyond any reasonable doubt of murder, but
11 they're presenting that evidence to try to mitigate what
12 the punishment would be, and to convince the jury that
13 the proper punishment is life. Do you understand that?

14 MR. HOLLAND: Yes.

15 THE COURT: When I use the term life, I mean life
16 with absolutely no possibility of parole. Do you
17 understand that?

18 MR. HOLLAND: Yes, I do.

19 THE COURT: And death in South Carolina is by
20 either electrocution or lethal injection. Do you
21 understand that?

22 MR. HOLLAND: Yes.

23 THE COURT: All right. Understanding all of this
24 procedure, the bifurcated trial, the aggravating
25 evidence and mitigating evidence that's presented, I'm

1 sure you understand that we need to get to know your
2 feelings about capital punishment. Would you tell me
3 generally, Mr. Holland, do you favor capital punishment,
4 are you against capital punishment, how do you feel?

5 MR. HOLLAND: I'm in favor of capital punishment in
6 certain cases, yes.

7 THE COURT: All right. And when you say in certain
8 cases, you would not automatically vote for capital
9 punishment in every aggravated murder case?

10 MR. HOLLAND: No, sir.

11 THE COURT: All right. You will listen to the
12 evidence in mitigation and the evidence in aggravation
13 before you made up your mind?

14 MR. HOLLAND: Yes, sir.

15 THE COURT: When I say listen to it, let me put it
16 this way, would you give meaningful consideration to the
17 evidence in aggravation and also give meaningful
18 consideration to the evidence in mitigation before you
19 made up your mind as to what the sentence should be?

20 MR. HOLLAND: Yes, sir.

21 THE COURT: A jury is never required to give the
22 death penalty. I'm going to tell you that. They may
23 find beyond any reasonable doubt several aggravating
24 circumstances, murder plus whatever. And they may find
25 no mitigating circumstances. Do you understand that?

1 MR. HOLLAND: Yes.

2 THE COURT: Even in that case, the jury can vote
3 for life. Do you understand that?

4 MR. HOLLAND: Yes, sir.

5 THE COURT: All right. If you sat on a case and
6 you thought the proper sentence was death, you're
7 telling me that you could vote for the death penalty?

8 MR. HOLLAND: Yes.

9 THE COURT: If you thought the proper sentence was
10 life, you could vote for a life sentence?

11 MR. HOLLAND: Yes, sir, I could.

12 THE COURT: If you were on a jury and if you
13 thought the proper sentence was death, you and the
14 others jurors would have to sign your name, you would
15 each individually sign the verdict form. Do you
16 understand that?

17 MR. HOLLAND: Yes, sir.

18 THE COURT: That's sometime referred to as the
19 death warrant. Do you understand that?

20 MR. HOLLAND: Yes, sir.

21 THE COURT: If you thought the proper sentence was
22 death, could you sign your name to that verdict form?

23 MR. HOLLAND: Yes, sir.

24 THE COURT: All right. Whose turn is it?

25 MS. STROM: It's theirs.

1 THE COURT: All right. This is Frank Eppes. He is
2 one of the attorneys representing the defendant. He's
3 going to ask you some questions and then Mr. Ariail is
4 going to ask you some questions.

5 MR. HOLLAND: Yes, sir.

6 QUESTIONING BY MR. EPPES:

7 Q Hi, Mr. Holland.

8 A Yes, sir.

9 Q This is John Abdalla. He's working with me. This
10 is Brad Sigmon. He's our client. I appreciate your
11 being here. Why are you in favor of the death penalty?

12 A Well, sir, I believe there some crimes are
13 committed that there is no other sentence that is fair
14 to the victims, or to their survivors.

15 Q Why is that?

16 A Well, there are things that can be done that are --
17 as far as I'm concerned that life imprisonment even
18 without the possibility of parole is -- just doesn't
19 seem to stack up, doesn't seem to add up right. I
20 wouldn't say that I'm 100 percent for the death penalty.
21 I wouldn't give -- say give it to anybody who committed
22 a crime even with aggravated circumstances, but I think
23 there are circumstances that do call for it.

24 Q What types of circumstances?

25 MS. STROM: Objection, Your Honor.

1 THE COURT: Sustain the objection.

2 BY MR. EPPES:

3 Q What purposes do you believe the death penalty
4 serves?

5 A For one, I think it is probably a deterrent to
6 other, maybe in the same circumstances, to guarantee
7 that the same crime won't be committed again by the same
8 person.

9 Q Doesn't life without parole ensure that the same
10 crime won't be committed by the same person?

11 A Not necessarily. I've never seen any kind of
12 prison yet somebody couldn't get out of, one way or the
13 other.

14 Q Is that based on anecdotal evidence or personal
15 experience? I noticed you have a brother that's a
16 prison guard. Is it your brother?

17 A Brother-in-law.

18 Q Your brother-in-law is a prison guard?

19 A Yes, sir.

20 Q Where's he a prison guard?

21 A Right now at Wateree.

22 Q Is that in Lee County or Bishopville?

23 A It's in Kershaw County.

24 Q Kershaw, thank you.

25 A And yes, it's based on that.

1 Q What has he told you about that?

2 A My uncle was also a prison guard many years ago,
3 and they have been called in several times to escapes,
4 even from the higher security area of the prison.
5 I can't think of any in the last few years, but I can
6 remember him being called in from a family get together
7 a time or two.

8 Q Okay. Is that personal knowledge that you have
9 about that issue, is that going to keep you from giving
10 meaningful consideration to a life without parole
11 sentence?

12 A No, sir, we're talking about somebody's life.

13 Q And you understand how precious that is?

14 A Yes, sir, I do.

15 Q Now, you understand that the law never demands the
16 death penalty?

17 A Yes, sir, I understand.

18 Q Okay. And you understand that if a jury finds
19 someone guilty of a crime and then the jury finds
20 aggravating circumstances that even if that defendant
21 presents no mitigating circumstances, that the jury
22 needs to give meaningful consideration to a life
23 sentence?

24 A Yes, sir.

25 Q And would you be able to do that?

1 A Yes, I would.

2 Q You mentioned -- you mentioned the -- the family.
3 I believe you said that there was no other sentence that
4 might be fair to the victim or survivors under some
5 circumstances?

6 A Yes, I did.

7 Q Okay. In many of these cases you hear victim
8 impact evidence, about the loss of a loved one, and
9 it's, as you can imagine, heart wrenching. When
10 families lose a member it tears at their very fiber, and
11 that's very compelling evidence. If you heard that
12 evidence, would you still be able to listen to the
13 mitigating evidence and fairly judge the decision
14 between life without parole and death?

15 A Yes.

16 Q You understand that it's important to two families?

17 A Yes.

18 Q You've seen stuff on TV about jury trials?

19 A Yes, sir.

20 Q Okay. You know how the jury sits in the box and
21 listens, and then goes in the back and discusses the
22 aspects of the case, right?

23 A Yes.

24 Q Okay. If you were faced with a situation where 11
25 jurors had reached the decision to sign a death warrant,

1 and they were all leaning on you to sign the death
2 warrant, and you believed that death was not the
3 appropriate sentence, how do you believe you would
4 react?

5 A Given the fact that I have to live with me for the
6 rest of whatever life I've got left, it wouldn't make a
7 difference.

8 Q You'd stick to your convictions?

9 A Yes, sir. We're talking about somebody's life, and
10 we're not talking about a couple hundred bucks or
11 anything.

12 Q On the opposite side of that, if you were on a
13 jury, and you were one of the 11 that had already signed
14 the death warrant, and there was one person holding out,
15 would you respect their beliefs and understand their
16 convictions and allow them to keep curve of their
17 convictions?

18 A Yes, sir, I would expect them to do the same for
19 me.

20 MR. EPPES: Let me check one thing, okay.

21 THE COURT: Solicitor.

22 MR. EPPES: Thank you, Your Honor

23 THE COURT: I'm sorry, Ms. Strom.

24 MS. STROM: That's quite all right, Your Honor.

25 Mr. Holland, my name is Betty Strom. I'm a Deputy

1 Solicitor here. That is Solicitor Ariail, and Mindy
2 Hervey an assistant. We will be prosecuting this case.
3 They left me no questions to ask you. They asked them
4 all. Thank you.

5 THE COURT: All right. I'm going to give you this
6 letter, and if you would sort of look along with me, Mr.
7 Holland. You are qualified to serve on this jury. That
8 certainly does not mean that you will be selected, but
9 it does mean that you need to be prepared to serve. By
10 prepared to serve, I mean you need to go ahead and go
11 home and pack a suitcase with enough clothes for seven
12 or eight days. When we have empaneled enough jurors to
13 pick the jury, then the clerk will call all qualified
14 jurors and she'll tell them to come back to court.
15 She'll give you plenty of warning, at least a couple
16 hours, probably over night, but it really depends on
17 when we get to the point where we have enough jurors.
18 Pack any medications you need, anything like that. When
19 you come to court, I'm going to ask that you park over
20 in the Hyatt garage. Did you park over there Monday
21 morning?

22 MR. HOLLAND: Yes, I did.

23 THE COURT: And the Street between the Hyatt and
24 the courthouse is Spring Street. The -- right across
25 from the garage entrance to the Hyatt on Spring Street

1 is the garage entrance to this building. In order to
2 keep the jury separate and out of the public corridors,
3 where the family members are and the press are, I'm
4 going to ask that you meet down there, and then the
5 bailiffs will meet you and bring you upstairs. I would
6 bring you in the way you came this afternoon, but
7 there's not enough parking spaces out there, so I'm
8 going to have you park in the Hyatt. Then leave your
9 suitcase in the car, and then when you come up we'll
10 pick the jury.

11 If you're selected then you will be immediately
12 sequestered. SLED agents will escort you around.
13 They'll help you get your suitcase and things like that.
14 You will not have any direct contact with your family or
15 business during the course of sequestration. If you
16 need to get a message to someone that can be
17 accomplished by giving the bailiff a name, a number and
18 a message, and they can relay a message to someone.
19 Also on this letter are two emergency numbers. If
20 someone needs to get in touch with you on an emergency
21 basis only, then that would be able to be accomplished.
22 They wouldn't be able to talk to you directly, but we
23 could handle any emergency that came up. Do you have
24 any questions about any of this?

25 MR. HOLLAND: No, sir.

1 THE COURT: All right. It will probably be
2 Wednesday afternoon or Thursday before we get our panel.
3 In the meantime, do not read anything about this case in
4 the paper. There will be coverage in the newspaper.
5 Don't watch anything on TV about it. There probably
6 will be some TV coverage. Do not listen to anything on
7 the radio. Also, do not talk to anyone about this case.
8 Obviously you can tell people you've got to come back,
9 you're on the panel, but don't talk about the
10 substantive evidence of this case. If someone tries to
11 talk with you, simply tell them you're on the jury panel
12 and you cannot talk to them. If they persist, take
13 their names and tell the bailiffs when you come to
14 court, and we'll handle that, okay?

15 MR. HOLLAND: Okay.

16 THE COURT: All right. If you don't have any other
17 questions, you're free to go. I will see you probably
18 tomorrow afternoon or Thursday.

19 MR. HOLLAND: Yes, sir.

20 THE COURT: Thank you very much.

21 (Mr. Holland exited the courtroom.)

22 THE COURT: Anything with regard to that last juror
23 from the State?

24 MS. STROM: No, sir.

25 THE COURT: From the defense?

1 MR. EPPES: Nothing, Your Honor.

2 THE COURT: All right. Anything on Nathan Turner I
3 need to know about? Heard facts, knows potential
4 witness, didn't sign declaration, wife's grandfather was
5 murdered, anything besides that?

6 MR. EPPES: One hundred percent, Judge.

7 THE COURT: All right. Bring in Nathan Turner.

8 (Mr. Turner entered the courtroom.)

9 THE COURT: You're Nathan Turner?

10 MR. TURNER: Yes, sir.

11 THE COURT: All right. As you make yourself
12 comfortable, if you would, slide your chair up so you
13 can speak directly into the microphone so that your
14 voice will be amplified. Mr. Turner, you understand
15 that you're still under oath.

16 MR. TURNER: Yes, sir.

17 THE COURT: And have you complied with my prior
18 instructions not to talk with anyone about this case?

19 MR. TURNER: Yes, sir.

20 THE COURT: All right. I need to ask you about a
21 number of things because you responded that you had
22 heard about some of the facts of the case and that also
23 you knew a potential witness in the case. Tell me what
24 you heard about this case and where you heard it?

25 A I just vaguely remember reading something about it

1 initially when all this first happened back last year,
2 or 2001, I believe it was.

3 Q What details, if any, do you recall?

4 A I just remember reading the -- about the
5 accusations of the person that supposedly did the crime,
6 Sigmon I believe is his name.

7 THE COURT: Um-hm.

8 MR. TURNER: Excuse me. And I you just vaguely
9 remember a little bit, but I did want to say that I
10 remember something -- a little something about it.

11 THE COURT: All right. From what you remember
12 reading in the paper, have you formed my opinions about
13 the case? Specifically have you formed any opinions
14 about the guilt or the innocence of Mr. Sigmon?

15 MR. TURNER: I really don't know enough about any
16 of the details to -- to come to an opinion about that.

17 THE COURT: Okay. And what you read in the paper,
18 can you set that aside and if you were selected as a
19 juror, can you judge this case solely on the facts that
20 you heard from the witnesses and the evidence that's
21 presented in the courtroom?

22 MR. TURNER: I think I could.

23 THE COURT: Okay. Well, I need more than I think I
24 could. In other words, something you read in the paper
25 may not be correct, you understand that?

1 MR. TURNER: I understand that.

2 THE COURT: All right. So what a jury has to do is
3 not let any extraneous matters enter into their
4 deliberation and their consideration. So a jury is
5 required only to -- it's okay for you to have heard
6 something. It's even okay for you to have formed an
7 opinion, as long as you can set it aside -- set aside
8 anything you heard, any conversations you had and judge
9 this case solely on the facts that you heard in the
10 courtroom. Do you understand that?

11 MR. TURNER: I understand what you're saying.

12 THE COURT: And could you do that?

13 MR. TURNER: I'm sure I could do that.

14 THE COURT: Okay. You also indicated that you knew
15 a witness in the case. What witness was that, or
16 witnesses?

17 MR. TURNER: I don't know this person personally
18 now, but years ago I went to high school with Parks
19 Evans, who was the coroner.

20 THE COURT: Okay. He is the coroner now.

21 MR. TURNER: Okay.

22 THE COURT: All right. You have no social contact
23 with him now?

24 MR. TURNER: Not in years, but I do know of him.

25 THE COURT: Okay. I don't know that -- that he'll

1 be a witness, but he may well be a witness. Would that
2 affect your ability to be fair and impartial in this
3 case?

4 MR. TURNER: I don't think so. I'm sure it
5 wouldn't.

6 THE COURT: All right. Because he testifies for
7 one side of the other, would you automatically favor
8 that side or anything like that?

9 MR. TURNER: No, I wouldn't.

10 THE COURT: Okay. I noticed that you did not sign
11 your jury return. Was that simply an oversight?

12 MR. TURNER: Yes, sir.

13 THE COURT: Okay. I don't want to get personal,
14 but I noticed on this questionnaire you said your wife's
15 grandfather was murdered?

16 MR. TURNER: Yes. This happened prior to she and I
17 even knowing each other. I just learned about it since
18 we've been married.

19 THE COURT: Um-hm.

20 MR. TURNER: He was a security guard, and some
21 young kid on drugs or whatever, just shot up one night
22 and turned around in the parking lot and shot him and
23 killed him, so ---

24 THE COURT: Was that in Greenville County?

25 MR. TURNER: Yes, sir, it was at the old

1 Pointsett -- on old Pointsett Highway, over there at the
2 old Wonder Weave Carpet Plant.

3 THE COURT: Okay. And you didn't know this fellow?

4 MR. TURNER: I didn't even know him at that time.

5 THE COURT: Okay. Would -- do you know if there
6 was a trial in that case? Was anyone arrested?

7 MR. TURNER: Yes, sir. The person who did the
8 crime is still serving time now.

9 THE COURT: Do you know if it started out as a
10 death penalty case or not?

11 MR. TURNER: I'm not sure about that. I think it
12 was a life sentence, and you know, since then he's been
13 before the parole board, you know, several times but
14 they always -- family don't -- they get a petition up or
15 something and ---

16 THE COURT: And he's still serving time?

17 MR. TURNER: He's still serving time.

18 THE COURT: All right. Would that experience, and
19 it really wasn't an experience, but would that fact
20 affect your ability to be fair and impartial in this
21 case?

22 MR. TURNER: No, sir.

23 THE COURT: All right. Let me tell you this, the
24 laws have changed dramatically probably since that
25 person was convicted. Now in a case like this, a life

1 sentence means absolutely no possibility of parole. Do
2 you understand that?

3 MR. TURNER: I understand that.

4 THE COURT: If someone is convicted in a case like
5 this, the two possible sentences are death, which in
6 South Carolina is either by electrocution or lethal
7 injection, or life basically until death. Do you
8 understand that?

9 MR. TURNER: Yes, sir.

10 THE COURT: All right. Now, I'm going to ask you a
11 number of questions, and some of these are going to seem
12 personal, and the attorneys are going to ask you some
13 questions. We do not mean to invade your privacy, but
14 this is a very serious matter and we must empanel a jury
15 that can be fair and impartial and -- in deciding the
16 guilt or innocent, and also fair and impartial if
17 there's a guilty verdict as to what penalty to impose.
18 So there are no right or wrong answers. We will respect
19 any opinion that you have, but we do need you to answer
20 these questions openly and honestly, okay?

21 Now, the first thing I'm going to tell you is that
22 the fact that we're talking about penalty -- most of the
23 questions I ask you and most of the conversation we are
24 going to have is about penalty, but you understand that
25 has nothing to do, that should not indicate anything

1 about this defendant at this time. Do you understand
2 that?

3 MR. TURNER: Correct.

4 THE COURT: In other words, he is presumed to be
5 innocent as he sits there, you understand that?

6 MR. TURNER: Absolutely.

7 THE COURT: It is sort of a backward process,
8 because we have to talk about penalty to get a fair
9 jury, but we're doing it before there is even a trial.
10 Do you understand that?

11 MR. TURNER: Yes, sir.

12 THE COURT: Before I talk about penalty, let me
13 generally, if you were seated on a criminal case, would
14 you listen to the law that the judge instructed and
15 accept that law and apply that law in the case?

16 MR. TURNER: Yes, sir.

17 THE COURT: Would you do that even if you may not
18 agree with the judge as to what the -- that that's the
19 proper law?

20 MR. TURNER: I would feel obligated to, it would be
21 my duty because ---

22 THE COURT: Your oath would be that you would
23 follow it.

24 MR. TURNER: Right, right, absolutely.

25 THE COURT: And the reason I ask that is, a lot of

1 times when people come to court and they have a
2 preconceived notion as to what they think the law should
3 be, and that's fine, as long as they can set that aside.
4 For instance, somebody may think that marijuana should
5 be legalized, and maybe they're called to sit on a
6 marijuana jury, and that's fine they believe that, as
7 long as they can set that aside and accept the law that
8 the judge gives them as the correct law, and then apply
9 that law, not their personal feelings as to what the law
10 should be. Do you understand that?

11 MR. TURNER: Yes, sir.

12 THE COURT: And you've told me you could do that?

13 MR. TURNER: Yes, sir.

14 THE COURT: And do you understand that the State
15 must prove a defendant guilty beyond any reasonable
16 doubt in a criminal case?

17 MR. TURNER: Yes, sir.

18 THE COURT: All right. If you were sitting on a
19 case and if you felt that the State had not proved a
20 defendant guilty beyond a reasonable doubt, would you
21 vote not guilty? Do you want me to repeat that?

22 MR. TURNER: Say that one more time.

23 THE COURT: Sure. I understand. Sometimes I talk
24 fast. If you were sitting on a case and you listened to
25 all the testimony and evidence, and you feel like the

1 State did not prove the person guilty beyond a
2 reasonable doubt, would you vote not guilty?

3 MR. TURNER: I would have to say I would, because I
4 call it like I see it.

5 THE COURT: And if you found that the State had
6 proved their case beyond a reasonable doubt, would you
7 vote guilty?

8 MR. TURNER: I would have to say I would.

9 THE COURT: All right. Did you read my two-page
10 letter about capital cases yesterday?

11 MR. TURNER: Yes, sir.

12 THE COURT: You understand that it is not every
13 murder case that is subject to the death penalty in
14 South Carolina, it's got be one of these aggravated
15 murders?

16 MR. TURNER: Yes, I understand.

17 THE COURT: The examples I gave was murder during
18 the commission of an armed robbery, or a rape or
19 something like that. Killing of a small child is
20 another aggravating circumstance.

21 MR. TURNER: Yes, sir.

22 THE COURT: Even when we talk about aggravated
23 murder, do you understand that the penalty is not
24 automatic, that simply means that the State is allowed
25 to seek the death penalty in those type of cases. Do

1 you understand that?

2 MR. TURNER: I understand that.

3 THE COURT: And then if the State seeks the death
4 penalty in that type of case, it is the jury that
5 decides what the penalty will be. Do you understand
6 that?

7 MR. TURNER: I understand that.

8 THE COURT: A death penalty trial is divided into
9 two parts. The first part is the trial phase, and
10 that's just like any other trial where the jury decides
11 whether the person is guilty or not guilty. If the
12 person is found not guilty then everybody goes home. If
13 the person is found guilty, then the same jury, after a
14 brief waiting period, comes back and they listen to more
15 testimony and evidence, and that testimony and evidence
16 is on the issue of what punishment the person should
17 receive. Do you understand that?

18 MR. TURNER: I understand.

19 THE COURT: In other words, they've already been
20 convicted of a murder and -- plus something else, all
21 right. But there's two types of evidence that is
22 presented in the penalty phase. There is evidence in
23 aggravation. That is evidence that is presented by the
24 State and that evidence is presented to try to convince
25 the jury that the proper sentence is death. Evidence in

1 aggravation might be things about the defendant. Maybe
2 he's just a mean person. Maybe he's got a long history
3 of crimes of violence. They would also present evidence
4 of victim impact. In other words, family members of the
5 victims may testify as to what the loss means to them,
6 the loss of a loved one to them and to the community.
7 And all that evidence is presented, again, to try to
8 convince the jury that the proper sentence is death.

9 Mitigating evidence is presented by the defense.
10 Mitigating evidence might be the person was under the
11 influence of some sort -- the defendant might have been
12 under the influence of some sort of drugs when the crime
13 occurred, or he might have some sort of mental problem,
14 or he might have been under the influence of someone
15 else, maybe he's got a real clean history, no crimes on
16 his record, things like that. The sky is sort of the
17 limit. In other words, I don't know what -- every case
18 is different. But again, they're presenting that
19 evidence to try to convince the jury, not to excuse him
20 of what he did, because he's going to get at least life
21 without parole, but they're presenting it to try to
22 mitigate the sentence and try to convince the jury that
23 he should receive life without parole instead of death.
24 Do you understand that?

25 MR. TURNER: I understand.

1 THE COURT: A jury in a criminal case, if they get
2 to the penalty phase, is never required to give the
3 death penalty. Do you understand that? In other words,
4 if they find a defendant guilty of murder and they find
5 beyond a reasonable doubt aggravating circumstances, and
6 even if they don't find any mitigating circumstances,
7 they can still give a life sentence. Do you understand
8 that?

9 MR. TURNER: Yes, sir.

10 THE COURT: All right. Understanding this whole
11 procedure, this two part trial and the concept of
12 aggravating evidence and mitigating evidence, I'm sure
13 you understand that we need to know generally how you
14 feel about the death penalty. Would you say that you're
15 generally for it, generally against it, how do you feel?

16 MR. TURNER: I think I'm pretty sure I'm generally
17 for it, depending on the nature of the crime.

18 THE COURT: All right. You mean you're for it in
19 every aggravated murder case?

20 MR. TURNER: No, sir. I mean, I would have to hear
21 all the evidence, but I mean what I'm saying is,
22 depending on the nature of the crime, I would have to
23 hear all the evidence and form my own opinion at that
24 point in time which way I would go.

25 THE COURT: Depending on the nature of the crime

1 and depending on the mitigating evidence that is
2 presented, you can either vote for life or death, is
3 that what you're telling me?

4 MR. TURNER: Yes, sir, I could.

5 THE COURT: If you thought the proper sentence was
6 death, could you vote for the death penalty?

7 MR. TURNER: Yes, sir, I could.

8 THE COURT: If you thought the proper sentence was
9 life, could you vote for life imprisonment?

10 MR. TURNER: If I thought that's what the proper
11 sentence was, I could vote for life.

12 THE COURT: Before you decide what the proper
13 sentence was, would you give careful and meaningful
14 consideration to the evidence in aggravation, and
15 careful and meaningful consideration to the evidence in
16 mitigation before you made up your mind as to proper
17 sentence?

18 MR. TURNER: I'm sure I would. I would hope
19 someone would give me that same benefit of doubt if the
20 shoe was on the other foot.

21 THE COURT: All right. The last thing I need to
22 tell you is that if -- if a jury decides that the proper
23 sentence is death, then each individual juror has to
24 sign his name to the verdict form. Do you understand
25 that?

1 MR. TURNER: Yes, sir.

2 THE COURT: Sometimes that's called a death
3 warrant. If you thought that was the proper sentence,
4 could you sign your name to that form?

5 MR. TURNER: Yes, sir.

6 THE COURT: Okay. This is Ms. Strom. She is
7 prosecuting along with Solicitor Ariail and she is going
8 to ask you some questions. And then this is Mr. Eppes
9 over here, and he's one of the attorneys representing
10 Mr. Sigmon, he'll ask you some questions after that.

11 MR. TURNER: All right.

12 QUESTIONING BY MS. STROM:

13 Q Good afternoon.

14 A How you doing?

15 Q Fine, thank you. At first it may seem that we're
16 asking you the same questions that the judge just asked
17 you, but sometimes I may not have quite gotten it. I
18 want to make sure I understand what you're telling us,
19 okay?

20 A Right.

21 Q What I've gotten so far from what the judge and
22 you have discussed is that just generally you're for
23 the death penalty, but if you felt that it was
24 appropriate to give a life sentence you could give a
25 life sentence?

1 A (Witness nodded his head.)

2 THE COURT: You got to say yes or no.

3 MR. TURNER: Yes. I'm sorry.

4 THE COURT: That's all right.

5 BY MS. STROM:

6 Q And the judge talked to you about that the death
7 penalty is never required, in terms of the -- the judge
8 will never tell the jury you always have to impose the
9 death penalty in these type of situations, it is always
10 left up to the jury, right?

11 A Correct, that's what I understood.

12 Q Okay. One of the things the judge talked to you
13 about is even if it's a murder, you go through the first
14 phase of the trial and you find the defendant guilty of
15 murder, okay? There are no defenses. You've discarded
16 any defenses that might have been raised, so the
17 defendant is guilty of murder. And then you go to the
18 second phase, which is the penalty phase.

19 A Right.

20 Q What's the appropriate penalty. And there you must
21 first find is there an aggravating factor. Is it this
22 murder plus something, murder plus the rape, murder plus
23 the armed robbery, or the killing of a child, as the
24 judge had given an example. So it's in that penalty
25 phase that you first have to decide is there an

1 aggravating factor.

2 A Correct, I understand that.

3 Q Once you find aggravating factors, there maybe
4 evidence of mitigation, there may not be evidence of
5 mitigation, okay. In that situation where it's murder
6 plus an aggravating circumstance, you are still entitled
7 to vote for either death or life in prison without
8 parole. Do you understand that?

