

VOLUME THREE OF NINE

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Lexington County

James R. Barber, III, Circuit Court Judge

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S.C. Supreme Court

KEVIN MERCER,

PETITIONER/RESPONDENT

V.

STATE OF SOUTH CAROLINA,

RESPONDENT/PETITIONER

APPENDIX

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1 Q. DID THEY ASK YOU ABOUT THE SPECIFICS OF THE CASE?

2 MR. LITTLEJOHN: I'M SORRY. WE CAN'T HEAR,

3 BY THE COURT:

4 Q. SPEAK UP A LITTLE BIT IF YOU DON'T MIND.

5 A. NO, THEY DIDN'T ASK SPECIFICS.

6 Q. ALL RIGHT. IN THE COURSE OF ASKING YOU ANY OF THE
7 QUESTIONS THAT THEY ASKED, DID THEY SAY ANYTHING ABOUT THE
8 CASE THAT THEY MIGHT HAVE READ OR HEARD?

9 A. NO, SIR.

10 Q. ALL RIGHT. NOW, I'M GOING TO ASK YOU SOME
11 QUESTIONS, AND THEN AFTER I DO THAT, THE LAWYERS MAY ASK YOU
12 SOME FOLLOW-UP QUESTIONS.

13 A. YES, SIR.

14 Q. WE'RE NOT TRYING TO PRY TOO DEEPLY INTO YOUR
15 PERSONAL LIFE, BUT WE DO NEED TO ASK YOU THESE QUESTIONS AND
16 IF YOU WOULD JUST LISTEN CAREFULLY TO THE QUESTIONS AND THEN
17 BE OPEN AND HONEST WITH US. TELL US WHAT YOU THINK AND HOW
18 YOU FEEL ABOUT THESE ISSUES THAT WE'RE GOING TO BE
19 DISCUSSING.

20 A. YES, SIR.

21 Q. AND THEN THAT'S ALL WE'RE ASKING.

22 A. ALL RIGHT.

23 Q. IF YOU ARE A JUROR IN THIS CASE, COULD YOU ACCEPT
24 AND APPLY THE LAW PRECISELY AS I WOULD EXPLAIN IT TO YOU AND
25 SET ASIDE ANYTHING THAT YOU MIGHT HAVE HEARD OR LEARNED ABOUT

1 THE CASE BEFORE THE TRIAL BEGAN AND RENDER A VERDICT THAT IS
2 BASED SOLELY ON THE TESTIMONY AND EVIDENCE THAT YOU SEE AND
3 HEAR IN THIS COURTROOM? COULD YOU DO THAT?

4 A. I DON'T FEEL THAT I COULD, NO, DO THAT DUE TO THE
5 FACT THAT, YOU KNOW, MY FATHER WAS IN THE MILITARY AND THE
6 VICTIM IN THIS CASE WAS IN THE MILITARY. IT'S JUST KIND OF
7 PUT A, SO TO SPEAK, A BAD TASTE IN MY MOUTH ABOUT IT.

8 Q. ALL RIGHT. WELL, NOW, MR. TEEM, I UNDERSTAND -- I
9 CERTAINLY UNDERSTAND THAT, AND I'M NOT GOING TO TRY IN ANY
10 WAY TO TALK YOU OUT OF THAT, BUT YOU CAN UNDERSTAND, OF
11 COURSE, THAT THE -- THE FACT THAT THE DEFENDANT (SIC) IS IN
12 THE -- WAS IN THE MILITARY IS -- IS NOT DIRECTLY RELATED TO
13 WHETHER OR NOT THE DEFENDANT IS GUILTY OF THE CRIME; CORRECT?

14 A. CORRECT.

15 Q. ALL RIGHT. NOW, BUT WE -- LET ME JUST -- LET ME
16 JUST KEEP GOING. IF YOU -- IF YOU -- YOU UNDERSTAND THAT THE
17 STATE HAS THE BURDEN OF PROVING THE DEFENDANT GUILTY BEYOND A
18 REASONABLE DOUBT.

19 A. YES, SIR.

20 Q. ALL RIGHT. NOW, EVEN CONSIDERING THE FACT THAT YOUR
21 FATHER WAS IN THE MILITARY AND THAT THE VICTIM IN THIS CASE
22 WAS IN THE MILITARY, COULD YOU, DEPENDING ON THE FACTS AND
23 CIRCUMSTANCES THAT YOU FIND TO HAVE BEEN PROVEN AND IN LIGHT
24 OF THE LAW AS I WOULD EXPLAIN IT TO YOU, COULD YOU FIND THE
25 DEFENDANT EITHER GUILTY OR NOT GUILTY DEPENDING ON WHETHER OR

1 NOT YOU FELT THE STATE HAD MET ITS BURDEN OF PROOF?

2 A. YES, SIR.

3 Q. NOW, IF YOU GOT IN -- IF THE JURY FOUND THE
4 DEFENDANT GUILTY OF MURDER, WE WOULD MOVE INTO THE SECOND
5 PHASE OF THE TRIAL, AND WE CALL THAT THE PENALTY PHASE. I'M
6 GOING TO TALK TO YOU NOW ABOUT SOME OF THE ISSUES THAT WOULD
7 COME UP DURING THAT PHASE. ONE IS AGGRAVATING CIRCUMSTANCES.
8 AGGRAVATING CIRCUMSTANCES ARE FACTS OR INCIDENTS OR DETAILS
9 THAT SOUTH CAROLINA HAS DECLARED TO AGGRAVATE THE CRIME OF
10 MURDER OR TO MAKE IT WORSE. AGGRAVATING CIRCUMSTANCES
11 INCREASE THE ENORMITY OF THE CRIME AND ADD TO THE INJURY
12 RESULTING FROM THE CRIME, BUT THERE ARE ALSO MITIGATING
13 CIRCUMSTANCES.

14 MITIGATING CIRCUMSTANCES ARE FACTS OR INCIDENTS OR
15 DETAILS THAT SOUTH CAROLINA HAS DECLARED TO LESSEN THE
16 SEVERITY OF THE CRIME. THEY SERVE TO EXTENUATE OR TO REDUCE
17 THE DEGREE OF MORAL CULPABILITY OR RESPONSIBILITY FOR THE
18 CRIME OF MURDER. DO YOU UNDERSTAND THE CONCEPT OF
19 AGGRAVATING AND MITIGATING CIRCUMSTANCES?

20 A. YES, SIR.

21 Q. NOW, DID YOU GET THIS SHEET WHEN YOU CAME IN THIS
22 MORNING - OR MAYBE IT WAS THIS AFTERNOON WHEN YOU GOT HERE -
23 THAT LISTED THE THREE TYPES OF JURORS?

24 A. YES, SIR.

25 Q. DO YOU UNDERSTAND THOSE THREE TYPES OF JURORS?

1 A. ABSOLUTELY.

2 Q. WHICH OF THOSE THREE TYPES OF JURORS DO YOU BELIEVE
3 YOU WOULD BE?

4 A. THE FIRST ONE.

5 Q. NUMBER ONE?

6 A. YES, SIR.

7 Q. DOES THAT MEAN THAT IN ALL CASES YOU WOULD
8 AUTOMATICALLY IMPOSE THE DEATH PENALTY IF SOMEONE WERE
9 CONVICTED OF MURDER?

10 A. YES, SIR.

11 THE COURT: ALL RIGHT. IS THERE ANY FOLLOW-UP
12 QUESTIONS THAT EITHER SIDE WOULD LIKE TO ASK?

13 MR. MYERS: NO, SIR.

14 MR. LITTLEJOHN: NO, YOUR HONOR.

15 THE COURT: MR. TEEM, WE WILL NOT BE NEEDING YOUR
16 SERVICES AS A JUROR IN THIS CASE, AND YOU'RE FREE TO GO.

17 THE WITNESS: THANK YOU, SIR.

18 (JUROR TEEM LEAVES THE COURTROOM.)

19 BAILIFF: YOUR HONOR, THE OTHER JURY PANEL IS STILL
20 OVER HERE. I CAN BRING THEM AROUND.

21 THE COURT: GO AHEAD AND BRING THEM AROUND. WE'RE
22 PROBABLY GOING TO -- HOW LONG HAVE THEY BEEN OVER THERE?

23 BAILIFF: SOME ABOUT 30 MINUTES, SOME LESS.

24 THE COURT: Y'ALL WANT TO DO ONE OUT OF THAT PANEL
25 UNTIL LUNCH GETS HERE? DO Y'ALL JUST WANT TO QUIT OR DO YOU

1 WANT TO TAKE A SHOT AT ONE MORE?

2 MR. HUBBARD: WE DON'T EVEN HAVE OUR STUFF YET,
3 JUDGE, FROM THE NEXT PANEL.

4 THE COURT: OKAY. ALL RIGHT.

5 MR. HUBBARD: WE COULD GET IT IF YOUR HONOR WANTS TO
6 PROCEED, BUT OTHERWISE---

7 THE COURT: NO. I TELL YOU WHAT WE'LL DO. WE'LL
8 TAKE A BREAK OF INDETERMINATE LENGTH. OKAY? AT SOME POINT
9 PERHAPS SOMEBODY MIGHT BE READING THIS TRANSCRIPT AND SAYING,
10 "WHAT KIND OF A JERK JUDGE IS THAT TO GIVE PEOPLE A THREE --
11 A FOUR-MINUTE-AND-FIFTEEN-SECOND BREAK?" AND I JUST WANT THE
12 RECORD TO REFLECT THAT THAT IS A LITTLE BIT OF A JOKE.

13 MR. LITTLEJOHN: IT IS?

14 THE COURT: NOW, BREAKS MAY HAVE BEEN -- THE BREAKS
15 MAY HAVE BEEN THAT SHORT, BUT THAT'S ALL I'VE GOT TO SAY ON
16 THE RECORD.

17 MR. LITTLEJOHN: INDETERMINATE NOT TO EXCEED SIX
18 MINUTES.

19 (WHEREUPON, A LUNCH BREAK WAS TAKEN.)

20 THE COURT: OKAY. EVERYTHING GOES IN SPURTS. WE
21 HAD THE LONGEST -- PROBABLY WHAT I BET YOU IS THE LONGEST
22 STREAK OF QUALIFIED JURORS THAT MANY PEOPLE HAVE EVER SEEN,
23 14 IF I COUNTED RIGHT, AND NOW WE'RE ON A STREAK OF FIVE
24 STRAIGHT DISQUALIFIED.

25 MR. HUBBARD: IT'S HARD. IT'S KILLING US.

1 THE COURT: Y'ALL READY?

2 MS. KIMBROUGH: YES, SIR.

3 MR. HUBBARD: YES, SIR.

4 THE COURT: BRING IN THE NEXT JUROR.

5 (JUROR RENEE SHEALY IS BROUGHT INTO THE COURTROOM.)

6 RENEE SHEALY, HAVING BEEN PREVIOUSLY SWORN AS A
7 PART OF THE JURY VOIR DIRE AND REMAINING UNDER OATH,
8 TESTIFIED AS FOLLOWS:

9 THE WITNESS: HELLO.

10 EXAMINATION BY THE COURT

11 Q. HELLO. HOLD ON JUST A SECOND, MS. SHEALY, AND I'LL
12 BE RIGHT WITH YOU.

13 A. OKAY.

14 Q. MS. SHEALY, YOU RECALL THAT ON MONDAY WHEN YOU WERE
15 HERE WE PUT YOU UNDER OATH.

16 A. YES, SIR.

17 Q. YOU'RE STILL UNDER OATH TODAY. DO YOU UNDERSTAND
18 THAT?

19 A. YES, SIR.

20 Q. SINCE YOU LEFT US ON MONDAY, HAS ANYONE TALKED TO
21 YOU ABOUT THIS CASE OR HAVE YOU TALKED TO ANYBODY ABOUT THE
22 CASE?

23 A. NO, SIR, I HAVE NOT. NO, SIR.

24 Q. MS. SHEALY, I'M GOING TO ASK YOU SOME QUESTIONS.
25 YOU MAKE YOURSELF COMFORTABLE.

1 A. OKAY.

2 Q. YOU DON'T HAVE TO -- YOU CAN PULL THE MICROPHONE
3 TOWARDS YOU IF YOU WOULD LIKE.

4 A. OKAY.

5 Q. I'M GOING TO ASK YOU SOME QUESTIONS, AND THEN THE
6 LAWYERS ARE PROBABLY GOING TO ASK YOU SOME FOLLOW-UP
7 QUESTIONS. WE DON'T MEAN TO BE PRYING TOO DEEPLY INTO YOUR
8 PERSONAL LIFE, BUT WE DO HAVE TO ASK YOU THESE QUESTIONS.
9 THERE ARE NO RIGHT OR WRONG ANSWERS. WE JUST WANT YOU TO
10 LISTEN VERY CAREFULLY TO THE QUESTIONS AND BE OPEN AND HONEST
11 WITH US. TELL US HOW YOU FEEL AND HOW YOU THINK ABOUT THESE
12 ISSUES THAT WE'RE GOING TO BE DISCUSSING.

13 A. OKAY.

14 Q. IF YOU WERE A JUROR IN THIS CASE, COULD YOU ACCEPT
15 AND APPLY THE LAW PRECISELY AS I WOULD EXPLAIN IT TO YOU, SET
16 ASIDE ANYTHING THAT YOU MIGHT HAVE HEARD OR LEARNED ABOUT THE
17 CASE BEFORE THE TRIAL STARTED, AND THEN RENDER A VERDICT
18 THAT'S BASED SOLELY ON THE TESTIMONY AND THE EVIDENCE THAT
19 YOU WOULD SEE AND HEAR IN THIS COURTROOM? COULD YOU DO THAT?

20 A. YES, I COULD.

21 Q. DO YOU UNDERSTAND THAT IN A CRIMINAL CASE THE STATE
22 HAS THE BURDEN OF PROVING THE DEFENDANT GUILTY BEYOND A
23 REASONABLE DOUBT?

24 A. YES, SIR.

25 Q. COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES

1 THAT YOU FIND TO HAVE BEEN PROVEN AND IN LIGHT OF THE LAW AS
2 I WOULD EXPLAIN IT TO YOU, COULD YOU FIND THE DEFENDANT
3 EITHER GUILTY OR NOT GUILTY DEPENDING ON WHETHER OR NOT YOU
4 BELIEVE THE STATE HAS MET ITS BURDEN OF PROOF?

5 A. YES, SIR.

6 Q. NOW, IF YOU'RE ON THE JURY IN THIS CASE AND IF THE
7 JURY FINDS THE DEFENDANT GUILTY OF MURDER, THEN WE WOULD MOVE
8 INTO THE SECOND PHASE OR THE PENALTY PHASE OF THE TRIAL, AND
9 THERE ARE GOING TO BE SOME ISSUES THAT WILL COME UP IN THAT
10 PHASE THAT I'M GOING TO TALK TO YOU ABOUT NOW.

11 A. OKAY.

12 Q. ONE IS AGGRAVATING CIRCUMSTANCES. AGGRAVATING
13 CIRCUMSTANCES -- EXCUSE ME. AGGRAVATING CIRCUMSTANCES ARE
14 FACTS OR INCIDENTS OR DETAILS THAT THE STATE OF SOUTH
15 CAROLINA HAS DECLARED TO AGGRAVATE THE CRIME OF MURDER OR TO
16 MAKE IT WORSE. AGGRAVATING CIRCUMSTANCES INCREASE THE
17 ENORMITY OF THE CRIME, AND THEY ADD TO THE INJURY RESULTING
18 FROM THE CRIME. MITIGATING CIRCUMSTANCES, ON THE OTHER HAND,
19 ARE FACTS OR INCIDENTS OR DETAILS THAT THE STATE OF SOUTH
20 CAROLINA HAD DECLARED TO LESSEN THE SEVERITY OF THE CRIME OF
21 MURDER. MITIGATING CIRCUMSTANCES SERVE TO EXTENUATE OR TO
22 REDUCE THE DEGREE OF MORAL CULPABILITY OR RESPONSIBILITY FOR
23 THE CRIME. NOW, DO YOU UNDERSTAND WHAT I SAY WHEN I'M
24 TALKING ABOUT THE CONCEPTS OF AGGRAVATING AND MITIGATING
25 CIRCUMSTANCES?

1 A. WHAT YOU JUST EXPLAINED?

2 Q. YES, MA'AM.

3 A. YES. IT WAS A LOT TO COMPREHEND, BUT I THINK I, YOU
4 KNOW...

5 Q. YOU THINK YOU DO?

6 A. YES. YES, I BELIEVE I DO UNDERSTAND.

7 Q. ALL RIGHT. NOW, WHEN YOU GOT HERE THIS AFTERNOON,
8 YOU WERE GIVEN A COPY OF THIS SHEET THAT SHOWS THREE
9 DIFFERENT TYPES OF JURORS.

10 A. YES; SIR.

11 Q. DO YOU UNDERSTAND THOSE THREE DIFFERENT TYPES OF
12 JURORS?

13 A. YES, SIR.

14 Q. WHICH OF THOSE THREE TYPES OF JURORS DO YOU BELIEVE
15 YOU WOULD BE?

16 A. WITHOUT A DOUBT THE THIRD ONE.

17 Q. THE THIRD ONE?

18 A. YES, SIR.

19 Q. NOW, IF YOU ARE ON THE JURY IN THIS CASE AND IF THE
20 JURY FINDS THE DEFENDANT GUILTY OF MURDER -- AND LET ME TELL
21 YOU THAT MURDER IS DEFINED AS THE INTENTIONAL AND UNLAWFUL
22 KILLING OF ANOTHER PERSON WITH MALICE AFORETHOUGHT. THEN IT
23 WOULD BE UP TO THE JURY TO DECIDE THE PENALTY FOR THAT CRIME,
24 FOR THE CRIME OF MURDER, AND THE JURY WOULD HAVE TWO OPTIONS
25 AS TO WHAT THE PENALTY COULD BE. ONE OPTION IS A LIFE

1 SENTENCE WITHOUT THE POSSIBILITY OF PAROLE, AND THE OTHER
2 OPTION IS THE DEATH PENALTY. COULD YOU, DEPENDING ON THE
3 FACTS AND CIRCUMSTANCES THAT YOU FIND TO EXIST AND
4 CONSIDERING THE LAW AS I WOULD EXPLAIN IT TO YOU, COULD YOU
5 VOTE TO RETURN A VERDICT FOR A LIFE SENTENCE?

6 A. I COULD, YES, DEPENDING.

7 Q. COULD YOU VOTE TO RETURN A VERDICT FOR THE DEATH
8 PENALTY?

9 A. YES, I COULD.

10 Q. IF YOU WERE ON THE JURY IN THIS CASE AND IF I DECIDE
11 TO SEQUESTER THE JURY, YOU WOULD BE PUT UP IN A HOTEL FOR
12 FIVE OR SIX DAYS, AND WE WOULD FEED YOU ALL YOUR MEALS AND
13 YOU WOULD NOT BE ALLOWED TO GO HOME DURING THAT TIME. WOULD
14 THAT IMPOSE AN -- WHAT WAS THAT WORD I WAS USING? WOULD THAT
15 IMPOSE A TERRIBLE BURDEN ON YOU?

16 A. NO.

17 Q. OKAY. DID YOU GET A CHANCE TO GO OVER THAT WITNESS
18 LIST THAT WE GAVE YOU WHEN YOU CAME IN THIS AFTERNOON?

19 A. I DID.

20 Q. DID YOU READ EVERY NAME ON THAT LIST?

21 A. YES, SIR.

22 Q. DO YOU KNOW OR ARE YOU RELATED TO ANYONE WHOSE NAME
23 IS ON THAT LIST?

24 A. NO, SIR.

25 Q. ALL RIGHT, MA'AM. THANK YOU. THE LAWYERS ARE GOING

1 TO ASK YOU---

2 A. OKAY.

3 Q. ---SOME FOLLOW-UP QUESTIONS.

4 A. ALL RIGHT.

5 DIRECT EXAMINATION

6 BY MR. HUBBARD:

7 Q. GOOD AFTERNOON, MS. SHEALY.

8 A. HI.

9 Q. I'M JUST GOING TO ASK A FEW QUESTIONS FOLLOWING UP
10 WHAT THE JUDGE ASKED. ALSO, I NOTICED LOOKING OVER THE JURY
11 QUESTIONNAIRE FORM THAT YOU SENT IN TO THE CLERK'S OFFICE
12 THAT YOU HAD INDICATED YOU HAD SERVED ON A CIVIL JURY ONE
13 TIME ABOUT EIGHT YEARS AGO?

14 A. YES. I WASN'T QUITE SURE HOW -- WHAT TYPE OF JURY
15 IT WAS. I DO KNOW THAT I WAS ON A JURY AT ONE TIME.

16 Q. WAS IT IN COMMON PLEAS?

17 A. IT WAS AN ACTUAL LAWSUIT TYPE SITUATION WHICH DID
18 INVOLVE A DEATH.

19 Q. OKAY. WAS IT AT THE COURTHOUSE ACROSS THE STREET?

20 A. YES.

21 Q. THE OLD COURTHOUSE?

22 A. YES, IT WAS.

23 Q. OKAY. WELL, IN SOME WAYS THIS WOULD BE SIMILAR IN
24 CERTAIN RESPECTS. YOU'VE STILL GOT LAWYERS, LAWYERS
25 PRESENTING EVIDENCE. YOU HAVE WITNESSES SITTING ON THE STAND

1 RIGHT WHERE YOU'RE SITTING RIGHT NOW. IN THAT REGARD IT'S
2 THE SAME. CRIMINAL CASES THOUGH ARE DIFFERENT FROM CIVIL
3 CASES, AND YOU UNDERSTAND THAT.

4 A. CORRECT.

5 Q. THERE'S A DIFFERENT BURDEN OF PROOF.

6 A. YES, SIR.

7 Q. IT'S THE STATE THAT'S PRESENTING THE EVIDENCE AND
8 PRESENTING WITNESSES. BUT ONE THING, TOO, ONCE THESE 12
9 JURORS HAVE ALL THE INFORMATION, THEY GO BACK TO THE JURY
10 ROOM AND THEY HAVE THE JOB OF DECIDING WHETHER THE DEFENDANT
11 IS GUILTY OR NOT GUILTY. AND YOU UNDERSTAND THAT PART, I'M
12 SURE.

13 A. CORRECT.

14 Q. AND AT THAT POINT THERE'S NO TALK ABOUT PUNISHMENT;
15 THERE'S NO TALK ABOUT MERCY. THAT'S JUST NOT AN ISSUE AT
16 THAT POINT. IT'S JUST GUILT OR NOT GUILTY.

17 A. RIGHT.

18 Q. AND YOU UNDERSTAND THAT.

19 A. YES, SIR.

20 Q. AND IN THAT REGARD THIS PROCESS THAT WE'RE HERE ON
21 TODAY IS LIKE ANY OTHER CASE, BUT WHERE IT DIFFERS IS IF THAT
22 JURY CONVICTS THE DEFENDANT OF MURDER, HE DOESN'T STAND IN
23 FRONT OF THE JUDGE TO GET SENTENCED. THE JURY SENTENCES HIM.
24 AND THAT'S WHERE THE JUDGE WAS TELLING YOU ABOUT THE TWO
25 OPTIONS, LIFE OR DEATH.

1 A. CORRECT.

2 Q. AND THAT'S WHEN WE GO INTO THE SECOND PHASE. IN THE
3 SECOND PHASE YOU'VE ALREADY DETERMINED GUILT, SO THAT'S
4 ALREADY DECIDED. YOU JUST FOCUS SOLELY ON PUNISHMENT, AND
5 THE JUDGE MENTIONED THE MITIGATING CIRCUMSTANCES AND
6 AGGRAVATING CIRCUMSTANCES.

7 A. RIGHT.

8 Q. IT COULD BE KIND OF CONFUSING, I'M SURE.

9 A. YES. YES.

10 Q. AND THIS IS ALL, I'M SURE, VERY NEW TO YOU.

11 A. OH, YES.

12 Q. BUT BASICALLY WHAT IT IS IS IN THAT PHASE OF THE
13 TRIAL WE'RE NO LONGER TALKING ABOUT GUILT OR INNOCENCE OR
14 ANYTHING LIKE THAT. WE'RE TALKING ABOUT THE DEFENDANT, GOOD
15 THINGS AND BAD THINGS ABOUT HIM, THINGS THAT YOU AS JURORS
16 WOULD WANT TO KNOW BEFORE YOU MAKE A DECISION, AND I'M SURE
17 YOU WOULD WANT TO KNOW THOSE THINGS BEFORE YOU CHOSE LIFE OR
18 DEATH.

19 A. CORRECT.

20 Q. BUT THAT'S WHAT WE WOULD DO. IT WOULD ALSO INVOLVE
21 INFORMATION MAYBE MAKING THE CRIME ITSELF WORSE OR MAYBE
22 MITIGATING THAT CRIME, JUST VARIOUS BITS OF INFORMATION,
23 TESTIMONY, TO HELP YOU AS JURORS MAKE THAT DECISION, AND YOU
24 UNDERSTAND WHAT I'M SAYING---

25 A. CORRECT.

1 Q. ---IN THAT RESPECT.

2 A. YES, SIR.

3 Q. BASICALLY THOSE CHOICES THOUGH WOULD BE LIFE AND
4 DEATH, AND AS I UNDERSTOOD YOUR RESPONSES TO THE JUDGE, IF
5 YOU HEARD ALL OF THE TESTIMONY AND ALL THE EVIDENCE AND YOU
6 THOUGHT LIFE WAS APPROPRIATE, YOU COULD GIVE A LIFE VERDICT.

7 A. YES, SIR.

8 Q. AND IF YOU HEARD ALL THE EVIDENCE AND ALL THE
9 TESTIMONY AND YOU FELT DEATH WAS APPROPRIATE, YOU COULD GIVE
10 DEATH.

11 A. CORRECT.

12 Q. YOU'RE A JUROR THAT COULD GIVE EITHER ONE OF THOSE
13 SENTENCES, DEPENDING ON THE FACTS.

14 A. THAT'S CORRECT.

15 Q. OKAY. NOW, THERE IS ONE OTHER THING THAT'S A LITTLE
16 DIFFERENT ABOUT THIS TYPE OF CASE. THE VERDICT FORM ITSELF
17 IS DIFFERENT. WHEN YOU GO INTO THAT SECOND PHASE WHERE
18 YOU'RE TALKING ABOUT PUNISHMENT, THAT VERDICT FORM'S
19 DIFFERENT. IF YOU DECIDE LIFE, JUST THE FOREPERSON ON THE
20 JURY SIGNS THAT VERDICT FORM, BUT IF IT'S DEATH, ALL 12
21 MEMBERS OF THE JURY SIGN IT. IF YOU WERE SITTING ON THAT
22 JURY AND IF YOU THOUGHT DEATH WAS THE RIGHT -- RIGHT
23 SENTENCE, COULD YOU PUT YOUR NAME ON THAT VERDICT FORM?

24 A. YES, I COULD.

25 Q. OKAY. BUT BEFORE YOU WOULD DO THAT, YOU WOULD WANT

1 TO HEAR EVERYTHING THERE IS TO HEAR.

2 A. OH, ABSOLUTELY.

3 Q. AND YOU WOULD FOLLOW THE JUDGE'S INSTRUCTIONS?

4 A. THAT'S CORRECT.

5 Q. THAT'S ALL WE COULD ASK OF YOU, MS. SHEALY.

6 A. OKAY.

7 Q. THANK YOU VERY MUCH.

8 A. UH-HUH. THANK YOU.

9 CROSS-EXAMINATION

10 BY MS. KIMBROUGH:

11 Q. GOOD AFTERNOON, MS. SHEALY. HOW ARE YOU?

12 A. HELLO. FINE. THANK YOU.

13 Q. I'M LISA KIMBROUGH, AND ALONG WITH CAM LITTLEJOHN, I
14 REPRESENT THE DEFENDANT, MR. MERCER.

15 A. UH-HUH.

16 Q. I JUST HAVE A FEW BRIEF QUESTIONS.

17 A. OKAY.

18 Q. DEALING WITH THE FIRST PHASE FIRST, YOU UNDERSTAND
19 THAT THE ONLY WAY THAT YOU AS A JUROR WOULD MOVE ON TO
20 CONSIDERING WHETHER OR NOT KEVIN SHOULD BE SENTENCED TO
21 EITHER LIFE OR DEATH WOULD BE IF YOU AND THE OTHER 11 JURORS
22 UNANIMOUSLY DECIDED THAT HE WAS GUILTY OF AN INTENTIONAL
23 MURDER, IN OTHER WORDS, AN INTENTIONAL KILLING. MURDER IS
24 ALWAYS INTENTIONAL. DO YOU UNDERSTAND---

25 A. YES, SIR.

1 Q. ---THAT THIS IS NOT GOING TO BE A SITUATION OF
2 SELF-DEFENSE OR MANSLAUGHTER? IT'S GOT TO BE INTENTIONAL---

3 A. CORRECT.

4 Q. ---AND IT'S GOT TO BE PLANNED. OKAY. EVEN KNOWING
5 THAT FACT GOING INTO THE SECOND PHASE, WOULD YOU STILL BE
6 ABLE TO KEEP AN OPEN MIND ABOUT WHAT THE PENALTY SHOULD BE?