9 A I understand.

10 Q And I believe what you told the judge and what
11 you've have told us is that in that situation you could
12 give whichever of those two sentences you felt was
13 appropriate?

14 A Correct.

15 Q Sitting here today, you're not predisposed to give
16 one sentence or the other?

17 A No, ma'am.

18 Q It all depends on the facts and circumstance?

19 A I go through this whole process and I sit on the
20 jury, I will form my own opinion and my own collective
21 way of what everything that's presented to me. That's
22 all I have to go by and then I'll form my own opinion
23 then.

24 A And I take it from what you're telling us you're
25 going to stick by your opinion too?

1 A Oh, yeah, I'm that way.

2 Q Okay. Can you think of anything in your
3 background, religious, moral, or anything that would
4 impair your ability to fairly consider the death
5 sentence, or fairly consider life without parole?

6 A I don't think there's anything that would hinder
7 that.

8 MS. STROM: Court's indulgence, Your Honor? Thank
9 you. I have no further questions.

10 THE COURT: Mr. Eppes.

11 MR. EPPES: Thank you, Your Honor.

12 MR. TURNER: Excuse me.

13 THE COURT: That's all right. Do you want some
14 water? Is there some-- yeah, you can pour yourself some
15 of that.

16 MR. TURNER: Good afternoon.

17 QUESTIONING BY MR. EPPES:

18 Q How are you doing? Go ahead and take a sip before
19 we start talking.

20 A Thank you.

21 Q I'm Frank Eppes. This is my co-counsel, John
22 Abdalla, and that's my client, Brad Sigmon. We just
23 want to talk to you a little bit and understand your
24 opinions on the death penalty, okay. Get some general
25 background on you. I notice on here you went to Parker

1 and Greenville, which one did you graduate from?

2 A Graduated from Greenville High School, class of
3 '76.

4 Q How come you switched?

5 A My parents moved to North Carolina over the summer
6 between my sophomore and junior year and I was going to
7 go in Asheville High, but then in the same summer my
8 father decided he was moving back to Greenville. So we
9 moved back to Greenville and moved to the other side of
10 town and I had to swap schools.

11 Q Okay. Did you play football or anything?

12 A I went out for football my senior year and decided
13 not to participate and I went back to work, and I've
14 been working since I was 14 years old.

15 Q Okay. As an electrician?

16 A Oh, no, not as an electrocution. I've only been
17 doing that for a couple years.

18 Q What did you do before you're an electrician?

19 A Mechanical type work, setting machinery, building
20 machinery, field -- field crews out installing
21 machinery, and like synthetic industries, textile mills,
22 stuff like that.

23 Q Okay. Is your electrical work now in textile mills
24 or ---

25 A No, commercial electrical. We do Bi-los, Ingles,

1 Publix grocery stores, things of that nature.

2 Q Installing lights or ---

3 A Lighting, power, service -- we do service
4 contracts, go back and upgrade or do resets, remodels,
5 things of that nature.

6 Q Um-hm. You said you're generally for the death
7 penalty. Why is that?

8 A Why is that?

9 Q Yes, sir.

10 A I believe that in my opinion is if someone takes
11 someone else's life out, I mean, if it's self-defense,
12 that's one thing, but if it's just out of meanness,
13 trying to get something somebody else's got or whatever,
14 then you're taking somebody's life usefully -- I mean,
15 not usefully, there's no use to take anyone else's life.
16 I mean, I just -- I think an eye for an eye, a tooth for
17 a tooth. That's the way I've always been taught, you
18 know.

19 Q Um-hm?

20 A That's what I believe, you know.

21 Q Okay. Now, you understand that there's a guilt
22 phase trial or -- and then there's a sentencing phase
23 trial. Do you understand that?

24 A I understand that.

25 Q Okay. Now, you understand that at the guilt phase

1 trial you decide whether or not somebody is guilty of
2 murder plus other things under the law of South
3 Carolina?

4 A Right.

5 Q Okay. That means in the guilt phase trial somebody
6 says it was self-defense, if somebody says they were
7 insane, if somebody says they were somewhere else, if
8 somebody says it was an accident, any of those things,
9 if you find them guilty, none of those things apply. Do
10 you understand that?

11 A I understand that.

12 Q Okay. Once you find them guilty and they're
13 sitting there as defendants and they move onto the
14 penalty phase, at that stage they're murderers, no
15 question about it, okay? Now, in that position, when
16 they're murderers right there, before you hear any
17 evidence, would you say you were leaning towards the
18 death penalty, or leaning towards life in prison, or
19 would you ---

20 MS. STROM: I would object, Your Honor.

21 MR. EPPES: --- be up in the air?

22 THE COURT: Overruled. You can answer. Go ahead.
23 Answer that.

24 MR. TURNER: Based on -- if I understood your
25 question correctly, I would still -- before -- still

1 have to hear the upcoming evidence in that stage of the
2 trial before I would be leaning one way or the other,
3 towards a life sentence or the death penalty.

4 BY MR. EPPES:

5 Q Okay. So at that point you would be even, even
6 steven?

7 A If I understand the process that's my -- that's my
8 duty to still be even and not -- not assess a penalty
9 until I heard all the evidence.

10 Q It's your duty, but you can tell us here today,
11 we're trying to find out. Take your duty out of it, I
12 know you're going to be fair ---

13 MS. STROM: I object, Your Honor.

14 MR. EPPES: --- are you going to lean ---

15 THE COURT: Okay. Sustain the objection. You
16 can't take your duty out of it.

17 BY MR. EPPES:

18 Q Would your mind be leaning one way or the other,
19 even in light of your duty?

20 A I -- I mean, that's a hard question to answer right
21 here at this point in time. I'd have to be in that
22 situation at that moment to be able to answer that
23 question absolutely honestly and fairly. I mean I would
24 like to think I would be waiting to hear the rest of the
25 evidence.

1 Q The rest of the?

2 A Then -- the evidence that comes in the second stage
3 of the trial.

4 Q You would want to hear the rest of the story?

5 A I'd want to hear everything.

6 MR. EPPES: Okay. Now -- dad burnit
7 (phonetically), I lost my train of thought. I'm going
8 to get some water. Court's indulgence.

9 THE COURT: Yes, sir.

10 BY MR. EPPES:

11 Q I just lost my train of thought. Okay. Now, in
12 this sentencing phase of the trial, you've heard about
13 how it has to be something more than murder. It has to
14 be murder with an armed robbery, murder with a rape,
15 double murder. It has to be something else, you
16 understand that?

17 A I understand that.

18 Q Okay. Now, if you heard that information, if you
19 heard it was something else, heard that there was
20 something else there, if you heard it was a cold blooded
21 killing with an armed robbery, okay, and if the
22 defendant -- if the defendant just laid down, just said,
23 Your Honor, we ain't got nothing so say, we did it, we
24 ain't got nothing to say, you understand you don't have
25 an obligation at that point to give a death sentence,

1 you don't have to do it even if the defendant didn't
2 give you any information at all to try to protect --
3 save his life?

4 A Yeah, I understand -- I think I understand pretty
5 much what my obligation is and what my obligation
6 isn't.

7 Q Okay. If that defendant didn't give you any
8 information, would you -- would you be willing to
9 consider a life sentence, or if you had an aggravated
10 murder, would you just say, well, in that situation he
11 ought to die?

12 A My personal opinion to that question is if I were
13 sitting in his shoes, I'll be wanting to offer some kind
14 of information to -- to -- you know.

15 Q I understand that.

16 A I mean ---

17 Q I understand that.

18 A I'm trying to give you a good answer, but I mean,
19 and an honest answer.

20 Q Well, if he didn't, what would you think?

21 A If he ---

22 MS. STROM: I object, Your Honor.

23 THE COURT: I'm going to sustain the objection.

24 Not what he would think.

25 BY MR. EPPES:

1 Q Okay. The defendant offers no mitigation, he
2 offers nothing. He's guilty of an aggravated murder,
3 say an armed robbery and murder, okay. No mitigation.
4 Would you be able to fairly consider giving him a life
5 sentence?

6 A Yes, I'd be able to fairly consider it. But let me
7 ask you a question.

8 THE COURT: No, I'm sorry.

9 MR. TURNER: Can I ask a question? I can't ask a
10 question?

11 THE COURT: You can't.

12 MR. TURNER: Okay.

13 THE COURT: All right. Any other questions?

14 MR. EPPES: Yes, sir, Your Honor, I've got a few
15 more.

16 THE COURT: All right. Move on.

17 BY MR. EPPES:

18 Q Okay. Now, the judge has said that you have to
19 consider mitigating factors, you have to consider them,
20 alcohol, drugs, mental problems, personal problems. You
21 have to consider all those factors, right? Do you
22 understand that?

23 A I understand that.

24 Q And you have said you would be able to do that and
25 do it fairly, right? You have to say yes or no ---

1 A Yes.

2 Q --- Mr. Turner, I'm sorry.

3 A Yes. I mean, yes.

4 Q I do that all the time. When you nod your head
5 they can't put it down. Okay.

6 A Okay.

7 Q There's going to be other things that come out of
8 the case. There is going to be -- there would be other
9 things that came out in a capital case if you got to the
10 penalty phase. One of those things you would -- you
11 might hear in a capital case would be evidence from the
12 family of the people that had died, okay. Now, if you
13 heard evidence from a family that had been torn apart
14 that was gut wrenching, made you cry, and you heard
15 that, would you still be able to fairly consider these
16 mitigating factors, these -- you know, factors like
17 alcoholism, drugs, family problems?

18 A Yes, yes.

19 Q You'd still be able to fairly consider them, they
20 wouldn't sway you one way?

21 MS. STROM: Objection, Your Honor.

22 THE COURT: Sustain the objection. Would you be
23 able to consider ---

24 MR. EPPES: They wouldn't sway you to be unfair,
25 I'm sorry, Your Honor.

1 BY MR. EPPES:

2 Q You'd be able to fairly consider them?

3 A Yes.

4 Q Okay. Now, would you be able to -- in light --
5 would you be able to fairly consider them -- to consider
6 all these mitigating factors, even in light of what
7 happened to your wife's grandfather?

8 A Yes.

9 Q Okay. Now, if you -- if you reached a decision
10 that life without parole was the appropriate sentence,
11 and everybody else on the jury signs the death warrant,
12 and they wanted you to go along with it, would you stick
13 to your guns? I think I know the answer, but would you
14 stick to your guns if you believed that life without
15 parole was the appropriate sentence?

16 A Knowing me, I'm sure I would.

17 Q And ---

18 A Stick to my guns.

19 Q And if somebody else was doing that, if somebody
20 else was holding out for a life sentence, and you and 10
21 other members of the jury were in favor of the death
22 sentence, would you respect the wishes of that other
23 person, or would you -- you know, if they were pretty
24 firm in their conviction, would you respect their
25 wishes.

1 A I'm sure I would have to.

2 MR. EPPES: Okay. Court's indulgence. Mr. Turner,
3 thank you very much.

4 THE COURT: Mr. Turner, let me give you this
5 letter.

6 MR. TURNER: Yes, sir.

7 THE COURT: You are qualified to serve as a juror
8 on this case. That does not mean you will serve. It
9 simply means you are one of a number of jurors we're
10 going to qualify and pick the jury from. You need to be
11 ready to serve. Madam Clerk, when we have accumulated
12 enough jurors, will call all the qualified jurors and
13 tell them to come back to court. Excuse me. You need
14 to go ahead and pack a suitcase for seven or eight days.
15 You will be sequestered. I think you know that.

16 MR. TURNER: Yes, sir.

17 THE COURT: If -- or excuse me, when you're called,
18 if you'd come back and park in the Hyatt parking garage,
19 that you parked in on Monday morning.

20 MR. TURNER: Yes, sir.

21 THE COURT: Then right across the street from the
22 Spring Street entrance, Spring Street is the street
23 between the Hyatt and the courthouse, there is the
24 garage entrance to the courthouse.

25 MR. TURNER: Right.

1 THE COURT: I want you to come to that entrance,
2 because I don't have enough parking places out here to
3 for everybody to park. So I'm going to have you to come
4 in that way. Bailiffs will meet you when you're told to
5 come back. Then they'll bring you up to the courtroom
6 and we'll pick a jury at that time. Leave your suitcase
7 in the car, because there's a chance you wouldn't be
8 picked. Do you understand that?

9 MR. TURNER: Right.

10 THE COURT: Go head and pack any medications you
11 need, anything like that. If you are picked and of
12 course you're going to be sequestered, that means you
13 will not be able to be in contact with your family or
14 business. They will not be able to be in direct contact
15 with you. We can provide to get information to them if
16 you need to thought the bailiffs. And there are some
17 emergency numbers on this letter. If there's an
18 emergency they can contact you, not directly but through
19 the SLED agents and through the bailiffs.

20 Now, finally I need to tell you, don't talk about
21 this case with anyone. If anyone talks to you take
22 their names and let the bailiffs know. If -- excuse me,
23 let me back up. Don't read anything about this case.
24 Don't read anything in the paper, watch anything on TV,
25 okay?

1 MR. TURNER: Yes, sir.

2 THE COURT: All right. Do you have any questions
3 of me before I let you go?

4 MR. TURNER: No, sir.

5 THE COURT: All right. It will probably be
6 tomorrow afternoon or Thursday before we call you back,
7 but you need to be ready to come when you're called, all
8 right?

9 MR. TURNER: All right, sir.

10 THE COURT: Thank you very much.

11 MR. TURNER: Yes, sir.

12 (Mr. Turner exited the courtroom.)

13 THE COURT: All right. Anything on Ms. Myers,
14 besides heard the facts of the case?

15 MS. STROM: No, sir.

16 THE COURT: Nothing on line 20? Anything else I
17 need to look at? All right. Bring in Ms. Myers.

18 (Ms. Myers entered the courtroom.)

19 THE COURT: Hey. You are Mary Myers?

20 MS. MYERS: Yes.

21 THE COURT: My name is Joe Watson. As you make
22 yourself comfortable, go ahead and slide your chair
23 forward and speak directly into the microphone, that way
24 we'll be able to hear you.

25 MS. MYERS: Okay.

1 THE COURT: You understand you're still under oath?

2 MS. MYERS: Yes.

3 THE COURT: And you understand that -- let me back
4 up. Have you complied with my instructions yesterday
5 not to talk about this case with anyone?

6 MS. MYERS: Yes.

7 THE COURT: All right. Yesterday morning when we
8 were downstairs you responded to one of the questions I
9 asked saying that you had heard something about this
10 case, is that correct?

11 MS. MYERS: Yes.

12 THE COURT: Where did you hear about it? Did you
13 read something in the paper, see something on TV?

14 MS. MYERS: Both.

15 THE COURT: All right. Did you know anybody from
16 that area that was affected by what happened, by chance?

17 MS. MYERS: I had a student who had a cousin that
18 their school was on lock down. I teach.

19 THE COURT: Okay.

20 MS. MYERS: And so the student came sharing that
21 with me and was very upset, for fear that our school
22 might have a lock down.

23 THE COURT: Okay. What grade do you teach?

24 MS. MYERS: Sixth.

25 THE COURT: All right. Having read something about

1 this case and having talked to that student about his
2 experience, would that affect your ability to be fair
3 and impartial in this case if you were selected as a
4 juror?

5 MS. MYERS: I hope not.

6 THE COURT: Okay. Well, I guess my question wasn't
7 how could it. I mean, would -- would the fact that
8 you've heard something about it affect your ability to
9 be fair?

10 MS. MYERS: I guess what I am wondering is why
11 it -- I thought he had confessed that he did this.

12 THE COURT: Okay. Is that something you read in
13 the paper?

14 MS. MYERS: Yes.

15 THE COURT: Okay. Well, that may have been in the
16 paper. I mean, if the paper -- I understand that may
17 have been in the paper.

18 MS MYERS: Right.

19 THE COURT: Let's do it this way. Could you set --
20 from what you have read, have you formed any opinions
21 about his guilt or innocence, let, me ask you that?

22 MS. MYERS: I'm afraid I have.

23 THE COURT: Okay. And that opinion is what?

24 MS. MYERS: That he's guilty.

25 THE COURT: Okay. Now, can you set aside what you

1 have read and judge this case only on the evidence
2 that's been presented in court?

3 MS. MYERS: I think so.

4 THE COURT: Okay. And can you set aside any
5 opinion and decide his guilt or innocence and ultimately
6 what punishment he might receive if he was found guilty,
7 based solely on the testimony and evidence that's
8 presented in court?

9 MS. MYERS: Yes.

10 THE COURT: Okay. In other words, it's okay to
11 have read something, it's even okay to have formed
12 opinions, as long as you can separate that out and be
13 fair to the State and fair to the defendant. Do you
14 understand what I'm saying?

15 MS. MYERS: Yes.

16 THE COURT: All right. Now, you -- I will be
17 asking you a number of questions, and then the attorneys
18 will be asking you a number of questions. Some of these
19 questions may seem of a personal nature. Nobody means
20 to offend you, but if we do, hold it against me, don't
21 hold it against the State or the defendant. Because of
22 the nature of these proceedings we need to ask these
23 questions. There are no wrong answers. There are no
24 right answers. We would certainly respect any opinions
25 you may have, but we do need your open, and honest, and

1 full answers to these questions. Most of what I'm going
2 to be talking about is penalty, but I need to make sure
3 you understand up front that just because we talk about
4 penalties that indicates nothing about this defendant.
5 Do you understand that?

6 MS. MYERS: Um-hm.

7 THE COURT: As he sits there he is presumed to be
8 innocent. Do you understand that?

9 MS. MYERS: Yes.

10 THE COURT: All right. It's sort of a backward
11 process. In order to make sure we get a fair jury,
12 we've got to talk about penalty before the case even
13 starts, but that's just the way this process is. Before
14 I talk about penalty with you I need to ask you
15 generally, if were selected to serve on a criminal jury,
16 would you listen to the law that the judge charged and
17 accept that law and apply that law to the case as he
18 instructs?

19 MS. MYERS: Yes.

20 THE COURT: Would you do that even if you did not
21 agree with that law?

22 MS. MYERS: Yes.

23 THE COURT: All right. Do you understand that the
24 State must prove a defendant guilty beyond any reason
25 doubt?

1 MS. MYERS: Yes.

2 THE COURT: And if you sat on a case and you
3 thought that the State had not proved a defendant guilty
4 beyond a reasonable doubt, would you vote not guilty in
5 the case?

6 MS. MYERS: Yes.

7 THE COURT: And on the other hand, if you thought
8 the State had proved their case beyond a reasonable
9 doubt, would you vote for guilty?

10 MS. MYERS: Yes.

11 THE COURT: Now, did you know much about the death
12 penalty in South Carolina before coming to court
13 yesterday? Did you know we had a death penalty?

14 MS. MYERS: Yes, I did.

15 THE COURT: Did you know that it was not every
16 murder case that is subject to the death penalty?

17 MS. MYERS: Yes.

18 THE COURT: All right. You already knew that?

19 MS. MYERS: Yes, I did.

20 THE COURT: Most people don't know that. You
21 understand then this concept of an aggravated murder,
22 it's a -- something our Legislature has said separates a
23 regular murder from aggravated murder. It's the killing
24 during an armed robbery, killing during a rape, killing
25 of a police officer, killing of a judge, things like

1 that are considered aggravated murder, you understand
2 that?

3 MS. MYERS: Yes.

4 THE COURT: And when we talk about aggravated
5 murder, do you understand that the penalty is not
6 automatic in those cases, that that simply means the
7 State can seek the death penalty? And if the State
8 seeks the death penalty it is up to the jury to decide
9 what punishment the defendant should receive if he's
10 convicted. Do you understand that?

11 MS. MYERS: Yes.

12 THE COURT: Before a jury decides the punishment,
13 in other words you've already had the first part of the
14 case, the trial phase, and that's just like any other
15 trial, the issue is not guilty or guilty. If the person
16 is found guilty then everybody goes home, but if the
17 person is found guilty then the same jury moves to that
18 second phase of the trial where they hear additional
19 testimony and additional evidence. And they hear two
20 types of evidence and testimony. The State presents
21 evidence in aggravation. That is evidence that they
22 present in order to try to convince the jury that the
23 appropriate sentence is death. And then the defense
24 presents mitigating evidence. That is evidence that the
25 defense presents in order to convince the jury that the

1 proper sentence is life. Do you understand that?

2 MS. MYERS: Yes.

3 THE COURT: Evidence in aggravation can be any
4 number of things. It might be the defendant is a mean
5 character, or has a long history of violence, something
6 like that.

7 MS. MYERS: This has nothing to do with the use of
8 drugs or alcohol?

9 THE COURT: That would be mitigating. Let me talk
10 about the aggravating first. The aggravating evidence
11 would be things like the fact that he's a violent
12 person, okay? And again, aggravating evidence would be
13 the actual crimes itself, murder during an armed
14 robbery, something like that. They would also present
15 what's called victim impact evidence. Victim impact
16 evidence would be members of the victim's family who
17 would testify about what the death of their loved one
18 means to them, what the impact has on them and to their
19 community. That's what that is. Do you understand that
20 concept of aggravating evidence?

21 MS. MYERS: Yes.

22 THE COURT: All right. Now, I'm going to move to
23 mitigating evidence, because mitigating evidence might
24 be that the person suffered from some mental problem at
25 the time they committed the crime, or he might suffer --

1 he might have been under the influence of someone else
2 when he committed the crimes, or maybe he's got a
3 complete clean record, he's never been in trouble
4 before, maybe he's an particularly youthful defendant,
5 things like that that the defense presents to mitigate
6 what punishment he should receive. Do you understand
7 that?

8 MS. MYERS: Yes.

9 THE COURT: All right. In a capital case, if a
10 jury is in the penalty phase, if they find beyond a
11 reasonable doubt -- they must find beyond a reasonable
12 doubt the existence of the aggravating circumstance
13 before they can vote for death. Do you understand that?

14 MS. MYERS: Yes.

15 THE COURT: But even if they find an aggravated
16 circumstance, or they may find several aggravating
17 circumstances, do you understand they are never required
18 to sentence someone to death?

19 MS. MYERS: Yes.

20 THE COURT: There maybe numerous aggravating
21 circumstances and the jury may find no mitigating
22 circumstances but the jury can still give a life
23 sentence. Do you understand that?

24 MS. MYERS: Yes.

25 THE COURT: All right. Now, understanding this

1 procedure, the bifurcated trial and the concept of
2 aggravating evidence and mitigating evidence, I'm sure
3 you now understand that we must get to know generally
4 what your feelings are about capital punishment. Would
5 you say that you are generally for capital punishment,
6 generally against capital punishment, just how do you
7 feel? I'm done talking, it's your turn to talk now.

8 MS. MYERS: Well ---

9 THE COURT: Have you thought about it before?

10 MS. MYERS: Yes, I have.

11 THE COURT: All right.

12 MS. MYERS: And there are times when I think, yes,
13 I'm for it, and then there are other times that I think
14 that's not a right of ours. I'm sorry.

15 THE COURT: That's all right. It should be a tough
16 decision in any case. Let me see if I can articulate
17 what you told me. Do you think that in some cases
18 it's -- that the case is so aggravated that it might be
19 the proper punishment?

20 MS. MYERS: Yes.

21 THE COURT: Do you think that there -- the death
22 penalty has a proper place in our society as a form of
23 punishment in some cases?

24 MS. MYERS: Yes.

25 THE COURT: All right. Now, would you vote for the

1 death penalty in every case of aggravated murder?

2 MS. MYERS: No.

3 THE COURT: All right. Would you listen carefully
4 and give meaningful consideration to the evidence in
5 aggravation and also to the evidence in mitigation
6 before you reached a decision of life or death?

7 MS. MYERS: Yes.

8 THE COURT: All right. If you thought the proper
9 sentence was death, would you vote for the death
10 penalty?

11 MS. MYERS: I think. I can't be positive.

12 THE COURT: I understand. If you thought the
13 appropriate sentence was life, do you think you could
14 vote for a life sentence?

15 MS. MYERS: Yes.

16 THE COURT: Okay. Now, if the jury thought that
17 the appropriate sentence was death, they would be
18 required to sign the verdict form. Each juror would
19 have to sign their name individually. If you thought
20 the proper sentence was death in a case, could you sign
21 that verdict form?

22 MS. MYERS: Yes.

23 THE COURT: All right. Are you telling me that
24 there are some cases that would be aggravated enough
25 that you could vote for the death penalty and sign that

1 form?

2 MS. MYERS: Yes.

3 THE COURT: Okay. Who's turn is it? All right,
4 Mr. Eppes. This is Frank Eppes. He is representing the
5 defendant along with Mr. Abdalla. He's going to be
6 asking you some questions first and then Solicitor or
7 Ms. Strom, who's in the white, will ask you questions
8 after Mr. Eppes.

9 MR. EPPES: I'll bring my cup this time.

10 THE COURT: Fine.

11 QUESTIONING BY MR. EPPES:

12 Q Hey, Ms. Myers.

13 A Hey. This is just a personal question. Are you
14 Judge Eppes' son?

15 Q Yeah, I'm little Frank.

16 A Well, I purchased a schnauzer from you years ago.

17 Q Lord have mercy.

18 A You weren't but about eight years old.

19 THE COURT: From his dad?

20 MS. MYERS: From his dad, but I can remember ---

21 MR. EPPES: I wish you had taken them all.

22 THE COURT: How big was he when he was that young,
23 let me ask you that?

24 MS. MYERS: He was not real big.

25 THE COURT: Okay.

1 MS. MYERS: But I remember he said, you can train
2 this dog to do his business at the end of the yard.

3 BY MR. EPPES:

4 Q I was being nice to the dog, that was my brother.

5 A And the schnauzer was a wonderful dog.

6 Q They're great, aren't they?

7 A They certainly are. And you make me feel so old.

8 Q You old?

9 A Yes.

10 Q I make me feel old. My mom still has one, but --
11 well, let me ask you, you know my family, would that
12 cause you to be impartial in this case either for or
13 against the State or my client?

14 A No, no.

15 Q You understand that if -- if an individual is
16 found guilty, then we go to this penalty phase of the
17 case?

18 A Yes.

19 Q And you understand that the reason we go to the
20 penalty phase is because the State thinks the death
21 penalty is an appropriate punishment.

22 A Yes.

23 Q Okay. You understand that the State will present
24 evidence in aggravation to show why they feel that the
25 death penalty is appropriate, correct?

1 A Yes.

2 Q Okay. And the defense, if we get to that stage,
3 will present evidence in mitigation to show why they
4 think that the death penalty is not appropriate. Do you
5 understand that?

6 A Yes.

7 Q And you understand also that the State of South
8 Carolina doesn't have a law that says if you satisfy A,
9 B, C, D, that the death penalty is the only appropriate
10 sentence?

11 A Yes.

12 Q You understand that either life without parole is
13 appropriate or the death penalty, and the -- the jury
14 has to decide, correct?

15 A Yes.

16 Q You would be able to give meaningful consideration
17 for both sentences, life without parole and the death
18 penalty, correct?

19 A Yes.

20 Q And after that consideration, if you thought that
21 the death penalty was the appropriate sentence, you
22 would vote for the death penalty and you would sign that
23 warrant, correct?

24 A Yes.

25 MR. EPPES: Okay. Ms. Myers, I appreciate it.

1 THE COURT: Ms. Strom.

2 QUESTIONING BY MS. STROM:

3 Q Good afternoon, Ms. Myers.

4 A Good afternoon.

5 Q I'll try and be brief. And some of the questions
6 are going to seem like the exact same questions that the
7 judge asked you and the exact same questions that Mr.
8 Eppes asked, okay. So bear with us. You understand the
9 necessity for our going through this process of
10 questioning you about your opinions on the death
11 penalty?

12 A Yes.

13 Q Okay. You know what we're looking for is a jury
14 who can give fair consideration to the State's request
15 to impose the death penalty?

16 A Yes.

17 Q And fair consideration to the defendant's request
18 to not impose the death penalty?

19 A Correct.

20 Q Okay. And I don't mean to put you on the spot, we
21 all understand it would be a very difficult decision.
22 It's not anything that anybody takes lightly when asking
23 to impose the death penalty. What I need to know from
24 you is can you fairly give consideration to our request
25 to impose the death penalty if you believed that the

1 facts warrant it?

2 A I think so.

3 Q You think you could? Okay. The judge talked to
4 you about signing that form, the verdict form. All 12
5 agree that the death penalty is the appropriate
6 sentence, you all must sign the verdict form which is
7 also sometimes referred to as the death warrant that
8 goes to the Department of Corrections, which is the
9 legal document that carries out the execution. Okay?
10 Could you put your name on that form, if you had decided
11 that the -- that was the sentence?

12 A I think so.

13 Q Okay. Okay. Please, if you need anything?

14 A I'm fine. I'm just one of these very emotional
15 people.

16 Q We understand. And I don't mean to put you on the
17 spot or make you feel uncomfortable in any way. Can you
18 think of anything in your background, in your religious
19 makeup, in your personal or professional life that would
20 interfere, that would substantially impair your ability
21 to consider the death penalty?

22 A I just keep wrestling with the fact that it's not
23 our place to make that decision, but then again, I just
24 have a new granddaughter and I think if someone killed
25 her, yes, I probably -- you know, I could, but at the

1 same time, I wrestle with it, and I've never been asked
2 to be on a jury like this. So I've never really had to
3 form an opinion ---

4 Q The first ---

5 A --- that is so precise.

6 Q And without getting into any specifics but you
7 brought up the fact if something happened to one of your
8 family members, I want to take you outside of your
9 family, okay. Do you still think that even though it
10 didn't happen to any member of your family, somebody
11 outside your family, could you still consider and
12 actually vote for the death penalty if you felt it was
13 appropriate?

14 A I think so.

15 MS. STROM: Okay. Court's indulgence, Your Honor?

16 THE COURT: Yeah.

17 MS. STROM: I have nothing further. Thank you, Ms.
18 Myers.

19 THE COURT: All right. Ms. Myers, let me give you
20 this letter. You are qualified as a juror. That
21 certainly does not mean you will be selected. That
22 simply means you need to be ready to serve if you are
23 selected. We're in the process of qualifying a much
24 larger panel. And whenever we get enough jurors, Madam
25 Clerk will call each juror to tell them to come back to

1 court. You need to come with a suitcase packed, ready
2 to stay for seven or eight days. Bring any
3 medications, things like that that you might need. When
4 you return to court, which will probably be sometime
5 tomorrow or Thursday, you need to park in the Hyatt
6 parking garage, across -- did you park there Monday
7 morning?

8 MS. MYERS: Um-hm.

9 THE COURT: If you would come across Spring Street
10 to the garage entrance to this courthouse. I don't have
11 enough parking out here in the back to park everybody,
12 so I'm going to have the bailiffs meet you at the garage
13 entrance, you and the other jurors, and they'll bring
14 you up here and we'll select a jury at that time.

15 Leave your suitcase in the car. Don't bring it
16 with you, because there will be a greater than 50 percent
17 chance you will not be selected in the case, but if you
18 are selected, then -- then we'll sequester you
19 immediately, but the SLED agents will take you to get
20 your suitcase. You might want to bring someone with you
21 that can drive your car home. If you can't do that then
22 we'll make some other arrangements to get it home, or
23 you can leave it over there until the case is over with
24 and that should not be a problem.

25 If you are selected and if you're sequestered you

1 cannot have any direct contact with family or business.
2 We can communicate to them for you. If there's
3 something you absolutely have to communicate, that's
4 fine. You can write a message and give it to the
5 bailiffs, give them a phone number, they will call
6 someone for you. If there is an emergency, on this
7 letter there are emergency numbers, day time and night
8 time. We can handle any emergency that comes up, any
9 family member would simply have to call that number.
10 It's not an information hotline. They're not going to
11 be able to tell your family members how long the case is
12 going to last or anything like that. Do you have any
13 questions so far?

14 MS. MYERS: Now, that call would come tomorrow or
15 Thursday?

16 THE COURT: Or Thursday, and it will leave you
17 enough lead time. It could be tomorrow afternoon. It
18 could be tomorrow late morning that says come at two
19 o'clock. It may be tomorrow afternoon that says come
20 Thursday morning. It maybe Thursday morning that says
21 come Thursday afternoon. I just don't know exactly how
22 far along in this process we are. Hopefully it will be
23 over night but it could be as short as a couple hours,
24 and -- Andrea or Caroline will step out with you to make
25 sure she has got all of your phone numbers where we can

1 reach you, day or night, and let you know.

2 Do not talk about this case with anyone. If
3 someone tries to talk with you tell them you're on the
4 jury panel and you can't discuss it. If they persist in
5 trying to talk about it, then take their name and tell a
6 bailiff who it is and we'll handle that situation.

7 There will be media coverage of this case. The reason
8 I'm having y'all meet in the garage and bringing you up
9 the back way is, I don't want you to mingle with family
10 members on either side, the media that's out there, just
11 -- so don't read anything about it in the paper. There
12 will be articles in the paper I'm sure every day. Do
13 not look at anything on TV, or don't listen to any talk
14 radio, or anything like that, okay? Any other
15 questions?

16 MS. MYERS: No.

17 THE COURT: All right. Thank you, ma'am. We'll
18 see you tomorrow or Thursday.

19 (Ms. Myers exited the courtroom.)

20 THE COURT: Anything with regard to this jury from
21 the State -- juror?

22 MS. STROM: No, sir.

23 THE COURT: From the defense?

24 MR. EPPES: Nothing, Your Honor.

25 THE COURT: All right. Let's take about a 5 or 10

1 minute break. We'll come back. We're at a pretty good
2 pace here. Would you tell the jurors that we're going
3 on break, it's going to be 5 or 10 minutes before we
4 call the next one in.

5 (A short recess was taken, after which, the trial
6 continued as follows:)

7 THE COURT: This next juror -- no, not yet.
8 Everybody ready? This next juror indicated yesterday
9 morning that his mother is close to death, in the
10 hospital, they've been called up twice. He also
11 indicated he's heard facts of the case. Anything else?
12 All right. Bring in the juror, Mr. Calvin Davis?

13 (Mr. Davis entered the courtroom.)

14 THE COURT: Hey, you're Mr. Davis?

15 MR. DAVIS: Yes.

16 THE COURT: Please come up and have a seat, Mr.
17 Davis. I'll reintroduce myself. I'm Joe Watson. I'll
18 remind you understand you're still under oath from the
19 oath you took yesterday morning?

20 MR. DAVIS: Yes, sir.

21 THE COURT: I need for you to say yes or no to the
22 questions and speak up, because she's taking down
23 everything that is said, but there's a back-up system,
24 so if you nod your head or shake your head, obviously
25 that recording system can't record that. So -- all

1 right. I'm going to ask you about a couple of things
2 that we talked about yesterday morning in the jury
3 assembly room. First of all, you indicated that your
4 mother was close to death, and she's in the hospital, is
5 that correct?

6 MR. DAVIS: That's correct.

7 THE COURT: And that y'all had been called in
8 twice, meaning that they thought she was close to
9 death and they wanted to gather the family, is that
10 correct?

11 MR. DAVIS: That's correct.

12 THE COURT: Okay. Has her condition changed any in
13 the last day or so?

14 MR. DAVIS: Yesterday her temperature dropped two
15 degrees from 95 degrees to 93.

16 THE COURT: Okay. All right. Mr. Davis, is that
17 going to affect your ability to serve on this case? Do
18 you understand that if you are selected, it would
19 probably be Wednesday or Thursday before we would
20 actually pick a jury, but a jury would be sequestered
21 during the course of this trial. Do you understand
22 that?

23 MR. DAVIS: I understand.

24 THE COURT: All right. And is your mother's
25 condition going to affect your ability to serve on this

1 case?

2 MR. DAVIS: No, because I have already gotten all
3 of the preliminaries out of the way.

4 THE COURT: All right. Well, I guess the question
5 is, if she passes during the course of the trial -- let
6 me ask you this, during the course of the trial are you
7 going to be preoccupied with her condition, are you
8 going to be able to concentrate on what's going on in
9 the courtroom?

10 MR. DAVIS: No, I shouldn't. She has been in the
11 hospital for -- today it's a month, so I have been
12 looking for this to happen for a month, so ---

13 THE COURT: And if -- I guess have they given any
14 sort of prognosis as to how imminent death may be?

15 MR. DAVIS: A week ago they said two days. She is

16 ---

17 THE COURT: Okay.

18 MR. DAVIS: She could hold on for I don't know how
19 long. She's not getting any liquids whatsoever, any
20 food. She's off all life support.

21 THE COURT: All right. You also indicated that you
22 had heard some of the facts of this case is that
23 correct?

24 MR. DAVIS: That's correct.

25 THE COURT: All right. Tell me what -- was that

1 from the newspaper, or TV or ---

2 MR. DAVIS: TV and newspaper.

3 THE COURT: All right. Tell us what you recall
4 about the case?

5 MR. DAVIS: Well, the alleged -- for one thing, why
6 I took such interest in it, it's not far from my house.
7 It's about maybe three or four miles away from my home.

8 THE COURT: All right. Do you remember any of the
9 details that were in the media as to what happened, or
10 what they allege happened, anything like that?

11 MR. DAVIS: Just that it -- two elderly people had
12 been beaten to death and their daughter had been shot
13 and there was a manhunt.

14 THE COURT: Okay. From what you read about it, or
15 saw on TV, have you formed any opinions about this case?
16 Specifically have you formed any opinions about the
17 guilt or the innocence of the defendant in the case?

18 MR. DAVIS: No.

19 THE COURT: Okay. Can you set aside what you heard
20 about the case and judge this case solely on the facts
21 and the testimony that is presented in the courtroom?

22 MR. DAVIS: Yes.

23 THE COURT: All right. Now, let me -- I'm going to
24 ask you to step outside just for a minute. I need to
25 talk to the lawyers and then I will bring you back in,

1 okay.

2 (Mr. Davis exited the courtroom.)

3 THE COURT: All right. What -- anybody got any
4 position so far as to whether he should serve or not? I
5 mean, my fear obviously is that his mother dies during
6 the course of the trial and that's going to be a
7 problem.

8 MR. ARIAIL: That's our position. It just -- it's
9 going to necessitate you picking another alternate,
10 obviously, because you got almost a situation where
11 you're going to need one.

12 THE COURT: Or not letting him do anything.

13 MR. ARIAIL: Or let him not serve, that's right.

14 THE COURT: No, not letting him go to the funeral.

15 MR. ARIAIL: Right.

16 THE COURT: Okay. What's your position?

17 MR. ABDALLA: Your Honor, my position is he's
18 indicated he wants to serve. He said his mother has
19 been on her death bed for a month or so, so it's
20 impossible at this point.

21 THE COURT: It's what?

22 MR. ABDALLA: It's an impossible call as to whether
23 his mother survives the trial.

24 THE COURT: I think with her temperature where it
25 is, she's pretty close to death. All right. I am going

1 to give him the option. I'm going to tell him that
2 because of his situation if he does not want to serve
3 then that will be justified. I will transfer him to
4 another week, but also tell him that if he decides to
5 serve then no matter what happens he's going to have to
6 continue to serve.

7 MR. ARIAIL: Have you looked at number 34 on his
8 questionnaire also?

9 THE COURT: That's -- I mean that's not relevant
10 unless he's so opposed.

11 MR. ARIAIL: Correct.

12 THE COURT: All right. Let's just handle it this
13 way. Bring him back in.

14 (Mr. Davis entered the courtroom.)

15 THE COURT: All right, sir. All right, Mr. Davis,
16 I'm going to handle this this way. You had asked to be
17 excused because of your mother's situation.

18 MR. DAVIS: Yes.

19 THE COURT: And because of her situation, I will
20 allow you to be -- excuse yourself from jury duty to
21 transfer to another week of court, if you want to, okay?
22 If you want to, that's fine. You can serve if you're
23 qualified, but the problem would be if you're served --
24 you serve and you're sequestered, then if something
25 happens you still have to remain on this jury and you

1 have to serve. Do you understand that?

2 MR. DAVIS: I understand.

3 THE COURT: All right. Do you want to be exempted
4 to be transferred to another week, or do you want to
5 continue this process?

6 MR. DAVIS: I want to be exempted, please.

7 THE COURT: Okay. All right. Then I'm going to
8 let you go. You're going to need to transfer him to
9 another week. They will just be back in touch with you.
10 You will get another summons to come to court sometime
11 before the end of the year, okay?

12 MR. DAVIS: Okay.

13 THE COURT: All right. Thank you very much.

14 MR. DAVIS: Thank you.

15 (Mr. Davis exited the courtroom.)

16 THE COURT: All right. Anything from the State or
17 the defendant on my excusing this juror?

18 MR. ARIAIL: Nothing from the State.

19 MR. ABDALLA: Nothing from the defense.

20 THE COURT: All right. The next one heard facts of
21 the case, knows potential witnesses, didn't sign his
22 declaration or fill out page four. All right. Anything
23 in this that I need to look at, number 20? All right.
24 Bring in Mr. -- is it Thames, Thames?

25 MR. EPPES: He said Thames, Your Honor.

1 (Mr. Thames entered the courtroom.)

2 THE COURT: Hey, come on in and have a seat. As
3 you make yourself comfortable, slide your chair close to
4 the microphone so that we can amplify your voice.

5 MR. THAMES: Okay.

6 THE COURT: First I need to know how to pronounce
7 your name. Is it Thames or Thames?

8 MR. THAMES: It's actually Thames.

9 THE COURT: Thames, okay.

10 MR. THAMES: With the H silent.

11 THE COURT: With what now?

12 MR. THAMES: With the H silent.

13 THE COURT: Okay. You understand that you're still
14 under oath, Mr. Thames?

15 MR. THAMES: Yes, sir.

16 THE COURT: And have you complied with my
17 instructions from yesterday not to talk with anyone
18 about this case?

19 MR. THAMES: Yes, sir.

20 THE COURT: All right. Now, you indicated
21 yesterday that -- well, before I even get into that.
22 You, in filling out this jury questionnaire, did not
23 fill out page three or sign it. Was it just an
24 oversight on your part?

25 MR. THAMES: Probably.

1 THE COURT: Okay. All right. Is everything in
2 here correct?

3 MR. THAMES: Yes, sir.

4 THE COURT: All right. Now, yesterday morning you
5 indicated that you had heard some of the facts of this
6 case from the media, I believe, is that correct?

7 MR. THAMES: Yes, sir.

8 THE COURT: Did you -- was it recently as this case
9 got ready for trial, or was it back when it happened, or
10 both?

11 MR. THAMES: Back when it happened.

12 THE COURT: All right. Do you recall what you saw
13 about it on the TV or read in the paper about it, do you
14 recall any of the facts that were alleged to have
15 happened?

16 MR. THAMES: Not really.

17 THE COURT: Okay. Could you separate what you
18 heard outside of the courtroom? In other words, the
19 jury is required to judge the facts of the case solely
20 from the evidence and testimony that's presented in the
21 courtroom. In other words, the witness has to be sworn
22 under oath before you can receive testimony. So can you
23 judge this case solely on what you've heard in the
24 courtroom as opposed to what you might have heard
25 outside the courtroom?

1 MR. THAMES: I think so.

2 THE COURT: All right. Now, you also indicated
3 that -- let me back up to another question. I'm
4 hopping around here. From what you recall hearing about
5 this case or seeing about it, have you formed any
6 opinions about this case? Specifically have you formed
7 any opinions about the guilt or innocence of the
8 defendant?

9 MR. THAMES: No, sir.

10 THE COURT: All right. Now, you indicated that you
11 knew a potential witness in the case?

12 MR. THAMES: Yes, sir.

13 THE COURT: Who is that, please, sir?

14 MR. THAMES: Rene Sherbert. She's my neighbor,
15 lives across the street.

16 THE COURT: All right. I don't know her. She
17 works for the Department of Public Safety with ---

18 MR. ARIAIL: She's ---

19 MR. EPPES: She's in forensics.

20 THE COURT: With the Sheriff -- with the Police
21 Service Bureau, okay. All right. A jury's function is
22 to decide the true facts of the case. In any case there
23 are going to be disputed facts, you understand that? In
24 other words, there's going to be a conflict as to what
25 the testimony is, whether it's a civil case or criminal

1 case. And so what we do is when there's a conflict, our
2 law say that we empanel a group of citizens and they
3 decide the facts of that conflict. In deciding the
4 facts of a conflict, you're going to hear testimony and
5 you're going to have to judge the credibility of
6 witnesses. You have to decide what weight to give each
7 witness' testimony. You might believe entirely what a
8 witness says, or disbelieve entirely what a witness
9 says. You can believe part of what a witness says, or
10 disregard the other part. But in doing that you have to
11 look at common sense things, like the demeanor of the
12 witness on the stand, did that witnesses appear to be
13 telling the truth, or maybe they were hesitant in
14 answering questions. You look at whether a witness
15 might have had a reason to give the testimony they gave,
16 do they have an interest in the outcome of a case, a
17 bias or a prejudiced. You look at whether the witness'
18 testimony was consistent or may have contained
19 discrepancies. You look at whether that testimony is
20 supported by the other evidence and testimony in the
21 case, or it might be it's weakened by the other
22 testimony and evidence. Again, all these things are
23 common sense things. Do you understand the role of the
24 jury and what you would be asked to do?

25 MR. THAMES: Yes, sir.

1 THE COURT: And it's okay to know a witness, but
2 the question is, would you submit that witness'
3 testimony to the same standards of believability and
4 credibility as you would the other witnesses in the
5 case?

6 MR. THAMES: Yes.

7 THE COURT: All right. And so knowing Ms.
8 Sherbert, you would still submit her testimony, if she
9 testifies, I don't know that she'll actually testify,
10 but if she did, you would submit her testimony to the
11 same standard of believability and credibility?

12 MR. THAMES: Yes, sir.

13 THE COURT: And would you automatically favor
14 whatever side she testified for?

15 MR. THAMES: I don't think so.

16 THE COURT: Okay. You would be fair to both sides?

17 MR. THAMES: Yes.

18 THE COURT: Even though you know a witness in the
19 case?

20 MR. THAMES: Yeah.

21 THE COURT: All right. Now, I'm going to ask you a
22 number of questions. And some these are going to be
23 somewhat of a personal nature. Then the attorneys will
24 in turn get to also ask you questions. We need your
25 open and honest and full answers to the questions.

1 There are no right answers. There are no wrong answers.
2 Everybody's going to respect whatever opinion you may
3 have. But, I need to tell you that most of these
4 questions are going to deal with penalty. And before I
5 start, I need to make sure you understand, just because
6 we're talking about penalty, that does not indicate
7 anything about this defendant in the case. Do you
8 understand that?

9 MR. THAMES: Okay.

10 THE COURT: In other words, he is presumed to be
11 innocent as he sits there. Do you understand that?

12 MR. THAMES: Yes.

13 THE COURT: And it's sort of a backwards process,
14 because before the case even starts, in order to make
15 sure we get a fair jury, we have to talk about penalty,
16 but -- you understand what I'm saying?

17 MR. THAMES: Right.

18 THE COURT: All right. Before I talk about
19 penalty, let me ask you, if you were selected to serve
20 on a criminal case, would you listen to the law that the
21 judge charges and accept that law and apply that law in
22 the case?

23 MR. THAMES: Yes.

24 THE COURT: Would you do that even if you did not
25 necessarily agree with that law?

1 MR. THAMES: I think so, yes.

2 THE COURT: All right. An example might be,
3 someone comes to court and they thought they knew what
4 the law was, and the judge tells them something
5 different, that's okay, or someone may come to court
6 with a preconceived notion as to what they think the law
7 should be, for instance somebody thinks marijuana should
8 be legal, but the question is, can they set that aside
9 and accept and apply the law that the judge gives. And
10 you say you could do that?

11 MR. THAMES: Yes, sir.

12 THE COURT: Now, you understand that the State in a
13 criminal case has the burden of proving a defendant
14 guilty beyond any reasonable doubt, that's the burden?

15 MR. THAMES: Yes.

16 THE COURT: If you listen to the evidence in a
17 case, and if after all the evidence was presented, you
18 did not believe that the State proved a defendant guilty
19 beyond a reasonable doubt, would you vote not guilty?

20 MR. THAMES: Yes.

21 THE COURT: All right. If, on the other hand, you
22 thought the State had proved their case beyond a
23 reasonable doubt -- the guilt beyond a reasonable doubt,
24 would you vote guilty?

25 MR. THAMES: Yes, sir.

1 THE COURT: Now, let me get to some questions about
2 penalty in this type of case. Did you read my letter
3 yesterday, the two-page letter?

4 MR. THAMES: Yes, sir.

5 THE COURT: And do you understand that it is not
6 every murder case that is even subject to the death
7 penalty in South Carolina?

8 MR. THAMES: Yes.

9 THE COURT: It's got to be an aggravated murder.
10 The example I gave is murder during an armed robbery, or
11 something like that. But even when we talk about
12 aggravated murder, do you understand that the penalty is
13 not automatic, that simply allow the State to seek the
14 death penalty in a case like this?

15 MR. THAMES: Yes, sir.

16 THE COURT: And when the State seeks the death
17 penalty, the person -- or the group that decides what
18 the penalty will be, if there is a conviction, is the
19 jury itself. Do you understand that?

20 MR. THAMES: Yes, sir.

21 THE COURT: Now, in a case like this, the case is
22 bifurcated. It's a two-part trial. The first part is
23 the trial phase. It's just like any other case. The
24 issue is whether the defendant is guilty or not guilty.
25 If he's not guilty, then everybody goes home. If the

1 defendant is found guilty, then that same jury, after a
2 waiting period, will come back and they will decide the
3 issue of life and death. Before they decide that issue,
4 they will listen to testimony. In other words, it's
5 like another little trial. There is more evidence
6 presented, more testimony presented. And there are two
7 types of testimony and evidence that are presented.
8 There is evidence in aggravation and there is evidence
9 in mitigation. Evidence in aggravation is evidence
10 about the defendant himself. Maybe he's got a long
11 history of being mean. Maybe he's got a prior record of
12 crimes of violence, things like that. There's also
13 testimony and evidence about the crime itself, how
14 heinous the crime is. Do you understand that?

15 MR. THAMES: Yes.

16 THE COURT: Also in aggravation, the State may put
17 up evidence of victim impact. In other words, family
18 members may testify about the death and the loss to
19 them, the loss to the community. Do you understand
20 that?

21 MR. THAMES: Yes, sir.

22 THE COURT: And all this aggravating evidence is
23 presented by the State in order to convince the jury
24 that the proper sentence is death. Do you understand
25 that?

1 MR. THAMES: Yes.

2 THE COURT: But also in the penalty phase, the
3 defense would present evidence, evidence of what we call
4 evidence in mitigation. Evidence in mitigation is not
5 to excuse what they did. If you're in the penalty
6 phase, they've already been convicted beyond any
7 reasonable doubt of a murder plus something else. So
8 what that evidence is is not evidence to excuse the
9 person's crime, but to mitigate what his punishment
10 should be. In other words, they're attempting to
11 convince the jury that the proper punishment is life in
12 prison. Do you understand that?

13 MR. THAMES: Yes.

14 THE COURT: Evidence in mitigation could be
15 anything. It could be that the person is relatively
16 young, and it could be the person has a mental
17 deficiency, or a mental condition at the time he
18 committed the crimes. It might be that he was under the
19 influence of somebody else when he committed the crime.
20 Any number of things might be introduced as mitigation.
21 He might have a completely clean record, never been in
22 trouble before, things like that. Now, let me make sure
23 one last thing you understand before we get to what your
24 opinions are. In a capital case, if you're in the
25 penalty phase, the jury can only vote for death if they

1 find beyond a reasonable doubt an aggravating
2 circumstance. Do you understand that?

3 MR. THAMES: Yes.

4 THE COURT: But even if they find an aggravating
5 circumstance, and even if there are no mitigating
6 circumstances in the case, they can still vote for life.
7 Do you understand that? In other words, the death
8 penalty is never required of a jury. Out of mercy they
9 can simply give a life sentence. Do you understand
10 that?

11 MR. THAMES: Yes, sir.

12 THE COURT: All right. Understanding that whole
13 procedure, I'm sure you appreciate that we need to get
14 to know what your general feelings are about capital
15 punishment. Would you say generally that you are for
16 capital punishment, generally you are opposed to capital
17 punishment, just how do you feel in general?

18 MR. THAMES: Generally I think if it's warranted,
19 it should be applied.

20 THE COURT: All right. Do you mean that in every
21 aggravated murder case that the death penalty is
22 warranted?

23 MR. THAMES: No, sir.

24 THE COURT: Okay. If you were selected as a juror
25 in a capital case, would you listen to and give

1 meaningful consideration to the evidence in aggravation
2 that is presented by the State and charged by the judge,
3 and the evidence in mitigation that's presented by the
4 defense and charged by the judge before you reached that
5 decision of life and death?

6 MR. THAMES: Yes, sir.

7 THE COURT: All right. And I guess from you
8 answer -- let me -- do you think there is a proper place
9 in our society for capital punishment?

10 MR. THAMES: Yes, sir.

11 THE COURT: All right. If you were selected on a
12 jury and if you thought the proper sentence was life,
13 would you vote for a life sentence?

14 MR. THAMES: Yes.

15 THE COURT: And if you thought the proper sentence
16 was death, would you vote for a death sentence?

17 MR. THAMES: Yes, sir.

18 THE COURT: All right. The last thing I need to
19 tell you is, a case -- if the jury decided that the
20 death -- that death is the appropriate sentence, then
21 each juror has to sign their name to the verdict form,
22 and that's sometimes called a death warrant. If you
23 thought that that was the appropriate sentence, could
24 you sign your name to that form?

25 MR. THAMES: I think so, yes, sir.

1 THE COURT: Okay. All right. And the last thing I
2 need to make sure you understand, when I talk about a
3 life sentence, I'm talking about absolutely life with no
4 possibility of parole. Do you understand that?

5 MR. THAMES: Yes, sir.

6 THE COURT: It used to be that a long time ago that
7 there was parole eligibility even in cases like this,
8 and I tell you that there is absolutely no parole on a
9 life sentence. And death in this state means death by
10 electrocution or death by lethal injection. Okay?

11 MR. THAMES: Yes, sir.

12 THE COURT: All right. All right. Lori. These
13 are the Solicitor and his staff. Go ahead.

14 QUESTIONING BY MS. REESE:

15 Q Good evening, Mr. Thames. My name is Lori Reese.
16 I am working with Solicitor Ariail and Deputy Solicitor
17 Betty Strom, representing the State. I just wanted to
18 ask you a couple of questions generally. Do you have a
19 general idea, or an opinion as to the purpose of the
20 death penalty? Have you ever thought about that?

21 A Not really, but I think the death penalty has been
22 put out there for punishment for certain crimes, heinous
23 crimes, depending on their severity.

24 Q Okay. Do you believe that there are certain
25 situations that exist, limited situations that exist

1 where the death penalty should in fact be imposed?

2 A State that one more time.

3 Q Do you believe that there may be certain
4 situations, certain facts where the death penalty should
5 be imposed?

6 A Possibly, yes.

7 Q Okay. Do you -- so you believe there are times
8 when the death penalty would be an appropriate sentence,
9 maybe that's a better way to put it?