7 A. YES.

8 Q. OKAY.

9 A. UH-HUH.

10 Q. ALL RIGHT. AND IF WE GET TO THAT SECOND PHASE,
11 YOU'LL BE PRESENTED WITH ADDITIONAL EVIDENCE. IN THE FIRST
12 PHASE YOU WILL HEAR THINGS RELATED TO SOLELY THE QUESTIONS OF
13 GUILT OR INNOCENCE FOR THE THREE CHARGES, AND THOSE CHARGES
14 -- AND I BELIEVE THE JUDGE TOLD THE WHOLE PANEL ON MONDAY---

15 A. YES.

16 Q. ---WHAT THOSE CHARGES ARE. THEY'RE VERY SERIOUS
17 CHARGES: MURDER, ARMED ROBBERY, AND POSSESSION OF A WEAPON
18 DURING A VIOLENT CRIME. NOW, THE STATE WILL HAVE THE BURDEN
19 OF PROVING EACH AND EVERY ONE OF THOSE CRIMES TO THE
20 SATISFACTION OF ALL 12 JURORS BEYOND A REASONABLE DOUBT. IF
21 THEY DON'T DO THAT, THEN MR. MERCER IS INNOCENT AND YOU DON'T
22 GET TO THAT SECOND PHASE. DO YOU FEEL LIKE THERE'S ANYTHING
23 THAT WOULD PREVENT YOU FROM HOLDING THE STATE ACCOUNTABLE TO
24 THAT BURDEN?

25 A. I'M NOT SURE -- I'M SORRY. REPEAT THAT.

1 Q. IT WAS POORLY WORDED. I'LL RESTATE IT. CAN YOU
2 THINK OF ANYTHING THAT WOULD INTERFERE WITH YOUR ABILITY TO
3 HOLD THE STATE TO ITS BURDEN WHICH IS BEYOND A REASONABLE
4 DOUBT FOR EACH OF THOSE CHARGES?

5 A. I UNDERSTAND THAT IT HAS TO BE PROVEN WITHIN, YOU
6 KNOW, A REASONABLE DOUBT THERE.

7 Q. YES.

8 A. YES, I UNDERSTAND THAT.

9 Q. OKAY.

10 A. I MAY NOT BE ANSWERING IN THE CORRECT -- IN THE FORM
11 THAT YOU'RE GIVING IT TO ME, BUT I UNDERSTAND WHAT THEY HAVE
12 TO DO.

13 Q. I'M NOT TRYING TO CONFUSE YOU. I JUST WANT TO MAKE
14 SURE THERE'S NOTHING THAT WOULD IMPAIR YOUR ABILITY TO HOLD
15 THE STATE TO ITS BURDEN OF PROOF.

16 A. OKAY.

17 Q. AND YOU'LL HAVE TO DETERMINE CREDIBILITY OF THE
18 WITNESSES AND OF THE TESTIMONY THAT WILL BE GIVEN FROM THE
19 WITNESS STAND, AND THAT WILL BE PART OF THE JURORS' -- REALLY
20 ONE OF THEIR MAIN JOBS IS TO DETERMINE CREDIBILITY.

21 A. CORRECT.

22 Q. AND YOU MAY HEAR FROM DIFFERENT SORTS OF WITNESSES
23 AND RECEIVE DIFFERENT TYPES OF EVIDENCE. THERE COULD BE
24 PHYSICAL EVIDENCE, FORENSIC EVIDENCE, LAY WITNESS TESTIMONY,
25 EXPERT TESTIMONY, POLICE OFFICER TESTIMONY. AND SO ALL WE

1 WOULD ASK OF YOU IS IF YOU COULD GIVE EACH OF THOSE TYPE OF
2 TESTIMONY EQUAL CONSIDERATION.

3 A. YES.

4 Q. OKAY.

5 A. YES, I UNDERSTAND THAT. I COULD.

6 Q. NOW, ASSUMING THE JURY HEARS ALL THAT INFORMATION
7 AND DECIDES THAT MR. MERCER IS GUILTY OF MURDER AND HE'S
8 GUILTY OF AGGRAVATED MURDER WHICH WOULD MEAN MURDER PLUS AN
9 ADDITIONAL CIRCUMSTANCE -- IN THIS CASE THE STATE IS ALLEGING
10 ARMED ROBBERY. IF THOSE CRIMES ARE PROVEN, THEN WE WILL MOVE
11 INTO THE SENTENCING PHASE OF THE CASE. AT THAT POINT, AS
12 WITH THE FIRST PHASE, KEVIN MERCER HAS NO BURDEN OF PROOF.
13 IN OTHER WORDS, HE DOESN'T HAVE TO PRESENT ANY EVIDENCE. IT
14 IS LIKELY THAT HE WILL. THERE ARE DIFFERENT TYPES OF
15 EVIDENCE HE CAN -- HE CAN INTRODUCE, AND WE JUST WANT TO MAKE
16 SURE YOU CAN GIVE FAIR CONSIDERATION TO THE TYPES OF EVIDENCE
17 THAT MAY COME BEFORE YOU, AND I'LL JUST NAME SOME -- A FEW OF
18 THEM JUST TO FAMILIARIZE YOU.

19 IT COULD BE MORE LAY WITNESS TESTIMONY, PEOPLE WHO
20 KNOW KEVIN, PEOPLE WHO KNOW ABOUT HIS BACKGROUND AND HIS
21 UPBRINGING. IT COULD BE EXPERT TESTIMONY. IT COULD EVEN BE
22 MENTAL HEALTH TESTIMONY. AND ALL THAT INFORMATION WILL BE
23 PROVIDED TO THE JURY ALONG WITH EVIDENCE THAT THE STATE
24 BELIEVES MAKES THE CRIME OF MURDER BAD ENOUGH TO ASK FOR A
25 DEATH SENTENCE. DO YOU THINK YOU COULD KEEP AN OPEN MIND

1 ABOUT ALL THOSE TYPES OF EVIDENCE?

2 A. YES, I COULD.

3 Q. OKAY. AND RESERVE JUDGMENT UNTIL EVERYTHING WAS IN.

4 A. THAT'S CORRECT.

5 Q. OKAY. BECAUSE IT'S JUST ONE OF THE FEATURES OF OUR
6 CRIMINAL JUSTICE SYSTEM THAT SOMEBODY'S GOT TO GO FIRST AND
7 TYPICALLY IT'S THE STATE. SO, YOU KNOW, BEING THE DEFENSE,
8 WE WOULD OBVIOUSLY WANT TO MAKE SURE THAT EVERYBODY COULD
9 KEEP THEIR MINDS OPEN UNTIL THE VERY END.

10 A. YES.

11 Q. OKAY. YOU HAD SAID YOU'RE A NUMBER THREE JUROR,
12 THAT BEING SOMEONE WHO COULD GIVE LIFE OR DEATH.

13 A. THAT'S CORRECT.

14 Q. OKAY. I NOTICE SOME HESITATION -- I DON'T KNOW IF I
15 BEING FURTHER AWAY MISUNDERSTOOD OR NOT, BUT THERE SEEMED TO
16 BE A LITTLE HESITATION ABOUT THE POSSIBILITY OF GIVING LIFE
17 IF IT WAS AN INTENTIONAL KILLING. DID I MISUNDERSTAND OR IS
18 THERE---

19 A. NO, I COULD BE EQUALLY -- LIKE I SAID, REGARDING THE
20 PROOF OR WHATNOT, I COULD BE THE THIRD, YOU KNOW.

21 Q. OKAY.

22 A. I'M NOT, YOU KNOW, A HUNDRED PERCENT ONE WAY OR THE
23 OTHER. IT WOULD HAVE TO BE -- I DEFINITELY HAVE AN OPEN MIND
24 TO BOTH. I COULD GIVE EITHER LIFE OR DEATH.

25 Q. AND THAT WOULD BE TRUE EVEN IN THE CASE OF SOMEONE

1 BEING CONVICTED OF AN INTENTIONAL PREMEDITATED MURDER.

2 A. YES.

3 Q. OKAY. ALL RIGHT. BUT YOU'D KEEP AN OPEN MIND.

4 A. YES.

5 Q. OKAY. BEG THE COURT'S INDULGENCE. I DON'T HAVE ANY
6 FURTHER QUESTIONS. THANK YOU, MS. SHEALY.

7 A. THANK YOU.

8 THE COURT: MS. SHEALY, YOU ARE QUALIFIED TO BE A
9 JUROR IN THIS CASE. THAT DOESN'T MEAN YOU'RE ON THE JURY,
10 BUT IT MEANS YOU'RE ELIGIBLE TO BE ON THE JURY. WE WILL NOT
11 NEED YOU AGAIN UNTIL MONDAY MORNING, SO I WOULD LIKE FOR YOU
12 TO BE PREPARED TO COME HERE MONDAY MORNING. I WOULD LIKE FOR
13 YOU TO CALL SUNDAY NIGHT TO THE TELEPHONE NUMBER THAT IS ON
14 THAT PINK CARD THAT YOU'VE BEEN GIVEN---

15 THE WITNESS: OKAY.

16 THE COURT: ---AND THERE WILL BE A RECORDED MESSAGE
17 ON THAT LINE THAT WILL TELL YOU THE EXACT DETAILS OF WHEN YOU
18 NEED TO BE HERE AND WHETHER OR NOT YOU NEED TO BRING ENOUGH
19 OF YOUR BELONGINGS AND YOUR CLOTHING TO STAY WITH US FOR
20 SEVERAL DAYS IF THE JURY IS SEQUESTERED. DURING THAT TIME,
21 BETWEEN NOW AND MONDAY, YOU MAY NOT DISCUSS THIS CASE WITH
22 ANYONE NOR MAY ANYONE DISCUSS THIS CASE WITH YOU. PLEASE BE
23 CAREFUL NOT TO ALLOW YOURSELF TO BE EXPOSED TO ANY MEDIA
24 COVERAGE OF THIS CASE. AND UNLESS YOU HAVE A QUESTION, WE'LL
25 SEE YOU MONDAY MORNING.

1 THE WITNESS: OKAY. THANK YOU VERY MUCH.

2 THE COURT: THANK YOU, MA'AM.

3 THE WITNESS: DO I NEED TO TAKE THIS INFORMATION?

4 THE COURT: HE'LL TAKE THAT FROM YOU.

5 THE WITNESS: OH, OKAY. THANK YOU.

6 (JUROR SHEALY LEAVES THE COURTROOM.)

7 THE COURT: BRING HIM IN.

8 (JUROR CHARLES NUNNERY, JR., IS BROUGHT INTO THE
9 COURTROOM.)

10 CHARLES NUNNERY, JR., HAVING BEEN PREVIOUSLY
11 SWORN AS A PART OF THE JURY VOIR DIRE AND REMAINING UNDER
12 OATH, TESTIFIED AS FOLLOWS:

13 EXAMINATION BY THE COURT

14 Q. GOOD AFTERNOON, SIR.

15 A. HEY.

16 Q. HOW ARE YOU?

17 A. GOOD.

18 Q. WHEN YOU WERE HERE ON MONDAY MORNING, YOU WERE PUT
19 UNDER OATH, AND I WANT TO MAKE SURE YOU UNDERSTAND THAT
20 YOU'RE STILL UNDER OATH NOW. DO YOU UNDERSTAND THAT?

21 A. YES, SIR.

22 Q. SINCE YOU LEFT US ON MONDAY, HAVE YOU TALKED TO
23 ANYBODY ABOUT THIS CASE OR HAS ANYBODY TALKED TO YOU ABOUT
24 THE CASE?

25 A. NO, SIR.

1 Q. I'M GOING TO ASK YOU SOME QUESTIONS NOW, AND THEN
2 AFTER I'VE DONE THAT, THE LAWYERS ARE PROBABLY GOING TO
3 FOLLOW UP WITH SOME QUESTIONS OF THEIR OWN. WE'RE NOT TRYING
4 TO PRY TOO FAR INTO YOUR PERSONAL LIFE, BUT WE DO HAVE TO ASK
5 YOU THESE QUESTIONS. THERE ARE NO RIGHT OR WRONG ANSWERS TO
6 THESE QUESTIONS. WE JUST WANT YOU TO LISTEN VERY CAREFULLY
7 TO THE QUESTIONS AND THEN BE OPEN AND HONEST WITH US. TELL
8 US WHAT YOU THINK AND HOW YOU FEEL ABOUT THESE ISSUES THAT
9 WE'LL BE DISCUSSING. IF YOU ARE A JUROR IN THIS CASE, COULD
10 YOU ACCEPT AND APPLY THE LAW PRECISELY AS I WOULD EXPLAIN IT
11 TO YOU AND SET ASIDE ANYTHING THAT YOU MIGHT HAVE HEARD OR
12 LEARNED ABOUT THE CASE BEFORE THE TRIAL BEGAN AND THEN RENDER
13 A VERDICT THAT IS BASED SOLELY ON THE TESTIMONY AND EVIDENCE
14 THAT YOU SEE AND HEAR IN THIS COURTROOM? COULD YOU DO THAT?

15 A. YES, SIR.

16 Q. DO YOU UNDERSTAND THAT IN A CRIMINAL CASE THE STATE
17 HAS THE BURDEN OF PROVING THE DEFENDANT GUILTY BEYOND A
18 REASONABLE DOUBT?

19 A. YES, SIR.

20 Q. COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES
21 THAT YOU FIND TO HAVE BEEN PROVEN AND IN LIGHT OF THE
22 EVIDENCE AS I WOULD EXPLAIN IT TO YOU, COULD YOU FIND THE
23 DEFENDANT EITHER GUILTY OR NOT GUILTY DEPENDING ON WHETHER OR
24 NOT YOU BELIEVE THE STATE HAS MET ITS BURDEN OF PROOF?

25 A. YES, SIR.

1 Q. NOW, IF YOU WERE ON THE JURY IN THIS CASE AND IF THE
2 JURY FINDS THE DEFENDANT GUILTY OF MURDER, WE WOULD MOVE INTO
3 THE SECOND PHASE OR THE PENALTY PHASE OF THE TRIAL. I'M
4 GOING TO TALK TO YOU NOW ABOUT SOME OF THE ISSUES THAT WILL
5 COME UP IN THAT PHASE IF WE GET THERE.

6 A. OKAY.

7 Q. AGGRAVATING CIRCUMSTANCES ARE FACTS OR INCIDENTS OR
8 DETAILS THAT THE STATE OF SOUTH CAROLINA HAS DECLARED TO
9 AGGRAVATE THE CRIME OF MURDER OR TO MAKE IT WORSE.
10 AGGRAVATING CIRCUMSTANCES INCREASE THE ENORMITY OF THE CRIME
11 AND ADD TO THE INJURY RESULTING FROM THE CRIME. MITIGATING
12 CIRCUMSTANCES, ON THE OTHER HAND, ARE FACTS OR INCIDENTS OR
13 DETAILS THAT SOUTH CAROLINA HAS DECLARED TO LESSEN THE
14 SEVERITY OF THE CRIME OF MURDER. THEY SERVE TO EXTENUATE OR
15 TO REDUCE THE DEGREE OF MORAL CULPABILITY OR RESPONSIBILITY
16 FOR THE CRIME. DO YOU UNDERSTAND THE CONCEPT OF AGGRAVATING
17 AND MITIGATING CIRCUMSTANCES?

18 A. YES, SIR.

19 Q. NOW, WHEN YOU CAME IN THIS AFTERNOON, YOU WERE GIVEN
20 THIS SHEET THAT SHOWS THREE DIFFERENT TYPES OF JURORS.

21 A. YES, SIR.

22 Q. DO YOU UNDERSTAND THOSE THREE TYPES OF JURORS?

23 A. YES, SIR, I DO.

24 Q. WHICH OF THOSE THREE TYPES WOULD YOU BE?

25 A. I'M NUMBER THREE.

1 Q. IF YOU ARE ON THE JURY IN THIS CASE AND IF THE JURY
2 FOUND THE DEFENDANT GUILTY OF MURDER - AND I WANT TO TELL YOU
3 THAT MURDER IS DEFINED AS THE INTENTIONAL AND UNLAWFUL
4 KILLING OF ANOTHER PERSON WITH MALICE AFORETHOUGHT - THEN THE
5 JURY WOULD HAVE TWO DIFFERENT OPTIONS AS TO WHAT THE VERDICT
6 WOULD BE -- I MEAN WHAT THE PUNISHMENT WOULD BE, AND THE
7 PUNISHMENT IS UP TO THE JURY. THE FIRST OPTION WOULD BE A
8 LIFE SENTENCE WITHOUT THE POSSIBILITY OF PAROLE, AND THE
9 SECOND OPTION WOULD BE THE DEATH PENALTY. COULD YOU,
10 *DEPENDING ON THE FACTS AND CIRCUMSTANCES THAT YOU FIND TO
11 EXIST AND CONSIDERING THE LAW AS I WOULD EXPLAIN IT TO YOU,
12 COULD YOU VOTE TO RETURN A VERDICT FOR A LIFE SENTENCE?

13 A. YES, SIR.

14 Q. COULD YOU VOTE TO RETURN A VERDICT FOR THE DEATH
15 PENALTY?

16 A. YES, SIR.

17 Q. NOW, IF YOU ARE ON THE JURY IN THIS CASE AND IF I
18 DECIDE TO SEQUESTER THE JURY, YOU WOULD BE PUT UP IN A HOTEL
19 FOR FIVE OR SIX DAYS. WE'D FEED YOU ALL YOUR MEALS, AND YOU
20 WOULD NOT BE ALLOWED TO GO HOME. WOULD THAT IMPOSE A
21 TERRIBLE BURDEN ON YOU?

22 A. NO, SIR.

23 Q. DID YOU GET A CHANCE TO READ OVER THAT WITNESS LIST
24 THAT WAS SENT BACK THERE?

25 A. YES, SIR, I DID.

1 Q. DID YOU READ EVERY NAME ON THAT LIST?

2 A. YES, SIR, I DID.

3 Q. IS THERE ANYBODY ON THAT LIST WHOM YOU KNOW OR TO
4 WHOM YOU ARE RELATED?

5 A. ABSOLUTELY NO ONE.

6 Q. ALL RIGHT, SIR. THE LAWYERS ARE GOING TO ASK YOU
7 SOME QUESTIONS, AND THEN I'LL COME BACK IN JUST A FEW MINUTES
8 TO TALK TO YOU.

9 A. OKAY.

10 DIRECT EXAMINATION

11 BY MR. HUBBARD:

12 Q. GOOD AFTERNOON, MR. NUNNERY.

13 A. GOOD AFTERNOON.

14 Q. YOUR HONOR, I WANT TO PASS THIS UP TO YOU. MR.
15 NUNNERY, I WAS LOOKING AT YOUR JURY SERVICE FORM, AND I
16 BELIEVE YOU INDICATED THAT YOU'VE NEVER SERVED ON A JURY
17 BEFORE?

18 A. NO, SIR, I HAVE NOT.

19 Q. SO THIS IS A NEW EXPERIENCE?

20 A. YES, SIR, IT IS.

21 Q. HAVE YOU EVER BEEN IN THE COURTHOUSE HERE IN
22 LEXINGTON?

23 A. NO, SIR.

24 Q. WELL, THIS CASE, ALTHOUGH IT'S YOUR FIRST CASE, IT'S
25 A LITTLE DIFFERENT FROM A LOT OF THE NORMAL CASES. YOUR

1 HONOR, I DON'T KNOW IF YOU WANT ME TO DISCUSS THAT WITH YOU.

2 RE-EXAMINATION BY THE COURT

3 Q. LET ME -- LET ME ASK YOU A QUESTION, MR. NUNNERY.

4 HAVE YOU EVER BEEN CONVICTED OF A CRIME THAT WAS EITHER GRAND
5 LARCENY OR BREAKING INTO A MOTOR VEHICLE?

6 A. YES, SIR.

7 Q. AND POSSESSION OF CRACK?

8 A. YES, SIR.

9 Q. ALL RIGHT. NOW, HAVE YOU EVER -- HAVE YOU BEEN
10 PARDONED FOR ANY OF THOSE CRIMES?

11 A. NO, SIR, I HAVE NOT BEEN PARDONED.

12 Q. OKAY. WELL, BECAUSE OF THOSE CONVICTIONS AND
13 BECAUSE THEY WOULD CARRY A MAXIMUM PUNISHMENT OF MORE THAN
14 ONE YEAR, YOU WOULD NOT BE QUALIFIED TO SERVE AS A JUROR, AND
15 SO I EXCUSE YOU AND YOU'RE FREE TO GO.

16 A. OKAY. THANK YOU.

17 MR. HUBBARD: THANK YOU, YOUR HONOR.

18 (JUROR NUNNERY LEAVES THE COURTROOM.)

19 THE COURT: I NOTICE THAT SOMEBODY - I DON'T KNOW IF
20 IT WAS Y'ALL - GAVE ME THREE OR FOUR OF THESE RAP SHEETS, AND
21 I ONLY ENDED UP DEALING WITH ONE JUROR. SO ARE THERE OTHER
22 JURORS THAT ARE ON THE LIST THAT HAVE CONVICTIONS THAT WOULD
23 DISQUALIFY THEM?

24 MR. HUBBARD: YOUR HONOR, I HAVE NO IDEA. I'M
25 LOOKING AS WE GO.

1 THE COURT: OKAY.

2 MR. HUBBARD: I'M SEEING THIS STUFF FOR THE FIRST
3 TIME.

4 THE COURT: WELL, IF YOU COME ACROSS SOMEBODY, DON'T
5 HESITATE TO INTERRUPT ME BECAUSE I'M AFRAID THAT THE LIFESPAN
6 OF MY VOICE IS DECREASING MINUTE BY MINUTE AS I SPEAK. DO
7 YOU NEED THIS BACK?

8 MR. HUBBARD: NO, SIR, I DO NOT.

9 THE COURT: LET'S -- I'M GOING TO HAND THIS ARREST
10 RECORD FOR MR. -- DID Y'ALL SEE THIS?

11 MR. LITTLEJOHN: NO, SIR.

12 THE COURT: YOU GOT -- HAVE YOU GOT ANY OBJECTION TO
13 ME JUST EXCUSING THAT JUROR?

14 MR. LITTLEJOHN: YOUR HONOR, IF YOU'RE SATISFIED THE
15 RECORD IS ACCURATE, I HAVE -- AND APPARENTLY IT WAS.

16 THE COURT: AND HE TESTIFIED TO IT SO...

17 MR. LITTLEJOHN: YES, SIR.

18 THE COURT: ALL RIGHT. THEN THAT WILL BE
19 SUFFICIENT. BRING IN THE NEXT JUROR.

20 (JUROR RICHARD BURRIS IS BROUGHT INTO THE
21 COURTROOM.)

22 RICHARD BURRIS, HAVING BEEN PREVIOUSLY SWORN AS
23 A PART OF THE JURY VOIR DIRE AND REMAINING UNDER OATH,
24 TESTIFIED AS FOLLOWS:
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EXAMINATION BY THE COURT

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Q. YOU'RE MR. BURRIS?

A. YES, SIR.

Q. ON MONDAY WHEN YOU WERE HERE WE PUT YOU UNDER OATH,
AND I WANT YOU TO UNDERSTAND THAT YOU'RE STILL UNDER OATH
NOW. DO YOU UNDERSTAND THAT?

A. YES, SIR.

Q. SINCE MONDAY WHEN YOU LEFT US, HAVE YOU TALKED ABOUT
THIS CASE WITH ANYONE OR HAS ANYONE TALKED TO YOU ABOUT THIS
CASE?

A. NO.

Q. NO, SIR?

A. NO, SIR.

Q. I MEAN, I DIDN'T MEAN TO SAY "SIR." I WAS JUST
SAYING...

A. YEAH. THAT'S FINE.

Q. I WANTED TO MAKE SURE THAT WAS YOUR ANSWER. NOW,
I'M GOING TO ASK YOU SOME QUESTIONS, AND THEN AFTER I'M DONE,
THE LAWYERS ARE GOING TO ASK YOU SOME -- POSSIBLY ASK YOU
SOME FOLLOW-UP QUESTIONS.

A. OKAY.

Q. NOW, WE'RE NOT TRYING TO PRY TOO DEEP INTO YOUR
PERSONAL LIFE, BUT WE DO NEED TO ASK YOU THESE QUESTIONS.
THERE ARE NO RIGHT OR WRONG ANSWERS. WE JUST WANT YOU TO
LISTEN CAREFULLY AND THEN TO BE OPEN AND HONEST WITH US AND

1 TELL US WHAT YOU THINK AND HOW YOU FEEL ABOUT THESE ISSUES
2 THAT WE'RE GOING TO BE DISCUSSING. IF YOU ARE A JUROR IN
3 THIS CASE, COULD YOU ACCEPT AND APPLY THE LAW PRECISELY AS I
4 WOULD EXPLAIN IT TO YOU AND SET ASIDE ANYTHING THAT YOU MIGHT
5 HAVE HEARD OR LEARNED ABOUT THE CASE BEFORE THE TRIAL BEGAN
6 AND THEN RENDER A VERDICT THAT'S BASED SOLELY ON THE
7 TESTIMONY AND EVIDENCE THAT YOU WOULD HEAR AND SEE IN THIS
8 COURTROOM? COULD YOU DO THAT?

9 A. YES, SIR.

10 Q. DO YOU UNDERSTAND THAT IN A CRIMINAL CASE THE STATE
11 HAS THE BURDEN OF PROVING THE DEFENDANT GUILTY BEYOND A
12 REASONABLE DOUBT?

13 A. I DO.

14 Q. COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES
15 THAT YOU FIND TO HAVE BEEN PROVEN AND IN LIGHT OF THE LAW AS
16 I WOULD EXPLAIN IT TO YOU, COULD YOU FIND THE DEFENDANT
17 EITHER GUILTY OR NOT GUILTY DEPENDING ON WHETHER OR NOT YOU
18 FEEL THE STATE HAS MET ITS BURDEN OF PROOF?

19 A. I COULD.

20 Q. NOW, IF YOU'RE ON THE JURY IN THIS CASE AND IF THE
21 JURY FINDS THE DEFENDANT GUILTY OF MURDER, WE WOULD MOVE INTO
22 THE SECOND PHASE OR THE PENALTY PHASE OF THIS TRIAL. I'M
23 GOING TO TALK TO YOU NOW ABOUT SOME OF THE THINGS THAT WILL
24 COME UP DURING THAT PHASE IF WE GET THERE. AGGRAVATING
25 CIRCUMSTANCES ARE FACTS OR INCIDENTS OR DETAILS THAT THE

1 STATE OF SOUTH CAROLINA HAS DECLARED TO AGGRAVATE THE CRIME
2 OF MURDER OR TO MAKE IT WORSE. AGGRAVATING CIRCUMSTANCES
3 INCREASE THE ENORMITY OF THE CRIME AND ADD TO THE INJURY
4 RESULTING FROM THE CRIME.

5 MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE
6 FACTS OR INCIDENTS OR DETAILS THAT SOUTH CAROLINA HAS
7 DECLARED TO LESSEN THE SEVERITY OF THE CRIME OF MURDER. THEY
8 SERVE TO EXTENUATE OR TO REDUCE THE DEGREE OF MORAL
9 CULPABILITY OR RESPONSIBILITY FOR THE CRIME. NOW, DO YOU
10 UNDERSTAND THE CONCEPT OF AGGRAVATING AND MITIGATING
11 CIRCUMSTANCES?

12 A. I DO.

13 Q. WHEN YOU CAME IN THIS AFTERNOON, YOU WERE GIVEN A
14 COPY OF THIS SHEET THAT SHOWS THREE DIFFERENT TYPES OF
15 JURORS. DID YOU UNDERSTAND THOSE THREE TYPES OF JURORS?

16 A. I DID.

17 Q. WHICH OF THOSE THREE TYPES OF JURORS WOULD YOU BE?

18 A. I DO THINK THAT I WOULD BE THE THIRD TYPE. I THINK
19 I COULD WEIGH THE FACTS OR LOOK AT WHAT'S BEEN PRESENTED
20 BEFORE ME, MAKE A DECISION BASED ON THAT.

21 Q. IF YOU ARE A JUROR IN THIS CASE AND IF THE JURY
22 FINDS THE DEFENDANT GUILTY OF MURDER -- AND BY THE WAY, THE
23 DEFINITION OF MURDER IS AN INTENTIONAL AND UNLAWFUL KILLING
24 OF ANOTHER PERSON WITH MALICE AFORETHOUGHT -- THEN IT WOULD
25 BE UP TO THE JURY TO DECIDE THE PENALTY FOR THAT CRIME, AND

1 THERE WOULD BE TWO OPTIONS AS TO WHAT THE PENALTY COULD BE.
2 ONE OPTION IS FOR A LIFE SENTENCE WITHOUT THE POSSIBILITY OF
3 PAROLE, AND THE OTHER OPTION IS FOR THE DEATH PENALTY. COULD
4 YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES THAT YOU FIND
5 TO EXIST AND CONSIDERING THE LAW AS I WOULD EXPLAIN IT TO
6 YOU, COULD YOU RETURN A VERDICT FOR A LIFE SENTENCE?

7 A. I COULD.

8 Q. COULD YOU VOTE TO RETURN A VERDICT IMPOSING THE
9 DEATH PENALTY?

10 A. I COULD.

11 Q. ALL RIGHT, SIR. IF YOU ARE ON THE JURY IN THIS CASE
12 AND IF I DECIDE TO SEQUESTER THE JURY, YOU WOULD BE PUT UP IN
13 A HOTEL FOR FIVE OR SIX DAYS AND YOU WOULD NOT BE ALLOWED TO
14 GO HOME DURING THAT PERIOD OF TIME. WOULD THAT IMPOSE A
15 TERRIBLE BURDEN ON YOU?