10 A Yes.

11 Q Okay. Do you believe that there are only, say, a
12 handful of those appropriate times?

13 A Yes.

14 Q Okay. So I believe the judge asked this maybe very
15 directly, you do not believe that the death penalty is
16 always the proper sentence in, say, a murder case?

17 A That's correct.

18 Q Okay. I think the judge explained to you that this
19 case would be in two pieces, a phase where you'll hear
20 facts of the case and then another separate phase to
21 determine the punishment?

22 A Yes.

23 Q Do you feel absolutely certain that you will be
24 able to listen to what has been referred to as
25 mitigation testimony, that may be testimony which

1 discusses the psychological problems that a defendant
2 may have, maybe they abuse or use alcohol, factors that
3 may lessen the severity of the crime, would you be able
4 to listen to that mitigation evidence?

5 A Yes, ma'am.

6 Q And would you strongly consider all of the
7 mitigation evidence in determining what the proper
8 sentence would be in this case?

9 A Yes, I believe so.

10 Q And on the State's side, there may be some evidence
11 of aggravation, and by that it could be that the
12 defendant has a very violent prior record, it could be
13 that a very violent crime to place that lead to the
14 murder. Again, do you feel that you could truly
15 consider all of the evidence that may be presented to
16 show you that this truly was an aggravated, highly
17 aggravated murder? Could you consider all of that
18 evidence?

19 A Yes, ma'am, I believe so.

20 Q Would you be in a position to weigh all the
21 mitigation and aggravating circumstances equally?

22 A I believe so.

23 Q Do you understand if you were sitting on this jury,
24 and at the end of the trial went back in the jury room,
25 there will be 12 people approximately back there with

1 you?

2 A Yes.

3 Q If you were to form an opinion or make a decision
4 about the case, and you were the only one out of 12, it
5 was you and 11 other people, and you had one opinion and
6 those 11 had a totally different opinion, do you feel
7 certain you would stake out your position and not move
8 from it, or would you be persuaded by those other 11
9 having a totally different opinion?

10 A If I had formed an opinion, I believe I would stand
11 by it.

12 Q So you don't feel you would be pressured by 11
13 other individuals if you were the only one holding an
14 opinion?

15 A I don't think so.

16 Q Okay. And in the converse, if you were one of
17 those 11, and there was another individual, and you
18 and the group of 11 had an opinion about this case,
19 and there was one person who didn't share that opinion,
20 would you respect that one individual's opinion or
21 would you feel it was necessary to persuade them
22 otherwise?

23 A I think -- that's a good question.

24 THE COURT: Let me interrupt. The jury process,
25 whether you're talking about guilt or innocence, or

1 whether you're talking about penalty, is a give and take
2 process, you understand that?

3 MR. THAMES: Right.

4 THE COURT: And so, you know, the juror who stakes
5 out a position at the beginning and won't budge and
6 won't give meaningful consideration and respect to the
7 other people's position is not a good juror, you
8 understand that?

9 MR. THAMES: Okay.

10 THE COURT: All right. So the question is, would
11 you respect the other jurors' positions and -- and you
12 know, not be overbearing, I guess, in trying to convince
13 them of your position? Would you give consideration to
14 their opinions?

15 MR. THAMES: Yes, I would.

16 THE COURT: Okay.

17 MR. THAMES: Yes, I would.

18 THE COURT: I guess respect. I mean, I guess
19 they -- you might not respect their position, but would
20 you respect the fact that they had that position and at
21 least give consideration to that?

22 MR. THAMES: Yes.

23 THE COURT: Okay. Any other questions?

24 MS. REESE: One more, Your Honor.

25 THE COURT: All right.

1 BY MS. REESE:

2 Q Judge Watson mentioned that at the end of the
3 trial, if in fact the jury found the defendant not only
4 guilty but had decided for death as the sentence, that
5 there would be a piece of paper, referred to as a
6 verdict form, and sometimes called a death warrant, do
7 you feel with certainty that you could in fact sign your
8 name on that death warrant at the end of this trial, if
9 the jury's decision was to send this defendant to death.

10 A It's pretty tough, but I think I could.

11 MS. REESE: Okay. If I can have one second?
12 Nothing else, Your Honor.

13 THE COURT: All right. This is Mr. Abdalla. He's
14 one of attorneys, he and Frank Eppes are representing
15 Mr. Sigmon. He's going to ask you some questions now.

16 MR. THAMES: Okay.

17 MR. ABDALLA: Thank you, Your Honor.

18 QUESTIONING BY MR. ABDALLA:

19 Q Mr. Thames?

20 A Yes.

21 Q My name is John Abdalla as the judge said. Frank
22 Eppes is my co-counsel. Our client is Mr. Sigmon, Brad
23 Sigmon, seated at the table. I'm going to ask you a few
24 questions, and if I get too personal, just tell me it's
25 none of my business, it won't be the first time I've

1 heard it, okay?

2 A Okay.

3 Q As the judge had asked you earlier, one of the
4 pages, actually it's page four, was not filled out, so I
5 was going to ask you some of those questions. One of
6 those questions was, were you raised in a church or a
7 religious belief, and if so, which one?

8 A Yes, I was, and it's Baptist.

9 Q And where do you get your news sources from,
10 newspaper, magazine, radio, television or ---

11 A Everywhere, internet, CNN, newspapers, magazines.

12 Q And what radio, television, news programs do you
13 listen to or watch more often?

14 A As far as news?

15 Q Yeah, or -- yes.

16 A Geez, that's a good question. Probably Fox News
17 for international, Channel 4 for local.

18 Q Do you have a bumper sticker on your car?

19 A I've got a small window sticker, but not a bumper
20 sticker.

21 Q And what does your window sticker say, if I could
22 ask?

23 A I've got a dive sticker and ---

24 Q A what?

25 A Scuba diving sticker.

1 Q Oh, a dive, I'm sorry.

2 A And always I've got a sticker that I found in Key
3 West, it's about Jimmy Buffet.

4 Q Okay. Have you ever ---

5 THE COURT: Does it say, the weather is here wish
6 you were beautiful?

7 MR. THAMES: No, it's a little triangle about
8 Panama, Bermuda, and New Orleans.

9 THE COURT: Go ahead.

10 BY MR. ABDALLA:

11 Q Have you ever studied psychiatry or psychology?

12 A Have I every studied that?

13 Q Yeah.

14 A No.

15 Q And is there any information that maybe wasn't
16 asked by Ms. Reese or hasn't been asked by the judge
17 that you think would be important for us to know?

18 A Not really.

19 Q Okay. I see you grew up in Stone Lake?

20 A Yes, sir.

21 Q Did you have a pool there?

22 A Yes, sir.

23 Q Now, back to the matter at hand. You say you could
24 give the death penalty, that is a sentence you think
25 could be fair, is that correct, in certain

1 circumstances?

2 A Yes.

3 Q And if you're sitting on a jury and you had already
4 determined somebody is guilty beyond a reasonable doubt,
5 all of the defenses have been stricken, you as a jury,
6 you determined that with the others jurors, in other
7 words, it wasn't self-defense, it wasn't -- there's no
8 alibi, you're certain, pretty much 100 percent this guy
9 is guilty, no if ands or buts, and you convict him of
10 murder and of a aggravating factor. Aggravating factors
11 that were discussed earlier, for instance, armed robbery
12 or whatever. Okay?

13 A Yes, sir.

14 Q So you now have those, and you're in deliberation
15 on the sentencing phase. During that sentencing phase
16 the judge will tell you that if you find aggravating
17 factors, that, I'm assuming for the sake of this
18 conversation, you have found, there are one of two
19 sentences you can give. You can give life without the
20 possibility of parole, or you can give a death sentence.
21 All right?

22 A Yes, sir.

23 Q So we're now in the box where he's qualified for
24 the death sentence. He's qualified for life. And we've
25 offered no mitigation at this point -- the defendant,

1 I'm sorry, has offered no mitigation at this point,
2 would you still consider a life sentence, or at that
3 point would you be locked into death?

4 A I think it depends on the -- on the way the crime
5 was done.

6 Q All right, sir. And would you consider the
7 mitigation, that information being such as history of
8 drug abuse, intoxication, horrible upbringing, other
9 factors of mitigation, duress, would those things be
10 something you would be sympathetic toward and ---

11 MS. REESE: Objection, Your Honor.

12 THE COURT: Sustain the objection.

13 MR. ABDALLA: Sorry, withdraw that word.

14 BY MR. ABDALLA:

15 Q Would that be something you would weigh in your
16 decision?

17 A I think it would, it would matter.

18 Q Tell me how you feel about ---

19 MS. REESE: Objection, Your Honor.

20 THE COURT: Sustain the objection.

21 BY MR. ABDALLA:

22 Q What do you think about the death penalty?

23 A My -- I think it's -- I think it should be used
24 only in those cases where the circumstances would call
25 for the death penalty. It would have to be, I think, a

1 pretty horrible crime.

2 Q And if it's a horrible crime, could you still give
3 life?

4 A Yes.

5 Q And what do you think about life without the
6 possibility of parole as a sentence?

7 A That's -- that's good also. I think if the crime
8 warrants life in prison ---

9 Q Well, let me get to something here. I think the
10 question was asked, but I'm not sure your answer was
11 quite responsive, it wasn't quite what I was looking
12 for. What do you think the purpose of the death penalty
13 is? What's your personal philosophy about that? Why do
14 we have the death penalty?

15 A I think to set a standard for the society not to do
16 crimes.

17 Q All right. And why do we have life without parole?

18 A The same thing, but on a lesser -- I guess, to show
19 some compassion.

20 MR. ABDALLA: Okay. Can I just have one moment,
21 Your Honor?

22 BY MR. ABDALLA:

23 Q Do you think -- do you think the imposition of the
24 death penalty is -- has a deterrent effect, is it just
25 for punishment? How do you see that?

1 A I think both. I think it has a deterring and
2 also ---

3 Q What about life without parole, is that something
4 that deters crime?

5 A I think it does.

6 MR. ABDALLA: All right. I don't have any further
7 questions. Thank you very much, Mr. Thames.

8 MR. THAMES: Thank you.

9 THE COURT: Mr. Thames, let me give you this
10 letter. You are qualified to serve on this jury. That
11 certainly does not mean that you are going to be
12 selected, it simply means you're qualified amongst all
13 the other panelist we've qualified so far. We're trying
14 to qualify 40 or so jurors before we actually pick the
15 jury in this case. It does mean that you need to be
16 prepared to serve if you are selected.

17 If you would, please go home tonight, go ahead and
18 pack a suitcase, or suitcases with clothes for some
19 seven or eight days in the motel. I can't tell you it
20 will last that long, but we just need to be prepared for
21 that. Be prepared to be called tomorrow. It may not be
22 until Thursday when you're called, but when we have
23 enough jurors, Madam Clerk will call the panelist and
24 tell them to come back to the courthouse. Go ahead
25 pack any medications, anything like that that you may

1 need.

2 When you are called to come back, you will be given
3 ample notice. It maybe as short as two or three hours.
4 Hopefully over night notice, but I don't know, just
5 because I don't know how long it's going to take to get
6 the rest of our jurors. But when you came back, park in
7 the Hyatt parking garage, where you parked Monday
8 morning. I assume you parked there?

9 MR. THAMES: Yes, sir.

10 THE COURT: All right. The street between the
11 Hyatt and the courthouse is River Street -- not River
12 Street -- is it River Street?

13 MR. ARIAIL: Spring Street.

14 THE COURT: Spring Street. It's been a long two
15 days. In any event, if you could come across Spring
16 Street to the garage entrance to this courthouse. The
17 garage entrance for the Hyatt is on Spring Street, or
18 one of the entrances is.

19 MR. THAMES: Okay.

20 THE COURT: And then right across from that is our
21 entrance.

22 MR. THAMES: Yes.

23 THE COURT: If you would come to that entrance,
24 what I'm trying to do is keep the jurors out of the
25 public corridors of the courthouse, so they don't

1 intermingle with family members on either side, or the
2 press.

3 MR. THAMES: Yes.

4 THE COURT: The bailiffs will be down there to meet
5 y'all and escort you up. Once all the jurors are here,
6 we'll bring you into this courtroom and we'll select a
7 jury. If you're selected you will be sequestered. That
8 means you will not have any direct contact with any
9 business associates or family members. If you need to
10 get a message to them that can be accomplished. In
11 other words, the bailiffs can take a name, number and
12 message, and send any message that is necessary that we
13 can send. No one will be able to get in direct contact
14 with you. But on that list are two phone numbers for
15 emergencies, day time and night time. It is for
16 emergencies only. If -- nobody is going to be able to
17 tell someone how long the trial is going to be, or when
18 you're to be home, stuff like that. They can just watch
19 the local media. There will be media coverage of this
20 case.

21 The last thing I need to tell you, because there is
22 media cover, do not read anything in the paper about
23 this case, don't watch anything on TV, don't listen to
24 any talk radio about it. Also, don't talk with anyone
25 about the case. Obviously you can tell people you're on

1 the panel and you have to come back, but if someone
2 tries to talk to you, simply tell them you're on the
3 panel, you can't talk to them. If they persist, then
4 take their names, give it to the bailiffs or the SLED
5 agents when you come in and we'll handle that situation.
6 Do you have any questions?

7 MR. THAMES: Not really.

8 THE COURT: I will imagine it's going to be some
9 time tomorrow, possibly Thursday before we're going to
10 have enough to pick a jury. So you would probably get a
11 call tomorrow or Thursday. Okay?

12 MR. THAMES: Okay.

13 THE COURT: All right. Thank you very much.

14 MR. THAMES: Thank you.

15 (Mr. Thames exited the courtroom.)

16 THE COURT: All right. Republican, believes in the
17 death penalty.

18 MR. ABDALLA: I know.

19 THE COURT: All right.

20 MR. EPPES: We can skip him if you want to, Judge.

21 THE COURT: All right. What -- let me go back to
22 Thames. Anything from the State or the defense as to
23 Mr. Thames?

24 MR. ABDALLA: No, Your Honor.

25 MS. REESE: No, Your Honor.

1 THE COURT: Anything specifically I need to ask
2 about Mr. Manning?

3 MS. STROM: No, sir.

4 THE COURT: What is World magazine? Does anybody
5 know? Bring Mr. Manning, please, ma'am.

6 (Mr. Manning entered the courtroom.)

7 THE COURT: You are Mr. Manning, Larry Manning?

8 MR. MANNING: Yes, sir.

9 THE COURT: All right. Have a seat. As you make
10 yourself comfortable, slide up close to that microphone,
11 and speak into it so your voice will be amplified,
12 please, sir. Not too close, but -- okay. You're still
13 under oath, you understand that?

14 MR. MANNING: Yes, sir.

15 THE COURT: Have you complied with my instructions,
16 Mr. Manning, not to discuss this case with anyone?

17 MR. MANNING: Yes, sir.

18 THE COURT: Now, I believe you indicated yesterday
19 that you did not know any witnesses, you had not heard
20 anything about this case, is that correct?

21 MR. MANNING: True.

22 THE COURT: All right. I'm going to be asking you
23 questions and then the attorneys will be asking you
24 questions. Some of these questions may seem of a
25 personal nature. We don't mean to offend you. If you

1 take offense, hold it against me, don't hold it against
2 the State of South Carolina and don't it against the
3 defendant. There are no wrong answers. There are no
4 right answers, but we do need for you to answer these
5 questions openly, honestly and fully. Among other
6 things that we're going to be talking about are penalty,
7 and I need to make sure you understand up front that
8 just because we're talking about penalty, that does not
9 indicate anything about Mr. Sigmon, the defendant in
10 this case. Do you understand that?

11 MR. MANNING: Yes, sir.

12 THE COURT: In other words, as he sits there, he's
13 presumed to be innocent. Do you understand that?

14 MR. MANNING: Yes, sir.

15 THE COURT: This is a little bit of a backwards
16 process, but we do have to talk about penalty even
17 before the case starts in order to ensure we get a fair
18 jury. Do you understand that?

19 MR. MANNING: Yes, sir.

20 THE COURT: All right. Before I talk to you about
21 a capital case, and before I talk to you about penalty,
22 let me ask you, generally, if you were selected to sit
23 as a juror in a criminal case, would you listen to the
24 law the judge charged to you and would you accept that
25 law and apply that law in the case?

1 MR. MANNING: Yes, sir.

2 THE COURT: Would you do that even if you may not
3 agree with that law?

4 MR. MANNING: Could you clarify that?

5 THE COURT: Well, let -- an example would be
6 someone might think that marijuana should be legal, and
7 they're called to jury service, and they're asked to sit
8 on that type of case. It's okay for them to have that
9 opinion as long as they can set that an opinion aside
10 and take the law that the judge gives them and apply
11 that law. In other words, the law that marijuana is
12 illegal. Do you understand what I'm saying?

13 MR. MANNING: Um-hm.

14 THE COURT: Could you accept the law that the judge
15 gives even if you may not believe it?

16 MR. MANNING: As long as it fits within my personal
17 beliefs.

18 THE COURT: All right. And are you talking about
19 religious beliefs?

20 MR. MANNING: Religious beliefs.

21 THE COURT: Okay. All right. Would you -- do you
22 understand that the State has the burden of proving a
23 defendant guilty beyond a reasonable doubt?

24 MR. MANNING: Yes, sir.

25 THE COURT: All right. And if you were sitting on

1 a jury, if you thought the State had not met its burden,
2 they had not proved somebody guilty beyond a reasonable
3 doubt, would you vote not guilty in that case?

4 MR. MANNING: Yes, sir.

5 THE COURT: All right. And if you thought the
6 State had proved a defendant guilty beyond a reasonable
7 doubt, would you vote guilty in that case?

8 MR. MANNING: Yes, sir.

9 THE COURT: All right. Now, did you know much
10 about the death penalty in South Carolina before you
11 read my letter yesterday?

12 MR. MANNING: No, sir.

13 THE COURT: Did you know we had the death penalty
14 in South Carolina?

15 MR. MANNING: Not really.

16 THE COURT: All right. Do you understand that it
17 is only in aggravated murder cases that the State can
18 seek the death penalty, it's not every murder case, it's
19 got to be murder plus something else? The example I
20 gave in my letter are murder plus an armed robbery, or
21 murder plus a rape. Do you understand that?

22 MR. MANNING: I understand that.

23 THE COURT: Now, even when we talk about aggravated
24 murder, do you understand that the penalty is not
25 automatic, that simply allows the State to seek the

1. death penalty? Do you understand that?

2. MR. MANNING: If they desire to.

3. THE COURT: If they desire to, and they don't have
4. to in every aggravated murder case, but the aggravated
5. murder is what allows them to seek the death penalty.
6. Do you understand that?

7. MR. MANNING: Yes, sir.

8. THE COURT: Even if those cases, you understand
9. that it's up to the jury to decide if that's the
10. appropriate punishment in a capital case. In other
11. words, in most cases the judge is the person that
12. decides what the sentence is, but when we talk about a
13. death penalty case, it's different because the jury, if
14. they convict the person, if they find beyond a
15. reasonable doubt aggravated circumstance, then the jury
16. is the one who decides the punishment. Do you
17. understand that?

18. MR. MANNING: I did not know that.

19. THE COURT: Okay. Do you understand that now?

20. MR. MANNING: Yes, sir.

21. THE COURT: All right. Now, a death penalty case
22. is different in that it's a two-part case. There's
23. what's called the trial phase, and then there is the
24. penalty phase. The trial phase is like any other case.
25. The jury listens to the evidence and they decide whether

1 somebody is guilty or not guilty. Do you understand
2 that?

3 MR. MANNING: (Witness nodded his head.)

4 THE COURT: And then if the person is found not
5 guilty, everybody goes home, but if the person is found
6 guilty then the jury, after a waiting period, comes
7 back, a very short waiting period, they come back and
8 they sit in a second trial, or a second phase, where
9 they hear more testimony and more evidence. Do you
10 understand that?

11 MR. MANNING: If the penalty is death, then the
12 chosen that would be the additional penalty (sic)?

13 THE COURT: Okay. Well, that's not -- we're not to
14 that yet. In other words, all they've done so far is
15 found the person guilty.

16 MR. MANNING: Guilty or innocence.

17 THE COURT: Guilty -- well, if it's innocence, they
18 go home. But if they found the person guilty, they have
19 the waiting period and then they come back, and before
20 they decide -- at that point in time the only two
21 possible penalties are life without parole and death.
22 Do you understand that?

23 MR. MANNING: Yes, sir.

24 THE COURT: But before the jury decides what that
25 sentence is, they would hear more testimony and

1 evidence. They would hear two types of testimony and
2 evidence. They would hear evidence from the State
3 called evidence in aggravation. Evidence in aggravation
4 is evidence put up by the State about how bad a crime it
5 is, or it might be about the defendant himself. It
6 might be that he's got a prior record of crimes of
7 violence. They would also put up testimony about victim
8 impact. Members of the family would testify what --
9 what the deaths of their loved ones has meant to them
10 and to the community. They would put up all of this
11 evidence in an effort to convince the jury that death is
12 the appropriate sentence. Do you understand that?

13 MR. MANNING: Yes, sir.

14 THE COURT: All right. Now, also at that penalty
15 phase, the defense would put up what's called evidence
16 in mitigation. Evidence in mitigation is not something
17 that excused what the person did. They've already been
18 convicted of murder, but it's evidence that the defense
19 puts up in order to convince the jury that a life
20 sentence without parole is the appropriate sentence.
21 Evidence in mitigation can be any number of things. It
22 might be that the person has a mental problem -- had a
23 mental problem at the time they committed the crime. It
24 might be that they were under the influence of some one
25 else. It might be that the person was a relatively

1 young person. It might be that the person has -- the
2 defendant has no criminal record whatsoever, any number
3 of things. Do you understand that?

4 MR. MANNING: Yes, sir.

5 THE COURT: All right. Now, you understand that a
6 jury is never required to give the death penalty. Do
7 you understand that?

8 MR. MANNING: Yes, sir.

9 THE COURT: In other words, if a jury makes it to
10 that penalty phase, and they listen to all the evidence
11 and they find beyond a reasonable doubt aggravating
12 circumstances, or maybe several aggravating
13 circumstances, they are not required to give a death
14 penalty, do you understand that, they can always give a
15 life sentence?

16 MR. MANNING: Yes, sir.

17 THE COURT: And even if there is no mitigating
18 evidence, they can still give a life sentence if they
19 think that's appropriate, if they just want to give
20 mercy to the defendant. Do you understand that?

21 MR. MANNING: Yes, sir.

22 THE COURT: All right. Understanding that whole
23 procedure that I have explained, the two-part trial, the
24 aggravating evidence, the mitigating evidence, we need
25 to know generally what your position is on the death

1 penalty. I noticed on your form you put that you
2 believe in the death penalty, is that correct?

3 MR. MANNING: Yes, sir.

4 THE COURT: All right. Does that mean that you
5 believe in the death penalty for every case of
6 aggravated murder?

7 MR. MANNING: I believe it's the responsibility of
8 the government to hold that sword, to make that
9 decision.

10 THE COURT: All right.

11 MR. MANNING: And we do it through the legal
12 process.

13 THE COURT: All right. But you understand it's --
14 and maybe I misunderstood your answer, but do you
15 understand that it's the jury that makes that decision?
16 It may be through the government process, the legal
17 process, but you understand that it's -- it's an
18 individual decision in each case and the jury makes that
19 decision?

20 MR. MANNING: Yes, sir.

21 THE COURT: All right. Are you telling me that you
22 would automatically vote for the death penalty in every
23 aggravated murder case, or would you wait and listen to
24 the evidence in aggravation and the evidence in
25 mitigation and give a life sentence in some cases of

1 aggravated murder?

2 MR. MANNING: I would tend to lean toward the death
3 penalty.

4 THE COURT: Okay. That's ---

5 MR. MANNING: I would have to be persuaded by more
6 than some of the examples you have given. Those are not
7 good reasons for somebody to have killed someone.

8 THE COURT: All right. Well, there's never going
9 to be a good reason. In other words, the person has
10 already been convicted of murder, you understand that?
11 So it's not going to be any kind of excuse, like
12 self-defense or, you know, things like that. I'm not
13 asking you to weigh and tell us how you feel about
14 specific mitigating circumstances. I gave you just some
15 examples ---

16 MR. MANNING: Some examples.

17 THE COURT: Right. Right. Let me ask it this way.
18 If you were seated on a jury, would you give meaningful
19 consideration to the mitigating evidence that has been
20 presented by the defense and charged by the judge before
21 you decide the issue of life or death?

22 MR. MANNING: If that was the law and the
23 instructions that I had, yes.

24 THE COURT: That is the law and that -- you would
25 be instructed to give meaningful consideration to that.

1 But you understand that -- that there maybe not be any
2 mitigation in the case, or the jury may not accept
3 mitigation that's been presented. Do you understand
4 that?

5 MR. MANNING: Yes, sir.

6 THE COURT: And even in that case, do you
7 understand the jury does not have to invoke the death
8 penalty, they can still give a life sentence. Do you
9 understand that?

10 MR. MANNING: Yes, sir.

11 THE COURT: All right. Now, when I say meaningful
12 consideration I don't mean, well, I'd listen to it, but
13 you know, I'd vote for death every time. The question
14 is would you carefully consider that and weigh it in
15 this decision making process?

16 MR. MANNING: Yes, sir.

17 THE COURT: All right. If you thought the
18 appropriate sentence was death, could you vote for the
19 death penalty?

20 MR. MANNING: Yes, sir.

21 THE COURT: And if you thought the appropriate
22 sentence was life, could you vote for a life sentence?

23 MR. MANNING: Yes, sir.

24 THE COURT: All right. If you were on the jury
25 and if the jury thought that the appropriate sentence

1 was death, then you and the other jurors would have to
2 sign your name to the verdict form. In other words,
3 each individual juror would sign their name. If you
4 thought that was the appropriate sentence, could you do
5 that?

6 MR. MANNING: Yes, sir.

7 THE COURT: All right. Mr. Abdalla. This is John
8 Abdalla. He is one of the attorneys that is
9 representing the defendant in the case. He's going to
10 ask you some questions, and then the Solicitor is going
11 to ask you some questions.

12 MR. ABDALLA: Thank you, Your Honor.

13 QUESTIONING BY MR. ABDALLA:

14 Q Mr. Manning?

15 A Yes, sir.

16 Q Good afternoon. My name is John Abdalla, as the
17 judge told you. Mr. Eppes is my co-counsel, and Brad
18 Sigmon is our client.

19 A Yes, sir.

20 Q Now I noticed you wanted us to know that you are
21 for the death penalty?

22 A Yes, sir.

23 Q You wrote that on your form, and you're a
24 republican. What does that mean?

25 A My belief is that the State is given responsibility

1 to basically protect all of us, whatever state we're in,
2 with punitive penalty of death of someone that does take
3 the life of another person.

4 Q Do you believe in life without parole for murder?

5 A That's a possibility.

6 Q It's a possibility? You said that you would accept
7 the law if it fits within your personal beliefs. Can
8 you expand on that?

9 A Again, I guess I would lean back to that I believe
10 it's the government's responsibility to protect all of
11 us from people who kill, and that then is passed down to
12 me as a juror, and I must uphold that kind of a
13 decision. I don't know I'm if being clear.

14 Q Well ---

15 A The government is given the sword to be responsible
16 to protect all of us, and that sword is being given to
17 me as a juror, and so as a juror I have to listen to the
18 subject that is brought before me. I didn't realize it
19 was in two parts, I thought it was always in one part,
20 but the judge has explained it's in two part. Then be
21 willing to use that sword to basically take the life of
22 the person who took the life of the other person.

23 Q So would you be on a mission from God in essence to
24 take this life ---

25 MS. STROM: Objection, Your Honor.

1 THE COURT: Okay. I will -- I will sustain the
2 objection.

3 MR. MANNING: It's not from God, it's from the
4 State, that has that responsibility, as the law states
5 it, as the judge just outlined it, in two parts.

6 BY MR. ABDALLA:

7 Q In two parts, yeah. If the facts of the case were
8 such that an aggravated murderer -- a murder occurred,
9 you found him guilty, you as part of the jury, and
10 there's no defense, as in self-defense, or accident, so
11 there is no legal excuse to protect the defendant, and
12 you have now convicted him of murder.

13 A Right.

14 Q And you have convicted him, say, of armed robbery,
15 okay? Then you get to the deliberations in the
16 sentencing phase, and as a jury you conclude that the
17 criteria have been met for aggravating factors, you have
18 killing that has been found to be a murder, which is the
19 unlawful killing, and you have the aggravated factor,
20 which in this hypothetical would be an armed robbery.

21 A Um-hm.

22 Q At that point the State says you have two options,
23 life or death. Are you saying you're going to be one
24 way or the other, or you can give meaningful
25 consideration to both, if those are the facts?

1 A You haven't given me any meaningful reasons why he
2 committed this murder or this act, so I would have to --
3 as the judge stated to me, I would have to listen to
4 that phase to hear your arguments as to why he did what
5 he did before I could make a decision.

6 Q Well, I appreciate that. What if there was no
7 mitigation, can you still consider a life sentence?

8 A I believe I would have to vote for death.

9 Q In all cases where there's no mitigation?

10 A Without you presenting something that made sense as
11 to why the person did it, I simply would have to go ---

12 Q I appreciate your honesty.

13 A The -- the loss of life of one individual with no
14 justification from you as to why they did it, I would
15 say that he should die, he or she.

16 MR. ABDALLA: Could I have one moment, Your Honor.

17 THE COURT: Anything else?

18 BY MR. ABDALLA:

19 Q I'm sorry. All right. You said if I gave you no
20 mitigating factor, no explanation I believe is your
21 answer, then you would have to vote death, did I
22 correctly state your position?

23 A Yes, sir.

24 Q What if I said things like alcohol were part ---

25 MS. STROM: Objection, Your Honor.

1 THE COURT: Sustain the objection.

2 BY MR. ABDALLA:

3 Q Would you be willing to consider any of things that
4 are mitigation that the judge mentioned, like poverty,
5 background, age, mental illnesses?

6 A I think I said to the judge most of those that I
7 heard him say wouldn't in my mind justify taking the
8 life of another person. I guess that's the way I
9 answered the question to him. So it'd be basically the
10 same. I would listen but I need to hear more than just,
11 I was drunk and decided to kill somebody.

12 Q So without -- is it safe to say without a legal
13 reason for killing somebody as in a defense, that you
14 would be ---

15 A Self-defense would be a legal reason.

16 Q But outside of that magnitude, are you saying you'd
17 pretty much be for the death penalty?

18 A Yes, sir.

19 Q So without something of that magnitude, you'd
20 always be for the death penalty?

21 A Yes, sir.

22 MR. ABDALLA: Thank you. I appreciate your
23 honesty.

24 THE COURT: Yes, ma'am.

25 MS. STROM: Thank you.

1 QUESTIONING BY MS. STROM:

2 Q Mr. Manning, my name is Betty Strom, and I'm the
3 Deputy Solicitor here in Greenville and Pickens. This
4 is Bob Ariail, he's the Solicitor. This is Lori Reese,
5 she's an assistant. We are prosecuting -- we're
6 responsible for prosecuting criminal cases in the 13th
7 circuit. I want to go over a couple things, and lot of
8 it is going to relate back to what you and the judge
9 discussed.

10 A Okay.

11 Q One of the things that the judge talked to you
12 about was following the law as he charged it to you, and
13 I believe that you said that you would follow the law as
14 he charged it to you?

15 A Yes, ma'am.

16 Q Okay. As long as it -- well, you even talked in
17 terms of when he gave the example of if you came in and
18 thought the law should be something else and you found
19 out it wasn't, you would still follow the law as His
20 Honor charged you?

21 A Yes, ma'am.

22 Q Okay. That would be your duty to do that?

23 A Yes, ma'am.

24 Q And you would follow your duty?

25 A Yes.

1 Q His Honor would charge you that before making a
2 decision as to the penalty to be imposed in a case, you
3 would -- must consider any mitigation in the case. It
4 might be mitigation that's presented by the defendant,
5 or they could not present any mitigation, but you on
6 your own found mitigation in the facts and circumstances
7 of that case, okay. In other words, it didn't have to
8 be something that the defense brought and said, here,
9 this is mitigation. The State could put up only
10 evidence in aggravation and the defense could put up
11 nothing, but you in your assessment of that case you
12 said, whoa, wait a minute, that seems to give me a
13 reason, that seems to mitigate the punishment that
14 should be imposed, okay?

15 A How would I find out this information?

16 Q It could be something that is in the case, the
17 facts of the case, as far as what happened, how the
18 murder occurred, or what lead up to the murder, okay?
19 In other words, it may already be in the case without
20 the defense being the one who actually brings it to you.

21 A So if it was an automobile accident and for some
22 reason they did not present that the car was broken, but
23 I determined that the car was broken during the accident
24 and that caused the accident, if I determined that, but
25 it wasn't presented by anyone?

1 Q It can be something you determine, but I don't want
2 you using the example of a car accident, because in a
3 capital case we're talking about murder. We're talking
4 about someone who has been convicted of murder, not that
5 there was an accident.

6 A Okay.

7 Q So you have someone who was convicted of murder.

8 A Okay.

9 Q Then you go into the penalty phase and evidence is
10 presented in aggravation, because if there's no evidence
11 presented in aggravation, you never get to the issue of
12 sentence. You must first find that there was a murder
13 at the guilt phase.

14 A Okay.

15 Q Then you go to the penalty phase, and evidence will
16 be presented. And you must first find that there is the
17 existence of this aggravating factor. It's the murder
18 plus the rape, the murder plus the armed robbery, or
19 murder of a child, I think those were the examples that
20 the judge gave you. You first have to find that there
21 exists that aggravated factor, okay?

22 A Two parts.

23 Q Two parts. If you say there is no aggravating
24 factor, that's it. Okay?

25 A Cannot be death?

1 Q No, if you find there is no aggravating factor, you
2 don't find an aggravating factor, then the sentence is
3 no longer with the jury. Okay? The jury must first
4 determine is there an aggravated factor. Okay?

5 A Guilty and the two parts.

6 Q Guilty and go to the second part. If you find
7 there's an aggravating factor, then that's where you
8 have the decision of life without parole or the death
9 penalty?

10 A Okay.

11 Q Okay? The jury, as the judge charged you, can
12 always give a life sentence simply as an act of mercy.
13 If they wanted to, if they felt that was the appropriate
14 sentence, they could do it even if there were not
15 mitigation in the case at all. Okay?

16 A The defense presented nothing?

17 Q Even if the defense present nothing, the jury could
18 still return a sentence of life if they felt that was
19 the appropriate sentence. Do you understand that?

20 A Um-hm.

21 Q Okay. If you were sitting on a case and you had
22 found the defendant guilty and had found an aggravating
23 circumstance, you found there was no mitigating
24 circumstances, but still in your heart and in your gut,
25 if you felt the appropriate sentence was life, would you

1 vote for life?

2 A This is an emotional decision I'm making?

3 Q This is a decision based upon the facts and the
4 circumstance and what you hear in this courtroom.

5 A I could do it personally if that was the law.

6 Q Okay.

7 COURT REPORTER: Can I stop you for one second?

8 (Court reporter changed tapes.)

9 MS. STROM: Just a moment.

10 BY MS. STROM:

11 Q I want to go back to what you said about you could
12 do if it that's the law. The law -- His Honor will
13 charge you that law is the jury can give life for any
14 reason or no reason at all.

15 A Um-hm.

16 Q Simply as an act of mercy. So the law is, if you
17 wanted to, if the jury wanted to, to give life, they
18 could do that.

19 A Yes.

20 Q If you felt that was the appropriate sentence,
21 could you vote for life even though it was a murder plus
22 an aggravating circumstance?

23 A Be difficult, but I believe I could.

24 MS. STROM: You could? Court's indulgence for just
25 one second, Your Honor. That's all I have, Your Honor.

LARRY MANNING

1 THE COURT: All right. Mr. Manning, one of the
2 many questions you answered was that you thought that --
3 that you could vote for life if it was a case of
4 something like self-defense or something like that. Do
5 you understand that if it's a case of self-defense then
6 that would be what's known as a justifiable homicide and
7 you would never reach a ---

8 MR. MANNING: --- a verdict of murder.

9 THE COURT: You would never reach a verdict of
10 murder in that case. I'm going to ask you again, if you
11 were sitting on a jury, would you give meaningful
12 consideration to the aggravating circumstances and the
13 mitigating circumstances before you reached the decision
14 of the appropriate penalty, either life or death?

15 MR. MANNING: Without having an actual case it's
16 hard for me to ---

17 THE COURT: And -- and that's the problem with
18 this, but we can't -- we're not going to ask you, how
19 would you vote on this particular case, or that
20 particular case, or what do you think about this
21 mitigating circumstance, or this aggravating
22 circumstance. The question is, would you give
23 meaningful consideration to the evidence presented by
24 the State and charged by the judge and the evidence
25 presented by the defense and charged by the judge before

1 you reach a verdict of what the sentence should be? Or
2 would you automatically vote one way or the other
3 without meaningful consideration of the evidence that's
4 been presented?

5 MR. MANNING: Without knowing what the
6 circumstances are, without having heard them, I guess I
7 would not.

8 THE COURT: Okay. All right. I'm going to find
9 that you're disqualified, Mr. Manning. There are no
10 right and no wrong answers. Don't be offended by that.
11 But we've got to make sure that we can get a jury that
12 can give meaningful consideration to both types of
13 sentences. So I'm going to excuse you at this time.
14 Thank for your service so far.

15 (Mr. Manning exited the courtroom.)

16 MR. EPPES: Your Honor?

17 THE COURT: Did you want him to serve? You got an
18 objection?

19 MR. EPPES: Your Honor, is it possible we could
20 take a two second -- two minute break?

21 THE COURT: I'm going to sit right here, but if you
22 need to do something, go quick.

23 MR. EPPES: Thank you.

24 (A short recess was taken, after which, the trial
25 continued as follows:)

1 THE COURT: All right. Before you do that, let met
2 tell you, looking tomorrow, I don't know if we'll get
3 this far, but juror number 67 (sic), y'all remember
4 Evelyn Cruell?

5 MR. EPPES: Yes, sir.

6 THE COURT: All right. She responded to a lot of
7 questions, but one was that she suffered from a mental
8 problem and wanted to be excused. I told her to get a
9 doctor's excuse. She got the doctor's excuse and
10 brought it up. Can I see that, please? I couldn't even
11 read the doctor's signature, but it simply said, she --
12 Ms. Cruell was her -- his patient. Due to medical
13 reasons she still is unable to do jury duty. Andrea
14 called, and at my directions talked to the doctor. It
15 was a Dr. Gossi, G-o-s-s-i. In any event, he said that
16 she suffers from anxiety, high blood pressure, stress
17 and colitis, and that he did not think that she could
18 serve. So I have told Andrea to excuse her. So she'll
19 be called and told not to show up based on that medical
20 reason. All right. What did you have, Mr. Eppes?

21 MR. EPPES: Your Honor, on the next individual,
22 Jerry Crisp, has an address in Cleveland, South
23 Carolina. And as Your Honor may recall from appearances
24 before him, I have kind of a Marietta/Cleveland
25 practice. I was contacted on Saturday -- Sunday night

1 by a friend of fellow named Clarence Crisp about
2 retaining him. I instructed him to make arrangements to
3 have a meeting with me at my office after this trial was
4 over. I don't know if they're related for sure, Judge,
5 but knowing who all called and where they live, I bet
6 they were, and I thought you might want to inquire of
7 that.

8 THE COURT: Did you take over Kathy Jennings'
9 license plate, TR Law?

10 MR. EPPES: No, sir. That's right. I try to
11 dis-associate myself from that one-third of the
12 Traveler's Rest tri-oval of Jennings, Porter and Eppes.

13 THE COURT: All right. How do you want me to
14 handle it? I mean, do we even know if this guy is
15 related to the guy?

16 MR. EPPES: I don't know. I'd just ask him. I'd
17 just flat out ask him. I mean, at least then we know,
18 and just say that -- you know, it's possible that
19 Clarence may be ---

20 THE COURT: He may be related but he may not know
21 that you're on -- you're sort of opening up something
22 that ---

23 MR. EPPES: You can handle it anyway you want to.

24 THE COURT: I'm asking for directions. I'm ask for
25 suggestions. Solicitor?

1 MR. ARIAIL: I think just handle it the normal way.

2 THE COURT: Well, if I handle it the normal way,
3 I'm not going to ask him anything.

4 MR. ARIAIL: That's right. That's right.

5 THE COURT: I mean, I can ask him again if he knows
6 any of these attorneys.

7 MR. ARIAIL: Sure.

8 MR. ABDALLA: That would be fine.

9 MR. EPPES: That's fine.

10 THE COURT: All right. Bring in Mr. Crisp.

11 (Mr. Crisp entered the courtroom.)

12 THE COURT: Mr. Crisp. You are Jerry Crisp?

13 MR. CRISP: Yes, sir.

14 THE COURT: All right. Come up and have a seat.

15 And as you make yourself comfortable, go ahead and slide
16 up to that microphone. Speak into the microphone, if
17 you would, please, sir.

18 MR. CRISP: What do you want me to say?

19 THE COURT: I didn't hear you. What was that?

20 MR. CRISP: I said, what do you want me to say?

21 THE COURT: All right. Well, I'll do most of the
22 talking and then we're going to ask that you do some of
23 the talking in a little bit. Mr. Crisp, you remember
24 that you are under oath?

25 MR. CRISP: Yes, sir.

1 THE COURT: And have you complied with my
2 instructions not to talk about this case?

3 MR. CRISP: Yes, sir.

4 THE COURT: All right. I notice you live up in the
5 Cleveland area of the county, is that correct?

6 MR. CRISP: Yes, sir.

7 THE COURT: Have you lived up there most of your
8 life?

9 MR. CRISP: Yes, sir.

10 THE COURT: And are your mom and dad still living
11 in that area?

12 MR. CRISP: Yes, sir.

13 THE COURT: You got any brothers or sisters up in
14 that area?

15 MR. CRISP: Two, two sisters.

16 THE COURT: Two sisters. All right. I believe you
17 said that you did not know anything about this case?
18 You don't recall seeing anything on TV or reading
19 anything about it?

20 MR. CRISP: No, sir.

21 THE COURT: And I let you look at that list of
22 witnesses, you didn't seem to know any of the witnesses
23 as I recall, is that correct?

24 MR. CRISP: No, sir.

25 THE COURT: All right. Now, I'm going to ask you

1 some questions and then Solicitor Ariail and the defense
2 attorneys are going to ask you some questions. Some of
3 these questions are of a personal nature. We don't mean
4 to be intrusive, but we do need your honest and open
5 answers to these questions. There are no right answers.
6 There are no wrong answers, you understand that?

7 MR. CRISP: Yes, sir.

8 THE COURT: Whatever opinions you may hold, we will
9 respect those opinions. We are going to be talking
10 mainly about possible penalties in this case, but I need
11 to make sure you understand that just because we talk
12 about penalty that has nothing to do with this
13 defendant. Do you understand that?

14 MR. CRISP: Yes, sir.

15 THE COURT: That does not indicate anything about
16 him. As he sits there he is presumed to be innocent.
17 Do you understand that?

18 MR. CRISP: Yes, sir.

19 THE COURT: All right. Now, if you were seated on
20 a jury in a criminal case, would you listen to the law
21 that the judge gave and accept that law and apply that
22 law to the facts?

23 MR. CRISP: If I could remember all he said.

24 THE COURT: All right. Would you do that even if
25 you might not necessarily agree with that law?

1 MR. CRISP: I don't know.

2 THE COURT: All right. Let me give you an example.
3 Some people, for instance, come to court and they may
4 think they know what the law is, but when the judge
5 tells them the law, it's a little bit different. And
6 the question is, can the juror set that aside and accept
7 the law that the judge gives as the proper law and apply
8 that law. Could you do that?

9 MR. CRISP: Yeah.

10 THE COURT: All right. Some jurors come to court
11 with a pre-conceived notion as to what they think the
12 law should be. In other words somebody might think that
13 marijuana should be legal and they might be put on a
14 jury that is a marijuana case. And it's okay if they
15 believe that as long as they can set that aside and
16 listen to the judge and accept the law that he gives.
17 Do you understand what I'm saying?

18 MR. CRISP: Yes, sir.

19 THE COURT: Could you do that?

20 MR. CRISP: Yes, sir.

21 THE COURT: All right. You understand that the
22 State must prove somebody guilty beyond a reasonable
23 doubt?

24 MR. CRISP: Yes, sir.

25 THE COURT: All right. If you were sitting on a

1 case and you did not think that the Solicitor had proved
2 somebody guilty beyond a reasonable doubt, would you
3 vote not guilty for that person?

4 MR. CRISP: Yes, sir.

5 THE COURT: All right. That would be your oath to
6 do that. The other side of that is if you listened to
7 the evidence and you thought that the State had proved
8 them guilty, would you vote guilty?

9 MR. CRISP: Yes, sir.

10 THE COURT: All right. Now, we are going to be
11 talking about death penalty cases and penalties. Did
12 you read my letter yesterday, my two-page letter about
13 death penalty cases?

14 MR. CRISP: No, sir.

15 THE COURT: You did not? It was handed out to you
16 when you came into the jury room?

17 MR. CRISP: Yes, sir.

18 THE COURT: All right. Did you get a chance to
19 look at that?

20 MR. CRISP: Just what little bit sitting in the
21 courtroom.

22 THE COURT: All right. Well, let me ask you this.
23 Do you understand that it is not every murder case that
24 is subject to the death penalty? Do you understand
25 that?

1 MR. CRISP: No, sir.

2 THE COURT: All right. Well, most people think
3 that any murder case is subject to the death penalty.
4 That's not true. Only aggravated murder cases are
5 subject to the death penalty. In other words, a murder
6 plus an armed robbery, or murder plus a rape, something
7 like that makes the case a possible death penalty case.
8 Do you understand that?

9 MR. CRISP: Yes, sir.

10 THE COURT: All right. Even when we talk about an
11 aggravated murder case, do you understand that the
12 penalty is not automatic? That simply means that the
13 State can seek the death penalty in a case like that.
14 Do you understand that?

15 MR. CRISP: No, sir.

16 THE COURT: All right. Well, I'm telling you that.
17 Do you understand that now?

18 MR. CRISP: Yes, sir.

19 THE COURT: All right. And even when we talk about
20 an aggravated murder case, the penalty is not automatic.
21 The State can seek the death penalty, and what we do is
22 we let the jury decide what the penalty would be. The
23 possible penalties are life without parole or death if
24 somebody is convicted in this type of case. Do you
25 understand that?

1 MR. CRISP: Yes, sir.

2 THE COURT: All right. Now, the jury -- or let me
3 back up. The trial in a case like this is in two parts.
4 The first phase is called the trial phase. In that
5 phase it's just like any other trial. The jury listens
6 to the evidence and they decide if the person is guilty
7 or they decide if the person is not guilty. Do you
8 understand that?

9 MR. CRISP: Yes, sir.

10 THE COURT: All right, sir. If they find the
11 defendant not guilty, then everybody goes home. But if
12 they find the defendant guilty, then the jury comes back
13 to court and they listen to more evidence to decide what
14 the punishment should be. Do you understand that?

15 MR. CRISP: Yes, sir.

16 THE COURT: All right. Now, in that second phase,
17 if you got to the second phase, the jury would hear two
18 types of evidence, evidence in aggravation and evidence
19 in mitigation. The State would present evidence in
20 aggravation. That's stuff about the crime itself, how
21 bad it was. Or it might be victim -- survivors talking
22 about what the loss of their family members has done to
23 them, things like that. It might be stuff about the
24 defendant himself. In other words, it might be he's got
25 a real bad record of crimes of violence. They'll be

1 putting in all that evidence trying to convince the jury
2 that the proper sentence is death. Do you understand
3 that?

4 MR. CRISP: Yes, sir.

5 THE COURT: And the defense puts up evidence in
6 mitigation. Evidence in mitigation is evidence that
7 would -- about the defendant himself. Maybe he has a
8 clear record, he's never been in trouble before. Maybe
9 he suffered from a mental problem when -- at the time
10 when he committed these crimes, things like that. And
11 they're trying to show that the penalty should be
12 mitigated. In other words, the penalty should be life
13 without parole. Do you understand that?

14 MR. CRISP: Yes, sir.

15 THE COURT: All right. Now, a jury is never
16 required to give the death penalty. Do you understand
17 that?

18 MR. CRISP: Yes, sir.

19 THE COURT: All right. And even if they found
20 aggravating circumstances beyond a reasonable doubt, and
21 they did not find any mitigating evidence, they could
22 still vote for life. Do you understand that?

23 MR. CRISP: Yes, sir.

24 THE COURT: All right. I'm going to ask Mr. Ariail
25 and Mr. Abdalla to step over here to the side for just a

1 minute, and we'll put this on the record after this is
2 over with. Hold on just a minute.

3 (A bench conference was held.)

4 THE COURT: I'm going to ask you to step outside
5 for just a minute, Mr. Crisp, all right? We're going
6 to be with you in just a minute.

7 (Mr. Crisp exited the courtroom.)

8 MR. EPPES: Tell him to tell Clarence?

9 THE COURT: Huh?

10 MR. EPPES: Tell him to ---

11 THE COURT: He doesn't have any brothers. I sort
12 of ---

13 MR. EPPES: It's his son.

14 THE COURT: It's his son?

15 MR. EPPES: He's got a 23-year-old son.

16 THE COURT: Oh.

17 MR. EPPES: It may not be him.

18 THE COURT: All right. For the record I had a side
19 bar with Mr. Ariail and Mr. Abdalla. It was without any
20 offense to Mr. Crisp. I was under the impression that
21 he did not probably understand anything that I was
22 talking about. In the past when we've come across
23 jurors like that, sometimes both sides will just consent
24 to let him not serve. I wanted to offer that before we
25 got into the issue of what his position was on the

1 penalty so that one side wouldn't stake out their
2 position. And I'm perfectly willing to keep going and
3 let him serve if he's qualified, but I'm also willing
4 to, if both sides consent, based on his responses and
5 his apparent intelligent level, let him go. I don't
6 know exactly what I'll tell him if I do that. What is
7 the State's position?

8 MR. ARIAIL: We consent.

9 THE COURT: What's the defense's position?

10 MR. ABDALLA: I'll go ahead and consent, Your
11 Honor.

12 THE COURT: Beg your pardon?

13 MR. ABDALLA: We'll consent.

14 THE COURT: Okay. I think Clarence by the way is
15 not his 23-year-old son. They've looked it up on the
16 computer. He's been arrested. This Clarence is 30
17 something years old.

18 MR. EPPES: Thank you.

19 THE COURT: So it's probably not the same person.
20 I don't know exactly what to tell Mr. Crisp. Anybody
21 got some -- something general I can ---

22 MR. ARIAIL: Tell him we're full.

23 MR. EPPES: Your Honor ---

24 THE COURT: Talk to Mr. Mauldin, he's probably had
25 this before. We'll just tell him he's excused, that

1 y'all -- the attorneys excused him.

2 MR. ABDALLA: That's fine.

3 THE COURT: All right. Bring Mr. Crisp back in.

4 (Mr. Crisp entered the courtroom)

5 THE COURT: Mr. Crisp, you don't even need to sit
6 down. I'm going to tell you that I have talked to the
7 attorneys, and they have decided to excuse you in this
8 case. So you will not be serving as a juror. I
9 appreciate your service. Okay.

10 MR. CRISP: Thank you, sir.

11 THE COURT: All right. You're free to go.

12 (Mr. Crisp exited the courtroom.)

13 THE COURT: All right. Anything on Sandra Carver?
14 Heard facts of the case, may know a witness, pro death.
15 How do these people put this on there when they don't
16 know it's a death penalty case. Did any of these people
17 fill these things out this morning -- yesterday morning?

18 MS. PLUMLEY: No, sir.

19 THE COURT: All right. Anything victim wise I need
20 to know about?

21 MR. ARIAIL: Clairvoyant.

22 THE COURT: Yeah. All right. Bring Ms. Carver
23 in.

24 MS. STROM: Judge, witness and publicity, I didn't
25 know -- I didn't know if you mentioned that.

1 THE COURT: Heard facts of the case, new potential
2 witness, pro death.

3 MS. STROM: Okay. Sorry, I didn't hear that part.
4 I apologize.

5 (Ms. Carver entered the courtroom.)

6 THE COURT: You are Sandra Carver?

7 MS. CARVER: Yes, sir.

8 THE COURT: All right. If you would just have a
9 seat. As you make yourself comfortable, slide up close
10 to the microphone so your voice will be amplified,
11 please, ma'am. I will remind you, Ms. Carver, you're
12 still under oath, you understand that?

13 MS. CARVER: Yes, sir.

14 THE COURT: And I also ask you, have you complied
15 with my prior instructions not to discuss this case with
16 anyone?

17 MS. CARVER: Yes.

18 THE COURT: All right. Now, before I get into some
19 questions about this type of case, you responded
20 yesterday -- yesterday morning that you may know a
21 potential witness in the case, is that correct?

22 MS. CARVER: That's correct.

23 THE COURT: And who is that potential witness?

24 MS. CARVER: Doug Kelly.

25 THE COURT: All right. Doug Kelly. Now, is the

1 Doug Kelly you know with the Greenville County Sheriff's
2 Office?

3 MS. CARVER: Yes.

4 THE COURT: Okay. The fact -- how do you know Mr.
5 Kelly? Is he a neighbor, or ---

6 MS. CARVER: I actually work in a dentist office
7 and he's a patient of ours.

8 THE COURT: Okay. All right. And would that
9 affect your ability to be fair and impartial in this
10 case?

11 MS. CARVER: No, sir.

12 THE COURT: All right. Let me tell you briefly in
13 a nut shell what a jury's functions is. You are to
14 decide the facts of the case, and once you decide the
15 facts, you apply the law that I give to you, but in
16 deciding the facts there is usually a conflict as to
17 what the true facts are. In other words, people might
18 testify to different things, and so what a jury is asked
19 to do is to use their common sense to decide what weight
20 to give a witness' testimony. You can believe part of
21 what a witness says and disregard another part. You can
22 believe it all, or you can believe one witness as
23 against several, or several against one. But you use
24 your common sense. By that I mean you look at things
25 like the demeanor of the witness, did he appear to be

1 telling the truth. Maybe he's hesitant in answering the
2 question. You look at whether a witness has some reason
3 to give the testimony they gave. Do they have an
4 interest in the outcome of the case, or a bias, or a
5 prejudice. You would look at whether the testimony was
6 consistent or whether it contained discrepancies. All
7 these things are common sense. My question is, knowing
8 Mr. Kelly, if he's a witness in the case, would you
9 submit his testimony to the same standard of
10 believability and credibility as you would the other
11 witnesses in the case?

12 MS. CARVER: Yes.

13 THE COURT: All right. Now, would you favor -- I
14 don't know what side he might testify for, but would you
15 favor whatever side he testified for as opposed to the
16 other side?