16 A. NOT A TERRIBLE BURDEN, NO, NOT THROUGH THE HOUSE,
17 NO.

18 Q. IS IT A BURDEN THAT YOU THINK YOU COULD MANAGE?

19 A. I COULD MANAGE IT, YEAH.

20 Q. ALL RIGHT, SIR. DID YOU SEE THAT WITNESS LIST THAT
21 WE SENT BACK THERE FOR YOU TO REVIEW?

22 A. I DID.

23 Q. DID YOU READ EVERY NAME ON THAT LIST?

24 A. I READ THEM TWICE, YEAH.

25 Q. IS THERE ANYBODY ON THAT LIST WHOM YOU KNOW OR TO

1 WHOM YOU ARE RELATED?

2 A. NOBODY THAT I KNOW THAT I -- NO, I DIDN'T THINK I
3 KNEW ANYBODY. I KNOW I'M NOT RELATED TO ANYBODY.

4 THE COURT: ALL RIGHT, SIR. THE LAWYERS ARE GOING
5 TO ASK YOU SOME FOLLOW-UP QUESTIONS AT THIS TIME.

6 DIRECT EXAMINATION

7 BY MR. HUBBARD:

8 Q. MR. BURRIS, HOW ARE YOU?

9 A. DOING GREAT.

10 Q. I'VE JUST GOT A FEW QUESTIONS FOR YOU---

11 A. SURE.

12 Q. ---JUST FOLLOWING UP WHAT THE JUDGE ASKED YOU. HAVE
13 YOU EVER BEEN IN A COURTROOM BEFORE?

14 A. NO.

15 Q. HAVE YOU EVER SERVED ON A JURY BEFORE?

16 A. I DID SERVE ON A JURY. IT'S BEEN PROBABLY 15 TO 17
17 YEARS AGO, BUT IT WASN'T ANY TRIAL LIKE THIS.

18 Q. OKAY. DO YOU REMEMBER IF IT WAS CRIMINAL OR CIVIL?

19 A. IT HAD -- I WANT TO SAY CIVIL. IT HAD TO DO WITH
20 SOMEBODY NOT PAINTING AND NOT COMING THROUGH ON A CONTRACT OR
21 SOMETHING LIKE THAT.

22 Q. WAS THAT OVER IN THE OLD COURTHOUSE?

23 A. THAT WAS IN COLUMBIA.

24 Q. COLUMBIA.

25 A. DOWNTOWN.

1 Q. WELL, THE PROCESS WE'RE ENTERING TODAY, AS YOU CAN
2 TELL FROM WHAT THE JUDGE WAS SAYING, IS A LITTLE BIT
3 DIFFERENT THAN MOST JURY TRIALS. THERE'S TWO PHASES TO THIS
4 PROCESS. THERE'S THE FIRST PHASE WHERE THE JURY HAS TO
5 DETERMINE WHETHER THE DEFENDANT IS GUILTY OR NOT GUILTY, AND
6 IF THEY DETERMINE THE DEFENDANT IS GUILTY, WE GO INTO THE
7 SECOND PHASE AND THAT'S THE PUNISHMENT PHASE. IN THE FIRST
8 PHASE, AGAIN, JURORS WOULD BE SEATED RIGHT HERE IN THESE JURY
9 CHAIRS. WITNESSES WOULD BE SITTING RIGHT WHERE YOU'RE
10 SITTING RIGHT NOW, AND WE WOULD BE PRESENTING EVIDENCE AND
11 THE JURY WOULD BE CONSIDERING ALL THAT EVIDENCE AT THE END OF
12 THE TRIAL TO DETERMINE IF THE DEFENDANT'S GUILTY OR NOT
13 GUILTY. THERE WOULD BE NO TALK ABOUT PUNISHMENT AT THAT
14 POINT, NO TALK OF MERCY. THE FOCUS IS JUST ON GUILT OR
15 WHETHER HE'S NOT GUILTY. DO YOU UNDERSTAND THAT PART?

16 A. YES, I DO.

17 Q. AND IT'S ONLY IF WE GET BEYOND THAT, IF THE
18 DEFENDANT IS FOUND GUILTY OF MURDER, THAT WE MOVE ON TO THE
19 NEXT PHASE. THAT'S ANOTHER THING THAT'S A LITTLE BIT
20 DIFFERENT ABOUT THIS TYPE OF CASE THAN MOST CASES BECAUSE
21 TYPICALLY IF A DEFENDANT IS CONVICTED OF A CRIME, HE STANDS
22 RIGHT UP HERE IN FRONT OF A JUDGE AND THE JUDGE SENTENCES
23 HIM. AND THE JUDGE ASKS, "SOLICITOR, TELL ME SOMETHING ABOUT
24 THIS MAN, SOMETHING GOOD, SOMETHING BAD." THE DEFENSE
25 LAWYERS ANSWER THOSE SAME QUESTIONS. AND THEY ALL GIVE THE

1 JUDGE ALL THIS INFORMATION ABOUT THE DEFENDANT AND ABOUT THE
2 CRIME. IT MAY MAKE IT WORSE, MAY MAKE IT A LITTLE BIT
3 BETTER, THE AGGRAVATING AND MITIGATING STUFF THE JUDGE WAS
4 TALKING ABOUT. ALL THAT INFORMATION IS GENERALLY GIVEN TO A
5 JUDGE. THIS TYPE OF CASE IT GOES TO A JURY, AND IN THAT
6 SECOND PHASE THAT'S THE TYPE OF EVIDENCE THAT'S PRESENTED.
7 DO YOU UNDERSTAND THAT PART?

8 A. I UNDERSTAND THAT.

9 Q. SO WE WOULD BE PRESENTING STUFF, BAD STUFF ABOUT THE
10 DEFENDANT, BAD THINGS ABOUT THE CRIME, BUT YOU COULD ALSO
11 HEAR GOOD THINGS ABOUT THE DEFENDANT OR THINGS THAT MAYBE
12 MAKE THE CRIME NOT SEEM AS BAD AS WE WOULD SAY IT IS.

13 A. RIGHT.

14 Q. AND AS I UNDERSTAND YOUR RESPONSE TO THE JUDGE, YOU
15 WOULD WANT TO HEAR ALL OF THAT.

16 A. THAT'S CORRECT.

17 Q. AND YOU WOULD HAVE TO HEAR ALL OF THAT BEFORE YOU'D
18 MAKE A DECISION. IS THAT WHAT I UNDERSTOOD?

19 A. BEFORE I FEEL I COULD MAKE A SOUND DECISION, YES.

20 Q. AND AS I UNDERSTAND YOUR RESPONSES, IF YOU HEARD ALL
21 OF THAT INFORMATION, YOU COULD, IF YOU THOUGHT IT WAS RIGHT,
22 GIVE A LIFE SENTENCE.

23 A. I COULD.

24 Q. AND YOU COULD, IF YOU THOUGHT IT WAS APPROPRIATE,
25 GIVE A DEATH SENTENCE.

1 A. I COULD.

2 Q. NOW, THERE'S ONE OTHER THING ABOUT THIS PROCESS
3 THAT'S A LITTLE DIFFERENT AND THAT'S THE VERDICT FORM. THE
4 VERDICT FORM IN THE CASE LIKE THIS, IN THAT SECOND PHASE, IS
5 DIFFERENT BECAUSE IF YOU FIND LIFE, JUST THE FOREMAN SIGNS
6 IT, BUT IF YOU FIND FOR DEATH, EVERY JUROR SITTING ON THAT
7 JURY, EVERY SINGLE ONE OF THEM, HAS TO SIGN THEIR NAME TO IT
8 SHOWING THAT THAT IS THEIR BELIEF THAT THIS IS THE RIGHT
9 SENTENCE. AND IT SOUNDS LIKE A FUNNY QUESTION, BUT SOME
10 PEOPLE WILL TELL YOU WHAT THEIR THOUGHTS ARE OR WHAT THEY
11 BELIEVE, BUT THEY DON'T WANT TO PUT IT DOWN IN WRITING,
12 PARTICULARLY ON SOMETHING AS SERIOUS AS THIS. SO IF YOU'RE
13 ON THE JURY AND YOU GET TO THAT SECOND PHASE AND YOU THINK
14 DEATH IS THE RIGHT SENTENCE, COULD YOU PUT YOUR NAME ON THAT
15 VERDICT FORM?

16 A. I COULD.

17 Q. IS THERE ANYTHING ELSE THAT YOU KNOW OF IN YOUR PAST
18 OR ANYTHING THAT YOU KNOW OF THAT WOULD PREVENT YOU FROM
19 GIVING BOTH SIDES A FAIR TRIAL?

20 A. NO.

21 Q. YOU'D WANT TO HEAR BOTH SIDES.

22 A. I'D WANT TO HEAR BOTH SIDES.

23 Q. AND YOU WOULD FOLLOW THE JUDGE'S INSTRUCTIONS?

24 A. I'D FOLLOW THE JUDGE'S INSTRUCTIONS.

25 Q. SIR, THAT'S ALL WE COULD ASK OF YOU. THANK YOU VERY

1 MUCH.

2 A. THANK YOU.

3 CROSS-EXAMINATION

4 BY MR. LITTLEJOHN:

5 Q. GOOD AFTERNOON, MR. BURRIS.

6 A. GOOD AFTERNOON.

7 Q. MR. BURRIS, I'M CAM LITTLEJOHN, AND I, ALONG WITH
8 LISA KIMBROUGH, REPRESENT KEVIN MERCER WHO IS THE DEFENDANT
9 IN THIS CASE.

10 A. OKAY.

11 Q. MR. BURRIS, IF I COULD ASK YOU A COUPLE OF THINGS
12 ABOUT THE INFORMATION YOU SUPPLIED ON YOUR QUESTIONNAIRE.

13 A. SURE.

14 Q. I NOTICE THAT YOU WORK FOR CLAYTON RAWL?

15 A. THAT'S RIGHT.

16 Q. I UNDERSTAND. WHAT KIND OF WORK DO YOU DO FOR
17 CLAYTON RAWL?

18 A. IT'S A BIG FARM, BUT I'M---

19 Q. RIGHT.

20 A. ---PRETTY MUCH IN THE OFFICE AND DO RECONCILIATION
21 ORDERS, SENDING TRUCKS OUT, DETERMINING WHAT'S GOING TO BE
22 PICKED, CUT, AND THAT TYPE THING, BUT IT'S MAINLY OFFICE WORK
23 IS WHERE I'M AT.

24 Q. I GOT YOU. AND I BELIEVE YOU INDICATED THAT YOU
25 WENT TO CAROLINA?

1 A. YEAH.

2 Q. HOW FAR DID YOU GO AT CAROLINA?

3 A. I ACTUALLY WENT TO CAROLINA FOR A BRIEF PERIOD. I
4 WAS OUT AWHILE AND WENT THROUGH MIDLANDS TECH AND GRADUATED.
5 I WENT BACK TO CAROLINA. I'M ACTUALLY A FEW CREDITS SHORT OF
6 A BIOLOGY DEGREE. I'M OVER THE AMOUNT OF CREDITS BUT NOT IN
7 THE SAME BIOLOGY.

8 Q. I GOT YOU. THANK YOU, SIR. AND WHAT IS YOUR
9 SPOUSE'S OCCUPATION?

10 A. SHE IS A CARTOGRAPHER. SHE---

11 Q. WHAT IS THAT?

12 A. SHE DRAWS MAP -- DRAWS MAPS ON THE COMPUTER THAT
13 HAVE TO DO WITH THE PROPERTY LINES AND THINGS LIKE THAT.

14 Q. I'M WITH YOU. OKAY. MR. BURRIS, YOU TOLD US YOU
15 HAD SERVED ON A JURY IN A CIVIL CASE?

16 A. YEAH.

17 Q. YOU SAID THAT WAS IN COLUMBIA?

18 A. YEAH, I BELIEVE THAT'S -- I BELIEVE IS A CIVIL CASE
19 IS WHAT YOU'D CALL IT. THAT'S BEEN A LONG TIME AGO.

20 Q. DID YOU LIVE IN RICHLAND COUNTY THEN?

21 A. I LIVED IN RICHLAND COUNTY.

22 Q. I GOT YOU. MR. BURRIS, AS JUDGE FEW EXPLAINED TO
23 YOU, THE DEFENDANT HERE IS CHARGED WITH MURDER AND SOME OTHER
24 CRIMES, AND THIS CASE HAS THE POTENTIAL OF BEING A TWO-PART
25 CASE. BUT THE FIRST PART OF THE CASE DEALS WITH WHETHER THE

1 STATE PROVES HIM GUILTY BEYOND A REASONABLE DOUBT, AND THE
2 JURY WOULD HAVE TO BE CONVINCED THAT THE STATE HAD MET THAT
3 BURDEN OF PROOF BEFORE HE COULD BE FOUND GUILTY. DO YOU
4 UNDERSTAND THAT?

5 A. I DO UNDERSTAND THAT.

6 Q. IF YOU WERE ON THE JURY, DO YOU THINK YOU WOULD HAVE
7 ANY PROBLEM PUTTING THE STATE TO THAT BURDEN OF PROOF?

8 A. NO..

9 Q. OKAY. AND YOU UNDERSTAND THAT ONLY IF THE STATE
10 MEETS THAT BURDEN OF PROOF WOULD WE HAVE A SECOND PHASE TO
11 THIS CASE.

12 A. I UNDERSTAND THAT.

13 Q. YOU UNDERSTAND THAT. IT'S NOT A FOREGONE CONCLUSION
14 WE'RE GOING TO HAVE A SENTENCING.

15 A. YES, SIR.

16 Q. BUT THEY HAVE TO PASS THAT HURDLE BEFORE WE EVEN GET
17 THERE.

18 A. RIGHT.

19 Q. MR. BURRIS, DO YOU THINK IF YOU WERE SEATED ON THE
20 JURY YOU WOULD HAVE ANY PROBLEM WEIGHING THE CREDIBILITY OR
21 THE BELIEVABILITY OF THE VARIOUS WITNESSES THAT MIGHT
22 TESTIFY? THESE WITNESSES MIGHT BE POLICE OFFICERS, EXPERTS,
23 LAY PEOPLE, FAMILY MEMBERS. DO YOU THINK YOU'D HAVE ANY
24 PROBLEM DETERMINING AS BEST YOU COULD WHO WAS TELLING THE
25 TRUTH AND WHO WASN'T?

1 A. I DON'T TAKE IT LIGHTLY. I DON'T THINK I WOULD HAVE
2 ANY PROBLEM WITH THAT, BUT I REALIZE THAT'S A HEAVY FACTOR
3 AND WOULD WANT TO FEEL THAT I'VE UNDERSTOOD EVERYTHING
4 THOROUGHLY.

5 Q. RIGHT. AND I TAKE IT THAT WOULD BE THE -- THAT'S
6 THE MAIN JOB OF THE JURY, AND YOU WOULD BE GIVEN SOME
7 INSTRUCTIONS BY THE JUDGE AS TO DIFFERENT THINGS AND
8 DIFFERENT FACTORS YOU WERE TO USE IN COMING TO THAT
9 DETERMINATION. AND ALONG THOSE LINES I WOULD ASK YOU: DO
10 YOU THINK YOU'D HAVE ANY PROBLEM FOLLOWING JUDGE FEW'S LEGAL
11 INSTRUCTIONS AND APPLYING THOSE LEGAL PRINCIPLES TO THE FACTS
12 THAT YOU FIND?

13 A. I DON'T THINK THAT WOULD BE ANY PROBLEM.

14 Q. OKAY. MR. BURRIS, THE VICTIM IN THIS CASE WAS A
15 SERGEANT DAVIS WHO WAS STATIONED AT FORT JACKSON. HE WAS
16 ACTIVE MILITARY OBVIOUSLY, AND THE FACT THAT HE WAS IN THE
17 MILITARY, DO YOU THINK THAT WOULD HAVE ANY BEARING AT ALL ON
18 YOUR ABILITY TO WEIGH AND CONSIDER THE FACTS IN THIS CASE AND
19 BE A FAIR JUROR?

20 A. NO, I DON'T THINK THAT WOULD AFFECT ME.

21 Q. ALL RIGHT. I NOTICE IN RESPONSE TO JUDGE FEW'S
22 QUESTION ABOUT THE THREE TYPES OF JURORS, THE FORM THAT YOU
23 WERE GIVEN, YOU INDICATED THAT YOU WERE A TYPE THREE JUROR.

24 A. I FEEL THAT I AM, YES.

25 Q. OKAY. DID YOU HAVE TO CONSIDER ANY OF THE OTHER TWO

1 ALTERNATIVES?

2 A. I DID HAVE TO THINK ABOUT IT.

3 Q. UH-HUH.

4 A. BUT I THINK THAT -- I BELIEVE IN MY HEART THAT I'M
5 CLOSER TO THE THIRD TYPE JUROR, THAT I COULD DO WHAT WAS THE
6 RIGHT THING TO DO.

7 Q. OKAY. CAN YOU TELL ME A LITTLE BIT IN YOUR OWN
8 WORDS WHY YOU BELIEVE YOU'RE NUMBER THREE?

9 A. YEAH, I CAN. I THINK THAT -- I THINK THAT THE --
10 UNLESS THERE WAS NOT CONVINCING EVIDENCE, THERE MIGHT BE A
11 PROBLEM. I THINK THAT IF SOMEONE HAS TO BEAR THE BURDEN OF
12 THEIR CRIME IF THEY ARE CONVICTED WITHOUT A DOUBT AND I THINK
13 THAT IF THAT BURDEN IS NOT MET THAT I WOULD -- THAT I COULD
14 NOT DO IT.

15 Q. YOU COULD FIND THE DEFENDANT NOT GUILTY IF THE
16 BURDEN WASN'T MET.

17 A. YES, I DO.

18 Q. DO YOU THINK ALSO IF IT WASN'T PROVEN TO YOU THAT
19 THE DEATH PENALTY WASN'T APPROPRIATE THAT YOU COULD VOTE FOR
20 LIFE?

21 A. I DO. IF I FEEL THAT -- IF I WEIGHED ALL THE
22 CIRCUMSTANCES AND -- AND IT WAS NOT CALLED FOR, I THINK THAT
23 THERE'S BOTH. I THINK THAT THERE'S CASES WHERE I COULD JUDGE
24 THAT IT IS RIGHT AND I THINK THAT THERE'S CASES WHERE THERE
25 COULD BE CIRCUMSTANCES THAT MADE IT NOT.

1 Q. OKAY. ONE FINAL THING, MR. BURRIS. IF YOU WERE ON
2 THE JURY AND FOUND THAT YOU HAD FORMED AN OPINION AS TO WHAT
3 THE CORRECT VERDICT OR THE CORRECT PUNISHMENT MIGHT BE, IF WE
4 GET TO THAT, AND YOU FOUND THAT YOU WERE AT ODDS WITH YOUR
5 OTHER 11 JURORS, DO YOU THINK YOU'D EVER CONSIDER CHANGING
6 YOUR VOTE JUST TO ARRIVE AT A VERDICT?

7 A. NO. I WOULD MAKE UP MY MIND FOR MYSELF, AND THAT'S
8 WHAT I'D STICK WITH.

9 Q. YOU'D STICK WITH WHAT YOU---

10 A. ONE WAY OR -- ONE WAY OR THE OTHER.

11 Q. YOU'D STICK WITH WHAT YOU THOUGHT WAS RIGHT.

12 A. YES, SIR.

13 Q. OKAY. THANK YOU, MR. BURRIS. I APPRECIATE IT.

14 A. UH-HUH.

15 THE COURT: ANYTHING BEFORE I RULE?

16 MR. LITTLEJOHN: NO, YOUR HONOR.

17 THE COURT: MR. BURRIS, YOU ARE QUALIFIED TO SERVE
18 AS A JUROR IN THIS CASE. THAT DOESN'T MEAN YOU'RE ON THE
19 JURY, BUT IT MEANS YOU'RE ELIGIBLE TO BE ON THE JURY. WE
20 WILL NOT NEED YOU TO RETURN UNTIL MONDAY MORNING, BUT BE
21 PREPARED TO COME HERE ON MONDAY MORNING. IF YOU WOULD CHECK
22 ON SUNDAY NIGHT AFTER 6:00 BY CALLING THE TELEPHONE NUMBER ON
23 THAT PINK CARD THAT YOU WERE GIVEN, THERE WILL BE A DETAILED
24 MESSAGE ON THAT PHONE LINE THAT GIVES YOU INSTRUCTIONS ABOUT
25 WHEN YOU NEED TO BE HERE ON MONDAY AND WHAT YOU NEED TO BRING

1 IN CASE YOU NEED TO BRING YOUR PERSONAL ITEMS AND YOUR
2 CLOTHES TO STAY WITH US FOR SEVERAL DAYS.

3 THE WITNESS: OKAY.

4 THE COURT: IN THE MEANTIME, YOU MAY NOT DISCUSS
5 THIS CASE NOR MAY YOU ALLOW ANYONE TO DISCUSS THIS CASE WITH
6 YOU. PLEASE BE VERY CAREFUL NOT TO ALLOW YOURSELF TO BE
7 EXPOSED TO ANY PRESS COVERAGE THAT THERE MAY BE ABOUT THIS
8 CASE. HAVE A NICE REST OF THE WEEK, AND WE'LL SEE YOU ON
9 MONDAY.

10 THE WITNESS: OKAY. THANK YOU.

11 THE COURT: THANK YOU, SIR.

12 THE WITNESS: THANK YOU. THANK YOU.

13 (JUROR BURRIS LEAVES THE COURTROOM.)

14 MR. MYERS: YOUR HONOR, BEFORE THE NEXT ONE IS
15 BROUGHT IN, THERE MAY BE SOMETHING WE HAVE TO RESOLVE. ON
16 THE CLERK'S JURY INFORMATION THAT HAS ALL THE NAMES, THE NEXT
17 JUROR SAYS IT'S WALLACE J. ZERUTH, Z-E-R-U-T-H.

18 MR. LITTLEJOHN: L. WALLACE L.

19 MR. MYERS: WALLACE L. ON THE CLERK'S STUFF WHERE
20 IT HAS THAT AT NUMBER 350, IT'S GOT DATE OF BIRTH APRIL 21,
21 1946.

22 THE COURT: OKAY.

23 MR. MYERS: NOW, I NOTICE WHEN THIS WAS FILLED OUT
24 IT'S GOT WALLACE L. ZERUTH, JR., AND HIS AGE IS 28. SO IT
25 MIGHT BE THAT---

1 THE COURT: WAIT A MINUTE. WASN'T IT IN THAT CASE
2 THAT WE TRIED DOWN IN JANUARY WHERE THIS CAME UP? DIDN'T WE
3 HAVE TWO JURORS? DO Y'ALL REMEMBER THAT?

4 MR. MYERS: I THINK SO, YEAH.

5 THE COURT: AND THEN THAT WAS THE FIRST TIME I'D
6 EVER SEEN THAT HAPPEN, AND THEN I HAD IT HAPPEN -- I'VE HAD
7 IT HAPPEN SINCE IN OTHER COUNTIES SINCE THEN WHERE WE GOT THE
8 SON OR THE FATHER IN AND WE WERE SUPPOSED TO HAVE ONE OR THE
9 OTHER.

10 MR. MYERS: AND HIS DATE OF BIRTH IS 2/20/1978.

11 THE COURT: THAT'S WHAT THE RETURN SHOWS?

12 MR. MYERS: THE RETURN SHOWS THAT, AND IT'S GOT ON
13 HERE WALLACE L. ZERUTH, JR.

14 THE COURT: ALL RIGHT.

15 MR. MYERS: THAT'S HOW HE SIGNED IT.

16 THE COURT: LET'S -- LET'S -- HAVE YOU SEEN THIS GUY
17 OUT HERE?

18 BAILIFF: HE'S OUT HERE.

19 THE COURT: DOES HE LOOK LIKE HE'S 28 OR A LOT
20 OLDER?

21 BAILIFF: LET ME CHECK.

22 THE COURT: DON'T WORRY ABOUT IT. HOLD ON. DON'T
23 WORRY ABOUT IT YET.

24 MR. MYERS: AS A MATTER OF FACT, ON THE THING THAT
25 THE CLERK SENDS OUT, IT'S GOT OVER HERE REGULAR, BUT HE

1 CORRECTED IT AND PUT JUNIOR WHEN HE SENT IT BACK IN. SO ALL
2 THIS STUFF WAS SENT BACK IN AS JUNIOR BORN IN 1978, BUT THE
3 CLERK'S INFORMATION SHOWS IT'S NOT JUNIOR AND BORN IN 1946.

4 THE COURT: OKAY. WHERE IS THE -- WHEN THE CLERK OR
5 WHEN THE PANEL OF JURY COMMISSIONERS DRAWS THE NAME, WHERE IS
6 THE INFORMATION THAT YOU ACTUALLY PULLED? IT'S ON THIS
7 SHEET?

8 MR. MYERS: THAT WAS THE SHEET I WAS REFERRING TO.

9 THE COURT: OKAY. IT'S ON---

10 MR. MYERS: THE FRONT PAGE HAS GOT THE JURY
11 COMMISSIONERS.

12 THE COURT: WELL, I'M GOING TO -- I'LL QUESTION HIM,
13 AND THEN IF IT'S SUPPOSED TO BE HIS FATHER, WHAT DO WE DO?
14 SKIP HIM OR... WE STILL WOULD HAVE TIME TO BRING THE FATHER
15 IN, REALLY.

16 MR. LITTLEJOHN: JUDGE, I DON'T KNOW. SOLICITOR
17 MYERS HASN'T CITED ANY CASES.

18 MR. MYERS: WELL, I'LL CITE SOME FOR YOU.

19 THE COURT: ALL RIGHT. WELL, WE'LL PROBABLY HAVE
20 ONE CALLED STATE VERSUS MERCER THAT COULD BE CITED IN FUTURE
21 YEARS IF WE USE THE WRONG JUROR.

22 MR. LITTLEJOHN: LET'S HOPE NOT.

23 THE COURT: WOULD Y'ALL PREFER THAT WE JUST SKIP HIM
24 OR WOULD Y'ALL PREFER THAT WE TAKE STEPS TO TRY TO BRING THE
25 REAL MR. ZERUTH IN? HE APPEARS -- '46. HE WOULD -- WAIT A

1 MINUTE. WELL, AS OF NEXT FRIDAY HE WOULD---

2 MR. LITTLEJOHN: 59.

3 THE COURT: OH, 59. OKAY. SO HE WOULD QUALIFY.
4 HE'S NOT 65.

5 MR. MYERS: WHO IS THAT?

6 THE COURT: THE ELDER MR. ZERUTH.

7 MR. LITTLEJOHN: HE WOULD BE 60.

8 MR. MYERS: I THINK -- I THINK HE MAY HAVE A RECORD
9 THAT DISQUALIFIES HIM ANYHOW.

10 THE COURT: THE ELDER ONE?

11 MR. MYERS: YES, SIR. HE HAD SOME OUT-OF-STATE
12 STUFF. I KNOW HE -- SOMETHING ABOUT LARCENY. HE'S GOT THREE
13 MONTHS, ONE YEAR OF PROBATION, AND THEN HE'S GOT RESISTING
14 ARREST THAT'S FIVE MONTHS. SO I DON'T THINK HE WOULD BE --
15 PROBABLY WOULDN'T BE QUALIFIED EVEN IF WE BROUGHT HIM IN.
16 BUT I DON'T KNOW WHAT THIS JUROR WOULD SAY, BUT I'VE GOT
17 PROBLEMS WHERE WE SUMMONS ONE JUROR AND---

18 THE COURT: WELL, I DON'T THINK WE CAN USE THIS
19 JUROR---

20 MR. MYERS: YES, SIR.

21 THE COURT: ---IF HE'S THE WRONG PERSON. THE
22 QUESTION WOULD BE WHETHER OR NOT WE SHOULD JUST SKIP THE
23 ELDER MR. ZERUTH OR TRY TO BRING HIM IN. YOU'RE SAYING THAT
24 THE ELDER MR. ZERUTH APPEARS TO HAVE A CRIMINAL RECORD THAT
25 WOULD DISQUALIFY HIM.

1 MR. MYERS: HE'S GOT A LOT OF OUT-OF-STATE STUFF;
2 YES, SIR.

3 THE COURT: AND YOU CAN'T TELL EXACTLY WHAT IT ALL
4 IS?

5 MR. MYERS: I KNOW IT'S A LARCENY, BUT I DON'T KNOW
6 WHAT IT IS---

7 THE COURT: I'M GOING TO DO THIS: I'M GOING TO
8 BRING HIM IN, THE ELDER ONE, UNLESS Y'ALL AGREE NOT TO. WHAT
9 DO YOU SAY?

10 MR. LITTLEJOHN: JUDGE, I THINK WE SHOULD BRING HIM,
11 I MEAN, IF HE'S -- IF HE'S---

12 THE COURT: ALL RIGHT. THEN---

13 MR. LITTLEJOHN: EVERYBODY ELSE CAME IN, AND HE
14 SHOULD COME IN ALSO.

15 THE COURT: I'M GOING TO ASK HIM WHETHER HIS FATHER
16 STILL LIVES AT THIS -- IN LEXINGTON COUNTY AND THEN WE'LL GO
17 FROM THERE. BRING HIM IN, PLEASE.

18 (JUROR WALLACE L. ZERUTH, JR., WAS BROUGHT INTO THE
19 COURTROOM.)