17 MS. CARVER: No.

18 THE COURT: Okay. Now, you also indicated you had
19 heard some of the facts of this case. Tell me a little
20 bit about that. Do you recall, was it from newspaper,
21 or TV or ---

22 MS. CARVER: Everything I remember was actually
23 from last year, and it wasn't anything that I read in
24 the newspaper, and what I saw on the news.

25 THE COURT: Okay. And just briefly, do you

1 remember any details about what you saw or heard?

2 MS. CARVER: Well, just that he killed the two
3 people, and his girlfriend was trying to get out of a
4 relationship or something, and I think I remember her
5 jumping out of the car window and he shot her.

6 THE COURT: Okay. All right. Now, that's fine for
7 someone to have heard something about a case before they
8 come to court, but I have some follow-up questions to
9 that. Could you set aside what you had heard outside of
10 the courtroom and judge this case only on the facts and
11 evidence and testimony that you heard in this courtroom?

12 MS. CARVER: Yes.

13 THE COURT: All right. Have you formed any
14 opinions about this case from what you have heard or
15 seen before? Specifically, have you formed any opinion
16 about the guilt or innocence of this defendant?

17 MS. CARVER: Only in the degree to where after
18 thinking about the case yesterday on the way home, I
19 remembers him saying he did it.

20 THE COURT: You saw that in the paper?

21 MS. CARVER: Yes.

22 THE COURT: Okay. Well, again, can you set that
23 aside?

24 MS. CARVER: Yes.

25 THE COURT: And only judge this case -- in other

1 words, what ---

2 MS. CARVER: Forget about that, yes.

3 THE COURT: Something that was reported in the
4 paper may not be true, or something on TV, and so only
5 the evidence in the case that came out in the trial
6 itself is to be considered by the jury. Could you
7 follow that ---

8 MS. CARVER: Yes, I can do that.

9 THE COURT: Okay. All right. Now, I'm going to be
10 asking you a number of questions and the attorneys will
11 in turn ask you some questions. We do not mean to be
12 personal, but some of these questions may seem like
13 we're invading your privacy. If you're offended, hold
14 it against me, don't hold it against the State or
15 against the defendant. There are no right answers.
16 There are no wrong answers, but we need to get your
17 opinion on some of these questions. And we'll respect
18 whatever opinion you have. One of the things -- or the
19 main thing that I'm going to be talking about with you
20 is penalty. And I need to make sure you understand that
21 just because we are talking about penalties, that does
22 not indicate anything about this defendant. Do you
23 understand that?

24 MS. CARVER: Um-hm.

25 THE COURT: In other words, he is -- as he sits

1 there, he is presumed to be innocent. Do you understand
2 that?

3 MS. CARVER: Yes.

4 THE COURT: It's sort of a backward process. It's
5 probably not a real good process, but we have to talk
6 about penalty before we even start the trial, but you
7 understand the necessity of doing that in order to get a
8 fair jury?

9 MS. CARVER: Yes.

10 THE COURT: All right. I'm -- before I talk to you
11 about penalty, let me back up and ask you, if you were
12 seated on a jury in a criminal case, would you listen to
13 the law and accept that law that the judge gives you and
14 apply that law in the case?

15 MS. CARVER: Yes.

16 THE COURT: Would you do that even though you may
17 not necessarily agree with that law?

18 MS. CARVER: Yes.

19 THE COURT: All right. Do you understand that the
20 State must prove the defendant guilty beyond a
21 reasonable doubt?

22 MS. CARVER: Yes, sir.

23 THE COURT: If you sat on a case and you felt that
24 the State had not proved somebody guilty beyond a
25 reasonable doubt, would you vote not guilty?

1 MS. CARVER: Yes, sir.

2 THE COURT: And if you thought the State had proved
3 somebody guilty beyond a reasonable doubt, would you
4 vote guilty in that case?

5 MS. CARVER: Yes, sir.

6 THE COURT: All right. Did you know much about the
7 death penalty in South Carolina before you came to
8 court?

9 MS. CARVER: I knew there were certain, you know, I
10 guess cases that were qualified for it, and certain ones
11 that weren't, but I wasn't sure exactly of ---

12 THE COURT: Okay. That's ---

13 MS. CARVER: --- the complete difference.

14 THE COURT: That's more than most people know.
15 Because most people believe every murder case is subject
16 to the death penalty. But you understand this concept
17 of an aggravated murder case?

18 MS. CARVER: Yes, sir.

19 THE COURT: It's got to be a murder plus a rape, or
20 a murder plus an armed robbery, murder of a judge,
21 something like that ---

22 MS. CARVER: Um-hm.

23 THE COURT: --- qualifies as a capital case.

24 MS. CARVER: Yes, sir.

25 THE COURT: But you understand that even when we

1 talk about an aggravated murder case, the penalty is not
2 automatic, that simply means that the Solicitor can seek
3 the death penalty in that case. Do you understand that?

4 MS. CARVER: Yes, sir.

5 THE COURT: And when the Solicitor seeks the death
6 penalty in a case, that the trial is a two-part trial.
7 The first phase of the trial is called the trial phase,
8 and that's like any other trial in criminal court. The
9 issue is whether the defendant is guilty or not guilty.
10 And of course if he's not guilty everybody goes home.
11 If he's found guilty, then the case moves to that second
12 phase, where the same jury comes back to court and
13 listens to more testimony and more evidence, and the
14 only issue at that point in the second phase is should
15 the person receive a sentence of life without parole or
16 a sentence of death. Do you understand that?

17 MS. CARVER: Yes, sir.

18 THE COURT: So that the actual jury is the
19 person -- the entity that sentences the defendant. Do
20 you understand that?

21 MS. CARVER: Yes, sir.

22 THE COURT: Now, in that second phase, in a
23 hypothetical case, if you got there, again there would
24 be more testimony and evidence, there's two types of
25 testimony and evidence. The State presents testimony of

1 what's called aggravating evidence or aggravating
2 circumstances. That can be a number of things. It
3 could be the character of the defendant. Perhaps he's a
4 real mean person. It might be the defendant himself has
5 a significant prior crimes of violence -- or a record of
6 crimes of violence, additional evidence about the crime
7 itself, how gruesome it is. He also might put up victim
8 impact evidence. In other words, family members would
9 be able to tell the jury what the loss of their loved
10 ones has meant to them, to the community. And all of
11 that evidence is presented in an effort to convince the
12 jury that the appropriate sentence is death. Do you
13 understand that?

14 MS. CARVER: Yes, sir.

15 THE COURT: And in that same phase, the defendant
16 would put up evidence in mitigation. Evidence in
17 mitigation is evidence about the defendant. It might be
18 things like, he suffered from a mental problem at the
19 time he committed the crime, or he might have been under
20 the influence of someone else when he committed the
21 crime, or something of that nature. Do you understand
22 that?

23 MS. CARVER: Yes, sir.

24 THE COURT: He may have a very clean record, he may
25 never have been in trouble, he may be a very youthful

1 person, different things like that. And again, they're
2 putting up that evidence not to excuse what he did, he
3 already has been convicted of a murder plus something
4 else, but they're putting that evidence in to mitigate
5 what his sentence should be, to convince the jury that
6 life is the appropriate sentence. Do you understand
7 that?

8 MS. CARVER: Yes, sir.

9 THE COURT: When I say life, I mean life absolutely
10 without no possibility of parole in a case like this.
11 Do you understand that?

12 MS. CARVER. Yes, sir.

13 THE COURT: And in South Caroline, death is either
14 by electrocution or by lethal injection. Do you
15 understand that?

16 MS. CARVER: Yes, sir.

17 THE COURT: All right. If you were sitting on a
18 jury in the penalty phase of a case and -- not you, but
19 if the jury found beyond a reasonable doubt the
20 aggravating circumstances, then that would simply
21 entitle them to vote for death. In other words, if they
22 did not find aggravating circumstances beyond a
23 reasonable doubt, they could not even consider death,
24 but if they found an aggravating circumstance beyond a
25 reasonable doubt, then they would be entitled to

1 consider death. Do you understand that?

2 MS. CARVER: Yes.

3 THE COURT: But even then the sentence is not
4 automatic.

5 MS. CARVER: Um-hm.

6 THE COURT: Even if there was no mitigation in the
7 case, do you understand that the jury could still give a
8 life sentence in the case?

9 MS. CARVER: Yes, sir.

10 THE COURT: In other words, there may be no
11 mitigation, there may be several aggravating
12 circumstances proved, but the penalty could still be
13 life or death. Do you understand that?

14 MS. CARVER: Yes, sir.

15 THE COURT: All right. Understanding that whole
16 procedure, and understanding how a bifurcated trial
17 works, and this concept of aggravating circumstances and
18 mitigating circumstances, I think you probably know now
19 that we need to understand what your position is on
20 capital punishment. Would you say you're generally for
21 capital punishment, generally against capital
22 punishment, what's your position?

23 MS. CARVER: I'm for capital punishment, yes.

24 THE COURT: All right. I noticed on your return
25 that you said that you are pro death, does that mean you

1' are in favor ---

2 MS. CARVER: Yes, I am in favor of capital
3 punishment, yes.

4 THE COURT: All right. Does that mean that you
5 would vote for capital punishment in every case of
6 aggravated murder?

7 MS. CARVER: Likely, yes.

8 THE COURT: All right. Would you give meaningful
9 consideration to the mitigating evidence that has been
10 presented in the case in making your decision?

11 MS. CARVER: I could do that, yes.

12 THE COURT: All right. Well, could you vote for a
13 life sentence if thought a life sentence was
14 appropriate?

15 MS. CARVER: Yes, I could -- if I thought it was
16 appropriate, yes, I would.

17 THE COURT: All right. Could you vote for a death
18 sentence if you thought that a death sentence was
19 appropriate?

20 MS. CARVER: Yes. All right. Now, would you
21 automatically vote one way or the other, or would you
22 listen to the evidence in aggravation and the evidence
23 in mitigation before you made up your mind as to what
24 the proper punishment would be?

25 MS. CARVER: I would listen first.

1 THE COURT: Okay. And when I say listen, I mean
2 not only listen, but give meaningful consideration to
3 the aggravating circumstances that are presented ---

4 MS. CARVER: Yes, sir.

5 THE COURT: --- by the defense (sic) and charged by
6 the judge?

7 MS. CARVER: I could do that.

8 THE COURT: Okay. If you thought that death was
9 the appropriate sentence, and if you thought that if --
10 or if the other jurors thought that death was the
11 appropriate sentence, then you and your fellow jurors
12 would have to sign the verdict form in that case. Do
13 you understand that?

14 MS. CARVER: Yes.

15 THE COURT: If -- you probably didn't understand
16 that, but I'm telling you that.

17 MS. CARVER: That's fine, yeah.

18 THE COURT: All right. If you thought death was
19 the appropriate sentence, could you sign that?

20 MS. CARVER: Yes, sir.

21 THE COURT: All right. Who's up? Solicitor?
22 This is Bob Ariail. He's going to ask you some
23 questions first and then Mr. Abdalla, who's one of the
24 attorneys representing Mr. Sigmon, will ask you some
25 questions.

1 QUESTIONING BY MR. ARIAIL:

2 Q How are you?

3 A Fine.

4 Q I'm Bob Ariail, and the judge introduced us. I'm
5 the Solicitor, which means that -- for Greenville,
6 Pickens Counties, which means I'm the State's
7 prosecutor. Other states call them DAs, on TV, District
8 Attorney. This is my Deputy Solicitor, Betty Strom, who
9 will be helping with be helping me on this case, and one
10 of my assistants, Lori Reese, who will be helping us on
11 this case. I noticed that in your questionnaire that
12 you're a receptionist and a secretary with Dr. Jody
13 Moon?

14 A Yes, sir.

15 Q And is that at his office down -- I guess, that's
16 Augusta Road?

17 A Actually that office is closed. We're at Woodruff
18 Road full time now.

19 Q All right. Now, the judge went over the process
20 with you, and what I want to make sure that you
21 understand is that you're going to have two decisions if
22 you get past the guilt phase.

23 A Right.

24 Q If the defendant is found guilty, you go to the
25 second phase of the trial. The judge talked to you

1 about aggravated murder -- aggravated circumstances, and
2 I just want to make sure you're clear on that. The law
3 as he explained it to you allows the Solicitor to seek
4 the death penalty in certain cases when there is an
5 aggravating circumstance accompanying a murder. There
6 is a murder then the Legislature defines about 15
7 aggravating circumstances. Some of them -- one of them
8 he mentioned was murder plus a rape, or murder with an
9 armed robbery, but there's murder accompanied by some
10 acts that the Legislature has said is an aggravated
11 circumstance, that then the State can seek the death
12 penalty. That's not necessarily -- the law doesn't say
13 in that case that it's got to be imposed, that's up to
14 the jury to determine. And the process is such that
15 before the jury can make that decision, they must listen
16 to the evidence of aggravation that the State presents,
17 and they must listen to evidence of -- now, when I say
18 evidence of aggravation, I'm talking about something
19 other than the aggravating factor. Aggravating evidence
20 is something that makes it worse. The judge talked to
21 you about victim impact, have victims come up, or they
22 may put up character evidence about the defendant having
23 a bad record. That's making the whole thing worse.
24 That's not an aggravating circumstance, but that's
25 making the case more aggravated.

1 A Um-hm.

2 Q The process is that you will hear all of that along
3 with all the evidence of mitigation before you retire
4 and make your decision. What the judge asked you was,
5 could you fairly and meaningfully consider both the
6 evidence in aggravation and the evidence in mitigation
7 before you retired to the -- or after you retired to the
8 jury room before making your decision?

9 A Yes, I believe I could.

10 Q Listen to all of it?

11 A Um-hm, yes, sir.

12 Q And if thought, based on the overall case, even if
13 there was an aggravating factor, even though there were
14 aggravating circumstances, you could still consider --
15 meaningful consider, and if thought appropriate vote for
16 a life sentence?

17 A Yes, sir.

18 Q Even if there was no mitigation, the defense
19 presented no mitigation, but you looked at all the
20 evidence to determine if you found any mitigation, could
21 you still vote for a life sentence if -- even if there
22 was no mitigation, if you thought that was appropriate?

23 A If I thought that was appropriate, yes.

24 Q And you would want to hear it all before you made
25 that decision?

1 A Yes.

2 Q All right. If you were in the jury room and the
3 vote was 10 -- 11 to 1 and you were in the minority one
4 way or the other, would you hold your position after
5 considering everybody else's, and everybody negotiated
6 and talked and everybody exchanged ideas, but you'd come
7 to the conclusion you had the right decision, would you
8 stick with that decision, rather than just caving in?

9 A I don't know what I would do, really. I don't
10 know.

11 Q Well, you understand the process is one where in --
12 through deliberations you reach an -- you try to reach a
13 consensus but there may be people or there may be
14 opinions that you would come to conclude that were --
15 would not be like everybody else's ---

16 A Um-hm.

17 Q --- but you had based those conclusions, or that
18 decision based upon the evidence that you had heard and
19 you thought it was the right one?

20 A I would probably stick with what I originally ---

21 Q And likewise, if you were on the other side, in the
22 majority, you would respect those people who had an
23 opinion different than yours?

24 A Oh, yes, yes, sir.

25 Q Provided everybody had gone through the whole

1 process of deliberating?

2 A Yes.

3 Q Okay. Did the judge -- the judge told you about
4 having to sign the form?

5 A Yes.

6 Q Did that give you any hesitancy?

7 A No, it's not a problem.

8 Q If you think that's the right decision?

9 A Yes.

10 MR. ARIAIL: Okay. Thank you.

11 THE COURT: All right. This is Mr. Abdalla, he's
12 going to be asking you some questions.

13 QUESTIONING BY MR. ABDALLA:

14 Q Good afternoon, Ms. Carver.

15 A Yes.

16 Q My name is John Abdalla. I represent Brad Sigmon.
17 And my co-counsel is Frank Eppes. They're both seated
18 over there at the table.

19 A Um-hm.

20 Q You said you heard some things on the news, I
21 believe, when this occurred?

22 A Yes.

23 Q Did you see my client on television at that time?

24 A Yes.

25 Q And did you see or hear him admitting to anything?

1 A Yes.

2 Q Okay. You did. And are you telling me that having
3 seen and heard that, you could still give a fair trial
4 to my client?

5 A Well, you know, ----

6 Q I'm not trying ---

7 A --- if I set aside everything that I saw on TV, as
8 instructed, I could. If I just forgot about everything
9 I saw on TV and everything that I read, yes.

10 Q But could you really do that?

11 A I think so, yes.

12 Q You think so? And as the judge had asked you, you
13 put you're pro death on your form, which is fine, my
14 question is, why did you feel the need to put it there,
15 because there wasn't a question about that? I ---

16 A Well, just ---

17 Q --- am just curious about that.

18 A Well, I just -- you know, it's just something
19 that I feel very personal about, that -- I'm very -- I
20 just -- I'm strong about my feelings on it.

21 Q That's honest. Also, you answered -- where is
22 it -- has anyone worked for a criminal defense lawyer or
23 prosecutor, or engaged in the practice, could you
24 expound on that a little?

25 A What was the question again, I'm sorry?

1 Q There was a general question about whether anyone
2 in your family, you or anyone in your family had ever
3 worked for a defense lawyer or prosecutor?

4 THE COURT: What number is that?

5 MR. ARIAIL: Twenty-four.

6 THE COURT: Okay. Go ahead.

7 MS. CARVER: My husband's cousin is -- she works
8 for the Greenville County Sheriff's Department, and
9 she's in supplies or something.

10 BY MR. ABDALLA:

11 Q Okay.

12 A But no one, you know, directly in my family. We
13 have patients in our dental practice that also are
14 attorneys and a few police officers.

15 Q Okay. Now, if you were seated on a jury and you
16 were -- a defendant was convicted of a murder, and also
17 aggravating factors were found as the judge instructs
18 you, I think he gave the example of armed robbery as an
19 aggravating factor?

20 A Yes.

21 Q So someone goes in and kills somebody and robbed
22 them during the course of that, or vice versa, robs them
23 and kills them during the course of that, that would be
24 death -- that would be qualified for the death penalty.

25 A Um-hm.

1 Q Could you, if there's no mitigation, consider a
2 life sentence in a situation like that?

3 A After hearing all the facts, I could.

4 Q You could. What is your belief about the death
5 penalty? Why are you for it?

6 A I just feel like it's the right thing to do.

7 Q Right, and I'm not trying ---

8 A You can take a life, then it should be your life.

9 Q Then if you say that, then why would you consider
10 sparing a life, if you said that?

11 A Well, if it was going to be life imprisonment, and
12 they weren't going to get out ---

13 Q All right. Are you aware that the law changed, and
14 the judge will have to instruct you about that, about
15 life without parole, several years ago, life now means
16 life without the possibility of getting out?

17 A Um-hm.

18 THE COURT: There used to be like a 30 year parole
19 eligibility. That has been changed. If the jury gives
20 a life sentence in a case like this, the defendant is
21 going to die in prison. Do you understand that?

22 MS. CARVER: Yes, sir.

23 THE COURT: Okay.

24 BY MR. ABDALLA:

25 Q And what you said, though, is if somebody takes

1 somebody's life, they, I guess, deserve to lose their
2 life, and I want to make sure I understand you, is that
3 correct, or did I mistake what you believe?

4 A I do believe that, you know, if someone takes a
5 life then their life should be taken, but you know, due
6 to the situation and circumstance I could still fairly
7 listen and decide that.

8 Q So you could weigh the mitigating factors, is that
9 what you're saying?

10 A Yes.

11 Q What do you think the, I don't want to be beating a
12 dead horse, the purpose of the death penalty is? What's
13 its function?

14 A Well, it's certainly a good deterrent.

15 Q All right. So you see it as a deterrent. Anything
16 else?

17 A Well, it's -- I don't know, restitution. I mean,
18 it's just what it is. It's punishment.

19 Q All right. What about life without parole, how do
20 you see that in comparison?

21 A It does the same thing.

22 MR. ABDALLA: If I could have one moment, please?

23 BY MR. ABDALLA:

24 Q I just want to make sure that I understand that --
25 that you're clear on this issue. The illustration I

1 gave you earlier, you found somebody guilty of murder,
2 so that means there was no self-defense, there was no
3 legal justification for the acts, correct, and the
4 aggravating factor is present, that would be the armed
5 robbery?

6 A Um-hm.

7 Q All right. In a case like that, where there is no
8 legal justification, can you consider a life sentence?

9 MR. ARIAIL: Already asked and answer that
10 questioned.

11 MR. ABDALLA: No, not in that form.

12 THE COURT: I'll allow the question.

13 MS. CARVER: Yes.

14 THE COURT: All right. Any other questions?

15 BY MR. ABDALLA:

16 Q I'm sorry?

17 A Yes.

18 Q Okay. And can you give it, or just consider it?

19 A No, I would give it if I felt it warranted it, yes.

20 MR. ABDALLA: Thank you.

21 THE COURT: All right. Let me give you that, Ms.
22 Carver. I'm going to go over it with you. You are
23 qualified as a juror on this case. That certainly does
24 not mean you will be selected. That simply means that
25 you need to be prepared to serve if you were chosen.

1 We're in the process of qualifying a large panel. When
2 we get sufficient jurors then we'll tell those jurors to
3 come back to court. And we'll select the 12 jurors and
4 alternates from that group. You do need to be prepared
5 to serve, which means you need to go ahead and pack a
6 suitcase, being prepared to stay seven or eight days in
7 a motel. I don't know that the case will last that
8 long, but you do need to be prepared in case it does
9 last that long. You need to go ahead and pack any
10 medications or anything like that that you may need.

11 When Madam Clerk calls the jury to come back to
12 court, which will probably be tomorrow or Thursday, then
13 we're going to ask the jurors to go park in the Hyatt
14 garage. Did you park there on Monday morning?

15 MS. CARVER: Yes.

16 THE COURT: All right. The street between the
17 Hyatt garage and this courthouse is Spring Street. If
18 you went into Spring Street entrance into the Hyatt
19 garage, directly across the street is the garage
20 entrance to this courthouse. That's where I want you to
21 come. Leave your suitcase in the car but come to that
22 garage entrance, because I will have the bailiffs meet
23 all the jurors there and bring them upstairs to the
24 courtroom. The reason I'm doing that is to keep the
25 jury separated out of the public corridors from family

1 members and press, things like that.

2 If you are selected, then you will be sequestered,
3 which means you will not be able to have contact with
4 your place of employment or your family. Let me back
5 up, it won't be any direct contract. If you need to get
6 a message to someone that can be accomplished. You
7 could write a note, put a name and a number, and the
8 bailiff will call and leave a message with someone.
9 There are emergency numbers on this piece of paper. If
10 someone needs to contact you, then they can do that.
11 They cannot contact you directly, but they can contact
12 either the bailiffs or the SLED agents that are going to
13 be charged with your custody.

14 Now, do you have any questions about this so far?

15 MS. CARVER: No.

16 THE COURT: All right. Again, we're going to
17 probably be calling you tomorrow. We'll give you as
18 much lead time as we can. It might be just two or three
19 hours, hopefully it will be perhaps over night, but we
20 will give you, you know, notice to get here, but you
21 need to go ahead and get prepared to come once you get
22 that notice.

23 Now, do not -- there is going to be press coverage
24 of this case. Do not read anything in the paper about
25 this case, don't watch anything on TV, don't listen to

1 the radio about this case. If someone tries to talk
2 with you about the case, tell them that you're on the
3 jury panel and you cannot talk with them. If they
4 persist, then take their name and give it to the
5 bailiff, and we'll handle that situation. Again, any
6 other questions?

7 MS. CARVER: I don't think so. I just want to make
8 sure, the dentist that I work for, you know, Jody Moon,
9 his wife is related to your wife, I just wanted to make
10 sure that wasn't a problem with ---

11 THE COURT: That is not a problem. There is no
12 conflict there. All right. Okay. You're free to go.
13 Thank you very much.

14 (Ms. Carver exited the courtroom.)

15 THE COURT: All right. Anything on Nora Ruiz
16 Horne.

17 MR. ABDALLA: No, I just wanted to make a comment
18 on Ms. Carver.

19 THE COURT: Oh, I'm sorry.

20 MR. ABDALLA: Just that she saw our client on
21 television confessing to the crime, and I think that
22 would disqualify her. That's the only thing I need to
23 put on the record.

24 MR. EPPES: Your Honor, we have a concern that she
25 saw that confession, and it's very likely the State is

1 going to use the television reports that include a
2 confession of our client in this trial. This juror is
3 going to have an unfair buttressing of her belief system
4 that she already -- she said she can set it aside, but
5 if she saw the same news report as part of the evidence
6 in the case, I believe that would unfairly prejudice our
7 client.

8 THE COURT: You're saying if she saw the same tape
9 that she saw on TV?

10 MR. EPPE: Absolutely. It's going to be ---

11 THE COURT: Explain that a little bit to me.

12 MR. EPPE: Well, Judge, she says, okay, I saw some
13 stuff on the news, I believe I might -- she -- I think
14 she said probably she can set it aside at first, and
15 then she said, I'll -- of course I can set it aside to
16 be fair. Okay. She says that now, but if they bring in
17 that news report, and throw it on -- throw it on the
18 air, you know, she looks at it, she says, well, here's
19 the news report I saw ---

20 THE COURT: All right.

21 MR. EPPE: --- the judge said not believe what's
22 on television, but by golly, they brought it in as
23 evidence in the case.

24 THE COURT: Okay. So then -- so then I guess my
25 question is, what's the prejudice?

1 MR. EPPES: The prejudice is now she's taking
2 something she knew before, that she didn't have in the
3 jury room, she's bringing it in and -- she's going to
4 say ---

5 THE COURT: Let me ask you this, is your client
6 going to deny that he said that on TV if they bring it
7 in?

8 MR. EPPES: Judge, that's not the standard. The
9 standard is is the outside influence going to improperly
10 affect her decision.

11 THE COURT: Right. But -- but if they put it in
12 evidence, I don't understand. I don't understand.
13 Somebody help me here. I mean, I don't understand.

14 MR. EPPES: It's an outside -- Judge, it's an
15 outside influence. It brings in other things. Then she
16 can say, well, I saw this, this, this, this, and this on
17 the news as well.

18 THE COURT: Okay. All right. I find that -- that
19 she clearly stated that she could set aside anything she
20 saw outside of the courtroom and judge this case based
21 on what she heard from the witnesses and the other
22 evidence that has been presented. She's qualified. All
23 right. Anything about Ms. Horne that we need to know?

24 MR. ABDALLA: No, sir.

25 THE COURT: All right. Bring in Ms. Horne.

1 (Ms. Horne entered the courtroom.)

2 THE COURT: Are you Ms. Horne? If you would, make
3 yourself comfortable. As you do, if you slide your
4 chair forward and speak into the microphone. Don't be
5 afraid. It's a little bit intimidating, I understand
6 that, but let me do some of the talking, and I'll try to
7 make sure you feel comfortable. Let me remind you that
8 you're under oath. Do you understand that?

9 MS. HORNE: Yes.

10 THE COURT: Okay. I need -- and I'm going to tell
11 you you need to say yes or no, don't just nod or shake
12 your head because there is a back-up recording system
13 that has to hear everything that goes on. And I believe
14 you yesterday indicated that you had not read anything
15 about this case, don't remember seeing anything on TV
16 about it, is that correct?

17 MS. HORNE: I remembered later.

18 THE COURT: You did?

19 MS. HORNE: Yes.

20 THE COURT: Okay. What do -- what do you recall,
21 was it from TV or ---

22 MS. HORNE: I recall -- recall the general story,
23 sketchy and not very sensational, so it didn't leave a
24 big impression, so I didn't remember it right away until
25 after thinking.