20 WALLACE L. ZERUTH, JR., HAVING BEEN PREVIOUSLY
21 SWORN AS A PART OF THE JURY VOIR DIRE AND REMAINING UNDER
22 OATH, TESTIFIED AS FOLLOWS:

23 EXAMINATION BY THE COURT

24 Q. HOW ARE YOU, SIR?

25 A. ALL RIGHT, SIR.

1 Q. WE MIGHT HAVE SOME CONFUSION HERE, AND I WANT TO SEE
2 IF I CAN CLEAR THIS UP.

3 A. UH-HUH.

4 Q. THE ORIGINAL JURY LIST THAT WE HAVE SHOWS A WALLACE
5 L. ZERUTH. IS THAT HOW YOU PRONOUNCE IT?

6 A. YES, SIR.

7 Q. DATE OF BIRTH APRIL 21ST, 1946.

8 A. THAT'S MY DAD.

9 Q. AND I CAN TELL THAT YOU'RE NOT QUITE THAT OLD.

10 A. NO, SIR. NO, SIR. THAT'S MY DAD.

11 Q. NOW, DOES YOUR DAD STILL LIVE IN LEXINGTON COUNTY?

12 A. UH-HUH.

13 Q. DOES HE LIVE AT 148 DOWNY DRIVE?

14 A. NO, SIR.

15 Q. IS THAT WHERE YOU LIVE?

16 A. THAT'S WHERE I LIVE.

17 Q. WHERE DOES YOUR DAD LIVE?

18 A. HE LIVES OFF OF HIGHWAY 321.

19 Q. CAN YOU GIVE ME THE ADDRESS?

20 A. I THINK I GOT IT. I HONESTLY DON'T KNOW. IT'S
21 4464, I THINK, HIGHWAY 321, LOT A-5.

22 Q. HIGHWAY 321, LOT 85?

23 A. A-5. A-5.

24 Q. AND WHAT -- A-5?

25 A. UH-HUH. A-5.

VOLUME THREE OF SIX

STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM LEXINGTON COUNTY

John C. Few, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KEVIN MERCER,

APPELLANT

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COPY

STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF LEXINGTON

2003-GS-32-0409

THE STATE OF SOUTH CAROLINA :

-VS- :

KEVIN J. MERCER :

TRANSCRIPT OF RECORD

VOLUME 3

PAGES 1000 - 1499

APRIL 10 - 13, 2006

APRIL 17 - 22, 2006

LEXINGTON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE JOHN FEW, JUDGE, AND JURY.

A P P E A R A N C E S:

DONALD V. MYERS, ESQUIRE
S. RICK HUBBARD, III, ESQUIRE
D. SHAWN GRAHAM, ESQUIRE
MARION MOSES, ESQUIRE
ATTORNEYS FOR THE STATE

CAMERON B. LITTLEJOHN, JR., ESQUIRE
MELISSA J. KIMBROUGH, ESQUIRE
ATTORNEYS FOR THE DEFENDANT

DAPHNE D. HELMS
CIRCUIT COURT REPORTER

1 Q. OH, A-5. AND WHAT TOWN?

2 A. GASTON.

3 Q. GASTON?

4 A. UH-HUH.

5 Q. ZIP?

6 A. 29053, I THINK.

7 Q. WHAT'S HIS PHONE NUMBER?

8 A. 926.

9 Q. 926?

10 A. UH-HUH. 2296.

11 Q. 2296.

12 A. YES, SIR.

13 Q. YOUR FATHER IS ALMOST 60?

14 A. I THINK -- YEAH, HE'LL BE 60 THIS YEAR. YES, SIR.

15 Q. ALL RIGHT. WE -- WE ARE GOING TO HAVE TO HAVE YOUR

16 FATHER UP HERE INSTEAD OF YOU.

17 A. OKAY.

18 Q. SO YOU'RE GOING TO BE EXCUSED.

19 A. ALL RIGHT.

20 Q. BUT IF YOU WOULDN'T MIND HELPING US BY MAYBE LETTING

21 YOUR DAD KNOW THAT HE NEEDS TO COME UP HERE---

22 A. OKAY.

23 Q. WE WOULD LIKE FOR HIM TO COME THIS AFTERNOON OR

24 TOMORROW MORNING.

25 A. OKAY.

1 Q. CAN YOU CONTACT HIM, YOU THINK?

2 A. YES, SIR.

3 Q. DO YOU KNOW WHERE HE IS NOW?

4 A. HE'S EITHER AT HIS HOUSE OR AT HIS GIRLFRIEND'S
5 HOUSE.

6 Q. OKAY. WELL, I TELL YOU WHAT. YOU DON'T NEED TO
7 WORRY ABOUT IT.

8 A. OKAY.

9 Q. WE WILL -- WELL, DO YOU KNOW THE NUMBER TO THE
10 GIRLFRIEND'S HOUSE?

11 A. NO.

12 Q. ALL RIGHT. DOES THIS -- IS THIS HIS CELL PHONE
13 NUMBER?

14 A. THAT'S THE HOUSE NUMBER. HE DOESN'T HAVE A CELL
15 PHONE.

16 Q. DOES HE HAVE A CELL PHONE?

17 A. NO.

18 Q. OKAY. HOW ABOUT TELL ME WHERE THE GIRLFRIEND'S
19 HOUSE IS, IF YOU KNOW?

20 A. IT'S SOMEWHERE ON MACK STREET IN GASTON. I MEAN, I
21 CAN GET THERE, BUT I DON'T KNOW THE ADDRESS.

22 Q. MACK STREET?

23 A. YES, SIR.

24 Q. IN GASTON. WHAT'S HER NAME?

25 A. SHIRLEY... OH, GOSH. I DON'T HONESTLY KNOW HER

1 LAST NAME---

2 Q. SHIRLEY.

3 A. ---NO, SIR.

4 Q. OKAY. SHIRLEY ON MACK STREET IN GASTON.

5 A. THAT'S -- I MEAN, I CAN GET THERE, BUT I DON'T KNOW
6 HER NAME OR HER ADDRESS.

7 Q. ALL RIGHT. WELL, WE -- WE'RE GOING TO TRY TO --
8 WE'RE GOING TO NEED TO GET A HOLD OF YOUR DAD. I'M SORRY---

9 A. OKAY.

10 Q. ---ABOUT THE CONFUSION.

11 A. NOT A PROBLEM.

12 Q. BUT YOUR DAD IS THE ONE WHO WAS SUPPOSED TO HAVE
13 BEEN DRAWN.

14 A. UH-HUH.

15 Q. AND SO WHAT WE'LL DO IS WE'LL GET HIM IN HERE AND
16 WE'LL TALK TO HIM AND GET THIS CLEARED UP.

17 A. OKAY.

18 Q. SO YOU'RE FREE TO GO.

19 A. ALL RIGHT.

20 Q. THANK YOU.

21 A. ALL RIGHT. Y'ALL HAVE A GOOD DAY.

22 (JUROR ZERUTH LEAVES THE COURTROOM.)

23 MR. LITTLEJOHN: YOUR HONOR, COULD I CONFER WITH THE
24 STATE FOR A MINUTE?

25 (AN OFF-THE-RECORD DISCUSSION TAKES PLACE BETWEEN

1 MR. LITTLEJOHN AND MR. HUBBARD.)

2 MR. LITTLEJOHN: THANK YOU, YOUR HONOR.

3 THE COURT: OKAY. WHO IS -- WHO CAN TAKE OVER
4 TRYING TO GET HIM IN HERE? MA'AM?

5 THE CLERK: DO YOU WANT ME TO CALL HIM?

6 THE COURT: YES. HAVE YOU GOT ALL THE INFORMATION
7 THAT WE GOT? ALL RIGHT. IF YOU NEED TO GET SOMEBODY -- IF
8 YOU CAN'T GET A HOLD OF HIM; THEN SEND SOMEBODY FROM THE
9 SHERIFF'S DEPARTMENT OUT TO LOCATE HIM AND NOTIFY HIM THAT HE
10 NEEDS TO COME IN RIGHT AWAY.

11 THE CLERK: 926...

12 THE COURT: I GOT 96. 926-2296.

13 THE CLERK: OKAY.

14 THE COURT: OKAY? ALL RIGHT. WE'LL HAVE THE CLERK
15 KEEP US POSTED AS TO WHAT IS THE PROGRESS BEING MADE WITH
16 LOCATING THE CORRECT MR. ZERUTH. AND NOW WE ARE READY FOR
17 ROBIN EZZELL.

18 (JUROR ROBIN EZZELL IS BROUGHT INTO THE COURTROOM.)

19 ROBIN EZZELL, HAVING BEEN PREVIOUSLY SWORN AS A
20 PART OF THE JURY VOIR DIRE AND REMAINING UNDER OATH,
21 TESTIFIED AS FOLLOWS:

22 EXAMINATION BY THE COURT

23 Q. HELLO. HOW ARE YOU, MS. EZZELL?

24 A. I'M FINE. HOW ARE YOU?

25 Q. FINE. THANK YOU. WHEN YOU WERE HERE ON MONDAY, YOU

1 WERE PUT UNDER OATH, AND YOU'RE STILL UNDER OATH. DO YOU
2 UNDERSTAND THAT?

3 A. I DO.

4 Q. SINCE YOU LEFT US ON MONDAY, HAVE YOU TALKED ABOUT
5 THIS CASE WITH ANYONE OR HAS ANYONE TRIED TO TALK TO YOU
6 ABOUT THE CASE?

7 A. PEOPLE HAVE TRIED TO TALK TO ME ABOUT WHAT WAS GOING
8 ON, BUT, NO, I HAVEN'T TALKED TO ANYONE.

9 Q. SO THEY WERE ASKING YOU QUESTIONS ABOUT WHAT WAS
10 GOING ON?

11 A. HOW WAS IT? WHAT WAS IT LIKE? WHAT DID YOU DO?
12 CAN YOU TELL US WHAT IT'S ABOUT?

13 Q. DID THEY -- SO THEY DID ASK YOU WHAT THE CASE WAS
14 ABOUT?

15 A. WELL, THEY WANTED TO KNOW IF I KNEW WHAT IT WAS
16 ABOUT.

17 Q. AND WHAT---

18 A. AND I JUST TOLD THEM I COULDN'T DISCUSS IT.

19 Q. OKAY. AND IN THE COURSE OF DOING ALL THAT, DID THEY
20 EVER -- DID THEY SAY ANYTHING TO YOU ABOUT WHAT THEY MIGHT
21 HAVE KNOWN ABOUT THE CASE?

22 A. NO.

23 Q. OKAY. SO NOBODY HAS TOLD YOU ANY FACTS OR ANYTHING
24 LIKE THAT?

25 A. NO, SIR.

1 Q. ALL RIGHT. WELL, YOU DID A GOOD JOB. THANK YOU.

2 A. THANK YOU.

3 Q. CONTINUE TO DO THAT.

4 A. I WILL.

5 Q. I'M GOING TO ASK YOU SOME QUESTIONS NOW, AND WHEN
6 I'M DONE, THE LAWYERS WILL PROBABLY HAVE SOME FOLLOW-UP
7 QUESTIONS FOR YOU.

8 A. OKAY.

9 Q. WE DON'T MEAN TO BE PRYING TOO DEEP INTO YOUR
10 PERSONAL LIFE, BUT WE DO HAVE TO ASK YOU THESE QUESTIONS.
11 THERE ARE NO RIGHT OR WRONG ANSWERS. WE JUST WANT YOU TO
12 LISTEN VERY CAREFULLY AND THEN TO BE OPEN AND HONEST WITH US
13 AND TELL US WHAT YOU THINK AND HOW YOU FEEL ABOUT THESE
14 ISSUES THAT WE'LL BE DISCUSSING.

15 A. OKAY.

16 Q. IF YOU ARE A JUROR IN THIS CASE, COULD YOU ACCEPT
17 AND APPLY THE LAW PRECISELY AS I WOULD EXPLAIN IT TO YOU AND
18 SET ASIDE ANYTHING THAT YOU MIGHT HAVE LEARNED OR HEARD ABOUT
19 THE CASE BEFORE THE TRIAL BEGAN AND THEN RENDER A VERDICT
20 THAT'S BASED SOLELY ON THE TESTIMONY AND EVIDENCE THAT YOU
21 WOULD SEE AND HEAR IN THIS COURTROOM? COULD YOU DO THAT?

22 A. YES, SIR.

23 Q. DO YOU UNDERSTAND THAT IN A CRIMINAL CASE THE STATE
24 HAS THE BURDEN OF PROVING THE DEFENDANT GUILTY BEYOND A
25 REASONABLE DOUBT?

1 A. YES, SIR.

2 Q. COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES
3 THAT YOU FIND TO HAVE BEEN PROVEN AND DEPENDING ON -- AND
4 CONSIDERING THE LAW AS I WOULD EXPLAIN IT TO YOU, COULD YOU
5 FIND THE DEFENDANT EITHER GUILTY OR NOT GUILTY DEPENDING ON
6 WHETHER OR NOT YOU FEEL THE STATE HAS MET THAT BURDEN OF
7 PROOF?

8 A. YES, SIR.

9 Q. YOU COULD DO THAT.

10 A. YES.

11 Q. IF YOU'RE ON THE JURY IN THIS CASE AND IF THE JURY
12 FINDS THE DEFENDANT GUILTY OF MURDER, WE WOULD MOVE INTO THE
13 SECOND PHASE OR THE PENALTY PHASE OF THE TRIAL. I'M GOING TO
14 TALK TO YOU NOW ABOUT SOME OF THE THINGS THAT WILL COME UP IN
15 THAT PHASE IF WE GET THERE. AGGRAVATING CIRCUMSTANCES ARE
16 FACTS OR INCIDENTS OR DETAILS THAT THE STATE OF SOUTH
17 CAROLINA HAS DECLARED TO AGGRAVATE THE CRIME OF MURDER OR TO
18 MAKE IT WORSE. AGGRAVATING CIRCUMSTANCES INCREASE THE
19 ENORMITY OF THE CRIME AND ADD TO THE INJURY RESULTING FROM
20 THE CRIME.

21 MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE
22 FACTS, INCIDENTS, OR DETAILS THAT SOUTH CAROLINA HAS DECLARED
23 TO LESSEN THE SEVERITY OF THE CRIME OF MURDER, AND THEY SERVE
24 TO EXTENUATE OR TO REDUCE THE DEGREE OF MORAL CULPABILITY OR
25 RESPONSIBILITY FOR THE CRIME. DO YOU UNDERSTAND THE CONCEPT

1 OF AGGRAVATING AND MITIGATING CIRCUMSTANCES?

2 A. I DO NOW.

3 Q. WHEN YOU CAME IN THIS AFTERNOON, YOU WERE GIVEN THIS
4 SHEET THAT SUMMARIZES THREE TYPES OF JURORS.

5 A. UH-HUH.

6 Q. DO YOU UNDERSTAND THOSE THREE TYPES OF JURORS?

7 A. YES, SIR, I DO.

8 Q. WHICH OF THOSE THREE TYPES DO YOU THINK YOU WOULD
9 BE?

10 A. I'M THE LAST ONE.

11 Q. THE THIRD ONE?

12 A. YES, SIR.

13 Q. NOW, MA'AM, AGAIN, IF YOU'RE ON THE JURY IN THIS
14 CASE AND IF THE JURY FINDS THE DEFENDANT GUILTY OF MURDER --
15 AND BY THE WAY, THE DEFINITION OF MURDER IS AN INTENTIONAL
16 AND UNLAWFUL KILLING OF ANOTHER PERSON WITH MALICE
17 AFORETHOUGHT. IT WOULD BE UP TO THE JURY TO DETERMINE THE
18 SENTENCE THAT THE DEFENDANT WOULD RECEIVE, AND THERE WOULD BE
19 TWO OPTIONS THAT THE JURY COULD HAVE OR WOULD HAVE. THE
20 FIRST OPTION WOULD BE FOR A LIFE SENTENCE WITHOUT THE
21 POSSIBILITY OF PAROLE, AND THE OTHER OPTION WOULD BE THE
22 DEATH PENALTY. COULD YOU, DEPENDING ON THE FACTS AND
23 CIRCUMSTANCES THAT YOU FIND TO EXIST AND CONSIDERING THE LAW
24 AS I WOULD EXPLAIN IT TO YOU, COULD YOU VOTE TO RETURN A
25 VERDICT FOR A LIFE SENTENCE?

1 A. YES.

2 Q. COULD YOU VOTE TO RETURN A VERDICT IMPOSING THE
3 DEATH PENALTY?

4 A. YES, SIR.

5 Q. IF YOU'RE ON THE JURY IN THIS CASE AND IF I DECIDE
6 TO SEQUESTER THE JURY, THEN YOU WOULD BE PUT UP IN A HOTEL
7 ROOM FOR FIVE OR SIX DAYS. WE WOULD PROVIDE ALL OF YOUR
8 MEALS FOR YOU, AND YOU WOULD NOT BE ALLOWED TO GO HOME DURING
9 THAT PERIOD OF TIME. WOULD THAT IMPOSE A TERRIBLE BURDEN ON
10 YOU?

11 A. NO, SIR.

12 Q. DID YOU GET A CHANCE TO READ OVER THAT WITNESS LIST
13 THAT YOU WERE GIVEN?

14 A. I DID.

15 Q. DID YOU READ EVERY NAME ON THAT LIST?

16 A. I DID.

17 Q. DO YOU KNOW OR ARE YOU RELATED TO ANYBODY WHOSE NAME
18 APPEARS ON THAT LIST?

19 A. I KNOW WHO DR. SEXTON IS. I WAS IN THE PHOTOGRAPHY
20 BUSINESS FOR A GREAT NUMBER OF YEARS, AND I SPOKE TO HIM MANY
21 TIMES ON THE TELEPHONE REGARDING PHOTOGRAPHY.

22 Q. UH-HUH.

23 A. BUT OTHER THAN THAT, I DON'T KNOW HIM PERSONALLY.

24 Q. WHEN WAS THE LAST TIME YOU HAD ANY DEALINGS WITH DR.
25 SEXTON?

1 A. 1996.

2 Q. OKAY. ALL RIGHT. THANK YOU, MA'AM.

3 A. UH-HUH.

4 THE COURT: THE LAWYERS ARE GOING TO ASK YOU SOME
5 FOLLOW-UP QUESTIONS NOW.

6 DIRECT EXAMINATION

7 BY MR. HUBBARD:

8 Q. HOW ARE YOU DOING TODAY?

9 A. FINE. THANK YOU. HOW ARE YOU?

10 Q. I'M DOING GOOD. I JUST HAVE A FEW QUESTIONS TO
11 FOLLOW UP WHAT THE JUDGE WAS TALKING ABOUT. HAVE YOU EVER
12 SERVED ON A JURY BEFORE?

13 A. I SERVED ON THE RICHLAND COUNTY GRAND JURY.

14 Q. OKAY. DO YOU REMEMBER HOW MANY YEARS AGO THAT WAS?

15 A. I BELIEVE THAT WAS 1997.

16 THE COURT: RICK, HOLD ON JUST ONE SECOND, PLEASE,
17 IF Y'ALL DON'T MIND. (PAUSE) MS. EZZELL, WOULD YOU MIND
18 STEPPING OUT IN THE HALL FOR JUST ONE SECOND, PLEASE?

19 THE WITNESS: SURE. CAN I LEAVE MY PURSE?

20 THE COURT: YOU CAN. YES, MA'AM.

21 (JUROR EZZELL LEAVES THE COURTROOM.)

22 THE COURT: I HAVE DISCOVERED INTERESTINGLY THAT I
23 APPEAR TO BE SOMEWHAT OF A MAGNET FOR BOMB THREATS IN THE
24 LIFE -- AND APPARENTLY THERE HAS BEEN SOME SORT OF A SECURITY
25 THREAT THAT HAS BEEN DIRECTED AT THE COURTHOUSE. THE CLERK

1 HAS NO MORE DETAILED INFORMATION THAN THAT. I SEE NO REASON
2 TO INTERRUPT WHAT WE'RE DOING, BUT I WANTED TO LET Y'ALL
3 KNOW. IF SHE COMES BACK AND TELLS ME ANYTHING DIFFERENT,
4 I'LL LET YOU KNOW THAT. DOES ANYBODY SEE ANYTHING -- ANY
5 REASON TO DO OTHERWISE?

6 MR. MYERS: NO, SIR.

7 THE COURT: ALL RIGHT. BRING HER IN.

8 (JUROR EZZELL IS BROUGHT INTO THE COURTROOM.)

9 THE COURT: OKAY. MR. HUBBARD, YOU CAN RESUME.
10 BY MR. HUBBARD:

11 Q. YOU WERE TELLING ME THAT YOU HAD SERVED ON A GRAND
12 JURY IN RICHLAND COUNTY?

13 A. YES, SIR.

14 Q. ABOUT EIGHT YEARS AGO?

15 A. IT WAS IN 1997 OR 1998.

16 Q. OKAY. ALL RIGHT. IS THERE ANYTHING ABOUT YOUR
17 SERVICE ON THE GRAND JURY IN RICHLAND COUNTY THAT WOULD
18 PREVENT YOU FROM GIVING A FAIR TRIAL IN THIS CASE?

19 A. NO, SIR.

20 Q. HAVE YOU EVER SERVED ON A JURY BEFORE IN THE JURY
21 BOX?

22 A. NO, SIR.

23 Q. OKAY. WELL, THIS CASE IS A LITTLE DIFFERENT THAN A
24 LOT OF THE OTHER CASES THAT YOU'VE PROBABLY HEARD ABOUT. THE
25 FIRST PART IS VERY SIMILAR TO THE NORMAL TYPICAL CASE.

1 A. UH-HUH.

2 Q. WE HAVE JURORS SITTING HERE, 12 OF THEM. THEY'LL
3 LISTEN TO ALL THE EVIDENCE THAT'S PRESENTED. WITNESSES WILL
4 SIT RIGHT WHERE YOU'RE SITTING RIGHT NOW.

5 A. UH-HUH.

6 Q. AND AT THE END OF THE TRIAL THESE 12 JURORS WILL GO
7 BACK INTO THE JURY ROOM AND DECIDE WHETHER THE DEFENDANT IS
8 GUILTY OR NOT GUILTY. THERE'S NO TALK ABOUT PUNISHMENT, NO
9 TALK ABOUT MERCY. IT'S ALL ABOUT WHETHER HE'S GUILTY OR NOT
10 GUILTY, AND YOU UNDERSTAND THAT.

11 A. YES, SIR.

12 Q. THE SECOND PHASE IS WHERE IT GETS DIFFERENT BECAUSE
13 IN A NORMAL CASE IF A PERSON IS CONVICTED, IS FOUND GUILTY,
14 WE PUT THEM UP IN FRONT OF A JUDGE AND THE JUDGE SENTENCES
15 THEM.

16 A. UH-HUH.

17 Q. BUT IN A CASE LIKE THIS WHERE THE JURY FINDS MURDER,
18 THE JURY IS THE ONE THAT DOES THE SENTENCING. ALL 12 JURORS
19 GO BACK INTO THE JURY ROOM AND HAVE TO DECIDE LIFE OR DEATH,
20 BUT BEFORE THEY MAKE THAT DECISION, MORE EVIDENCE IS
21 PRESENTED TO THEM. MORE WITNESSES WILL TAKE THAT STAND.
22 THERE WILL BE CIRCUMSTANCES THAT THE JUDGE WAS TALKING ABOUT:
23 AGGRAVATING CIRCUMSTANCES, EVIDENCE SHOWING THAT THE CRIME
24 WAS WORSE, THAT MAKE THE CRIME WORSE OR THINGS ABOUT THE
25 DEFENDANT THAT SHOW HIM TO BE WORSE. THERE IS MITIGATING

1 FACTORS, THINGS THAT MIGHT LESSEN OR REDUCE HIS CULPABILITY
2 IN THE CRIME OR MAYBE SOME GOOD THINGS ABOUT THE DEFENDANT.
3 ALL OF THAT COULD BE PRESENTED, AND THAT'S WHAT JURORS USE
4 BEFORE THEY DECIDE LIFE OR DEATH. IS THAT THE TYPE OF
5 INFORMATION YOU'D WANT TO HEAR BEFORE MAKING A DECISION?

6 A. YES, SIR, ABSOLUTELY.

7 Q. AND IN MAKING THAT DECISION, WOULD YOU FOLLOW THE
8 JUDGE'S INSTRUCTIONS AS TO WHAT AGGRAVATING CIRCUMSTANCES
9 ARE?

10 A. YES.

11 Q. AND WHAT MITIGATING CIRCUMSTANCES ARE?

12 A. YES.

13 Q. NOW, THERE'S SOMETHING ELSE THAT'S UNUSUAL ABOUT
14 THIS PROCESS, TOO. NOT ONLY DOES THE JURY DO THE SENTENCING,
15 BUT THE VERDICT FORM THAT THEY ISSUE IS DIFFERENT. IF THE
16 JURY DECIDES LIFE, THE FOREPERSON SIGNS THE VERDICT FORM AND
17 HE'S THE ONLY ONE THAT SIGNS IT OR SHE'S THE ONLY ONE THAT
18 SIGNS IT.

19 A. UH-HUH.

20 Q. BUT IF THE JURY DECIDES THAT DEATH IS THE
21 APPROPRIATE SENTENCE, ALL 12 PEOPLE SIGN THAT VERDICT FORM.
22 NOW, IT MAY SOUND LIKE A FUNNY QUESTION, BUT SOME PEOPLE WILL
23 TELL YOU THEIR OPINION ON SOMETHING, BUT THEY DON'T WANT TO
24 PUT THEIR NAME DOWN.

25 A. UH-HUH.

1 Q. SO I GOT TO ASK YOU: IF YOU THOUGHT DEATH WAS THE
2 APPROPRIATE SENTENCE AFTER LISTENING TO EVERYTHING, COULD YOU
3 SIGN YOUR NAME ON THAT VERDICT FORM?

4 A. YES, SIR.

5 Q. OKAY. BEFORE YOU DO THAT, YOU WOULD WANT TO HEAR
6 EVERYTHING THERE IS TO HEAR ABOUT THE CASE.

7 A. EVERYTHING.

8 Q. AND YOU UNDERSTAND THAT AT THAT POINT WE'RE JUST
9 TALKING PUNISHMENT.

10 A. YES, SIR.

11 Q. WE'RE NOT TALKING GUILT OR NOT GUILTY AT THAT POINT.

12 A. OKAY.

13 Q. AND YOU WOULD FOLLOW THE JUDGE'S INSTRUCTIONS ON THE
14 LAW.

15 A. YES, SIR.

16 Q. IS THERE ANYTHING ELSE YOU KNOW IN YOUR PAST OR IN
17 YOUR LIFE THAT WOULD PREVENT YOU FROM BEING A FAIR JUROR IN
18 THIS CASE?

19 A. NO, SIR.

20 MR. HUBBARD: THAT'S ALL WE CAN ASK OF YOU. THANK
21 YOU.

22 CROSS-EXAMINATION

23 BY MR. LITTLEJOHN:

24 Q. GOOD AFTERNOON, MS. EZZELL.

25 A. HI. HOW ARE YOU?

1 Q. I'M CAM LITTLEJOHN, AND I, ALONG WITH LISA
2 KIMBROUGH, REPRESENT KEVIN MERCER WHO IS THE DEFENDANT.

3 A. PLEASSED TO MEET YOU.

4 Q. IF I COULD ASK YOU A FEW BRIEF QUESTIONS.

5 A. SURE.

6 Q. I TAKE IT BY YOUR -- THE INFORMATION YOU PUT IN YOUR
7 QUESTIONNAIRE YOU GREW UP IN COLUMBIA?

8 A. I DID.

9 Q. OKAY. AND THEN YOU'VE LIVED IN LEXINGTON COUNTY FOR
10 ABOUT SEVEN YEARS?

11 A. YES, SIR.

12 Q. WHAT TYPE OF WORK DO YOU DO? YOU SAID RETAIL
13 BUSINESS FOR S.C. JOHNSON?

14 A. YES, SIR. IT'S MERCHANDISING -- MERCHANDISING
15 PRODUCTS FOR S.C. JOHNSON AND GROCERY CHAINS.

16 Q. OKAY. Y'ALL SELL DIFFERENT PRODUCTS---

17 A. WELL, WE ACTUALLY JUST MAKE SURE THE PRODUCTS ARE
18 SHELVED AND PRICED AND AVAILABLE.

19 Q. I UNDERSTAND. OKAY. AND YOU SAID BEFORE THAT YOU
20 WERE IN THE PHOTOGRAPHY BUSINESS?

21 A. YES, SIR.

22 Q. WHAT KIND OF WORK DID YOU DO IN THE PHOTOGRAPHY
23 BUSINESS?

24 A. I WAS CUSTOMER SERVICE, BOOKKEEPING, FRONT COUNTER
25 SALES, A LITTLE BIT OF EVERYTHING IN THE BUSINESS.

1 Q. OKAY.

2 A. IT'S A PROFESSIONAL PHOTOGRAPHY SERVICE.

3 Q. I UNDERSTAND. OKAY. MS. EZZELL, AS YOU'VE GLEANED
4 BY NOW, THIS IS A MURDER TRIAL.

5 A. YES, SIR.

6 Q. AND THERE COULD POSSIBLY BE TWO PHASES TO THIS
7 TRIAL, BUT JUST SO YOU UNDERSTAND, THE FIRST PHASE OF THIS
8 TRIAL WOULD DEAL ONLY WITH THE GUILT OR INNOCENCE OF THE
9 DEFENDANT.

10 A. YES, SIR.

11 Q. AND DURING THAT PHASE OF THE TRIAL IT WOULD BE UP TO
12 THE STATE TO PROVE KEVIN MERCER GUILTY BEYOND A REASONABLE
13 DOUBT.