1 THE COURT: Okay. And now that you've thought
2 about it, do you remember any of the details that you
3 might have seen on TV or read in the paper.

4 MS. HORNE: I remember a few details. I just
5 remember my impression of it, it was sort of like how
6 incomplete this information is, how it does not have a
7 lot of details in it.

8 THE COURT: Okay. All right. Regardless of what
9 you heard, could you set that aside and if you were
10 seated as a juror in this case, could you judge this
11 case solely by the testimony that's presented in court
12 and the evidence that's presented in court?

13 MS. HORNE: I could do that.

14 THE COURT: Okay. Now, I'm going to ask you some
15 questions and then the attorneys are going to ask you
16 some questions. No one is trying to invade your privacy
17 or be personal, and I tell you, there are no right
18 answers, no wrong answers. Whatever your answers are,
19 we'll certainly respect your opinion or your position,
20 but I do need for you to answer these questions openly
21 and honestly. Most of the questions I ask are going to
22 be about penalties. I need to make sure you understand
23 up front that merely because of the fact that I'm
24 talking about possible penalty, that does not indicate
25 anything about this defendant. Do you understand that?

1 You got to say yes or no.

2 MS. HORNE: Yes.

3 THE COURT: All right. In other words, as Mr.
4 Sigmon sits there, he is presumed to be innocent. Do
5 you understand that?

6 MS. HORNE: Yes.

7 THE COURT: Because of the nature of this type of
8 case, we have to talk about penalty in order to make
9 sure we get a fair jury. It's sort of a backwards
10 process, because we're talking about penalty before the
11 person even goes to trial. Do you understand that?

12 MS. HORNE: Right.

13 THE COURT: Okay. Now, if you were seated on a
14 case in a criminal trial, would you listen to the law
15 that the judge gave and accept that law and apply that
16 law to the case?

17 MS. HORNE: Definitely.

18 THE COURT: All right. Would you do that even
19 though you might not agree with that law?

20 MS. HORNE: It would be the only guide I will have,
21 so I definitely will have to.

22 THE COURT: Okay. All right. In a criminal case
23 the State has the burden of proving of a defendant
24 guilty beyond a reasonable doubt. Have you ever heard
25 that before?

1 MS. HORNE: Oh, yes.

2 THE COURT: All right. And that -- you understand,
3 that's their burden, they have to meet that?

4 MS. HORNE: Yeah.

5 THE COURT: If you sat on the case and if the State
6 had not met that burden of proving somebody beyond a
7 reasonable doubt, would you vote not guilty in that case
8 (sic)?

9 MS. HORNE: Yes.

10 THE COURT: And if they had proved somebody guilty
11 beyond a reasonable doubt, would you vote for guilty?

12 MS. HORNE: Yes.

13 THE COURT: Now, I gave you letter yesterday about
14 the death penalty in general. Did you have a chance to
15 read that?

16 MS. HORNE: I did.

17 THE COURT: Okay. And you understand that in a --
18 it has to be what we call an aggravated murder case
19 before the State can seek the death penalty?

20 MS. HORNE: Right.

21 THE COURT: In other words, just a plain old murder
22 case is not sufficient, it has to be murder plus
23 something else. The examples I gave were murder during
24 an armed robbery, or murder during a sexual assault, or
25 something like that. Do you understand that?

1 MS. HORNE: Right.

2 THE COURT: All right. When we talk about one of
3 these aggravated murders we don't mean that the penalty
4 is automatic. Do you understand that? It just allows
5 the State to seek the death penalty, and in those types
6 of cases the jury decides what the penalty is if they
7 convict the defendant. Do you understand that?

8 MS. HORNE: Yes.

9 THE COURT: All right. The trial in a capital case
10 is divided into two parts. The first part is the trial
11 phase. And in that phase the only issue is is the
12 person guilty or not guilty. It's like any other trial.
13 If the defendant is found not guilty, then the jury goes
14 home. But if he's found guilty, then the jury comes
15 back into the courtroom and they hear more testimony and
16 more evidence, and they hear that evidence to decide
17 what his proper punishment is. The only possible
18 punishments at that point in time, after a person is
19 convicted of aggravated murder, would be life without
20 parole or death, which in South Carolina is by either
21 electrocution or lethal injection. Do you understand
22 that?

23 MS. HORNE: Yes.

24 THE COURT: All right. There are two types of
25 evidence that the State might -- or excuse me, there are

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1 two types of evidence that might be presented in the
2 penalty phase of the trial. There is evidence in
3 aggravation that is put up by the State. And there is
4 evidence in mitigation that is put up by the defendant.
5 Evidence in aggravation can be any number of things.
6 The State may present evidence about the defendant
7 himself. They may put up evidence that he's got a bad
8 character, or that he has a long history of violent
9 acts. They may put up more evidence about the crime
10 itself, how bad -- how aggravated it is. They may put
11 up evidence of victim impact. In other words, family
12 members of the victims may testify about the loss they
13 suffered because of the loss of their loved ones. And
14 all this evidence is being presented by the State in an
15 attempt to convince the jury that the appropriate
16 sentence is death. Do you understand that?

17 MS. HORNE: Yes.

18 THE COURT: The defense again puts up evidence in
19 mitigation, and that can be any number of things. It
20 might that be the defendant is a relatively young
21 person, that should be treated differently than maybe
22 someone who's older. They might put up evidence that
23 the defendant was under the influence of some other
24 person when they committed the crimes. They might put
25 up evidence that the defendant suffered from some

1 mental problem at the time he committed the crimes. It
2 might -- they might put up evidence that the defendant
3 is -- has a clean record, has never done anything. All
4 kinds of things might be presented. Do you understand
5 that?

6 MS. HORNE: Yes.

7 THE COURT: Again, they're putting up that evidence
8 not to excuse what he did, because he's already been
9 convicted of murder, but they're putting that up to
10 mitigate what his punishment should be, to convince the
11 jury that the proper sentence would be life. Do you
12 understand that?

13 MS. HORNE: Yes.

14 THE COURT: All right. In a capital case, a jury
15 never has to impose the death penalty. Do you
16 understand that?

17 MS. HORNE: Yes.

18 THE COURT: Let me explain that to you. A jury
19 can only impose the death penalty if they find beyond
20 a reasonable doubt an aggravating circumstance. But
21 even if they find an aggravating circumstances, or
22 maybe there are two or three aggravating circumstances,
23 and even if there is no mitigation in the case, the
24 jury can still give a life sentence. Do you understand
25 that?

1 MS. HORNE: Based on just ---

2 THE COURT: Just because they want to give mercy to
3 the defendant, or they may find -- the defense may not
4 put up mitigation evidence, but there might be
5 mitigating evidence in the record itself that the jury
6 might want to consider. Do you understand what
7 I'm saying?

8 MS. HORNE: I guess so.

9 THE COURT: All right. Understanding that
10 procedure I've been through with you, I'm sure you
11 appreciate that we need to understand, Ms. Horne, your
12 position on capital punishment. Can you tell us,
13 generally do you favor capital punishment, generally
14 you're against capital punishment? Do you have a
15 position?

16 MS. HORNE: I don't have one. I'm -- I'll be
17 honest. I don't I think it's great or it's violent
18 definitely out of question, so I don't have a ---

19 THE COURT: A strong position either way?

20 MS. HORNE: No.

21 THE COURT: Do you think that there is a proper
22 place in our society for capital punishment?

23 MS. HORNE: There is.

24 THE COURT: Okay. So do you think that in some
25 cases that are so bad that capital punishment would be

1 appropriate?

2 MS. HORNE: I think so, but I basically like the
3 concept of capital punishment. I think if it's applied
4 right it can be great. If it's not, it -- it's not that
5 good, so ---

6 THE COURT: When you say applied wrong, do you mean
7 somebody sent to death row that's innocent.

8 MS. HORNE: By mistake.

9 THE COURT: By mistake, okay.

10 MS. HORNE: It's very hard just to think about
11 that.

12 THE COURT: To think about that. Okay. If you
13 were on a jury case and if you thought the proper
14 sentence was death, could you vote for death?

15 MS. HORNE: I could, yeah.

16 THE COURT: If you thought the proper sentence was
17 life, could vote for life?

18 MS. HORNE: Yes.

19 THE COURT: Okay. Before you made that decision of
20 life or death, would you listen to and give meaningful
21 consideration to the evidence that's presented in that
22 penalty phase, the evidence in aggravation and the
23 evidence in mitigation before you made that decision of
24 life or death?

25 MS. HORNE: Yes.

1 THE COURT: Okay. You would want to do that,
2 wouldn't you?

3 MS. HORNE: Definitely.

4 THE COURT: Okay. All right. If you thought that
5 death was the appropriate sentence, you and the other
6 jurors would be required to sign your name to the
7 verdict form. That's sometimes referred to as the death
8 warrant. But you understand that you would be asked to
9 sign your name to that verdict form?

10 MS. HORNE: I understand now, yes.

11 THE COURT: And if you thought that was the
12 appropriate sentence, could you do that?

13 MS. HORNE: I think so, yes.

14 THE COURT: Okay.

15 MS. HORNE: I'm not sure.

16 THE COURT: I understand. I understand. All
17 right. Mr. Abdalla?

18 MR. ABDALLA: Thank you, Your Honor.

19 THE COURT: I'm sorry. I need to introduce -- I'm
20 sure -- you might remember. This is Mr. Abdalla, who
21 is, along with Mr. Eppes, representing Mr. Sigmon. And
22 then Solicitor Bob Ariail and his staff are prosecuting
23 for the State. Mr. Abdalla will ask you questions
24 first, and then someone from the State will ask you
25 questions.

1 QUESTIONING BY MR. ABDALLA:

2 Q All right. Ms. Horne?

3 A Yes.

4 Q As the judge told you, I'm John Abdalla, and I'm
5 representing Mr. Sigmon. I'd like to ask you some
6 questions about your positions, okay?

7 A All right.

8 Q Regarding the death penalty, obviously. Now, it
9 seems you said -- you correct me if I'm misstating
10 anything, all right?

11 A All right.

12 Q That if the situation was bad enough you could give
13 the death penalty?

14 A Yes, I said that.

15 Q All right.

16 A But bad enough to me means the law indicates in the
17 case indicates it and the proof is ---

18 Q All right. Let me try to clear that up, and the
19 judge will correct me if I misstate the law, the law is
20 that you never have to give the death penalty, however
21 there are some situations where you can give the death
22 penalty if you think the facts are bad enough?

23 A So is it based on my con- -- on my impression, my
24 feelings?

25 Q Yes, your impression. If for instance, a person is

1 found guilty by the jury, then after they're found
2 guilty of -- well, they have been found guilty of
3 murder, for instance, and then after being found guilty
4 of murder there is also another charge of say armed
5 robbery, but the judge will define aggravating factors,
6 and an armed robbery would be an aggravating factor,
7 because you killed somebody while you were in the
8 commission of robbing from them. In a situation like
9 that, you then have the option to say, I would want to
10 see this person have the death penalty or life sentence,
11 you could vote either way. And we just have to make
12 sure you could in some circumstances give the death
13 penalty if that was something you found the facts would
14 warrant?

15 A I think so, yes.

16 Q All right. You understand about the jury, that
17 you're part of a jury, and a jury is made up of
18 citizens?

19 A Yes.

20 Q All right. And part of your duty as a citizen is
21 to serve on a jury, is what you seem to be doing right
22 now, or you're eligible for that, correct?

23 A Yeah, I think I'm in the process of being ---

24 Q Being considered, correct. You haven't been
25 selected yet, but you're -- we have a bunch of people

1 that we are -- the Court is going -- interviewing, all
2 right?

3 A Right.

4 Q And do you think it's your civic duty to be on the
5 jury?

6 A Yes.

7 Q Do you think a jury should be made up of a cross
8 section of people or just one type of person?

9 A I'm not familiar with the law to select juries, but
10 I think it's whatever is traditional is fine with me, of
11 my personal opinion.

12 MR. ABDALLA: May I have one moment, please?

13 BY MR. ABDALLA:

14 Q Essentially the only thing I have to find out from
15 you is if you could take all the facts into
16 consideration, the facts of aggravation that will be
17 presented by the state, and the facts of -- if we decide
18 to -- if the defense were to present any mitigation, the
19 reasons why you should give him mercy, can you do that
20 and ---

21 A Yes, yes, I can.

22 Q Before you vote for life or death?

23 A I can consider life and vote for mercy.

24 Q And can you ---

25 A I don't if I -- I couldn't ---

1 Q Could you vote for either one?

2 A Oh, yes.

3 Q Can you give fair consideration to a life sentence
4 or a death sentence?

5 A Yes.

6 MR. ABDALLA: All right. Thank you.

7 THE COURT: Ms. Strom.

8 MS. STROM: Thank you, Your Honor.

9 QUESTIONING BY MS. STROM:

10 Q Good evening, Ms. Horne.

11 A Good evening.

12 Q I will try not to take too much more of your time.
13 I know they asked questions and mine may seem like I'm
14 asking you the exact same thing, okay, so bear with me.

15 A All right.

16 Q What we're trying to do in this process is find
17 jurors who can be fair to both sides, right? We want a
18 juror who can be fair to the State and who could in the
19 right circumstances impose a death penalty, okay. We
20 want people who can be fair to the defendant. We want
21 jurors who, in the right circumstances, could impose a
22 life sentence, okay. I know when you were responding to
23 the judge and responding to Mr. Abdalla, you had some
24 hesitancy regarding the death penalty. Nobody is
25 indicating that that would be an easy decision to make.

1 Okay. No one is taking that lightly, I understand you
2 would not take that lightly. What I need to know is,
3 could you impose the sentence of death if you felt that
4 was appropriate?

5 A If I was convinced by the law, and I was convinced
6 by my own reasoning, and I had no doubt, I definitely
7 could, because I don't consider it totally evil. I
8 don't think it's something totally wrong, so I don't
9 have any experience, so I cannot say if I will do this,
10 because I can -- I know myself, I know I'm an emotional
11 person, but at the same time, I know I can reach some
12 separation and I think that I could, so -- I'm still
13 hesitant. I cannot ---

14 Q Right. And I know it's difficult.

15 A I can't tell you what I really don't know because I
16 cannot -- I cannot tell you my reaction, so I really
17 don't know.

18 Q And we understand it's a difficult to ask you about
19 a situation you have not been placed in in terms of
20 you've never had to make that decision before. What I
21 want -- what we need to know is that you could give fair
22 consideration to both sides?

23 A Yes.

24 Q Okay. And His Honor talked about having to sign
25 that form, the verdict form?

1 A Yes.

2 Q If you, along with your other jurors, had made the
3 determination that death was the appropriate sentence,
4 could sign your name to this form, that then goes down
5 to the Department of Corrections which is the legal
6 document to carry out the death sentence?

7 A Yes. Is it a group decision or is it -- each juror
8 can change the outcome?

9 Q Okay.

10 THE COURT: It's a group decision. It's a give and
11 take decision, and any decision has to be a unanimous
12 decision.

13 MS. HORNE: So yes, yes, I could.

14 BY MS. STROM:

15 Q All 12 must agree on the decision.

16 A Yes, because I wouldn't see it as a personal
17 signature, it wouldn't be me doing it, the person, but
18 as part of a group, yes.

19 MS. STROM: Okay. Thank you.

20 THE COURT: All right. Ms. Horne, let me give you
21 a letter. I'm going to go over it with you. You are
22 qualified to serve on this jury. That does not mean
23 that you will be selected. We are trying to get a
24 panel of some 40 jurors and then once we have that
25 panel, we'll pick a jury from that. Do you understand

1 that?

2 MS. HORNE: Yes.

3 THE COURT: Now, you need to be prepared to serve.
4 That means you need to go ahead and pack a suitcase for
5 seven or eight days stay in a motel, in case you're
6 going to serve. Go ahead and pack any medications,
7 things like that. When we have enough jurors the Clerk
8 will call all the panel and tell them to come back to
9 court. That will be sometime tomorrow or sometime on
10 Thursday. Do you understand that?

11 MS. HORNE: Yes.

12 THE COURT: Then when you are called to come back,
13 if you would park in the Hyatt parking garage across the
14 street. Did you park there on Monday morning?

15 MS. HORNE: Yes.

16 THE COURT: All right. Leave your suitcase in the
17 car and come across the street to the garage entrance to
18 this courthouse. There's -- on Spring Street, the
19 street that divides this from the Hyatt parking garage.
20 There is an entrance. I want the jurors to come there,
21 because I don't want them to go out into the hallways
22 and be in the public hallways where the family is and
23 the media and things like that. There will be bailiffs
24 there to meet you and they will bring you upstairs to
25 the courtroom and we'll pick a jury at that time. If

1 you're not picked, then you go back to your car and you
2 go home. If you are picked, then you will be
3 sequestered at that time, and the SLED agents will take
4 you to your car to get your suitcase and then take you
5 to your motel. If you want to bring someone in case
6 you're selected to drive your car home, that's fine. If
7 you don't have somebody to do that, then we'll make some
8 sort of arrangement to get your car home, or get your
9 car out to the hotel, okay?

10 MS. HORNE: Okay.

11 THE COURT: All right. Now, do you have any
12 questions about this?

13 MS. HORNE: No.

14 THE COURT: All right. My admonition to you is do
15 not read anything about this case. There will be
16 something in the paper every day, probably will be
17 information on TV about the case. Don't watch any news
18 accounts of this case, don't listen to the radio, any
19 news account of the case. Also, don't talk to anyone
20 about the case. Obviously you can tell your family
21 you've got to be on the jury, you got to come back, but
22 when I say don't talk about it, don't talk about the
23 substantive facts. If someone tries to talk to you,
24 tell them, I can't talk to you about it, I'm on the
25 panel. If they persist in talking to you, take their

1 names and tell the bailiff when you get here, and we'll
2 handle that.

3 If you need to tell your family something while
4 you're sequestered, you can't personally talk to them
5 but we can get a message to them. In other words, you
6 can write out a message, and a phone number and the
7 person's name and the bailiff will call and tell them
8 anything you need to tell them. There are emergency
9 numbers on this letter. If someone needs to contact you
10 in case of an emergency, they can do that, day or night.
11 Okay. That's an information line. They won't be able
12 to find out how long the trial is going to last or
13 anything like that. It's only for emergencies. All
14 right. I will see you either tomorrow or Thursday. And
15 thank you so far for your service.

16 MS. RUIZ: Okay.

17 THE COURT: Okay. You're free to go.

18 (Ms. Ruiz exited the courtroom.)

19 THE COURT: Anything with regard to this juror from
20 the State or the defense?

21 MS. STROM: No, sir.

22 MR. ABDALLA: No, sir.

23 THE COURT: All right. Anything before we break?

24 MR. EPPES: Your Honor?

25 MS. STROM: No, sir.

1 MR. EPPES: Your Honor, a couple things.

2 THE COURT: All right.

3 MR. EPPES: First of all, my client is having to
4 eat a sandwich back there, and security said they
5 wouldn't mind if his mom brought him a couple sandwiches
6 in the morning, gave them to them and he ate them for
7 lunch.

8 THE COURT: That's fine, as long as security -- I
9 don't have anything to do with security. As long as it
10 doesn't violate their rules, that's fine with me.

11 MR. EPPES: Second, Your Honor, could you give us
12 an idea of what you're thinking about scheduling or ---

13 THE COURT: Well, I need to talk to you about that.
14 Here's where we are. I count 29 qualified jurors.
15 Thirty-five would give us, assuming we don't lose
16 anybody, would give us enough for a jury and two
17 alternates. If we decide to go with two alternates, I
18 would want to go ahead and try to get 36 or 37 just in
19 case we lose somebody when they come back tomorrow.
20 That happens. If we decide we want three alternates,
21 then we need 39, so I would want to try to get 41 or so.
22 If we decide to get -- just go with two alternates, then
23 we can get our 35, 36, 37 whatever, by lunchtime
24 tomorrow, which means we could go ahead and strike
25 tomorrow afternoon without the jury but have them come

1 up here and strike in their presence and go ahead and do
2 opening statements and then let them go to a motel and
3 maybe take a witness and go to a hotel, which would --
4 you know, I don't know if that's pushing it too much,
5 but that's possible. What is the State's position on
6 two alternates as opposed to three?

7 MR. ARIAIL: We'd be comfortable with two in this
8 one. We've had three, four, as many as four.

9 THE COURT: How many have you ever lost?

10 MR. ARIAIL: We've lost -- the most I think we ever
11 lost is two, so that's why -- and this one won't
12 have ---

13 THE COURT: Would the defense be willing to go with
14 less than 12?

15 MR. EPPES: No, sir, Your Honor.

16 THE COURT: All right. That was not a serious
17 question. All right. What's y'all's position?

18 MR. EPPES: Your Honor, our position would be that
19 we prefer three alternates. Your Honor, apparently we
20 have a disagreement among ourselves. Can you give us a
21 second?

22 THE COURT: That's fine. And even if we only get
23 two, we still have the option of taking a longer time
24 and not starting until Thursday morning. I'm just
25 trying to figure out what the ---

1 MR. EPPES: Your Honor, I think either way our
2 concern is, Your Honor, as I've raised before and I'd
3 like to discuss it with you just a second more, you --
4 you know, we've been pushing very hard. Obviously the
5 State changed our strategy a little bit by taking three
6 charges out of this thing at the inception of the trial,
7 and regardless of that, I think we've made great
8 progress in getting this thing done. I think what I
9 would prefer to do is have some time to maybe get some
10 witnesses in and talk to them tomorrow afternoon, plan
11 to start Thursday morning, regardless of the Court's
12 decision, and in that case two alternates is okay. I'm
13 six to one, half dozen the other, I'm more cautious than
14 Mr. Abdalla.

15 THE COURT: Well, if we go with the three
16 alternates, we're going to be -- probably would have to
17 be into tomorrow afternoon picking them -- picking
18 jurors. And there's another option, I've done it one
19 time, I have no idea what y'all's position is, is -- is
20 to bring in the 29 -- not bring them in, is strike now
21 or in the morning you're main jury under the struck
22 system, and then strike you're alternates blind. I've
23 done that one time, and that would speed things up,
24 but -- okay. I see two no's, so that's fine. All
25 right. So what we're going to do is we're going to

1 start in the morning. We'll see what progress we make.
2 If we -- I will weigh heavily your request to not start
3 until Thursday morning. We will go ahead and strike
4 tomorrow, and then I will decide if I want to bring
5 them in and go ahead and start it or not. Anything
6 else?

7 MR. EPPES: Your Honor? Your Honor, finally, we
8 still have pending the motion for a speedy trial and a
9 motion on requesting that they dismiss with prejudice
10 these three charges that they want to try at a later
11 date. I've done a little bit of research on it. The
12 decision to bring the case is within the Solicitor's
13 discretion, but the decision with what to do with them,
14 how to try them is within the Court's discretion. Your
15 Honor, you know, if they want to sandbag these charges
16 of completely related events for some later date because
17 of a strategic reason, I think it's unfair and
18 prejudicial to my client. I think the charges ought to
19 be dismissed with prejudice. I would like the Court, if
20 possible, and I understand if you want to brief it, I'll
21 go brief it until the cows come home, but the Court
22 could indicate to us in the morning at least how it's
23 leaning to it so we could start to work towards
24 preparing for this trial.

25 THE COURT: Well, they have not called the cases,

1 and I have not qualified the jury as to those cases, so
2 I can tell you if you think a speedy trial motion means
3 we're going to try those cases in this case, that's not
4 going ---

5 MR. EPPES: No, I don't think that. Your Honor, if
6 I had known that that was an option, we had this trial
7 date for six charges.

8 THE COURT: Okay.

9 MR. EPPES: They have not brought the charges.
10 They have led us to believe for a year that these
11 charges would be tried this trial date. They have a
12 policy in their office to dispose of cases within 10
13 month. We have been sitting here dealing with this
14 trial date for a year. We've prepared to ---

15 THE COURT: What are you telling me? What are you
16 telling me?

17 MR. EPPES: I'm making a speedy trial motion.

18 THE COURT: You want a ruling on my speedy trial
19 motion?

20 MR. EPPES: No, I want the cases dismissed with
21 prejudice.

22 THE COURT: Why would you need to know that before
23 this case is over? If there's no way I can call those
24 cases or force them to call those cases during this
25 trial, why can't I just rule on that after this case is

1 over?

2 MR. EPPES: Because, Your Honor, you're going to
3 have a witness on the stand, well, yeah, there's still
4 a kidnapping charge pending, for example. Your Honor,
5 I think we qualified a juror who said he'd like to know
6 what happened to the kidnapping charges. It's going
7 to -- it's going to be an issue, and we need to know
8 what's going on with them. It affects our client's
9 position.

10 THE COURT: You got to articulate something better
11 than that. I'm sure I'm missing something. It's nine
12 o'clock at night. We've been doing this all day.

13 MR. EPPES: Okay.

14 THE COURT: Why would you need to know this before
15 the case is over?

16 MR. EPPES: Your Honor, if somebody gets on the
17 witness stand, and they start saying in the penalty
18 phase, if they start saying in the penalty phase, so
19 what happened is at gun point he took Ms. Larke from the
20 home, but they don't want to say victim for some reason,
21 I don't know quite what it is, but they don't want to
22 say victim for some reason, took them from the home,
23 you're going to have a jury back there wondering,
24 kidnapping, why isn't there any kidnapping? We've had a
25 qualified juror say, I don't understand why I'm not

1 trying a kidnapping charge. They clearly intend to
2 start their case with this shooting at the road, which
3 is an assault and battery with intent to kill, that
4 don't want to charge him, then they're going to
5 backtrack from the kidnapping to the murders. That's
6 their plan. If they're going to do that, why don't we
7 try them all at the same time?

8 THE COURT: Well, because he didn't call them.

9 MR. EPPES: Obviously ---

10 THE COURT: Wait a minute. I still don't
11 understand why you need a ruling. But if you thought
12 your speedy trial motion, I could rule on it and force
13 them to call them, I would understand why we would be
14 talking about this now. But you agree there is under no
15 circumstances can we put those cases back into this
16 trial right now?

17 MR. EPPES: I would agree with that, yes, sir.

18 THE COURT: Okay. Then I do not understand why you
19 would need a ruling -- if I grant you a speedy trial,
20 and say, all right, Solicitor, you got to try them
21 within the next two statutory terms, what's that going
22 to do for you? I mean, I can grant you a speedy trial
23 motion right now and tell you he's going to have to try
24 it within the next, you know, two statutory terms
25 but ---

1 MR. EPPES: Your Honor, I have some concerns about
2 it. Will you let me think about it tonight and maybe
3 I'll -- it's late for me too.

4 THE COURT: All right. I can't tell if I'm
5 supposed to be reading between the lines or what, but
6 I don't understand why you would need a ruling on
7 this ---

8 MR. EPPES: Let me see -- let me think about it
9 over night and see if I can articulate it better in the
10 morning, Your Honor.

11 THE COURT: All right. Okay.

12 MR. ARIAIL: Thank you, Your Honor.

13 MR. EPPES: Thank you, Your Honor.

14 THE COURT: Nine o'clock in the morning. All
15 right.

16 (Court recessed for the evening.)
17
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1 (The following proceedings were held on July 17,
2 2002, as follows:)

3 THE COURT: Are we waiting on Mr. Ariail?

4 MS. STROM: Yes, sir, but we don't have to.

5 THE COURT: All right. Here's my plan, and it's --
6 I hope it will give y'all enough time to do what you
7 want to do. I want to go through the morning to get at
8 least 35, hopefully 36 or 37, but stop at the end of the
9 morning if we've got at least that number. I want to
10 come back at 3:00 or 3:30, strike without the jury
11 there, handle any Batson issues. I'll bring the jury in
12 at four o'clock and go ahead and pick live, not do
13 opening statements, not do anything else, let me do a
14 little preliminary comments, but SLED needs some time to
15 shuttle cars home, get them settled in the motel, all of
16 that stuff. So that will give y'all, you know, a couple
17 three hours midday to do what you need to do, to decide
18 on strikes, and it will get you out of here, you know,
19 by five o'clock to work on things tonight. So I'm going
20 to tell the jurors as we qualify them this morning that
21 they need to be back at four o'clock.