14 A. RIGHT.

15 Q. AND THEY WOULD HAVE THE BURDEN OF PROVING THAT, AND
16 HIS HONOR WOULD INSTRUCT YOU THAT.

17 A. UH-HUH.

18 Q. WOULD YOU HAVE ANY PROBLEM PUTTING THE STATE TO THAT
19 BURDEN, MAKING THEM PROVE THEIR CASE BEYOND A REASONABLE
20 DOUBT BEFORE HE WAS FOUND GUILTY?

21 A. NO, SIR.

22 Q. OKAY. NOW, ONLY IF THEY GET PAST THAT HURDLE DO WE
23 GET TO THE SECOND PHASE, SO I DON'T WANT YOU TO THINK THAT
24 WAS A FOREGONE CONCLUSION OR---

25 A. RIGHT.

1 Q. ---AN AUTOMATIC THING. DO YOU THINK IF YOU WERE ON
2 THE JURY AND WE WERE TRYING THIS CASE THAT YOU WOULD BE ABLE
3 TO JUDGE THE CREDIBILITY OR THE BELIEVABILITY OF THE
4 WITNESSES?

5 A. I BELIEVE SO.

6 Q. OKAY. THESE MAY BE POLICE OFFICERS, MAY BE EXPERT
7 WITNESSES, MAY BE LAY PEOPLE.

8 A. YES, SIR.

9 Q. DO YOU THINK YOU WOULD HAVE ANY PROBLEM DOING THAT?

10 A. NO, SIR.

11 Q. OKAY. AND YOU ALSO -- YOU ALREADY INDICATED TO MR.
12 HUBBARD YOU DIDN'T THINK YOU'D HAVE ANY PROBLEM FOLLOWING THE
13 JUDGE'S INSTRUCTIONS.

14 A. NO, SIR, NOT AT ALL.

15 Q. ALL RIGHT. THE VICTIM IN THIS CASE WAS A SERGEANT
16 AT FORT JACKSON. HE WAS IN THE U.S. ARMY.

17 A. UH-HUH.

18 Q. WOULD THAT FACT, DO YOU THINK, HAVE ANY BEARING ON
19 YOUR ABILITY TO BE FAIR IN THIS CASE OR TO CONSIDER THE
20 EVIDENCE---

21 A. NO, SIR.

22 Q. ---EVENLY? ALL RIGHT. MS. EZZELL, YOU INDICATED TO
23 THE JUDGE THAT YOU THOUGHT YOU WERE A TYPE THREE JUROR AS
24 INDICATED ON THAT FORM.

25 A. YES, SIR.

1 Q. CAN YOU TELL ME HOW YOU ARRIVED AT THAT DECISION?
2 WHAT MAKES YOU THINK YOU'RE A TYPE THREE JUROR?

3 A. WELL, I JUST BELIEVE THAT IF YOU'RE ON A JURY PANEL
4 THAT YOU HAVE TO CONSIDER ALL THE OPTIONS. I DON'T
5 NECESSARILY BELIEVE OR DISBELIEVE IN THE DEATH PENALTY.

6 Q. UH-HUH.

7 A. IT MIGHT BE A TOUGH CHOICE TO MAKE, BUT I THINK I
8 COULD DO IT.

9 Q. OKAY. IF WE GOT TO THAT STAGE, THERE WOULD BE
10 EVIDENCE IN AGGRAVATION PRESENTED BY THE STATE, EVIDENCE THAT
11 WOULD TEND TO MAKE THE CRIME WORSE OR THE CIRCUMSTANCES
12 WORSE.

13 A. UH-HUH.

14 Q. THERE WOULD ALSO BE EVIDENCE PRESENTED IN
15 MITIGATION.

16 A. UH-HUH.

17 Q. WHICH WOULD BE EVIDENCE THAT LESSENS THE SEVERITY OF
18 THE CRIME OR THE CIRCUMSTANCES.

19 A. UH-HUH.

20 Q. THAT EVIDENCE IN MITIGATION WOULD INCLUDE EVIDENCE
21 ABOUT KEVIN'S BACKGROUND, INFORMATION ABOUT HIS FAMILY,
22 INFORMATION ABOUT MAYBE BAD THINGS THAT HAD HAPPENED TO HIM.

23 A. UH-HUH.

24 Q. MAYBE SOME MEDICAL INFORMATION. WOULD YOU LISTEN
25 CAREFULLY TO ALL THAT INFORMATION BEFORE MAKING UP YOUR MIND?

1 A. YES, I WOULD.

2 Q. WOULD YOU WANT TO LISTEN TO ALL THAT INFORMATION?

3 A. ALL OF IT.

4 Q. OKAY. MS. EZZELL, THANK YOU VERY MUCH.

5 A. THANK YOU.

6 THE COURT: ANYTHING BEFORE I RULE?

7 MR. LITTLEJOHN: NO, YOUR HONOR.

8 THE COURT: MS. EZZELL, YOU ARE QUALIFIED TO SERVE
9 AS A JUROR IN THIS CASE. THAT DOES NOT MEAN YOU'RE ON THE
10 JURY. IT MEANS YOU'RE ELIGIBLE TO BE PUT ON THE JURY. WE
11 WILL NOT NEED YOU AGAIN UNTIL MONDAY MORNING, SO I WOULD LIKE
12 FOR YOU TO BE READY TO RETURN ON MONDAY MORNING. IF YOU
13 WOULD CALL BACK ON SUNDAY NIGHT AFTER 6:00 TO THE TELEPHONE
14 NUMBER THAT YOU WERE GIVEN ON THAT PINK SLIP OR THAT PINK
15 CARD, THEN THERE WILL BE A MESSAGE ON THAT LINE THAT WILL
16 GIVE YOU DETAILED INFORMATION ABOUT WHEN TO BE HERE AND
17 WHETHER OR NOT YOU NEED TO BRING YOUR BELONGINGS AND YOUR
18 CLOTHING SO THAT YOU CAN STAY WITH US FOR SEVERAL DAYS IF THE
19 JURY IS SEQUESTERED.

20 UNTIL THEN, YOU MAY NOT DISCUSS THIS CASE NOR MAY
21 YOU ALLOW ANYONE TO DISCUSS THIS CASE WITH YOU, JUST LIKE
22 YOU'VE BEEN DOING. KEEP ON DOING THAT GOOD JOB. AND BE
23 CAREFUL NOT TO ALLOW YOURSELF TO BE EXPOSED TO ANY MEDIA
24 COVERAGE ABOUT THE CASE. ALL RIGHT? WE'LL SEE YOU MONDAY.

25 THE WITNESS: THANK YOU.

1 THE COURT: THANK YOU, MA'AM.

2 (JUROR EZZELL LEAVES THE COURTROOM.)

3 THE COURT: OKAY. ALL RIGHT. I'M GOING TO PUT
4 SOMETHING ON THE RECORD REGARDING THE ELDER MR. ZERUTH WHO IS
5 OUR JUROR NUMBER 350 WHOSE SON WAS HERE EARLIER. HOPE FROM
6 THE CLERK'S OFFICE CALLED HIM AT THE NUMBER THAT HIS SON GAVE
7 US, AND SHE REPORTS TO ME THAT SHE IMMEDIATELY NOTICED THAT
8 THERE MIGHT BE SOME PROBLEM WITH HIS ABILITY TO COMPREHEND
9 WHAT SHE WAS SAYING AND TO FASHION AN INTELLIGENT RESPONSE TO
10 THE QUESTION THAT -- QUESTIONS THAT SHE WAS ASKING HIM.

11 HE SAID SOMETHING TO HER ALONG THE LINES OF, "MA'AM,
12 THERE'S NO WAY THAT I'M DRIVING UP THERE," AND SHE SAID,
13 "WE'LL BE HAPPY TO SEND A SHERIFF'S DEPUTY OUT THERE TO PICK
14 YOU UP," AND HE LAUGHED AND SAID THAT HE WAS DRUNK AND HE DID
15 NOT THINK HE WOULD BE A VERY GOOD JUROR TODAY OR SOMETHING
16 LIKE THAT. SO THAT LIMITS OUR OPTIONS AT LEAST AS TO WHAT WE
17 CAN DO TODAY. PERHAPS WE CAN GIVE HIM A CHANCE TO SOBER UP
18 OVER NIGHT AND BRING HIM IN IN THE MORNING. WHAT DO Y'ALL
19 PROPOSE?

20 THE CLERK: JUDGE, HE DID MAKE A STATEMENT ALSO. I
21 REFERENCED THE POSSIBILITY OF CALLING HIM BACK TO COME IN
22 LATER, AND HE SAID, "HOPEFULLY I CAN'T GUARANTEE I WILL BE
23 SOBER IN THE MORNING."

24 THE COURT: HE SAID HE HOPED BUT HE COULD NOT
25 GUARANTEE THAT HE WOULD BE SOBER IN THE MORNING.

1 MR. MYERS: I SHOWED THIS THING TO MR. LITTLEJOHN.
2 HE WAS PUT ON A YEAR'S PROBATION, AND I DON'T KNOW WHETHER HE
3 WOULD BE QUALIFIED OR NOT. I DON'T KNOW WHETHER IT'S WORTH
4 THE EFFORT OR NOT. WHATEVER THE DEFENSE WANTS TO DO, I'LL GO
5 ALONG WITH IT.

6 THE COURT: WELL...

7 MR. LITTLEJOHN: YOUR HONOR, WE DON'T -- WE DON'T
8 SEE ANY REASON TO CALL HIM IN IF IT'S GOING TO BE MORE
9 TROUBLE THAN IT'S WORTH. WE'RE MAKING GOOD PROGRESS. WE'VE
10 GOT PLENTY OF JURORS TO WORK WITH.

11 THE COURT: OKAY.

12 MR. LITTLEJOHN: I'VE CONFERRED WITH MR. MERCER, AND
13 HE'S IN AGREEMENT.

14 THE COURT: OKAY. ALL RIGHT. WELL, WE'LL JUST SKIP
15 OVER MR. ZERUTH THEN AND WE'LL MOVE ON.

16 MR. MYERS: I CAN GO SPEND THE NIGHT WITH HIM AND
17 SOBER HIM UP IF YOU WANT ME TO. DRIVE HIM IN...

18 THE CLERK: HE WAS HAPPY.

19 THE COURT: ALL RIGHT. WE'VE GOT -- THE OTHER PANEL
20 WAS TO BE HERE AT WHAT TIME?

21 THE CLERK: 3:30.

22 THE COURT: 3:30?

23 THE CLERK: YES, SIR. THEY SHOULD---

24 THE COURT: WE'VE GOT ONE MORE JUROR ON THIS PANEL,
25 AND THEN WE HAVE ONE MORE PANEL THAT'S SUPPOSED TO BE

1 REPORTING IN ABOUT 10 MINUTES. DO Y'ALL WANT TO -- DO Y'ALL
2 FEEL LIKE GETTING THE OTHER PANEL -- THE NEXT PANEL IN TODAY?
3 USING OUR CURRENT NUMBERS -- AND WE'RE GOING TO END UP AT
4 ABOUT PROBABLY -- WE GOT 38. WE'RE PROBABLY GOING TO END UP
5 AT 42 OR 43 TONIGHT ANYWAY. Y'ALL JUST WANT---

6 MR. LITTLEJOHN: JUDGE, I GUESS IT DEPENDS ON HOW
7 MANY YOU THINK WE NEED TO ULTIMATELY QUALIFY. YOU WERE---

8 THE COURT: YEAH.

9 MR. LITTLEJOHN: YOU WERE TALKING ABOUT
10 SOMEWHERE BETWEEN 42 AND---

11 THE COURT: I'D SAY LET'S---

12 MR. LITTLEJOHN: ---45.

13 THE COURT: THEY'RE SUPPOSED TO -- THEY WERE TOLD TO
14 BE HERE AT 5:30?

15 THE CLERK: YES, SIR, BUT I CAN CHANGE IT BECAUSE
16 THEY'RE SUPPOSED TO CALL BACK AT 4 TO CONFIRM THEIR TIME.

17 THE COURT: LET'S TELL THEM -- IT'S 3:30 NOW. LET'S
18 TELL THEM TO GET IN HERE AT 5.

19 THE CLERK: 5.

20 THE COURT: AND WE'LL JUST DO AS MANY AS WE CAN. IF
21 WE GET TIRED -- AND THE FIRST PERSON TO COLLAPSE, WE'LL STOP.
22 IF IT'S ME -- IF IT'S ME, I DESIGNATE THE CLERK OF COURT TO
23 ADJOURN COURT FOR THE DAY.

24 THE CLERK: WHO SAID I WAS GOING TO BE HERE?

25 THE COURT: WELL, YOU CAN DESIGNATE YOUR OWN

1 LIEUTENANT TO DO THAT. ALL RIGHT.

2 THE CLERK: SO 5:00, YOUR HONOR?

3 THE COURT: TELL THEM TO BE HERE AT 5. YES, MA'AM.
4 THANK YOU. BRING IN THE NEXT JUROR.

5 THE CLERK: DID YOU WANT AN UPDATE BEFORE YOU DID
6 THAT?

7 THE COURT: OH, YES, MA'AM. FROM YOUR DEMEANOR I
8 INFERRED THAT THE URGENCY HAD DISSIPATED.

9 THE CLERK: WELL, THEY'RE WORKING ON A RESOLUTION,
10 BUT APPARENTLY WE HAD A DISGRUNTLED---

11 (JUROR GLORIA JOYE WAS BROUGHT INTO THE COURTROOM.)

12 THE COURT: YOU GOT EVERYTHING TAKEN CARE OF FOR
13 RIGHT NOW?

14 THE CLERK: FOR THE MOMENT.

15 GLORIA JOYE, HAVING BEEN PREVIOUSLY SWORN AS A
16 PART OF THE JURY VOIR DIRE AND REMAINING UNDER OATH,
17 TESTIFIED AS FOLLOWS:

18 EXAMINATION BY THE COURT

19 Q. MS. JOYE?

20 A. YES.

21 Q. HOW ARE YOU THIS AFTERNOON?

22 A. FINE. HOW ARE YOU?

23 Q. FINE. ON MONDAY YOU WERE PUT UNDER OATH, AND YOU'RE
24 STILL UNDER OATH THIS AFTERNOON. DO YOU UNDERSTAND THAT?

25 A. YES, SIR.

1 Q. OKAY. SINCE YOU LEFT US ON MONDAY, HAVE YOU TALKED
2 TO ANYBODY ABOUT THIS CASE OR HAS ANYBODY TALKED TO YOU ABOUT
3 THE CASE? YOU'RE NODDING NO?

4 A. UH-HUH.

5 Q. I'LL HAVE TO GET YOU TO GIVE ME YESES OR NOS BECAUSE
6 EVEN THOUGH I CAN UNDERSTAND YOU, WE NEED TO MAKE SURE---

7 A. OKAY.

8 Q. ---THE RECORD REFLECTS WHAT YOUR ANSWERS ARE.

9 A. NO, SIR.

10 Q. THANK YOU. I'M GOING TO ASK YOU SOME QUESTIONS NOW,
11 AND THEN AFTER I'M DONE, THE LAWYERS ARE GOING TO ASK YOU
12 SOME FOLLOW-UP QUESTIONS. AND WE'RE NOT TRYING TO PRY TOO
13 DEEP INTO YOUR PERSONAL LIFE, BUT WE DO NEED TO ASK YOU THESE
14 QUESTIONS. THERE ARE NOT ANY RIGHT OR WRONG ANSWERS. WE
15 JUST WANT YOU TO LISTEN CAREFULLY AND THEN TO BE OPEN AND
16 HONEST WITH US AND TELL US WHAT YOU FEEL AND WHAT YOU THINK
17 ABOUT THESE ISSUES THAT WE'RE GOING TO BE TALKING ABOUT.

18 IF YOU ARE A JUROR IN THIS CASE, COULD YOU ACCEPT
19 AND APPLY THE LAW PRECISELY AS I WOULD EXPLAIN IT TO YOU AND
20 SET ASIDE ANYTHING THAT YOU MIGHT HAVE HEARD OR LEARNED ABOUT
21 THE CASE AND THEN RENDER A VERDICT THAT'S -- I MEAN THAT YOU
22 MAY HAVE HEARD OR LEARNED ABOUT THE CASE BEFORE THE TRIAL
23 BEGAN AND THEN RENDER A VERDICT THAT'S BASED SOLELY ON THE
24 TESTIMONY AND THE EVIDENCE THAT WOULD SEE AND HEAR IN THIS
25 COURTROOM? COULD YOU DO THAT?

1 A. I BELIEVE SO.

2 Q. ALL RIGHT. DO YOU UNDERSTAND THAT IN A CRIMINAL
3 CASE THE STATE HAS THE BURDEN OF PROVING THE DEFENDANT GUILTY
4 BEYOND A REASONABLE DOUBT?

5 A. YES, SIR.

6 Q. COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES
7 THAT YOU FIND TO HAVE BEEN PROVEN AND IN LIGHT OF THE LAW AS
8 I WOULD EXPLAIN IT TO YOU, COULD YOU FIND THE DEFENDANT
9 EITHER GUILTY OR NOT GUILTY DEPENDING ON WHETHER OR NOT YOU
10 BELIEVE THE STATE HAS MET ITS BURDEN OF PROOF?

11 A. YES, SIR.

12 Q. NOW, IF YOU'RE ON THE JURY IN THIS CASE AND IF THE
13 JURY FINDS THE DEFENDANT GUILTY OF MURDER, WE WOULD MOVE INTO
14 THE SECOND PHASE OR THE PENALTY PHASE OF THE TRIAL, AND THERE
15 ARE SEVERAL ISSUES THAT WILL COME UP IN THAT PHASE THAT I
16 WOULD LIKE TO TALK TO YOU ABOUT RIGHT NOW. AGGRAVATING
17 CIRCUMSTANCES ARE FACTS OR INCIDENTS OR DETAILS THAT THE
18 STATE OF SOUTH CAROLINA HAS DECLARED TO AGGRAVATE THE CRIME
19 OF MURDER OR TO MAKE IT WORSE. AGGRAVATING CIRCUMSTANCES
20 INCREASE THE ENORMITY OF THE CRIME AND ADD TO THE INJURY
21 RESULTING FROM THE CRIME.

22 MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE
23 FACTS, INCIDENTS, OR DETAILS THAT SOUTH CAROLINA HAS DECLARED
24 TO LESSEN THE SEVERITY OF THE CRIME. THEY SERVE TO EXTENUATE
25 OR TO REDUCE THE DEGREE OF MORAL CULPABILITY OR

1 RESPONSIBILITY FOR THE CRIME. DO YOU UNDERSTAND THE CONCEPTS
2 OF AGGRAVATING AND MITIGATING CIRCUMSTANCES?

3 A. YES, SIR.

4 Q. NOW, WHEN YOU CAME IN THIS AFTERNOON YOU WERE
5 GIVEN -- YOU WERE GIVEN THIS SHEET THAT LISTS THREE TYPES OF
6 JURORS. DID YOU UNDERSTAND THOSE THREE TYPES OF JURORS?

7 A. YES, SIR.

8 Q. WHICH OF THOSE THREE TYPES DO YOU BELIEVE YOU WOULD
9 BE?

10 A. I BELIEVE I'D BE IN THE THIRD GROUP.

11 Q. IN THE THIRD? IF YOU'RE ON THE JURY IN THIS CASE
12 AND IF THE JURY WERE TO FIND THE DEFENDANT GUILTY OF MURDER
13 -- AND THE DEFINITION OF MURDER WOULD BE THE INTENTIONAL AND
14 UNLAWFUL KILLING OF ANOTHER PERSON WITH MALICE AFORETHOUGHT
15 -- THEN IT WOULD BE THE RESPONSIBILITY OF THE JURY TO DECIDE
16 WHAT THE PENALTY SHOULD BE FOR THAT CRIME, AND THE JURY WOULD
17 HAVE TWO OPTIONS AS TO WHAT THE VERDICT COULD BE. THE FIRST
18 OPTION WOULD BE FOR A LIFE SENTENCE WITHOUT THE POSSIBILITY
19 OF PAROLE, AND THE SECOND OPTION WOULD BE FOR THE DEATH
20 PENALTY. COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES
21 THAT YOU FIND TO EXIST AND CONSIDERING THE LAW AS I WOULD
22 EXPLAIN IT TO YOU, COULD YOU VOTE TO RETURN A VERDICT FOR A
23 LIFE SENTENCE?

24 A. YES.

25 Q. COULD YOU VOTE TO RETURN A VERDICT IMPOSING THE

1 DEATH PENALTY?

2 A. YES. HAVING NEVER DONE THAT BEFORE, I'M SAYING YES
3 BUT...

4 Q. OKAY. SO DEPENDING ON THE FACTS AND CIRCUMSTANCES,
5 YOU COULD RETURN A VERDICT EITHER FOR A LIFE SENTENCE OR FOR
6 A DEATH PENALTY, WHICHEVER YOU FELT WAS APPROPRIATE.

7 A. YES, SIR.

8 Q. ALL RIGHT. NOW, IF YOU'RE ON THE JURY IN THIS CASE
9 AND IF I DECIDE TO SEQUESTER THE JURY, THEN YOU WOULD BE PUT
10 UP IN A HOTEL FOR FIVE OR SIX DAYS. WE'D FEED YOU ALL YOUR
11 MEALS, AND YOU WOULD NOT BE ALLOWED TO GO HOME DURING THAT
12 PERIOD OF TIME. WOULD THAT IMPOSE A TERRIBLE BURDEN ON YOU?

13 A. PROBABLY WOULDN'T BE THE EASIEST THING BUT IT COULD
14 BE DONE.

15 Q. YOU COULD HANDLE THAT?

16 A. (WITNESS NODDED HEAD UP AND DOWN.)

17 Q. ALL RIGHT. DID YOU GET A CHANCE TO GO OVER THE
18 WITNESS LIST THAT YOU WERE GIVEN---

19 A. I DID.

20 Q. ---WHEN YOU CAME IN?

21 A. I DIDN'T KNOW ANYONE.

22 Q. DID YOU READ EVERY NAME ON THAT LIST?

23 A. I DID.

24 Q. DID YOU KNOW OR ARE YOU RELATED TO ANYONE WHOSE NAME
25 APPEARS ON THAT LIST?

1 A. NO, SIR.

2 Q. OKAY, MA'AM. THE LAWYERS ARE GOING TO ASK YOU SOME
3 QUESTIONS NOW, AND I'LL TALK TO YOU AGAIN IN JUST A FEW
4 MINUTES.

5 A. OKAY.

6 DIRECT EXAMINATION

7 BY MR. HUBBARD:

8 Q. MS. JOYE, HOW ARE YOU?

9 A. FINE. HOW ARE YOU?

10 Q. I DON'T WANT TO PRY EITHER. I JUST WANT TO FOLLOW
11 UP WITH THE JUDGE'S QUESTIONS AND JUST ASK YOU A FEW THINGS.

12 A. OKAY.

13 Q. HAVE YOU EVER SERVED ON A JURY BEFORE?

14 A. NO, SIR.

15 Q. SO THIS IS YOUR FIRST TIME EVER SERVING ON A JURY?

16 A. EVER, YES.

17 Q. HAVE YOU EVER BEEN UP TO THIS COURTHOUSE BEFORE?

18 A. NO.

19 Q. SO EVERYTHING IS BRAND-NEW.

20 A. YEAH.

21 Q. OF ALL THE CASES, THIS IS A BIG ONE.

22 A. IT IS.

23 Q. ALL RIGHT. WELL, LET ME WALK THROUGH A LITTLE BIT
24 OF WHAT THE JUDGE SAID AND JUST KIND OF EXPLAIN AND JUST SO
25 WE UNDERSTAND ONE ANOTHER. YOU UNDERSTOOD THE JUDGE SAID

1 THERE'S POTENTIALLY TWO PHASES TO THIS PROCESS. THE FIRST
2 PHASE IS WHERE THE JURY HAS TO DECIDE WHETHER THE DEFENDANT
3 IS GUILTY OR NOT GUILTY, JUST LIKE ANY OTHER TRIAL, AND THAT
4 THE CHARGES ARE MURDER AND ARMED ROBBERY AND SOME OTHER
5 STUFF. THE JURORS WOULD BE SITTING HERE. EVIDENCE WOULD BE
6 PRESENTED. AND THEN WHEN ALL THAT'S DONE, THEY'LL GO BACK TO
7 THE JURY ROOM AND DECIDE AT THAT POINT WHETHER HE'S GUILTY OR
8 NOT GUILTY. YOU UNDERSTAND THAT.

9 A. YES, SIR.

10 Q. AND AT THAT POINT THERE'S NO TALK ABOUT PUNISHMENT,
11 NO TALK ABOUT MERCY OR ANYTHING LIKE THAT. IT'S JUST
12 FOCUSING ON THE CASE. DO YOU UNDERSTAND THAT?

13 A. YES, SIR.

14 Q. ONLY IF THE JURY DECIDES THAT THE DEFENDANT'S GUILTY
15 DO WE GO INTO THE SECOND PHASE, AND THE SECOND PHASE IS ABOUT
16 PUNISHMENT. WE'RE NO LONGER TALKING ABOUT WHETHER HE'S
17 GUILTY OR NOT. HE'S GUILTY AND THEN WE'RE FOCUSING ON LIFE
18 OR DEATH, AND YOU UNDERSTAND THAT.

19 A. YES, SIR.

20 Q. AND THAT'S WHERE THE JUDGE WAS TALKING TO YOU ABOUT
21 MITIGATING CIRCUMSTANCES AND AGGRAVATING CIRCUMSTANCES,
22 THINGS THAT MIGHT MAKE THE CRIME WORSE AND THINGS BAD ABOUT
23 THE DEFENDANT, MAYBE SOME THINGS THAT SHOW THE DEFENDANT'S
24 NOT SO BAD OR THAT THE CRIME WASN'T SO BAD. YOU UNDERSTAND
25 THAT.

1 A. YES, SIR.

2 Q. AND AS I UNDERSTAND YOUR RESPONSES TO THE JUDGE,
3 YOU'D WANT TO HEAR EVERYTHING BEFORE YOU MAKE A DECISION.

4 A. SURE.

5 Q. YOU WOULDN'T JUST COME IN WITH YOUR MIND MADE UP ONE
6 WAY OR THE OTHER.

7 A. NO.

8 Q. AND YOU WOULD WANT TO FOLLOW THE JUDGE'S
9 INSTRUCTIONS ON THE LAW AS TO WHAT TO DO.

10 A. YES, SIR.

11 Q. OKAY. AND NO MATTER WHAT WE PRESENT FROM WHICHEVER
12 SIDE IT COMES FROM, YOU WOULD CONSIDER IT BEFORE MAKING A
13 DECISION.

14 A. YES, SIR.

15 Q. AND IN CONSIDERING ALL THE INFORMATION LAID IN FRONT
16 OF YOU, YOU TOLD HIS HONOR THAT YOU'D BE CAPABLE OF SAYING,
17 "IF I FELT LIFE WAS APPROPRIATE, I COULD VOTE FOR LIFE." IS
18 THAT RIGHT?

19 A. YES, SIR.

20 Q. AND IF YOU FELT DEATH WAS APPROPRIATE, YOU COULD
21 VOTE FOR DEATH.

22 A. YES, SIR.

23 Q. IS THAT CORRECT? THERE IS ONE OTHER THING THAT'S A
24 LITTLE DIFFERENT ABOUT THIS CASE, AND THAT'S THE JURY FORM,
25 THE VERDICT FORM. IF YOU VOTE FOR LIFE, JUST THE FOREMAN

1 SIGNS IT, BUT IF YOU VOTE FOR DEATH, ALL 12 JURORS, EVERY
2 SINGLE ONE OF THEM, HAS TO PUT THEIR NAME DOWN ON THAT
3 VERDICT FORM SHOWING EVERYBODY THAT THAT IS WHAT THEIR
4 OPINION IS AND THAT'S WHAT THEIR VOTE IS. AND THE REASON WHY
5 I BRING THAT UP IS, YOU KNOW, THERE'S SOME PEOPLE THAT WILL
6 TALK TO YOU ABOUT ALL DAY ABOUT WHAT THEY THINK, WHAT THEY
7 FEEL, BUT WHEN IT COMES TO WRITING IT DOWN, THEY DON'T WANT
8 TO PUT THEIR NAME ON IT. WOULD YOU, IF YOU THOUGHT DEATH IS
9 APPROPRIATE, SIGN YOUR NAME ON THAT VERDICT FORM?

10 A. YES, SIR.

11 Q. YOU COULD DO THAT?

12 A. (WITNESS NODDED HEAD UP AND DOWN.)

13 Q. OKAY. BUT BEFORE YOU DO THAT, YOU WOULD WANT TO
14 HEAR EVERYTHING THAT THERE IS TO HEAR IN THIS CASE.

15 A. YES, SIR.

16 Q. AND YOU WOULD FOLLOW THE JUDGE'S INSTRUCTIONS IN
17 THIS CASE?

18 A. YES, SIR.

19 MR. HUBBARD: THAT'S ALL WE COULD ASK OF YOU. THANK
20 YOU, MA'AM.

21 CROSS-EXAMINATION

22 BY MR. LITTLEJOHN:

23 Q. GOOD AFTERNOON, MS. JOYE.

24 A. GOOD AFTERNOON.

25 Q. MS. JOYE, MY NAME IS CAM LITTLEJOHN, AND I, ALONG

1 WITH LISA KIMBROUGH, REPRESENT KEVIN MERCER WHO IS THE
2 DEFENDANT HERE. IF I COULD ASK YOU A FEW QUESTIONS ABOUT
3 YOUR QUESTIONNAIRE. I NOTICE THERE THAT YOUR HUSBAND WAS IN
4 THE AIR FORCE?

5 A. YES, SIR.

6 Q. STILL IS?

7 A. NO.

8 Q. HOW LONG WAS HE IN THE AIR FORCE?

9 A. ABOUT SIX YEARS.

10 Q. SIX YEARS? THAT WAS SOMETIME AGO?

11 A. QUITE SOMETIME AGO.

12 Q. OKAY. I THINK YOU PROBABLY HEARD EARLIER THAT THE
13 VICTIM IN THIS CASE WAS IN THE MILITARY.

14 A. YES, SIR.

15 Q. HE WAS A SERGEANT IN THE ARMY. DO YOU THINK THAT
16 WOULD HAVE ANY BEARING OR ANY EFFECT ON YOUR ABILITY TO BE
17 FAIR AND IMPARTIAL TO BOTH SIDES IN THIS CASE---

18 A. NO, SIR.

19 Q. ---BY VIRTUE OF THAT MILITARY CONNECTION?

20 A. NO, SIR.

21 Q. OKAY. I NOTICED BEFORE YOU -- OR IN YOUR PRESENT
22 OCCUPATION YOU WERE A KINDERGARTEN ASSISTANT?

23 A. YES, SIR.

24 Q. AT SEVEN OAKS MILI -- SEVEN OAKS MILITARY. SEVEN
25 OAKS ELEMENTARY?

1 A. YES, SIR.

2 Q. HOW LONG DID YOU DO THAT WORK?

3 A. FOR ABOUT 18, 20 YEARS. I STAYED OUT AWHILE WHEN MY
4 GRANDDAUGHTER WAS A BABY.

5 Q. OKAY.

6 A. STAYED HOME WITH HER. BUT IT WAS ABOUT -- IT WAS
7 ALMOST 20 YEARS.

8 Q. GREAT. MS. JOYE, ON MONDAY THE JUDGE ASKED SOME
9 QUESTIONS ABOUT WHETHER DIFFERENT JURORS WERE -- HAD EVER HAD
10 A RELATIVE OR A FRIEND INVOLVED IN A CRIME OF VIOLENCE, AND
11 DID YOU STAND UP?

12 A. YES, I DID.

13 Q. COULD YOU TELL ME A LITTLE BIT ABOUT THAT?

14 A. MY SISTER WAS KILLED.

15 Q. UH-HUH.

16 A. SHE'S A HALF-SISTER.

17 Q. OKAY. WAS IT AN ACCIDENT OR WAS IT AN INTENTIONAL
18 KILLING OF SOME SORT?

19 A. IT WAS MY BROTHER-IN-LAW---

20 Q. UH-HUH.

21 A. ---WE THINK SHOT HER.

22 Q. OKAY.

23 A. THAT WAS NEVER DECIDED FOR SURE.

24 Q. WAS HE EVER CHARGED?

25 A. (WITNESS SHOOK HEAD FROM SIDE TO SIDE.)

1 Q. HE WAS NEVER CHARGED?

2 A. NOT YET.

3 Q. DID IT GO UNSOLVED?

4 A. SO FAR BUT I THINK IT'S STILL UNDER INVESTIGATION.

5 Q. HOW LONG AGO WAS THAT, IF I MAY ASK?

6 A. OCTOBER.

7 Q. OCTOBER OF LAST YEAR?

8 A. UH-HUH.

9 Q. WAS THAT IN LEXINGTON COUNTY?

10 A. NO, IT WAS IN SPARTANBURG.

11 Q. IN SPARTANBURG.

12 A. YEAH.

13 Q. OKAY. WELL, I'M SORRY FOR YOUR LOSS. MS. JOYE, AS
14 YOU'VE HEARD IN THIS CASE, THE DEFENDANT IS CHARGED WITH
15 MURDER---

16 A. YES, SIR.

17 Q. ---AND ARMED ROBBERY AND ANOTHER CRIME: POSSESSION
18 OF A FIREARM DURING THE COMMISSION OF A CRIME OF VIOLENCE. I
19 GUESS I NEED TO ASK YOU: WOULD THE FACT THAT THIS HAPPENED
20 TO YOUR HALF-SISTER -- DO YOU THINK THAT WOULD HAVE ANY
21 BEARING AT ALL ON YOUR ABILITY TO LISTEN TO THIS CASE AND
22 LISTEN TO THE FACTS?

23 A. I DON'T THINK IT WOULD. IT WOULD IF IT WAS MY
24 BROTHER-IN-LAW ON TRIAL, I'M SURE.

25 Q. UNDERSTANDABLY.

1 A. BUT -- BUT I DON'T THINK IT WOULD FOR SOMEONE ELSE.

2 Q. OKAY. DO YOU THINK THAT'S SOMETHING YOU COULD SET
3 ASIDE AND LISTEN TO THE EVIDENCE IN THIS CASE?

4 A. YES, SIR.

5 Q. OKAY. MS. JOYE, IN THIS CASE THERE WOULD BE A FIRST
6 PHASE, AND AT THAT FIRST PHASE OF THE CASE THE JURY WOULD
7 HAVE TO DECIDE WHETHER THE STATE HAD PROVEN THEIR CASE,
8 PROVEN THE GUILT OF THE DEFENDANT, MR. MERCER, BEYOND A
9 REASONABLE DOUBT, AND HIS HONOR WOULD TELL YOU THAT THAT
10 WOULD BE THE BURDEN OF PROOF THAT THEY WOULD HAVE TO MEET.
11 AND I WOULD ASK YOU: DO YOU HAVE ANY -- WOULD YOU HAVE ANY
12 PROBLEM IF YOU WERE ON THE JURY REQUIRING THE STATE TO MEET
13 THAT BURDEN OF PROOF?

14 A. NO, SIR.

15 Q. OKAY. NOW, ONLY IF THE JURY FOUND THAT THE STATE
16 HAD MET THAT BURDEN OF PROOF WOULD WE GET TO THE SECOND PHASE
17 OF THE CASE WHICH COULD BE THE PENALTY PHASE, AND
18 UNDERSTANDABLY, SO THAT EVERYTHING IS CONTINUOUS, WE WOULD
19 TRY THE FIRST PHASE. IF THERE WAS A GUILTY VERDICT, THEN WE
20 WOULD GO INTO THE SECOND PHASE. IF IT WAS NOT GUILTY IN THE
21 FIRST PHASE, THEN THERE WOULD BE NO SECOND PHASE. YOU
22 UNDERSTAND THAT, OF COURSE.

23 A. YES, SIR.

24 Q. IN REGARD TO THAT SECOND PHASE, YOU INDICATED TO THE
25 JUDGE THAT OF THE THREE TYPES OF JURORS INDICATED ON THE FORM

1 THAT YOU WERE GIVEN THAT YOU THOUGHT YOU WERE A TYPE THREE
2 JUROR. CAN YOU TELL ME HOW YOU ARRIVED AT THAT CONCLUSION?

3 A. I JUST FEEL LIKE I WOULD LISTEN TO BOTH SIDES AND
4 MAKE SURE I FELT LIKE, LIKE YOU SAID, WHAT THE STATE HAD
5 PROVEN BEYOND A SHADOW OF A DOUBT AND ALL THAT STUFF...

6 Q. OKAY. WOULD YOU WANT TO LISTEN TO EVERYTHING?

7 A. YES, SIR.

8 Q. OKAY. IF WE GET TO THAT SECOND PHASE, THE STATE
9 WOULD IN ALL LIKELIHOOD PRESENT EVIDENCE IN AGGRAVATION OR
10 EVIDENCE OF THINGS THAT WOULD MAKE THE CRIME OR THE
11 CIRCUMSTANCES WORSE. THE DEFENSE WILL PRESENT EVIDENCE, IF
12 WE GET TO THAT, OF MITIGATION WHICH MEANS TO LESSEN OR TO
13 MAKE NOT QUITE SO BAD THE CIRCUMSTANCES OF THE CRIME. THE
14 EVIDENCE IN MITIGATION COULD INCLUDE THINGS ABOUT KEVIN'S
15 BACKGROUND, ABOUT HIS UPRISING, ABOUT HIS FAMILY, MAYBE BAD
16 THINGS THAT HAD HAPPENED TO HIM, PERHAPS SOME MEDICAL
17 TESTIMONY. WOULD YOU BE WILLING TO LISTEN TO ALL OF THAT
18 BEFORE DECIDING ON WHAT THE PROPER VERDICT WOULD BE OR THE
19 PROPER SENTENCE WOULD BE?

20 A. YES, I WOULD BE WILLING TO LISTEN TO ALL OF IT.

21 Q. WOULD YOU WANT TO LISTEN TO ALL THAT BEFORE MAKING A
22 DECISION?

23 A. YES, SIR.

24 Q. OKAY. ONE FINAL THING, MS. JOYE. IF YOU WERE ON
25 THE JURY AND EITHER DURING THE FIRST PHASE OR THE SECOND

1 PHASE, IF THAT HAPPENS, AND YOU FOUND THAT YOU HAD AN OPINION
2 AS TO WHAT THE VERDICT OUGHT TO BE OR WHAT THE PENALTY OUGHT
3 TO BE AND YOU FOUND THAT YOUR OPINION DIFFERED FROM YOUR
4 OTHER 11 JURORS, DO YOU THINK YOU'D EVER CONSIDER CHANGING
5 YOUR VERDICT JUST TO GO ALONG WITH THE OTHER JURORS JUST TO
6 RENDER A VERDICT?

7 A. I DON'T THINK SO.

8 Q. OKAY. WELL, I GUESS IF YOU HAD A FIRMLY---

9 A. YOU MEAN JUST TO MAKE IT END?

10 Q. JUST TO MAKE IT END. WOULD YOU EVER DO THAT?

11 A. I DON'T THINK SO. I KNOW ON T.V. -- ON T.V. THEY
12 BRING A LOT OF PRESSURE TO BEAR SOMETIMES, BUT---

13 Q. RIGHT.

14 A. ---IN REAL LIFE I WOULDN'T THINK SO.

15 Q. OKAY. WELL, IN REAL LIFE THAT COULD HAPPEN, YOU
16 KNOW.

17 A. YEAH. YEAH.

18 Q. DO YOU THINK YOU COULD STAND UP FOR YOUR FIRM
19 BELIEFS IF YOU THOUGHT YOU WERE RIGHT?

20 A. I THINK SO.

21 Q. OKAY. THANK YOU, MS. JOYE.

22 A. OKAY.

23 THE COURT: ANYTHING BEFORE I RULE?

24 MR. LITTLEJOHN: NO, YOUR HONOR.

25 THE COURT: ALL RIGHT. MS. JOYE, YOU ARE QUALIFIED

1 TO SERVE AS A JUROR IN THIS CASE. THAT DOESN'T MEAN YOU'RE
2 ON THE JURY, BUT IT MEANS YOU'RE QUALIFIED TO SERVE AND THAT
3 YOU'RE ELIGIBLE TO BE ON THE JURY. WE WILL NOT NEED YOU
4 AGAIN UNTIL MONDAY MORNING, SO I WOULD LIKE FOR YOU TO BE
5 PREPARED TO COME HERE ON MONDAY MORNING.

6 IF YOU WOULD CALL ON SUNDAY NIGHT TO THE TELEPHONE
7 NUMBER THAT YOU WERE GIVEN ON THAT PINK CARD, THEN THERE WILL
8 BE A RECORDED MESS -- CALL AFTER 6:00. THERE WILL BE A
9 RECORDED MESSAGE ON THAT LINE THAT TELLS YOU EXACTLY WHEN TO
10 BE HERE AND WHETHER OR NOT YOU NEED TO BRING ENOUGH OF YOUR
11 CLOTHING AND PERSONAL ITEMS TO STAY WITH US FOR THE DURATION
12 OF THE TRIAL.

13 BETWEEN NOW AND THEN, YOU MAY NOT DISCUSS THIS CASE
14 NOR MAY YOU ALLOW ANYONE TO DISCUSS THIS CASE WITH YOU. IF
15 YOU -- WOULD YOU ALSO PLEASE BE VERY CAREFUL NOT TO ALLOW
16 YOURSELF TO BE EXPOSED TO ANY MEDIA COVERAGE ABOUT THE CASE?

17 THE WITNESS: YES, SIR.

18 THE COURT: AND WE LOOK FORWARD TO SEEING YOU ON
19 MONDAY. THANK YOU, MA'AM.

20 THE WITNESS: JUST LEAVE THIS HERE?

21 THE COURT: HE'LL TAKE IT; YES, MA'AM.

22 (JUROR JOYE LEAVES THE COURTROOM.)

23 THE COURT: OKAY. TWO THINGS BEFORE WE BRING THE
24 NEXT -- WELL, THE NEXT PANEL SHOULD BE READY. ARE THEY
25 READY?

1 BAILIFF: WE HAVE ALL BUT ONE, AND IT'S THE LAST
2 PERSON ON THAT---

3 THE COURT: OKAY. HAS THE FIRST ONE -- HAVE THEY
4 HAD THE INFORMATION THEY NEED LONG ENOUGH TO BE READY TO GO?

5 BAILIFF: THEY HAVE.

6 THE COURT: OKAY. ALL RIGHT. JUST ONE SECOND THEN.
7 BEFORE WE BRING -- DO YOU NEED A FOUR-MINUTE BREAK?

8 MR. LITTLEJOHN: YES, SIR.

9 THE COURT: ALL RIGHT. I GUESS SO. LET ME PUT
10 THESE TWO THINGS ON THE RECORD BEFORE I FORGET. I WAS
11 KIDDING; OF COURSE WE'LL TAKE A BREAK. JUROR NUMBER 296,
12 CHERYL SPENCER, WHO WAS THE FOURTH JUROR QUALIFIED - SHE'S ON
13 PANEL NUMBER 1 - YOU WILL RECALL THAT SHE IS THE LADY WHO HAD
14 AN APPOINTMENT -- WHO HAD AN APPOINTMENT THIS FRIDAY TO HAVE
15 OUTPATIENT SURGERY ON HER NECK. I HAVE A LETTER THAT WAS
16 FAXED HERE FROM DR. TAB THOMPSON WHO IS AT PALMETTO EAR, NOSE
17 AND THROAT CONSULTANTS WHO SAYS THAT, "MS. SPENCER IS HAVING
18 SURGERY ON FRIDAY. I HAVE ADVISED HER THAT I DO NOT KNOW THE
19 EXTENT OF HER SURGERY UNTIL I GET INTO THE NECK. I HAVE ALSO
20 ADVISED HER TO BE ON BED/COUCH/HOUSE REST UNTIL HER POST-
21 OPERATIVE APPOINTMENT ON FRIDAY, APRIL 21ST, 2006, AT 2:00."
22 SO UNLESS SHE CHOOSES, WHICH SHE APPARENTLY DOES NOT, TO
23 DISREGARD THE DOCTOR'S INSTRUCTIONS, SHE WOULD NOT BE ABLE TO
24 SERVE AS A JUROR IN THIS CASE. SO UNLESS THERE'S SOME
25 OBJECTION---

1 MS. KIMBROUGH: NO OBJECTION..

2 MR. LITTLEJOHN: NO OBJECTION.

3 THE COURT: ---I'M GOING TO EXCUSE HER FROM SERVICE.
4 ANY OBJECTION?

5 MR. MYERS: NO, SIR.

6 THE COURT: ALL RIGHT. WOULD YOU PLEASE NOTIFY MS.
7 SPENCER THAT SHE IS EXCUSED FROM SERVICE?

8 THE CLERK: YES, SIR.

9 THE COURT: AND WE'LL MAKE THIS LETTER A PART OF THE
10 RECORD.

11 THE CLERK: YES, SIR.

12 THE COURT: OR PART OF THE CLERK'S FILE. ALL RIGHT.
13 NOW, THE JUROR, EDWARD NOYES -- NO, THAT'S NOT RIGHT. WHO IS
14 IT THAT HAD THE HEARING PROBLEM?

15 THE CLERK: MR. BOYLES.

16 THE COURT: MR. BOYLES, JUROR NUMBER 27, HE WAS THE
17 16TH, NOW THE 15TH PERSON, QUALIFIED TO SERVE. YOU ALL
18 PROBABLY SAW MS. CARRIGG SITTING IN THE JURY BOX THIS MORNING
19 TESTING OUT A HEARING AMPLIFICATION DEVICE THAT SHE WORE ON
20 HER HEAD AS EARPHONES, HEADPHONES, AND THERE WAS A UNIT THAT
21 SAT ON THE RAIL IN FRONT OF HER. ISN'T THAT RIGHT?

22 THE CLERK: OR YOU CAN HOLD IT IN YOUR HAND.

23 THE COURT: SHE CAN HOLD IT IN HER LAP. SHE HAS
24 BOUGHT THAT DEVICE FOR MR. BOYLE'S USE AND FOR THE USE OF
25 ANYBODY ELSE THAT MIGHT HAVE A SIMILAR PROBLEM IN THE FUTURE,

1 AND MR. BOYLE HAS AGREED TO COME IN TOMORROW MORNING AT 9:30
2 TO TEST IT. I FIRST WANTED TO MAKE SURE THAT NONE OF YOU
3 HAVE ANY OBJECTION TO US USING A DEVICE LIKE THAT IF HE HAS
4 NO PROBLEM WITH IT AND TO SAY THAT WE WILL -- THAT YOU ALL
5 HAVE -- I WANT YOU ALL HERE TO BE PRESENT WHEN HE -- WHEN WE
6 TEST IT WITH HIM. ANY PROBLEM? ANY OBJECTION?

7 MR. MYERS: NO, SIR.

8 MR. LITTLEJOHN: NO, YOUR HONOR.

9 THE COURT: ALL RIGHT. AND THAT WAS A CREATIVE
10 SOLUTION TO THAT PROBLEM AND I APPRECIATE YOU COMING UP WITH
11 IT.

12 THE CLERK: WORKED OUT WELL. THANK YOU.

13 THE COURT: SO WITH THAT, AT MR. LITTLEJOHN'S
14 REQUEST, WE'LL BE IN RECESS FOR FOUR MINUTES.

15 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

16 THE COURT: BE SEATED. BRING US A JUROR, PLEASE.

17 (JUROR DONNA KEFFER IS BROUGHT INTO THE COURTROOM.)

18 DONNA KEFFER, HAVING BEEN PREVIOUSLY SWORN AS A
19 PART OF THE JURY VOIR DIRE AND REMAINING UNDER OATH,
20 TESTIFIED AS FOLLOWS:

21 EXAMINATION BY THE COURT

22 Q. HOW ARE YOU, MS. KEFFER?

23 A. FINE.

24 Q. MS. KEFFER, ON MONDAY WE PUT YOU UNDER OATH, AND
25 YOU'RE STILL UNDER OATH NOW. DO YOU UNDERSTAND?

1 A. YES, SIR.

2 Q. OKAY. SINCE YOU WERE HERE ON MONDAY, HAVE YOU
3 TALKED TO ANYBODY ABOUT THIS CASE OR HAS ANYBODY TALKED TO
4 YOU ABOUT THE CASE?

5 A. NO.

6 Q. OKAY. I'M GOING TO ASK YOU SOME QUESTIONS, AND THEN
7 THE LAWYERS PROBABLY WILL ASK YOU SOME FOLLOW-UP QUESTIONS.
8 WE'RE NOT TRYING TO PRY TOO DEEP INTO YOUR PRIVATE LIFE. IF
9 YOU'RE NERVOUS, THEN WE'RE NERVOUS, TOO.

10 A. VERY.

11 Q. DON'T BE NERVOUS. JUST RELAX AND JUST TALK WITH US
12 FOR A LITTLE WHILE. THERE'S NO -- WE JUST WANT YOU TO RELAX.
13 WE WANT YOU TO LISTEN VERY CAREFULLY TO THE QUESTIONS AND TO
14 BE OPEN AND HONEST WITH US AND TELL US HOW YOU FEEL. TELL US
15 WHAT YOU THINK ABOUT THESE ISSUES THAT WE'RE GOING TO BE
16 TALKING ABOUT. IF YOU WERE A JUROR IN THIS CASE, COULD YOU
17 ACCEPT AND APPLY THE LAW PRECISELY AS I WOULD EXPLAIN IT TO
18 YOU AND SET ASIDE ANYTHING THAT YOU MIGHT HAVE HEARD OR
19 LEARNED ABOUT THE CASE BEFORE THE TRIAL BEGAN AND RENDER A
20 VERDICT THAT'S BASED SOLELY ON THE TESTIMONY AND EVIDENCE
21 THAT YOU WOULD SEE AND HEAR IN THIS COURTROOM? COULD YOU DO
22 THAT?

23 A. YES.

24 Q. DO YOU UNDERSTAND THAT IN A CRIMINAL CASE THE STATE
25 HAS THE BURDEN OF PROVING THE DEFENDANT GUILTY BEYOND A

1 REASONABLE DOUBT?

2 A. YES.

3 Q. COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES
4 THAT YOU FIND TO HAVE BEEN PROVEN AND CONSIDERING THE LAW AS
5 I WOULD EXPLAIN IT TO YOU, COULD YOU FIND THE DEFENDANT
6 EITHER GUILTY OR NOT GUILTY DEPENDING ON WHETHER OR NOT YOU
7 BELIEVE THE STATE HAS MET ITS BURDEN OF PROOF?

8 A. YES.

9 Q. OKAY. NOW, IF YOU'RE ON THE JURY IN THIS CASE AND
10 IF THE DEFENDANT IS CONVICTED OF MURDER, THEN WE WOULD MOVE
11 INTO THE SECOND PHASE OF THE TRIAL OR THE PENALTY PHASE, AND
12 I'M GOING TO TALK TO YOU ABOUT SOME OF THE THINGS NOW THAT
13 WOULD COME UP IF WE GET INTO THAT PHASE. AGGRAVATING
14 CIRCUMSTANCES ARE FACTS OR INCIDENTS OR DETAILS THAT THE
15 STATE OF SOUTH CAROLINA HAS DECLARED TO AGGRAVATE THE CRIME
16 OF MURDER OR TO MAKE IT WORSE. AGGRAVATING CIRCUMSTANCES
17 INCREASE THE ENORMITY OF THE CRIME, AND THEY ADD TO THE
18 INJURY RESULTING FROM THE CRIME.

19 MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE
20 FACTS OR INCIDENTS OR DETAILS THAT SOUTH CAROLINA HAS
21 DECLARED TO LESSEN THE SEVERITY OF THE CRIME. THEY SERVE TO
22 EXTENUATE OR TO REDUCE THE DEGREE OF MORAL CULPABILITY OR
23 RESPONSIBILITY FOR THE CRIME OF MURDER. NOW, DO YOU
24 UNDERSTAND THE CONCEPT OF AGGRAVATING AND MITIGATING
25 CIRCUMSTANCES?

1 A. YES.

2 Q. WHEN YOU REPORTED THIS AFTERNOON, YOU WERE GIVEN A
3 COPY OF THIS SHEET THAT HAS THREE DIFFERENT TYPES OF JURORS.
4 DO YOU UNDERSTAND THOSE THREE DIFFERENT TYPES OF JURORS?

5 A. YEAH.

6 Q. WHICH OF THOSE TYPES DO YOU BELIEVE YOU WOULD BE,
7 MA'AM?

8 A. (PAUSE.)

9 Q. MAYBE I CAN ASK YOU ANOTHER QUESTION AND YOU WON'T
10 HAVE TO READ OVER THAT LIST AGAIN. THIS WILL HELP YOU OUT.
11 IF YOU WERE A JUROR IN THIS CASE AND IF THE JURY FOUND THE
12 DEFENDANT GUILTY OF MURDER, OF COURSE, WE WOULD HAVE -- WE
13 WOULD THEN MOVE INTO THE PENALTY PHASE OF THE TRIAL. NOW, I
14 WANT TO TELL YOU THAT THE DEFINITION OF MURDER IS THE
15 INTENTIONAL AND UNLAWFUL KILLING OF ANOTHER PERSON WITH
16 MALICE AFORETHOUGHT. NOW, IT WOULD BE THE JURY THAT WOULD
17 DECIDE THE PENALTY THAT SHOULD BE IMPOSED FOR THAT MURDER,
18 AND THE JURY WOULD HAVE TWO OPTIONS.

19 ONE OF THOSE OPTIONS WOULD BE FOR A LIFE SENTENCE
20 WITHOUT THE POSSIBILITY OF PAROLE, AND THE OTHER OPTION WOULD
21 BE FOR THE DEATH PENALTY. NOW, IF YOU WERE ON THAT JURY AND
22 THE JURY HAD ALREADY FOUND THE DEFENDANT GUILTY OF MURDER,
23 COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES THAT YOU
24 FOUND TO EXIST AND CONSIDERING THE LAW AS I WOULD EXPLAIN IT
25 TO YOU, COULD YOU VOTE TO RETURN A VERDICT FOR A LIFE

1 SENTENCE?

2 A. UNDER THE CIRCUMSTANCE I COULD. I MEAN---

3 Q. OF COURSE, I'M NOT ASKING YOU WHAT YOU WOULD DO---

4 A. RIGHT.

5 Q. ---BECAUSE YOU DON'T KNOW ANY OF THE CIRCUMSTANCES.

6 A. RIGHT.

7 Q. BUT UNDER SOME CIRCUMSTANCES COULD YOU VOTE TO

8 IMPOSE A LIFE SENTENCE?

9 A. YES.

10 Q. NOW, DEPENDING ON WHAT THE CIRCUMSTANCES WOULD BE,

11 COULD YOU VOTE TO IMPOSE A SENTENCE FOR THE DEATH PENALTY?

12 A. YES.

13 Q. OKAY. NOW, MA'AM, IF YOU ARE ON THE JURY AND IF I

14 DECIDE TO SEQUESTER THE JURY, WHICH I MIGHT DO, YOU WOULD BE

15 PUT UP IN A HOTEL FOR FIVE OR SIX DAYS, AND YOU WOULD NOT BE

16 ALLOWED TO GO HOME. WOULD THAT IMPOSE A TERRIBLE BURDEN ON

17 YOU?

18 A. YEAH.

19 Q. TELL ME ABOUT THAT.

20 A. I HAVE TWO KIDS. I HAVE A HUSBAND THAT'S DISABLED,

21 AND HE HAS DOCTORS' APPOINTMENTS, AND WE HAVE A MEETING AT

22 OUR ATTORNEY ON THE 25TH THAT WE HAVE TO GO FOR HIS LIFETIME

23 MEDICAL PLAN, AND THEN I WORK.

24 Q. OKAY. WELL, NOW, WE'LL TAKE THOSE ONE AT A TIME,

25 AND I'M CONCERNED ABOUT THE -- PARTICULARLY ABOUT THE ISSUE

1 WITH YOUR CHILDREN AND THE ISSUE WITH YOUR HUSBAND. BUT
2 TAKING THE OTHER TWO, WE WILL -- WE'LL BE DONE, I'M 99.9
3 PERCENT SURE, BY THE 25TH. I DO NOT BELIEVE THERE'S ANY
4 POSSIBILITY WE'LL STILL BE GOING ON THE 25TH.

5 AS FAR AS YOUR WORK, IF YOU WERE ON THE JURY, THEN
6 YOU WOULD PROBABLY NOT BE ABLE TO WORK ANYWAY BECAUSE WE
7 WOULD BE WORKING FAIRLY LONG DAYS, AND EVEN THOUGH YOU WOULD
8 NOT BE SEQUESTERED, IT WOULD BE LATE ENOUGH IN THE DAY WHEN
9 YOU WOULD BE GETTING HOME AND EARLY ENOUGH WHEN YOU WOULD
10 HAVE TO LEAVE THAT YOU WOULD NOT HAVE ANY TIME LEFT TO WORK.
11 BUT NOW TELL ME ABOUT YOUR CHILDREN. HOW OLD ARE YOUR
12 CHILDREN?