22 Now, the only problem is going to be if we have to
23 come back at 1:00 to get some more jurors, because we
24 have -- you know, we don't have enough.

25 All right. We're on Helene Adams?

1 MS. STROM: Yes, sir.

2 THE COURT: Is there anything about Ms. Adams? All
3 right. Bring -- anything before I bring in the juror?

4 MR. ABDALLA: No, Your Honor.

5 MS. STROM: No, sir, Your Honor.

6 THE COURT: All right. Bring in Ms. Adams.

7 (Ms. Adams entered the courtroom.)

8 THE COURT: Come on in. Hey, good morning.

9 MS. ADAMS: Good morning. How are you?

10 THE COURT: I'm good. All right. Go ahead and
11 make yourself comfortable and slide your chair up so you
12 can speak into the microphone. I need to ask a number
13 of questions and then the attorneys are going to want to
14 ask you questions. Let me start off, you understand
15 that you're still under oath from the oath administered
16 on Monday?

17 MS. ADAMS: I do.

18 THE COURT: Have you complied with my instructions
19 not to talk about this case with anyone?

20 MS. ADAMS: I have.

21 THE COURT: All right. You indicated that you had
22 heard some of the facts of this case. Was that through
23 the news media accounts?

24 MS. ADAMS: Newspaper.

25 THE COURT: Was it back when it happened or ---

1 MS. ADAMS: Yes, it was.

2 THE COURT: All right. Can you recall any of the
3 details of what you might have read or seen?

4 MS. ADAMS: No more than you indicated Monday.

5 THE COURT: Okay. There was a manhunt type thing
6 and schools were closed?

7 MS. ADAMS: Right.

8 THE COURT: Okay.

9 MS. ADAMS: And that he was found in Tennessee.

10 THE COURT: Okay. That's fine for people to have
11 read things about it. The question is, can you set that
12 aside and judge this case solely on the fact that are
13 presented in the courtroom either through testimony of
14 witnesses or through exhibits or things that are
15 introduced?

16 MS. ADAMS: I think so.

17 THE COURT: All right. Let me back up. Have you
18 formed any opinions about the case from what you read?
19 Specifically, have you formed any opinion as to the
20 guilt or innocence of this defendant?

21 MS. ADAMS: No.

22 THE COURT: Okay. Now, again we are going to be
23 asking you a number of questions. At times you're going
24 to feel we're probably invading your privacy. If that
25 upsets you, hold it against me, don't hold it against

1 the State of South Carolina, don't hold it against Mr.
2 Sigmon, but we need to ask these questions and we need
3 your full and honest and open answers to these
4 questions. I will tell you there are no wrong answers,
5 no right answers. Everybody in this courtroom will
6 respect whatever answers you give and whatever opinions
7 you may hold. Most of what I will be talking about with
8 you deals with penalty. I need to tell you up front
9 that that should not indicate anything about Mr. Sigmon.
10 Do you understand that?

11 MS. ADAMS: Yes.

12 THE COURT: It's -- as he sits there he is presumed
13 to be innocent. Do you understand that?

14 MS. ADAMS: (Witness nodded her head.)

15 THE COURT: It's sort of a backwards process,
16 because we have to talk about penalty in order to get a
17 fair jury before we even start the case. Let me, before
18 I talk with you about penalty, ask you in general
19 questions about sitting on a criminal jury. If you were
20 selected to sit on this jury, would you listen to the
21 law and accept the law and apply the law that I give to
22 you as the proper law?

23 MS. ADAMS: Yes.

24 THE COURT: Would you do that even if you perhaps
25 did not agree with that law?

1 MS. ADAMS: Yes.

2 THE COURT: Okay. In a criminal case, the State
3 has the burden of proving a defendant guilty beyond any
4 reasonable doubt. Do you understand that concept?

5 MS. ADAMS: Yes, I do.

6 THE COURT: If you were on the jury and you felt
7 like the State had not proved someone guilty beyond a
8 reasonable doubt, would you vote not guilty?

9 MS. ADAMS: Yes, sir.

10 THE COURT: All right. And if they had proved
11 somebody guilty in your mind beyond a reasonable doubt,
12 would you vote guilty?

13 MS. ADAMS: Yes.

14 THE COURT: Now, you read my two-page letter that I
15 gave, sort of generally outlining a death penalty trial?

16 MS. ADAMS: I did.

17 THE COURT: Okay. You understand that it is not
18 every murder case that is subject to the death penalty,
19 it has to be a murder plus something else, an aggravated
20 murder is what we call it?

21 MS. ADAMS: I do.

22 THE COURT: All right. The example I gave was
23 murder during an armed robbery, murder during a sexual
24 assault or something like that. You understand that
25 even when we talk about aggravated murder, that the

1 penalty is not automatic, that just allows the Solicitor
2 to seek the death penalty?

3 MS. ADAMS: Um-hm.

4 THE COURT: And the -- the jury is the one in a
5 case like this that ultimately decides what the penalty
6 is, assuming there is a conviction of the murder and an
7 aggravating circumstance. It's up to the jury to decide
8 the penalty. Do you understand that?

9 MS. ADAMS: Yes.

10 THE COURT: And the two possible penalties are life
11 without any possibility of parole or death, which in
12 South Carolina is by electrocution or lethal injection.
13 Do you understand that?

14 MS. ADAMS: Yes.

15 THE COURT: Let me emphasize to you there is no
16 parole. It used to be a many cases of murder there was
17 like a 30 year parole eligibility, something like that,
18 but under our laws now there is absolutely no parole.
19 Do you understand that?

20 MS. ADAMS: I do.

21 THE COURT: Okay. Now, do you understand the
22 bifurcated trial process? The first trial -- the first
23 phase is just like any other trial, the issue is whether
24 someone is not guilty or guilty. And then if they're
25 found guilty then the jury moves -- comes back and there

1 is a second trial. There is more evidence and testimony
2 that's presented but that evidence and testimony deals
3 with what penalty the defendant should receive. Do you
4 understand that?

5 MS. ADAMS: Yes.

6 THE COURT: And there are two types of evidence
7 that are presented at that stage. The State presents
8 evidence in aggravation and the defense presents
9 evidence in mitigation. Excuse me. The State's
10 evidence in aggravation may be any number of things. It
11 might be evidence about the character of the defendant,
12 maybe he's just a real bad character. It may be that he
13 has a long history of prior crimes of violence. The
14 evidence may be about the crime itself. It may be
15 additional evidence to what you heard in the trial phase
16 showing how aggravated this case is. They will probably
17 put up what's called victim impact evidence, evidence
18 from family members of the victims that will talk about
19 what the loss of their loved ones has meant to them, to
20 the community. All this is aggravating evidence and
21 it's an attempt by the State to convince the jury that
22 death is the proper punishment.

23 And then the defense puts up mitigating evidence.
24 And mitigating evidence is generally evidence about the
25 defendant himself. For instance, he may be of a very

1 young age and should be treated differently than someone
2 that's older. He may have been under the influence of
3 someone else. He might have suffered from some mental
4 problems, things like that. And it's not an excuse for
5 what he did, but they are putting it in to mitigate what
6 his punishment should be, in order to convince the jury
7 that life without parole is the proper punishment. Do
8 you understand that concept?

9 MS. ADAMS: I do.

10 THE COURT: A jury, before they can invoke the
11 death penalty, must find beyond a reasonable doubt
12 aggravating circumstances, plus the murder, but even if
13 that happens, the jury is never required to impose the
14 death penalty. In fact, they could find several
15 aggravating factors beyond a reasonable doubt and they
16 can find no mitigating factors and still give a life
17 sentence. Do you understand that?

18 MS. ADAMS: Yes.

19 THE COURT: Okay. Understanding that whole
20 process, I'm sure you understand that we need to
21 generally get an idea about how you feel about capital
22 punishment. Would you say that generally you're for it,
23 generally against it, just how do you feel?

24 MS. ADAMS: Against it.

25 THE COURT: Okay. And is that a very strong

1 feeling?

2 MS. ADAMS: (Witness nodded her head.)

3 THE COURT: All right. You got -- I forgot to tell
4 you, you need to say yes or no.

5 MS. ADAMS: Yes.

6 THE COURT: Okay. Can you tell me if that's from a
7 religious background, just the way you were raised, just
8 how did you come about -- have these feelings been with
9 you for a long time?

10 MS. ADAMS: They have. And it is probably exactly
11 what you said, a religious background, the way I was
12 raised, plus the fact that I've had -- since I was sent
13 the brochure -- not brochure, the questionnaire, I have
14 thought about this a great deal.

15 THE COURT: Okay.

16 MS. ADAMS: Almost every day.

17 THE COURT: When you were sent the questionnaire,
18 did you know it was a capital case, because there was
19 nothing in that that indicated it was a capital case?

20 MS. ADAMS: I thought there was.

21 THE COURT: Okay.

22 MS. ADAMS: I thought that it was.

23 THE COURT: It might have been.

24 MS. ADAMS: It certainly indicated that it was a
25 possibility.

1 THE COURT: Okay. That's fine. Does that mean
2 that given the choice between life and death, that you
3 would vote for life every time?

4 MS. ADAMS: Yes.

5 THE COURT: Are there any circumstances, if the
6 case was very, very aggravated could you vote for the
7 death penalty if you thought it was appropriate?

8 MS. ADAMS: I don't believe so.

9 THE COURT: All right. You indicated that you knew
10 an attorney, and I forget to ask you about that. Who is
11 it that you know?

12 MS. ADAMS: Solicitor Ariail.

13 THE COURT: Okay. And how do you know Bob Ariail?

14 MS. ADAMS: His son and my son-in-law were
15 roommates in college, and we -- we have a nice
16 relationship with the family. Well, my son-in-law was
17 in his son's wedding and vice versa.

18 THE COURT: Okay. And I don't know what's going to
19 happen as far as whether you're going to sit on this
20 jury or not, but would that affect your ability to be
21 fair and impartial, your relationship with Bob Ariail?

22 MS. ADAMS: No, it would not.

23 THE COURT: Okay. And as I recall, one of your
24 boys actually clerked for me in the Solicitor's office,
25 did he not? A long time ago?

1 MS. ADAMS: Yes, a long time ago.

2 THE COURT: And that was when I was the Solicitor?

3 MS. ADAMS: That's correct.

4 THE COURT: And I just need to let everybody know
5 that, and ask if that would affect your ability to be
6 fair in this case?

7 MS. ADAMS: No.

8 THE COURT: In other words, you would not --
9 because of your relationship with me or with Mr. Ariail,
10 you would not favor the State's side over the defense
11 side?

12 MS. ADAMS: Not at all.

13 THE COURT: Okay. All right. This is Ms. Strom.
14 She is helping Mr. Ariail prosecute this case, helping
15 him pick the jury. She's going to talk to you first and
16 then Mr. Eppes is going to talk to you.

17 QUESTIONING BY MS. STROM:

18 Q Good morning, Ms. Adams.

19 A Good morning.

20 Q First of all, please understand, nobody is -- as
21 the judge said, nobody is going to challenge your views.
22 Nobody is going to try to make you change your mind, or
23 anything like that. We are just trying to get an idea
24 of how you feel?

25 A Absolutely.

1 Q Okay. And you understand that what we're looking
2 for are jurors who can be fair to both sides?

3 A Yes.

4 Q Okay. And knowing that, the jurors need to be able
5 to -- we're looking for jurors who can give fair
6 consideration to the State's request to impose the death
7 penalty?

8 A Yes.

9 Q Okay. And I believe what you have told the judge
10 is that you would not be able to fairly consider our
11 request to impose the death penalty?

12 A That's correct.

13 Q Okay. Under no circumstance could you give the
14 death penalty?

15 A That's correct.

16 Q Okay. You're absolutely sure about that?

17 A I am.

18 MS. STROM: All right. Thank you.

19 THE COURT: Mr. Eppes.

20 QUESTIONING BY MR. EPPES:

21 Q Hey, Ms. Adams, how are you doing?

22 A Fine, thank you.

23 Q I'm Frank Eppes. I represent Mr. Sigmon over
24 there, and that's John Abdalla, my co-counsel. What
25 were your feelings about the death penalty prior to

1 getting the questionnaire?

2 A Excuse me?

3 Q You said -- you said you got the questionnaire and
4 you've been thinking about it every day. What were your
5 feelings about it prior to getting that questionnaire?

6 A I felt -- well, I felt strongly about it, yes.
7 This just -- this just made me think about it more.

8 Q Um-hm.

9 A Over the past few weeks it made me think about it
10 more.

11 Q So you were already against it prior to receiving
12 this questionnaire?

13 A Yes.

14 Q Why are you against it?

15 A Why am I against it?

16 Q Yes, ma'am.

17 A Well, my religious background has really -- and the
18 way I was brought up has really made me feel that way.

19 Q What in your religious background makes you feel
20 that way? I don't need an extensive theological
21 discussion but just ---

22 A I didn't think you would. I just don't feel that
23 it's appropriate to punish death with death.

24 Q Do you believe more in forgiveness of the sort?

25 A I believe in punishment, yes, sir.

1 Q Oh, yeah, well, life without parole is punishment,
2 isn't it?

3 A Yes, yes, it is.

4 Q Okay. And you understand that if someone is
5 convicted of an aggravated murder the only two
6 punishment options are life without parole and death?
7 Do you understand that?

8 A Yes, I do.

9 Q Okay.

10 A So you just don't think that death -- you think
11 that death is too extreme a punishment, is that correct?

12 A It's just not appropriate.

13 Q It's just not appropriate?

14 A Um-hm.

15 MR. EPPES: Okay. Thank you, ma'am. I appreciate
16 it.

17 MS. ADAMS: You're welcome.

18 THE COURT: All right. Ms. Adams, I'm going to
19 excuse you from serving. Obviously -- again, nobody is
20 challenging your views. There are a whole lot of people
21 just like you. And that's fine. But obviously someone
22 who would more or less automatically vote for death and
23 someone who more or less would automatically vote for
24 life would not be suitable serving. You are free to go.

25 MS. ADAMS: Thank you.

1 THE COURT: Thank you very much.

2 (Ms. Adams exited the courtroom.)

3 THE COURT: All right. Anything on this juror?

4 MS. STROM: No, sir.

5 MR. EPPES: Could you hold on one second, judge,
6 please?

7 THE COURT: Anything on this last juror, yes or no?

8 MR. EPPES: No, sir, on the last juror, no.

9 THE COURT: All right. Is there something on this
10 juror?

11 MR. EPPES: Yes, sir.

12 THE COURT: All right.

13 MR. EPPES: Your Honor?

14 THE COURT: Yep.

15 MR. EPPES: Just one -- one comment about your
16 introductory remarks to the jurors. One of the things
17 that you say -- have said this morning, I can't say you
18 said it yesterday, I frankly didn't notice it yesterday,
19 was how aggravated this case is. We know you're using a
20 hypothetical, we just want to make sure you make it
21 clear to the jurors it's a hypothetical.

22 THE COURT: You're absolutely right. If I did, I
23 apologize, and when -- at what point, when -- when I'm
24 explaining aggravating circumstances?

25 MR. EPPES: Yes, sir, Your Honor.

1 THE COURT: All right. All right. Bring in Janet
2 somebody. Braeckelaere? Braeckelaere?

3 MS. PLUMLEY: That's how she says it, Braeckelaere.

4 THE COURT: Braeckelaere?

5 (Ms. Braeckelaere entered the courtroom.)

6 MS. BRAECKELAERE: Braeckelaere.

7 THE COURT: Braeckelaere, excuse me. I'm sure I
8 probably will mispronounce that, and I will apologize up
9 front.

10 MS. BRAECKELAERE: No problem.

11 THE COURT: All right. You understand that you're
12 still under oath from the oath that was administered on
13 Monday?

14 MS. BRAECKELAERE: (Witness nodded her head.)

15 THE COURT: And have you complied with my
16 instructions not to talk about this case with anyone?

17 MS. BRAECKELAERE: Yes.

18 THE COURT: All right. As you answer these
19 questions, I'm going to ask that you speak up and
20 make -- that's right, go ahead and pull yourself close
21 to the microphone. Madam Court Reporter is taking down
22 everything that is said, but there is a back-up system
23 that has to hear your voice, so you can't nod your head
24 or shake your head, you need to verbally respond.

25 You indicated on Monday morning that you had heard

1 about this case either through the news media or talking
2 to people, and also you knew a potential witness. So
3 the first thing I need to talk with you about are those
4 two things. Tell me -- when you say you heard about the
5 facts of the case was that through the media about the
6 time that it happened?

7 MS. BRAECKELAERE: Yes.

8 THE COURT: All right.

9 MS. BRAECKELAERE: Radio, television, newspaper.

10 THE COURT: And how about as this case was
11 approaching trial date, did you read anything in the
12 newspaper then?

13 MS. BRAECKELAERE: No, huh-uh.

14 THE COURT: All right. Can you recall what briefly
15 some of the facts are that you remember seeing on TV or
16 reading about?

17 MS. BRAECKELAERE: That there was an older couple
18 that were beat to death. They were looking for a
19 particular person that they thought did it, and that
20 they found him later up around Gatlinburg in a camper.

21 THE COURT: Okay.

22 MS. BRAECKELAERE: That's what I recall.

23 THE COURT: Okay. It is perfectly all right for
24 jurors to have read something about a case. The
25 question is, can you set that aside, anything that you

1 heard or read outside of the courtroom and judge this
2 case solely on the facts you hear from the witnesses,
3 and from the evidence that is presented in the
4 courtroom?

5 MS. BRAECKELAERE: Yes.

6 THE COURT: Now, from what you recall reading and
7 seeing, have you formed any opinions about this case?
8 Specifically, have you formed any opinions about the
9 guilt or the innocence of the defendant in the case?

10 MS. BRAECKELAERE: No, not really.

11 THE COURT: All right. You also indicated that you
12 knew a witness in this case?

13 MS. BRAECKELAERE: Yes.

14 THE COURT: And who was that?

15 MS. BRAECKELAERE: Paul Silvaggio.

16 THE COURT: All right. He was a detective with the
17 Sheriff's Office as I recall?

18 MS. BRAECKELAERE: Correct.

19 THE COURT: All right. The -- a jury's duty, and I
20 think I touched on it downstairs on Monday, is to
21 determine the facts of the case. In any case, whether
22 it's a civil case or a criminal case, there is a dispute
23 as to what the true facts are, and so the jury has to
24 decide what weight to give each witness' testimony. And
25 in doing that, they have to pass upon the believability

1 and the credibility of each witness who testifies.
2 There are a lot of common sense things, tools, that's
3 what the whole jury is based on, taking 12 people with
4 varied backgrounds and putting them together to use
5 their collective common sense, but there are common
6 sense tools, like the way the witness testified, did he
7 appear to be telling the truth, maybe he was hesitant in
8 answering the questions. You look at whether the
9 testimony was supported by the other testimony and
10 evidence, or maybe it's weakened by the other testimony
11 and evidence. You look at whether the witness'
12 testimony was consistent or whether it contained
13 discrepancies. Maybe someone gave a prior statement
14 that's inconsistent with what they're testifying to in
15 court. You look at whether they have an interest in the
16 case, any reason to give the testimony they are giving.
17 I could keep going on, but that's a jury's duty. And
18 then you can believe a witness or not believe a witness.
19 You can believe part of what they say or disregard
20 another part of what they say. The question is, knowing
21 a witness in the case, will you submit that witness'
22 testimony to the same standards of believability and
23 credibility as you would the other witnesses, and would
24 you do that with ---

25 MS. BRAECKELAERE: Yeah, um-hm.

1 THE COURT: All right. Would you -- I don't know
2 which side has subpoenaed him, but if he testifies for
3 one side or the other, would that sway you to favor that
4 side because of your relationship with him?

5 MS. BRAECKELAERE: No.

6 THE COURT: Okay. And can you tell me generally
7 how you know him?

8 MS. BRAECKELAERE: He was our next door neighbor
9 for about a year and a half.

10 THE COURT: And how long ago?

11 MS. BRAECKELAERE: He and his wife separated I
12 think around Christmas of 2000, so it's been a year and
13 a half since he lived there.

14 THE COURT: All right. And does his wife still
15 live there?

16 MS. BRAECKELAERE: Yes.

17 THE COURT: All right. Let me move on. I'm going
18 to be asking you a number of questions as well as the
19 attorneys for each side, and I tell you there are no
20 wrong answers, there are no right answers. We'll
21 certain respect any opinions or positions that you have,
22 but we do need your open and honest answers to the
23 question we ask. Most of what I will be talking about
24 deals with penalty. I need tell you up front that the
25 mere fact that we talk about penalty does not indicate

1 anything about this defendant. Do you understand that?

2 MS. BRAECKELAERE: Um-hm.

3 THE COURT: In other words, as he sits there he is
4 presumed to be innocent. The problem with this system
5 is we've got to talk about penalty before we can start
6 the trial to make sure that we empanel a fair jury. Do
7 you understand that?

8 MS. BRAECKELAERE: Um-hm.

9 THE COURT: Before I talk about penalty and death
10 penalty cases in general, let me ask you generally about
11 sitting on a criminal jury. If you were selected to
12 serve on a criminal jury, would you listen to the law
13 that the judge charged and accept that law and apply
14 that law?

15 MS. BRAECKELAERE: Yes.

16 THE COURT: And would you do that even if you
17 perhaps did not agree with that law?

18 MS. BRAECKELAERE: Yes, I would.

19 THE COURT: All right. In a criminal case, the
20 State has the burden of proving someone guilty beyond a
21 reasonable doubt. Have you heard that term before?

22 MS. BRAECKELAERE: Um-hm.

23 THE COURT: And if the State did not prove someone
24 in your mind guilty beyond a reasonable doubt, would you
25 vote not guilty?

1 MS. BRAECKELAERE: I would vote not guilty.

2 THE COURT: All right. And if the State had proved
3 someone guilty beyond a reasonable doubt, would you vote
4 guilty?

5 MS. BRAECKELAERE: Yes, I would.

6 THE COURT: Now, I gave you a letter Monday
7 morning, a two-page letter outlining generally a capital
8 case. Have you had an opportunity to read that?

9 MS. BRAECKELAERE: Yes, I did.

10 THE COURT: Did you understand that it is not every
11 murder case that is subject to the death penalty, it has
12 to be an aggravated murder?

13 MS. BRAECKELAERE: Yes.

14 THE COURT: And the State law set out some 10 or so
15 circumstances where the State can seek the death
16 penalty. The examples I gave were murder during an
17 armed robbery, murder during a sexual assault, but you
18 also understand that even then the penalty is not
19 automatic, that simply means the State can seek the
20 death penalty and in this type of case it is the jury
21 that decides what the penalty will be if there is a
22 conviction. Do you understand that?

23 MS. BRAECKELAERE: Yes.

24 THE COURT: And it's a bifurcated trial. The first
25 part of the trial, the trial phase is like any other

1 case. The issue is guilty or not guilty. And of course
2 if the verdict is not guilty, everybody goes home. If
3 the verdict is guilty then that person stands convicted
4 of a murder usually plus something else, and then after
5 a short waiting period, the jury comes back, the same
6 jury, and they hear more testimony and more evidence.
7 This is called the penalty phase, and the evidence deals
8 with what punishment the person should suffer. There
9 are only two possible punishments, life without any
10 possibility of parole or death, which in South Carolina
11 is by electrocution or lethal injection.

12 At that second stage, that penalty phase, there are
13 two types of testimony and evidence that are presented.
14 The State put up testimony called aggravating
15 circumstances, or aggravating evidence, and that can be
16 any number of things. It might be evidence about the
17 character of the defendant, that's he's just a mean
18 person or something. It might be evidence of -- that he
19 has a long history of criminal violence, you know,
20 convictions for criminal crimes, things like that. It
21 might be more evidence about the case itself, that the
22 particular case was an aggravated case. It might be
23 victim impact evidence. In other words, family members
24 of the victims might testify as to their loss and the
25 community's loss by the death of their loved ones. All

1 that evidence is presented by the State in an effort to
2 convince the jury that the proper sentence is death.

3 The defense would put up evidence in mitigation.
4 Mitigating evidence is not evidence that forgives what
5 the person did or excuses what the person did, but it
6 may mitigate the punishment that he should receive. And
7 that usually is evidence about the defendant himself.
8 He might be suffering from a mental problem at the time
9 the crime was committed, or he might have been under the
10 influence of someone else, or he might have a very clean
11 record, never been in trouble before. Really, the sky
12 is the limit. There are any number of things that might
13 be introduced. You understand this concept?

14 MS. BRAECKELAERE: Yes.

15 THE COURT: All right. And what the jury is asked
16 to do is to carefully weigh the evidence in aggravation
17 and the evidence in mitigation and decide what the
18 punishment should be. Now, I tell you that a jury,
19 before they can invoke the death penalty, must find
20 beyond a reasonable doubt an aggravated circumstance
21 plus the murder, but even then a jury is not ever
22 required to invoke the death penalty. Do you understand
23 that?

24 MS. BRAECKELAERE: Yes.

25 THE COURT: In other words, the jury could find the

1 aggravating circumstance, they could actually find
2 several aggravating circumstances, and they may find
3 absolutely no mitigating circumstances, but they can
4 still give a life sentence. Do you understand that?

5 MS. BRAECKELAERE: Yes.

6 THE COURT: All right. Understanding this whole
7 process, the bifurcated trial, the penalty phase, I'm
8 sure you appreciate that we need to get to know what
9 your generally feelings are about capital punishment.
10 So I have done most of the talking, so I'm going to let
11 you talk a little bit. Would you say you're generally
12 for the death penalty, generally you're against the
13 death penalty?

14 MS. BRAECKELAERE: I'm for it.

15 THE COURT: All right. Does that mean you're for
16 it in every aggravated murder case?

17 MS. BRAECKELAERE: I'm for it where it suits the
18 crime.

19 THE COURT: Okay. Does that mean you would
20 automatically vote for the death penalty if you're given
21 a choice between life and death?

22 MS. BRAECKELAERE: No, I would try to weigh the
23 facts.

24 THE COURT: Okay. Would you listen to and give
25 meaningful consideration to the mitigating evidence that

1 is presented by the defense and charged by the judge in
2 making your decision -- before you made your decision as
3 to what the proper punishment would be?

4 MS. BRAECKELAERE: Yes.

5 THE COURT: All right. If you heard all the facts
6 and circumstances of the case and if you thought the
7 proper punishment was life imprisonment, could you vote
8 for life imprisonment?

9 MS. BRAECKELAERE: Yes.

10 THE COURT: And if you heard all the evidence and
11 circumstances in the case and you thought the
12 appropriate punishment was death, could you vote for the
13 death penalty?

14 MS. BRAECKELAERE: Yes.

15 THE COURT: If you thought the proper sentence was
16 death, each juror -- if the whole jury thought that, if
17 that was the verdict of the jury, then each individual
18 juror would have to sign their name to the verdict form,
19 it's actually sometimes referred to as the death
20 warrant, because that's the document, that's the legal
21 document that will ultimately authorize the execution.
22 If you thought that was the proper punishment, could you
23 sign that piece of paper?

24 MS. BRAECKELAERE: Yes.

25 THE COURT: Okay. All right. Let me introduce