13 A. I HAVE A 14 AND A 17-YEAR-OLD.

14 Q. OKAY. AND TELL ME -- SO THE 17-YEAR-OLD, I SUPPOSE,
15 GETS HIMSELF OR HERSELF---

16 A. SHE DRIVES AND THEN SHE WORKS IN THE EVENINGS.

17 Q. OKAY. NOW, HOW ABOUT THE 14-YEAR-OLD? DO YOU HAVE
18 TO MOVE THE 14-YEAR-OLD AROUND?

19 A. I TAKE HER TO SCHOOL IN THE MORNINGS.

20 Q. OKAY.

21 A. AND THEN SHE HAS BAND. I HAVE TO PICK HER UP AFTER
22 SCHOOL AND STUFF LIKE THAT.

23 Q. WHAT TIME DO YOU HAVE TO TAKE HER TO SCHOOL?

24 A. I NORMALLY LEAVE RIGHT ABOUT 15 AFTER 7.

25 Q. AND THEN WHAT TIME DO YOU HAVE TO PICK HER UP IN THE

1 EVENING?

2 A. ABOUT 4:00.

3 Q. 4:00 IN THE AFTERNOON?

4 A. AND SHE HAS JAZZ, YEAH.

5 Q. AFTER JAZZ PRACTICE?

6 A. UH-HUH.

7 Q. IS THERE SOMEBODY ELSE THAT COULD TAKE HER TO SCHOOL
8 IN THE MORNING OR PICK HER UP IN THE AFTERNOON?

9 A. NO.

10 Q. YOUR HUSBAND, IS HE NOT ABLE TO DO THAT?

11 A. HE CAN DRIVE, BUT MY DAUGHTER HAS THE OTHER CAR
12 TAKING HERSELF TO SCHOOL.

13 Q. OKAY.

14 A. SO WE ONLY HAVE TWO VEHICLES.

15 Q. WELL, NOW, LET'S -- LET ME JUST POSE THIS AS A
16 QUESTION. IF YOU WERE SEQUESTERED AND IF YOU LEFT YOUR OTHER
17 CAR AT HOME WHICH WE COULD ARRANGE FOR YOU -- WE COULD
18 ARRANGE TO HAVE YOU BROUGHT OVER HERE AND HAVE YOU TAKEN BACK
19 AT THE BEGINNING AND AT THE END OF THE TRIAL. WOULD THAT
20 TAKE CARE OF THE PROBLEM? AND LET ME -- LET ME ASSURE YOU
21 THAT I'M NOT TRYING TO MAKE THIS DIFFICULT FOR YOU. I'M JUST
22 TRYING TO SEE IF IT WOULD WORK FOR YOU IF I SEQUESTER THE
23 JURY AND---

24 A. I MEAN, YEAH, THAT WOULD WORK, BUT, SEE, I HAVE HIGH
25 BLOOD PRESSURE. YOU CAN SEE MY FACE IS PROBABLY -- IT'S

1 PROBABLY UP TO THE ROOF RIGHT NOW BUT I'M, YOU KNOW...

2 Q. OKAY. WELL, WE'LL TALK ABOUT EACH ONE OF THOSE
3 THINGS. SO -- BUT LET'S GO BACK TO TALKING ABOUT DEALING
4 WITH YOUR CHILDREN AND MAKING SURE THAT THEY WOULD BE OKAY IF
5 YOU WERE SEQUESTERED. IF THEY HAD BOTH OF THE CARS TO USE,
6 DO YOU THINK THEY COULD MAKE DO WITH YOU BEING SEQUESTERED?

7 A. YEAH.

8 Q. OKAY. NOW -- NOW, WHAT ABOUT YOUR HUSBAND? WOULD
9 THE FACT THAT YOU WERE NOT -- THAT YOU WOULD NOT BE THERE TO
10 CARE FOR HIM, WOULD THAT LEAVE HIM IN A VULNERABLE POSITION
11 OR WOULD THAT MAKE IT DIFFICULT FOR HIM TO BE---

12 A. IT WOULD BE---

13 Q. ---SAFE AND COMFORTABLE?

14 A. IT WOULD BE DIFFICULT FOR HIM TO TRY TO, YOU KNOW,
15 KEEP THEIR CLOTHES WASHED AND GETTING THEM UP, YOU KNOW, OFF
16 TO SCHOOL AND STUFF LIKE THAT.

17 Q. OKAY.

18 A. AND THEN HIM TRYING TO GET TO HIS DOCTORS'
19 APPOINTMENTS AND TO HIS ATTORNEYS AND STUFF LIKE THAT.

20 Q. ALL RIGHT. DO YOU KNOW IF HE HAS ANY DOCTORS'
21 APPOINTMENTS NEXT WEEK?

22 A. HE HAS ONE THIS FRIDAY.

23 Q. THIS FRIDAY? OKAY. THAT WON'T BE A PROBLEM FOR
24 YOU. YOU WON'T BE WORKING THIS FRIDAY, NOT WITH US. SO YOU
25 CAN TAKE HIM OR WHOEVER CAN TAKE HIM, BUT HOW ABOUT FOR NEXT

1 WEEK? DOES HE HAVE ANY APPOINTMENTS?

2 A. NOW, HE DOESN'T, BUT MY DAUGHTER HAS A MEETING
3 TUESDAY NIGHT FOR HER MARCHING BAND COMING UP. THEY
4 SUGGESTED THAT ALL PARENTS THAT HAS ONE THAT'S GOING TO BE IN
5 THE BAND NEEDS TO BE THERE.

6 Q. WHAT TIME IS THAT MEETING?

7 A. FROM 7.

8 Q. 7?

9 A. IN THE EVENING.

10 Q. OKAY. OKAY. NOW, YOU HAVE ALSO MENTIONED HIGH
11 BLOOD PRESSURE.

12 A. UH-HUH.

13 Q. DO YOU -- IF YOU WERE SEQUESTERED, WOULD YOU BE ABLE
14 TO TAKE CARE OF YOUR MEDICAL NEEDS IN TERMS OF YOUR HIGH
15 BLOOD PRESSURE?

16 A. WELL, I'M ON MEDICINE, YEAH. IT'S JUST LIKE WHEN I
17 GET NERVOUS OR UPTIGHT AND STUFF, THEN IT INCREASES MY BLOOD
18 PRESSURE REAL HIGH.

19 Q. OKAY. DO YOU FEEL THAT WAY RIGHT NOW?

20 A. AS I'M -- AFTER I'M SITTING HERE A LITTLE BIT, IT
21 FEELS LIKE IT'S -- YOU KNOW, I'M GETTING MORE RELAXED, BUT
22 WHEN AT FIRST SOMETHING -- IT INTENSES (SIC) ME AND IT'S
23 JUST...

24 Q. I THINK I UNDERSTAND. I'M GOING TO -- LET ME ASK
25 YOU ONE MORE QUESTION. DID YOU GET A CHANCE TO READ OVER

1 THAT WITNESS LIST?

2 A. YES.

3 Q. DID YOU READ EVERY NAME ON THAT LIST?

4 A. PRETTY MUCH BECAUSE I DIDN'T RECOGNIZE NONE OF THEM.
5 I DON'T -- YEAH, I MEAN, I READ THROUGH THEM, YEAH.

6 Q. SO YOU DON'T KNOW AND YOU'RE NOT RELATED TO ANYBODY
7 WHOSE NAME IS ON THAT LIST?

8 A. NO.

9 Q. MA'AM, I'M GOING TO LET THE LAWYERS ASK YOU SOME
10 QUESTIONS NOW, AND THEN I'LL COME BACK AND TALK TO YOU IN
11 JUST A FEW MINUTES.

12 A. OKAY.

13 DIRECT EXAMINATION

14 BY MR. HUBBARD:

15 Q. HOW ARE YOU DOING?

16 A. I'M FINE.

17 Q. AND I'M JUST GOING TO ASK YOU A FEW QUESTIONS, AND I
18 DON'T WANT TO MAKE YOU NERVOUS EITHER. I IMAGINE THIS IS
19 YOUR FIRST TIME---

20 A. VERY.

21 Q. ---UP HERE.

22 A. YES.

23 Q. EVER SERVED ON A JURY BEFORE?

24 A. NEVER. I NEVER DID REGISTER THINKING I'D GET
25 CALLED. NOW I KNOW IT'S NOT.

1 Q. WELL, I'LL JUST GO OVER SOME OF THE THINGS THAT THE
2 JUDGE WENT OVER WITH YOU, JUST WALKING THROUGH THE PROCESS.
3 AS HE MENTIONED, THERE'S BASICALLY TWO STAGES TO THIS TYPE OF
4 CASE. THE FIRST STAGE OR THE FIRST PHASE IS A TRIAL FOCUSED
5 ON WHETHER THE DEFENDANT IS GUILTY OR NOT GUILTY. AND IT'S
6 JUST LIKE ANY OTHER TRIAL, A NORMAL TRIAL, WHERE JURORS SIT
7 RIGHT OVER HERE AND A WITNESS WILL SIT RIGHT WHERE YOU ARE
8 AND EACH WITNESS WE PUT UP WILL SIT RIGHT THERE. WE'D
9 PRESENT EVIDENCE, AND THEN AT THE END OF THAT TRIAL THE JURY
10 GOES BACK AND THEY HAVE TO DECIDE WHETHER THE DEFENDANT IS
11 GUILTY OR NOT GUILTY.

12 A. RIGHT.

13 Q. THERE'S NO TALK ABOUT PUNISHMENT AT THAT POINT, NO
14 TALK ABOUT MERCY. IT'S JUST WHETHER HE'S GUILTY OR NOT
15 GUILTY, AND YOU UNDERSTAND THAT.

16 A. RIGHT.

17 Q. IT'S ONLY THE SECOND PHASE THAT MAKES THIS AN
18 UNUSUAL CASE BECAUSE USUALLY IF A DEFENDANT IS FOUND GUILTY,
19 WE PUT THEM IN FRONT OF A JUDGE AND HE SENTENCES THEM.

20 A. YEAH.

21 Q. BUT IN THIS CASE THE JURY DOES. THAT'S WHAT MAKES
22 THIS UNUSUAL. THAT'S THAT SECOND PHASE, AND WHEN YOU GET TO
23 THAT SECOND PHASE, YOU'VE ALREADY DETERMINED THE DEFENDANT IS
24 GUILTY OF MURDER, AND THE ONLY QUESTION IS LIFE OR DEATH.
25 AND AS I UNDERSTAND YOU IN TALKING TO THE JUDGE, YOU SAID YOU

1 COULD GIVE EITHER ONE OF THOSE, DEPENDING ON THE FACTS.

2 A. RIGHT.

3 Q. AND IT WOULD DEPEND ON THE FACTS.

4 A. (WITNESS NODDED HEAD UP AND DOWN.)

5 Q. IS THAT RIGHT?

6 A. THAT'S RIGHT.

7 Q. AND YOU WOULD WANT TO HEAR FROM BOTH SIDES.

8 WHATEVER EITHER SIDE HAS TO PRESENT, YOU WOULD WANT TO HEAR
9 IT BEFORE YOU MAKE YOUR DECISION.

10 A. OPEN MIND.

11 Q. OPEN MIND. YES, MA'AM. AND YOU WOULD CONSIDER
12 EVERY WITNESS, EVERY PIECE OF EVIDENCE. YOU'D LOOK IT ALL
13 OVER BEFORE YOU MADE A DECISION.

14 A. CORRECT.

15 Q. YES, MA'AM. AND IF YOU THOUGHT LIFE WAS
16 APPROPRIATE, YOU COULD VOTE FOR LIFE. IS THAT RIGHT?

17 A. THAT'S RIGHT.

18 Q. AND FROM WHAT YOU WERE TELLING THE JUDGE, IF YOU
19 THOUGHT DEATH WAS APPROPRIATE, YOU COULD VOTE FOR DEATH.

20 A. CORRECT.

21 Q. WELL, THERE'S SOMETHING ELSE THAT'S A LITTLE UNUSUAL
22 ABOUT THIS TYPE OF TRIAL HERE. NOT ONLY DOES THE JURY DO THE
23 SENTENCING, BUT THE VERDICT FORM IS DIFFERENT FROM MOST JURY
24 FORMS. THE VERDICT FORM, IF YOU VOTE FOR DEATH, REQUIRES
25 EVERY JUROR TO SIGN IT. AND SO I WANT TO ASK YOU: SOME

1 PEOPLE WILL TELL YOU WHAT THEY THINK, BUT THEY DON'T WANT TO
2 PUT THEIR NAME DOWN. COULD YOU, IF YOU THOUGHT DEATH WAS THE
3 APPROPRIATE SENTENCE, IF YOU THOUGHT IT WAS THE RIGHT THING
4 TO DO, COULD YOU SIGN YOUR NAME TO THAT VERDICT FORM?

5 A. YES.

6 Q. OKAY. IS THERE ANYTHING ABOUT YOU, WHETHER IT'S
7 YOUR HEALTH OR HOME OR YOUR PAST OR ANYTHING, THAT WOULD
8 PREVENT YOU FROM BEING A FAIR AND IMPARTIAL JUROR?

9 A. NO.

10 Q. AND YOU WOULD WANT TO HEAR FROM BOTH SIDES?

11 A. BOTH SIDES.

12 Q. AND YOU WOULD FOLLOW THE JUDGE'S INSTRUCTIONS.

13 A. CORRECT.

14 Q. THAT'S ALL WE COULD ASK OF YOU.

15 A. THANK YOU.

16 MR. HUBBARD: THANK YOU.

17 CROSS-EXAMINATION

18 BY MS. KIMBROUGH:

19 Q. GOOD AFTERNOON, MS. KEFFER. HOW ARE YOU?

20 A. I'M FINE.

21 Q. GOOD. I'M LISA KIMBROUGH, AND THIS IS CAM
22 LITTLEJOHN. HE AND I REPRESENT KEVIN MERCER. I JUST HAVE A
23 FEW QUESTIONS TO FOLLOW UP ON. BEGINNING WITH THE FIRST
24 PHASE OF THIS TRIAL, THAT OBVIOUSLY IS -- YOU KNOW, THE WHOLE
25 QUESTION CENTERS AROUND INNOCENCE OR GUILT, AND AS JUDGE FEW

1 HAD INSTRUCTED ALL THE JURORS EARLIER, THERE ARE THREE
2 CHARGES THAT HAVE BEEN INDICTED IN THIS CASE. ONE OF THEM IS
3 MURDER, THE OTHER IS ARMED ROBBERY, AND THE THIRD IS
4 POSSESSION OF A FIREARM.

5 THIS CASE INVOLVED THE MURDER OF A U.S. ARMY --
6 BASICALLY A CAREER SOLDIER. HE WAS AN ARMY RECRUITER, AND SO
7 JUST SORT OF AS AN INITIAL MATTER, DO YOU HAVE ANY STRONG
8 FEELINGS ABOUT MILITARY OR ANY CONNECTIONS WITH THE MILITARY
9 THAT WOULD MAKE THAT FACT ALONE DIFFICULT FOR YOU TO, YOU
10 KNOW, ESSENTIALLY KEEP AN OPEN MIND ABOUT IN THE FIRST PHASE?

11 A. NO, MA'AM, I DON'T HAVE ANYBODY THAT WOULD -- IN THE
12 MILITARY OR NOTHING LIKE THAT.

13 Q. OKAY. SO NO CONNECTIONS.

14 A. NO.

15 Q. OKAY. NOW, IN THAT FIRST PHASE, AGAIN, THE WHOLE
16 QUESTION IS GUILT, AND THERE'S ABSOLUTELY NO GUARANTEE THAT
17 WE'LL EVER GET -- EVEN GET TO THE SECOND PHASE. WE HAVE TO
18 ASK YOU THOSE QUESTIONS SIMPLY TO MAKE SURE THAT IF YOU DO
19 SIT ON THE JURY AND WE DO GET TO THE SECOND PHASE THAT YOU
20 COULD ASSUME THE RESPONSIBILITY FOR BEING A JUROR IN THIS
21 TYPE OF CASE. AND I BELIEVE HIS HONOR HAD SKETCHED OUT FOR
22 YOU THE BASIC REQUIREMENTS THAT THE STATE WOULD HAVE TO MEET,
23 THEIR BURDEN BEYOND A REASONABLE DOUBT, TO ESTABLISH A
24 MURDER, AND A LOT OF PEOPLE ARE CONFUSED BY THIS. YOU DON'T
25 SOUND LIKE YOU ARE, BUT I JUST WANT TO SORT OF GO THROUGH IT

1 AGAIN. I APOLOGIZE IF I'M REPEATING---

2 A. THAT'S FINE.

3 Q. ---WHAT YOU'VE ALREADY BEEN THROUGH.

4 A. THAT'S OKAY.

5 Q. BUT A MURDER IS SOMETHING THAT IS INTENTIONAL. IT'S
6 NOT JUSTIFIED. AND ONCE IT'S ESTABLISHED, THERE'S NOTHING
7 THAT CAN MAKE IT LESS BAD THAN IT IS. I MEAN, IT'S AN
8 UNLAWFUL KILLING. IT'S NOT SELF-DEFENSE OR MANSLAUGHTER. SO
9 I JUST WANTED TO MAKE SURE THAT YOU UNDERSTOOD THAT IF WE GET
10 TO THAT SECOND PHASE YOU WILL HAVE FOUND THAT KEVIN IS GUILTY
11 OF INTENTIONALLY KILLING ANOTHER PERSON. UNDER OUR LAW,
12 HOWEVER, NOT ALL MURDERS ARE DESERVING OF THE DEATH PENALTY.

13 THERE'S AN ADDITIONAL HURDLE THAT HAS TO BE MET, AND
14 THERE IS CERTAINLY NO BURDEN FOR MR. MERCER IN THAT SECOND
15 PHASE EITHER. HE DOESN'T HAVE TO PROVE HE'S ENTITLED TO A
16 LIFE SENTENCE. HE COULD CHOOSE TO PRESENT EVIDENCE THAT HE
17 THINKS ENTITLES HIM OR SPEAKS IN FAVOR OF A LIFE SENTENCE,
18 BUT THERE WOULD CERTAINLY BE NO BURDEN. DO YOU THINK YOU
19 COULD ESSENTIALLY HOLD THE STATE TO THEIR BURDEN IN THAT
20 PHASE AS WELL WITHOUT IMPOSING A BURDEN ON MR. MERCER AT THAT
21 POINT?

22 A. I DON'T REALLY UNDERSTAND WHAT YOU'RE ASKING THOUGH.
23 I MEAN...

24 Q. OKAY. WILL YOU BE ABLE TO ACCEPT THAT ONE EVEN
25 FOUND GUILTY OF AN INTENTIONAL KILLING HAS NO BURDEN TO SHOW

1 THAT THEY SHOULD RECEIVE A LIFE SENTENCE? IN OTHER WORDS,
2 THEY DON'T HAVE TO SHOW ANYTHING IN ORDER FOR A LIFE SENTENCE
3 TO BE HANDED DOWN TO THEM.

4 A. I STILL DON'T -- I'M SORRY.

5 Q. I'M NOT TRYING TO CONFUSE YOU; I'M REALLY NOT. THE
6 POINT BEING THAT A DEFENDANT NEVER HAS TO PROVE ANYTHING IN
7 EITHER PHASE, THAT THE BURDEN IS ON THE STATE, AND MR.
8 MERCER, SHOULD HE CHOOSE TO DO SO, COULD PRESENT EVIDENCE IN
9 THAT SECOND PHASE THAT HE BELIEVES SHOULD COMPEL A LIFE
10 SENTENCE, BUT HE HAS NO BURDEN TO DO THAT. AND THE STATE
11 WILL PRESENT EVIDENCE THAT THEY THINK SUPPORTS A DEATH
12 SENTENCE. COULD YOU KEEP AN OPEN MIND AND CONSIDER ALL THAT
13 EVIDENCE PRIOR TO RENDERING A VERDICT FOR EITHER LIFE OR
14 DEATH?

15 A. WITHOUT HIM GIVING...

16 Q. EITHER/OR. IF HE DID OR IF HE DIDN'T, COULD YOU --
17 DO YOU THINK YOU COULD KEEP AN OPEN MIND?

18 A. I THINK HE WOULD HAVE TO GIVE, I MEANT, SOME KIND OF
19 EVIDENCE.

20 Q. OKAY. SO LET ME ASK THIS ANOTHER WAY JUST TO MAKE
21 SURE I UNDERSTAND. OKAY?

22 A. YEAH.

23 THE COURT: LET ME -- LET ME TAKE A SHOT AT SPEAKING
24 TO HER FOR A SECOND.

25 MS. KIMBROUGH: YES, YOUR HONOR.

RE-EXAMINATION BY THE COURT

1
2 Q. MA'AM, EITHER IN THE -- NEITHER IN THE GUILT PHASE
3 OR IN THE PENALTY PHASE, THE FIRST PHASE OR THE SECOND PHASE,
4 THE DEFENDANT IS NOT OBLIGATED TO PRESENT ANY EVIDENCE. NOW,
5 THE DEFENDANT CAN, IF HE CHOOSES TO, AND THE LAW RECOGNIZES
6 THAT HE IS NOT REQUIRED TO PRESENT EVIDENCE. IF THE
7 DEFENDANT DECIDES NOT TO PRESENT EVIDENCE, YOU CAN'T HOLD
8 THAT AGAINST HIM. YOU WOULD THEN GO AHEAD AND MAKE YOUR
9 DECISION AS A JUROR BASED ON THE EVIDENCE THAT IS BEFORE YOU,
10 AND YOU WOULD NOT BE ALLOWED TO SAY IN YOUR MIND, "WELL, HE
11 SHOULD HAVE PRESENTED SOME EVIDENCE AND, THEREFORE, I'M GOING
12 TO DO THIS BECAUSE HE DIDN'T."

13 A. I THINK THAT'S HOW I WOULD FEEL.

14 Q. WELL, I'M -- WHAT I'M TELLING YOU IS THAT YOU'RE NOT
15 ALLOWED TO FEEL THAT WAY. THAT'S NOT THE LAW.

16 A. RIGHT.

17 Q. AND THEN THE QUESTION BECOMES: CAN YOU FOLLOW THE
18 LAW? NOW, THAT'S STANDARD IN EVERY CRIMINAL CASE---

19 A. RIGHT.

20 Q. ---THAT THE DEFENDANT HAS NO OBLIGATION TO PRODUCE
21 OR TO PRESENT ANY EVIDENCE, AND I TELL THE JURY THAT IN EVERY
22 SINGLE CRIMINAL CASE I EVER TRY, AND THAT'S THE LAW. SO
23 WOULD YOU BE ABLE TO FOLLOW THE LAW IN THAT RESPECT OR WOULD
24 YOU IMPOSE AN ILLEGAL BURDEN ON THE DEFENDANT TO MAKE HIM
25 PRESENT EVIDENCE?

1 A. I'D PROBABLY HAVE IT IN THE BACK OF MY MIND THOUGH
2 WHY HE DIDN'T, BUT I WOULD FOLLOW THE LAW, BUT I'D STILL BE
3 QUESTIONING MYSELF, YOU KNOW, WHY HE DIDN'T REPRESENT, YOU
4 KNOW...

5 Q. WELL...

6 A. I MEAN, IF IT WAS ME, I'D WANT PEOPLE TO KNOW IF I
7 KNEW SOMETHING IF IT'S GOING TO HELP ME.

8 Q. UH-HUH. WELL, THE QUESTION THOUGH IS NOT WHAT YOU
9 WOULD DO.

10 A. I MEAN, I WOULD FOLLOW THE LAW, YEAH. I MEAN, I
11 CAN'T BREAK THE LAW, AND I'D HAVE TO PUT WHAT, YOU KNOW, IS
12 IN FRONT OF ME -- WHAT I'D HAVE TO GO BY.

13 Q. RIGHT.

14 A. YOU KNOW...

15 Q. I THINK WE RECOGNIZE THAT IT MIGHT BE SOMEWHAT
16 NATURAL IN YOUR EVERYDAY LIFE TO EXPECT SOMEBODY TO OFFER AN
17 EXPLANATION, BUT THAT'S NOT NATURAL IN A CRIMINAL TRIAL. WE
18 HAVE NO EXPECTATION THAT THE DEFENDANT WILL OFFER ANY
19 EXPLANATION OR ANY EVIDENCE, AND IF YOU'RE GOING TO SIT AS A
20 JUROR, YOU CANNOT HAVE THAT EXPECTATION IN THIS TRIAL.

21 A. RIGHT.

22 Q. NOW, IN DEALING WITH YOUR 14-YEAR-OLD SON, IF HE
23 COMES IN AND YOU TELL HIM -- YOU ACCUSE HIM OF SOMETHING AND
24 HE DOESN'T SAY ANYTHING, THEN YOU -- YOU KNOW, YOU CAN TAKE
25 THAT INTO ACCOUNT, BUT WHEN YOU'RE IN HERE IN THIS TRIAL, YOU

1 CAN'T. DO YOU UNDERSTAND?

2 A. RIGHT. I UNDERSTAND.

3 Q. I MEAN, ACTUALLY YOUR 14-YEAR-OLD IS A DAUGHTER,
4 ISN'T SHE?

5 A. YEAH, BOTH GIRLS.

6 Q. BOTH OF THEM. ALL RIGHT. LET ME -- LET ME ASK YOU
7 TO STEP OUT IN THE HALL JUST ONE SECOND, PLEASE, MA'AM.

8 A. OKAY.

9 (JUROR KEFFER LEAVES THE COURTROOM.)

10 THE COURT: ANY OBJECTION TO WHAT I SAID?

11 MS. KIMBROUGH: NO, YOUR HONOR.

12 MR. MYERS: NO.

13 THE COURT: ALL RIGHT. ALL RIGHT. I'M GOING TO --
14 I'M GOING TO ASK HER THAT QUESTION ONE MORE TIME: WOULD SHE
15 BE ABLE TO FOLLOW THIS INSTRUCTION? AND THEN I'M GOING TO
16 TURN IT BACK OVER TO YOU.

17 MS. KIMBROUGH: THANK YOU, YOUR HONOR.

18 THE COURT: ALL RIGHT? BRING HER IN.

19 (JUROR KEFFER WAS BROUGHT INTO THE COURTROOM.)

20 BY THE COURT:

21 Q. OKAY. MA'AM, LET ME JUST -- I HAVE ONE MORE
22 QUESTION OR TWO TO ASK YOU. NOW, SO IF YOU'RE ON JURY WHAT I
23 WOULD TELL YOU IS THAT THE DEFENDANT HAS THE CONSTITUTIONAL
24 RIGHT TO REMAIN SILENT, AND THE EXERCISE OF THAT RIGHT CANNOT
25 BE USED AGAINST THE DEFENDANT, CANNOT BE HELD AGAINST THE

1 DEFENDANT. YOU CAN DRAW NO INFERENCE OR NO CONCLUSION
2 WHATSOEVER FROM THE FACT THAT THE DEFENDANT CHOSE TO REMAIN
3 SILENT AND CHOSE TO OFFER NO EVIDENCE. WOULD YOU BE ABLE TO
4 FOLLOW THAT LEGAL INSTRUCTION?

5 A. YES.

6 THE COURT: OKAY. THANK YOU, MA'AM. MS. KIMBROUGH?

7 MS. KIMBROUGH: THANK YOU, YOUR HONOR. MAY IT
8 PLEASE THE COURT?

9 RECROSS EXAMINATION

10 BY MS. KIMBROUGH:

11 Q. MS. KEFFER, I APOLOGIZE IF I CONFUSED YOU.

12 A. THAT'S FINE. I JUST...

13 Q. I CAN BE LONG-WINDED AND ASK QUESTIONS THAT TAKE TOO
14 MANY WORDS, SO I APOLOGIZE IF I DID THAT TO YOU. I CERTAINLY
15 DID NOT INTEND TO.

16 A. THAT'S FINE.

17 Q. REALLY, WHAT I WAS DRIVING AT WAS: ASSUMING MR.
18 MERCER IS FOUND GUILTY OF MURDER AND ARMED ROBBERY IN THAT
19 FIRST PHASE, IN YOUR OPINION BASED ON YOUR VIEWS ABOUT WHAT'S
20 AN APPROPRIATE PUNISHMENT AND BASED ON, YOU KNOW, JUST SORT
21 OF YOUR GENERAL DISPOSITION, I GUESS, TOWARDS THE WHOLE
22 QUESTION OF SENTENCING, WOULD YOU EXPECT OR DO YOU ANTICIPATE
23 THAT YOU WOULD EXPECT MR. MERCER TO PROVIDE YOU WITH A REASON
24 TO GIVE HIM LIFE IF HE, IN FACT, COMMITTED AN INTENTIONAL
25 KILLING OF ANOTHER PERSON WITHOUT ANY JUST CAUSE OR EXCUSE?

1 A. WHY I WOULD DO WHAT NOW?

2 Q. WOULD YOU EXPECT MR. MERCER TO ESSENTIALLY CONVINCE
3 YOU THAT HE IS WORTHY OF A LIFE SENTENCE IF HE'S CONVICTED OF
4 MURDER IN THAT FIRST PHASE?

5 A. THE EVIDENCE SHOULD SEE WHAT THE LIFE SENTENCE OR
6 DEATH OR SOMETHING -- WHAT EVIDENCE WOULD BE SHOWING. I
7 WOULDN'T EXPECT HIM TO TELL ME WHY HE WOULD NEED A LIFE OR
8 DEATH SENTENCE.

9 Q. OKAY. LET ME BREAK THIS DOWN A LITTLE BIT. IN THE
10 SECOND PHASE OF THE TRIAL THE JURY WILL GET INSTRUCTIONS ON
11 HOW TO ARRIVE AT THEIR VERDICT. ONE OF THE THINGS THEY'RE
12 INSTRUCTED IS THAT A LIFE SENTENCE CAN BE GIVEN FOR ANY
13 REASON OR NO REASON AT ALL. IT'S -- YOU KNOW, IT CAN BE DONE
14 FOR MERCY OR IT CAN BE DONE BECAUSE THERE'S CERTAIN EVIDENCE
15 THAT THE JURY FEELS COMPELLED TO ACCEPT AS A BASIS FOR
16 PROVIDING A LIFE SENTENCE, BUT THERE'S NO OBLIGATION ON A
17 CRIMINAL DEFENDANT AT THAT POINT. AND I GUESS MY QUESTION
18 IS: IN YOUR MIND IF MR. MERCER HAD BEEN CONVICTED OF A
19 MURDER AND AN ARMED ROBBERY AND YOU GOT TO THAT SENTENCING
20 PHASE, DO YOU THINK -- WOULD YOU FEEL LIKE HE NEEDED TO
21 CONVINCE YOU THAT HE WAS ENTITLED TO A LIFE SENTENCE AT THAT
22 POINT?

23 MR. MYERS: YOUR HONOR, THIS HAS BEEN GONE OVER A
24 GOOD BIT. I THINK SHE JUST SAID THAT SHE DOESN'T EXPECT THE
25 DEFENDANT---

1 THE COURT: I THINK SHE'S ANSWERED THAT QUESTION.
2 AS I UNDERSTOOD THE LAST TIME YOU ASKED IT, SHE SAID: I
3 WOULD NOT EXPECT HIM TO CONVINCE ME THAT HE WAS ENTITLED TO A
4 LIFE SENTENCE.

5 MS. KIMBROUGH: AND MY UNDERSTANDING OF THAT WAS
6 COUCHED IN TERMS OF: I WOULD THINK THE EVIDENCE WOULD SHOW
7 ME. AND I JUST WANTED TO MAKE SURE THAT WHEN WE'RE TALKING
8 ABOUT THE EVIDENCE SHOWING SOMEONE WHAT THE PROPER SENTENCE
9 WOULD BE THAT THERE'S NOT AN EXPECTATION THAT MR. MERCER
10 WOULD HAVE TO PRODUCE THAT EVIDENCE.

11 THE WITNESS: I GUESS MINE WOULD BE FROM THE
12 EVIDENCE---

13 MR. MYERS: THAT'S A HYPOTHETICAL, YOUR HONOR.

14 THE COURT: HOLD ON JUST A MINUTE, MA'AM. WE NEED
15 TO RESOLVE THIS BEFORE WE -- BEFORE YOU---

16 THE WITNESS: OH, OKAY.

17 THE COURT: ---ANSWER. OKAY?

18 MR. MYERS: THIS IS CONFUSING EVEN TO ME, AND IT'S A
19 HYPOTHETICAL.

20 THE COURT: ALL RIGHT. HOLD ON. EVERYBODY STOP.
21 I'M CONFUSED ABOUT EVERYTHING MYSELF. WOULD YOU -- WOULD YOU
22 LIKE FOR ME TO ASK HER TO STEP OUT FOR A SECOND SO WE CAN
23 DISCUSS IT OR WOULD YOU LIKE ME TO TALK TO HER FOR A SECOND?

24 MS. KIMBROUGH: I THINK I'M FINISHED.

25 THE COURT: OKAY. SO YOU DON'T HAVE ANY MORE

1 QUESTIONS?

2 MS. KIMBROUGH: NOT AT THIS POINT, YOUR HONOR.

3 THE COURT: OKAY.

4 THE WITNESS: I'M SORRY.

5 THE COURT: THAT'S OKAY. YOU DIDN'T -- YOU DIDN'T
6 -- YOU DON'T HAVE ANYTHING TO SAY YOU'RE SORRY ABOUT. IS
7 THERE ANYTHING FURTHER?

8 MS. KIMBROUGH: NO, YOUR HONOR.

9 THE COURT: ALL RIGHT. MA'AM, I'M GOING TO ASK YOU
10 ONE MORE TIME -- I'M SORRY ABOUT THIS. I'M GOING TO ASK YOU
11 ONE MORE TIME TO STEP OUT IN THE HALL, AND THEN I'LL BRING
12 YOU BACK IN IN JUST A SECOND.

13 THE WITNESS: OKAY.

14 (JUROR KEFFER LEAVES THE COURTROOM.)

15 THE COURT: OKAY. NOW, I DIDN'T -- I DIDN'T MEAN TO
16 CUT YOU OFF AND TELL YOU THAT YOU COULDN'T ASK ANY MORE
17 QUESTIONS, BUT -- BUT AT FIRST YOU WERE POINTING OUT TO HER
18 THAT IF THE DEFENDANT CHOSE NOT TO PRESENT ANY EVIDENCE
19 DURING THE PENALTY PHASE OF THE TRIAL THAT IT WOULD BE
20 IMPROPER FOR HER TO ESSENTIALLY PENALIZE THE DEFENDANT FOR
21 THAT. IT WOULD BE IMPROPER FOR HER TO HOLD OUT SOME
22 EXPECTATION THAT THE DEFENDANT WOULD COME IN AND OFFER
23 EVIDENCE TO EXPLAIN WHY HE SHOULD GET THE -- A LIFE SENTENCE.

24 THEN YOU -- AFTER I HAD A DISCUSSION WITH HER, YOU
25 SHIFTED AND YOU STARTED TALKING TO HER ABOUT WHETHER OR NOT

1 SHE WOULD PLACE AN EVIDENTIARY BURDEN OF PROOF ON THE
2 DEFENDANT IN THE PENALTY PHASE TO SHOW AN ENTITLEMENT TO A
3 LIFE SENTENCE. THAT'S THE WAY I UNDERSTOOD THE QUESTIONS
4 WENT -- TO GO. SO WE CLEARED UP THE FIRST PART I THINK WHEN
5 I TALKED TO HER, AND SHE SAID THAT SHE UNDERSTOOD THAT SHE
6 WOULD NOT BE ENTITLED TO SAY IN HER MIND THAT SHE WAS GOING
7 TO DRAW SOME INFERENCE FROM THE FACT THAT THE DEFENDANT CHOSE
8 NOT TO PRESENT ANY EVIDENCE.

9 NOW, YOU KNOW, REALLY IT'S A QUESTION THAT IS BOUND
10 TO CREATE CONFUSION AND BOUND TO CREATE UNNECESSARY
11 CONFUSION, I THINK, BECAUSE IT'S MY UNDERSTANDING THAT YOU DO
12 INTEND TO PRESENT SUBSTANTIAL EVIDENCE DURING THE PENALTY
13 PHASE OF THE TRIAL. SO IT IS A LITTLE BIT AND PERHAPS OF AN
14 UNNECESSARY QUESTION, BUT IT'S NEVERTHELESS -- I'M NOT SAYING
15 IT'S AN IMPROPER QUESTION. I'M JUST SAYING IT'S BOUND TO
16 CREATE SOME CONFUSION, AND IT'S ALSO ABOUT THE FIRST TIME
17 YOU'VE ASKED IT.

18 BUT, SECONDLY, THEN YOU ASKED HER WOULD SHE EXPECT
19 THE DEFENDANT TO COME IN AND OFFER SOME EXPLANATION TO
20 JUSTIFY A LIFE SENTENCE. NOW, THOSE WEREN'T -- THOSE WEREN'T
21 THE EXACT WORDS, BUT IT WAS SOMETHING ALONG THAT LINE. AND
22 SHE SAID, I THINK, IN RESPONSE: I WOULDN'T EXPECT HIM TO
23 EXPLAIN THAT OR TO JUSTIFY THAT; I WOULD LOOK AT THE
24 EVIDENCE. THAT'S WHAT I THOUGHT SHE SAID. NOW, AGAIN, THOSE
25 ARE NOT HER EXACT WORDS. SO I THINK THE QUESTIONS HAVE BEEN

1 ASKED AND ANSWERED. IS THERE ANYTHING FURTHER IN THE WAY OF
2 QUESTIONING OF THIS WITNESS?

3 MS. KIMBROUGH: NO, YOUR HONOR.

4 THE COURT: OKAY. I THINK SHE'S QUALIFIED. DOES
5 ANYBODY DISAGREE?

6 MS. KIMBROUGH: NO, YOUR HONOR.

7 THE COURT: OKAY. BRING HER IN.

8 (JUROR KEFFER IS BROUGHT INTO THE COURTROOM.)

9 THE COURT: MS. KEFFER, YOU ARE QUALIFIED TO HAVE --
10 TO SERVE AS A JUROR IN THIS CASE. THAT DOES NOT MEAN YOU'RE
11 ON THE JURY. IT MEANS YOU'RE ELIGIBLE TO BE ON THE JURY. WE
12 WON'T NEED YOU AGAIN UNTIL MONDAY MORNING, SO I WOULD LIKE
13 FOR YOU TO BE PREPARED TO BE HERE ON MONDAY MORNING. ON
14 SUNDAY EVENING AFTER 6:00, WOULD YOU PLEASE CALL THAT
15 TELEPHONE NUMBER THAT YOU'LL SEE ON THAT PINK CARD THAT
16 YOU'VE BEEN GIVEN? AND THERE WILL BE A RECORDED MESSAGE ON
17 THAT LINE THAT TELLS YOU EXACTLY WHEN TO BE HERE ON MONDAY
18 AND WHETHER OR NOT YOU NEED TO BRING BELONGINGS AND CLOTHING
19 TO STAY HERE IF I DECIDE TO SEQUESTER THE JURY.

20 NOW, BETWEEN NOW AND THEN, YOU MAY NOT ALLOW ANYONE
21 TO DISCUSS THIS CASE WITH YOU, AND YOU MAY NOT DISCUSS THIS
22 CASE WITH ANYONE ELSE, AND PLEASE BE VERY CAREFUL NOT TO
23 ALLOW YOURSELF TO BE EXPOSED TO ANY MEDIA COVERAGE ABOUT THE
24 CASE. NOW, MA'AM, REGARDING YOUR SITUATION WITH YOUR HUSBAND
25 AND WITH YOUR CHILDREN, I AM GOING TO GET IN TOUCH WITH YOU

1 AFTER I DECIDE WHETHER OR NOT TO SEQUESTER THE JURY AND
2 ADDRESS WITH YOU WHETHER OR NOT YOU WOULD STILL BE REQUIRED
3 TO SERVE.

4 SO IF I -- IF I DON'T SEQUESTER THE JURY, THEN I
5 THINK YOU'LL BE FINE. IF I DO SEQUESTER THE JURY, THEN WE
6 WILL DISCUSS WITH YOU WHETHER OR NOT YOU CAN CONTINUE -- YOU
7 WILL STILL BE ELIGIBLE TO SERVE. OKAY? ALL RIGHT? SO WE'RE
8 NOT GOING TO PUT YOU IN A POSITION OF BEING UNABLE TO CARE
9 FOR YOUR CHILDREN.

10 THE WITNESS: I GOT TO GET MY MEDICINE FILLED.

11 THE COURT: ALL RIGHT. THANK YOU, MA'AM. WE'LL
12 EITHER TALK TO YOU BEFORE MONDAY OR WE'LL SEE YOU ON MONDAY.

13 THE WITNESS: OKAY.

14 THE COURT: THANK YOU.

15 THE WITNESS: THANK YOU.

16 (JUROR KEFFER LEAVES THE COURTROOM.)

17 THE COURT: BRING US A JUROR, PLEASE.

18 THE CLERK: JUROR NUMBER 123, MS. HALL, IS THE LAST
19 PERSON IN THIS PANEL.

20 THE COURT: OKAY.

21 THE CLERK: SHE WAS INADVERTENTLY PUT IN THE PANEL
22 AFTER YOU EXCUSED HER. SHE IS THE WOMAN WITH THE 11-MONTH-
23 OLD BABY IN THE HOSPITAL.

24 THE COURT: IS SHE HERE?

25 THE CLERK: NO.

1 THE COURT: OH. SHE'S ALREADY.... DID Y'ALL HEAR
2 ALL THAT?

3 MR. LITTLEJOHN: MS. HALL IS ALREADY GONE?

4 THE COURT: JENNIFER HALL -- I EXCUSED HER
5 APPARENTLY ON MONDAY. SHE'S THE NUMBER 6 IN THIS PANEL OR
6 NOT -- YEAH, THIS PANEL. AND SHE IS -- SHE'S THE ONE WHO HAD
7 THE 11-MONTH-OLD CHILD WHO IS -- HAS AN INFECTION AND IS IN
8 THE HOSPITAL AND I EXCUSED HER.

9 MR. LITTLEJOHN: OKAY.

10 THE COURT: SO...

11 THE CLERK: SHE WILL NOT BE HERE.

12 THE COURT: A SIMPLE MISTAKE AND WE'LL TAKE HER OUT.

13 THE CLERK: MS. BAKER'S NUMBER HAS ALREADY BEEN
14 QUALIFIED. SHE IS JUROR NUMBER 10. SHE WAS THE THIRD PERSON
15 QUALIFIED. HER HUSBAND HAS CALLED AND SAID THAT SHE HAS HAD
16 TO GO GET SOME PSYCHOLOGICAL MEDICATION BECAUSE SHE THINKS
17 THE DEFENDANT SMILED AND WINKED AT HER, AND SHE HAS BEEN
18 UNABLE TO SLEEP AND IS HAVING NIGHTMARES AND IS UNABLE TO
19 RETURN.

20 THE COURT: ALL RIGHT. I AM TOLD BY THE CLERK OF
21 COURT WHO HAS -- DID YOU HAVE A CONVERSATION WITH HIM?

22 THE CLERK: HOPE DID.

23 THE COURT: HOPE DID. SHERYL BAKER, JUROR NUMBER
24 10, SHE WAS THE SECOND JUROR QUALIFIED; SHE APPEARED THIRD IN
25 THE FIRST PANEL. SHE WAS THE ONE AS TO WHOM THERE MIGHT HAVE

1 BEEN SOME SPECULATION AS TO WHETHER SHE WAS THINKING CLEARLY
2 WHEN SHE WAS HERE. HER HUSBAND CALLED AND SAID THAT SHE'S
3 HAVING PROBLEMS. SHE'S HAD TO GO GET SOME PSYCHIATRIC
4 MEDICATION. SHE IS HAVING NIGHTMARES AND HAVING TROUBLE,
5 OTHER TROUBLE, BECAUSE SHE -- SHE BELIEVES THAT MR. MERCER
6 MIGHT HAVE WINKED AT HER OR SOMETHING LIKE THAT AND THAT IS
7 DISTURBING HER AND SHE -- HE BELIEVES THAT SHE IS UNABLE TO
8 RETURN, AND APPARENTLY HE SAID THAT SHE HAS HAD MEDICAL --
9 HAS HAD MENTAL PROBLEMS ALL HER LIFE AND -- AND THAT'S THE
10 SITUATION WITH HER.

11 MR. LITTLEJOHN: SHE WAS NUMBER 10?

12 THE COURT: YES, SIR. SHE'S THE SECOND JUROR THAT
13 WE QUALIFIED ON MONDAY AFTERNOON.

14 MS. KIMBROUGH: YOUR HONOR, I DON'T KNOW HOW THE
15 STATE FEELS ABOUT HER SITUATION. WE WOULD CERTAINLY HAVE NO
16 OBJECTION TO HER BEING EXCUSED, PARTICULARLY IN LIGHT OF THE
17 FACT THAT SHE THINKS MR. MERCER WINKED AT HER AND SHE'S VERY
18 UPSET ABOUT THIS. I DON'T THINK IT WOULD BE TO HIS BENEFIT
19 TO HAVE---

20 THE COURT: WELL---

21 MS. KIMBROUGH: ---HER IN THE POOL.

22 THE COURT: WELL, THERE'S SEVERAL -- WE HAVE SEVERAL
23 OPTIONS. WE CAN AGREE TO EXCUSE HER. WE CAN BRING SOMEBODY,
24 HER OR HER HUSBAND, IN TO EXPLORE THIS SO THAT WE CAN MAKE
25 THIS DECISION BASED ON EVIDENCE RATHER THAN ON JUST WHAT

1 SOMEBODY SAYS. SO...

2 MR. MYERS: WE LEAVE IT UP TO YOUR HONOR. WHATEVER
3 YOU DECIDE IS FINE WITH US.

4 THE COURT: ALL RIGHT. WELL, I'M NOT INCLINED TO
5 EXCUSE HER JUST BASED ON THAT REPORT OF THE PHONE CALL THAT
6 OCCURRED. SO I WOULD SAY THAT -- I WOULD PROPOSE THAT I
7 DIRECT THE CLERK OF COURT TO HAVE SOMEONE CALL THE HUSBAND
8 BACK AND TELL THEM THAT IF THEY WOULD LIKE TO COME UP HERE
9 AND ASK FOR ME TO RECONSIDER THE DECISION TO QUALIFY HER AS A
10 JUROR THAT EITHER HE OR SHE OR BOTH WOULD NEED TO COME UP
11 HERE TOMORROW MORNING AT ABOUT 9:00, AND WE WILL TRY TO WORK
12 THEM IN AND TRY TO ADDRESS THIS QUESTION AT THAT TIME. ANY
13 OBJECTION TO THAT PROCEDURE?

14 MR. LITTLEJOHN: NO, YOUR HONOR. THAT'S FINE WITH
15 US, HOW EVER THE COURT WANTS TO HANDLE IT.

16 MR. MYERS: FINE.

17 THE COURT: ALL RIGHT. MADAM CLERK, CAN YOU TAKE
18 CARE OF THAT FOR ME?

19 THE CLERK: GOT IT, JUDGE.

20 THE COURT: THANK YOU VERY MUCH. OKAY. BRING US A
21 JUROR, PLEASE.

22 (JUROR VINCENT SHIRK WAS BROUGHT INTO THE
23 COURTROOM.)

24 VINCENT SHIRK, HAVING BEEN PREVIOUSLY SWORN AS
25 A PART OF THE JURY VOIR DIRE AND REMAINING UNDER OATH,

1 TESTIFIED AS FOLLOWS:

2 EXAMINATION BY THE COURT

3 Q. HOW ARE YOU, SIR?

4 A. FINE.

5 Q. YOU'RE MR. SHIRK?

6 A. I AM.

7 Q. ON MONDAY WHEN YOU WERE HERE, SIR, WE PUT YOU UNDER
8 OATH, AND YOU'RE STILL UNDER OATH TODAY. DO YOU UNDERSTAND
9 THAT?

10 A. YES, SIR.

11 Q. SINCE YOU LEFT US ON MONDAY, HAVE YOU TALKED TO
12 ANYBODY ABOUT THIS CASE OR HAS ANYBODY TALKED TO YOU ABOUT
13 THIS CASE?

14 A. NO, SIR.

15 Q. MR. SHIRK, I'M GOING TO ASK YOU SOME QUESTIONS NOW,
16 AND THEN AFTER I'M DONE, THE LAWYERS WILL PROBABLY HAVE SOME
17 FOLLOW-UP QUESTIONS FOR YOU. WE DON'T MEAN TO PRY TOO DEEPLY
18 INTO YOUR PERSONAL LIFE, BUT WE DO NEED TO ASK YOU THESE
19 QUESTIONS. THERE ARE NO RIGHT OR WRONG ANSWERS. WE JUST
20 WANT YOU TO LISTEN VERY CAREFULLY AND TO BE OPEN AND HONEST
21 WITH US AND TELL US HOW YOU FEEL AND HOW YOU THINK ABOUT
22 THESE ISSUES THAT WE'LL BE DISCUSSING.

23 IF YOU'RE ON THE JURY IN THIS CASE, COULD YOU ACCEPT
24 AND APPLY THE LAW PRECISELY AS I WOULD EXPLAIN IT TO YOU, SET
25 ASIDE ANYTHING THAT YOU MIGHT HAVE LEARNED OR HEARD ABOUT

1 THIS CASE BEFORE THE TRIAL BEGAN, AND RENDER A VERDICT THAT'S
2 BASED SOLELY ON THE TESTIMONY AND EVIDENCE THAT YOU WOULD SEE
3 AND HEAR IN THIS COURTROOM? COULD YOU DO THAT?

4 A. YES.

5 Q. DO YOU UNDERSTAND THAT IN A CRIMINAL CASE THE STATE
6 HAS THE BURDEN OF PROVING THE DEFENDANT GUILTY BEYOND A
7 REASONABLE DOUBT?

8 A. YES.

9 Q. COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES
10 THAT YOU FIND TO HAVE BEEN PROVEN AND IN LIGHT OF THE LAW AS
11 I WOULD EXPLAIN IT TO YOU, COULD YOU FIND THE DEFENDANT
12 EITHER GUILTY OR NOT GUILTY DEPENDING ON WHETHER OR NOT YOU
13 BELIEVE THE STATE HAS MET ITS BURDEN OF PROOF?

14 A. YES.

15 Q. NOW, IF YOU'RE ON THE JURY IN THIS CASE AND IF THE
16 JURY FINDS THE DEFENDANT GUILTY OF MURDER, THEN WE WOULD MOVE
17 INTO THE SECOND PHASE OF THE TRIAL OR THE PENALTY PHASE, AND
18 THERE ARE SEVERAL THINGS THAT WOULD COME UP DURING THAT
19 SECOND PHASE IF WE GET THERE. WE'RE GOING TO TALK ABOUT
20 THOSE NOW. AGGRAVATING CIRCUMSTANCES ARE FACTS OR INCIDENTS
21 OR DETAILS THAT THE STATE OF SOUTH CAROLINA HAS DECLARED TO
22 AGGRAVATE THE CRIME OF MURDER OR TO MAKE IT WORSE.
23 AGGRAVATING CIRCUMSTANCES INCREASE THE ENORMITY OF THE CRIME,
24 AND THEY ADD TO THE INJURY RESULTING FROM THE CRIME.

25 MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE

1 FACTS OR INCIDENTS OR DETAILS THAT SOUTH CAROLINA HAS
2 DECLARED TO LESSEN THE SEVERITY OF THE CRIME OF MURDER. THEY
3 SERVE TO EXTENUATE OR TO REDUCE THE DEGREE OF MORAL
4 CULPABILITY OR RESPONSIBILITY FOR THE CRIME. DO YOU
5 UNDERSTAND THE CONCEPTS OF AGGRAVATING AND MITIGATING
6 CIRCUMSTANCES?

7 A. I DO.

8 Q. WHEN YOU CAME IN THIS AFTERNOON, YOU WERE GIVEN THIS
9 SHEET THAT SHOWS THREE TYPES OF JURORS. DO YOU UNDERSTAND
10 THOSE THREE TYPES OF JURORS?

11 A. I DO.

12 Q. WHICH OF THOSE THREE TYPES DO YOU BELIEVE YOU ARE?

13 A. I BELIEVE I'M THE THIRD TYPE.

14 Q. THE THIRD. IF YOU WERE A JUROR IN THIS CASE AND IF
15 THE JURY REACHED A VERDICT OF GUILT ON THE CHARGE OF MURDER,
16 WE WOULD MOVE INTO THE SECOND PHASE OF THE TRIAL, AS I'VE
17 SAID. NOW, I WANT YOU TO UNDERSTAND THAT THE DEFINITION OF
18 MURDER IS AN INTENTIONAL AND UNLAWFUL KILLING OF ANOTHER
19 PERSON WITH MALICE AFORETHOUGHT. IT WOULD BE UP TO THE JURY
20 TO DETERMINE THE PENALTY FOR THE CRIME OF MURDER, AND THERE
21 WOULD BE TWO OPTIONS THAT THE JURY COULD CONSIDER. THE FIRST
22 OPTION WOULD BE FOR A LIFE SENTENCE WITHOUT THE POSSIBILITY
23 OF PAROLE, AND THE SECOND OPTION WOULD BE FOR THE DEATH
24 PENALTY. COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES
25 THAT YOU FIND TO EXIST AND CONSIDERING THE LAW AS I WOULD

1 EXPLAIN IT TO YOU, COULD YOU VOTE TO RETURN A VERDICT FOR A
2 LIFE SENTENCE?

3 A. YES.

4 Q. COULD YOU VOTE TO RETURN A VERDICT IMPOSING THE
5 DEATH PENALTY?

6 A. YES.

7 Q. NOW, IF YOU'RE ON THE JURY IN THIS CASE AND IF I
8 DECIDE TO SEQUESTER THE JURY, YOU WOULD BE PUT UP IN A HOTEL
9 FOR FIVE OR SIX DAYS, AND YOU WOULD NOT BE ALLOWED TO GO
10 HOME. WOULD THAT IMPOSE A TERRIBLE BURDEN ON YOU?

11 A. NO.

12 Q. HAVE YOU HAD A CHANCE TO GO OVER THE WITNESS LIST
13 THAT YOU WERE GIVEN WHEN YOU FIRST REPORTED TODAY?

14 A. I HAVE.

15 Q. DID YOU READ EVERY NAME ON THAT LIST?

16 A. I HAVE.

17 Q. DO YOU KNOW OR ARE YOU RELATED TO ANYONE WHOSE NAME
18 APPEARS ON THAT LIST?

19 A. NO.

20 THE COURT: ALL RIGHT, SIR. THE LAWYERS ARE GOING
21 TO ASK YOU SOME QUESTIONS NOW, AND I'LL COME BACK AND SPEAK
22 TO YOU AGAIN IN JUST A FEW MINUTES.

23 DIRECT EXAMINATION

24 BY MR. HUBBARD:

25 Q. MR. SHIRK, HOW ARE YOU?

1 A. FINE, SIR.

2 Q. I'M JUST GOING TO FOLLOW UP WITH A FEW QUESTIONS,
3 AND I DON'T WANT TO GET PERSONAL OR ANYTHING, SO I'M JUST
4 GOING TO FOLLOW UP WITH WHAT THE JUDGE WAS ASKING ABOUT HOW
5 THIS PROCESS IS A LITTLE DIFFERENT THAN MOST JURY SERVICE
6 EXPERIENCES THAT YOU MAY HAVE HEARD OF IN THE PAST. HAVE YOU
7 EVER SERVED BEFORE?

8 A. YES.

9 Q. YOU HAVE. WAS THAT CRIMINAL OR CIVIL?

10 A. I BELIEVE IT WAS CIVIL.

11 Q. OKAY. DO YOU KNOW IF IT WAS IN LEXINGTON OR...

12 A. IT WAS.

13 Q. OVER IN THE OLD COURTHOUSE?

14 A. IT WAS.

15 Q. OKAY. WELL, IN SOME WAYS THIS IS SIMILAR IN THAT
16 JURORS SIT OVER HERE IN THE JURY BOX. EVIDENCE IS PRESENTED,
17 AND THEY GO BACK AND DELIBERATE. BUT OBVIOUSLY IT'S
18 DIFFERENT IN THAT IT'S CRIMINAL AND THAT THE ONLY ISSUE WHEN
19 YOU GO BACK IS WHETHER THE DEFENDANT IS GUILTY OR NOT GUILTY.
20 THE STATE PRESENTS EVIDENCE TO ESTABLISH OUR CASE. THE JURY
21 DECIDES WHETHER WE'VE MET OUR BURDEN. YOU UNDERSTAND THAT.

22 A. YES.

23 Q. AND THAT DIFFERS FROM CIVIL WHERE YOU'RE JUST
24 WEIGHING WHICH SIDE PRESENTED THE MOST EVIDENCE. DO YOU
25 UNDERSTAND THE DIFFERENCE?

1 A. YES.

2 Q. BUT THE THING THAT'S DIFFERENT ABOUT THIS CASE
3 THOUGH IS THAT ONCE THE JURY MAKES THE DECISION, IF THEY
4 CONVICT, OR IF THE JURY FINDS THE DEFENDANT GUILTY OF MURDER,
5 THE JUDGE ISN'T THE ONE WHO SENTENCES HIM; IT'S THE JURY.
6 THAT'S DIFFERENT FROM MOST OTHER CASES. AND YOU PROBABLY
7 UNDERSTAND THAT AS WELL, I'M SURE.

8 A. YEAH, I DO.

9 Q. AND THAT'S WHERE WE GET INTO THAT SECOND PHASE THE
10 JUDGE WAS TALKING ABOUT WHERE BOTH SIDES PRESENT EVIDENCE OR
11 CAN IF THEY WISH TO. THE STATE WOULD PRESENT EVIDENCE
12 SHOWING AGGRAVATING CIRCUMSTANCES, THINGS ABOUT THE DEFENDANT
13 OR THINGS ABOUT THE CRIME THAT MAKE THE CRIME WORSE,
14 OBVIOUSLY TO SEEK THE DEATH PENALTY. AND THE DEFENSE WOULD
15 HAVE THE OPPORTUNITY, IF THEY WANT TO, TO PRESENT MITIGATING
16 EVIDENCE, THINGS ABOUT THE DEFENDANT MAYBE THAT -- THINGS
17 ABOUT HIM THAT MIGHT BE GOOD; I DON'T KNOW. THINGS THAT
18 MIGHT MITIGATE THE CRIME. OBVIOUSLY THEY'D BE SEEKING FOR
19 LIFE IF WE GET TO THAT POINT. YOU UNDERSTAND THAT.

20 A. I DO.

21 Q. IT'S MY UNDERSTANDING FROM YOUR RESPONSES TO THE
22 JUDGE YOU WOULD WANT TO HEAR BOTH SIDES OR HEAR WHATEVER IS
23 PRESENTED BEFORE YOU MAKE A DECISION.

24 A. I DO.

25 Q. YOU'D WANT TO HEAR ALL THE FACTS.

1 A. I DO.

2 Q. AND IT'S MY UNDERSTANDING THAT ON HEARING ALL THE
3 FACTS, IF YOU THOUGHT LIFE WAS APPROPRIATE YOU COULD FIND --
4 FIND FOR A LIFE SENTENCE. IS THAT RIGHT?

5 A. CORRECT.

6 Q. AND IF YOU THOUGHT DEATH WAS THE APPROPRIATE
7 SENTENCE, YOU WOULD FIND FOR THE DEATH PENALTY.

8 A. CORRECT.

9 Q. THERE'S ONE OTHER THING ABOUT THIS PROCESS THAT'S A
10 LITTLE BIT DIFFERENT; THAT'S THE VERDICT FORM ITSELF. IN
11 THAT SECOND PHASE WHERE IT'S A QUESTION OF LIFE OR DEATH, IF
12 THE JURY FINDS FOR LIFE, JUST THE FOREMAN SIGNS IT, BUT IF
13 THE JURY FINDS DEATH, ALL 12 JURORS SIGN THAT VERDICT FORM,
14 EACH AND EVERY ONE OF THEM, SHOWING THAT THAT IS THEIR
15 OPINION; THAT'S THEIR VIEW OF THE CASE. DID YOU KNOW THAT?

16 A. I DID NOT.

17 Q. WELL, KNOWING THAT -- AND THIS MAY SOUND LIKE A
18 FUNNY QUESTION, BUT, YOU KNOW, SOME PEOPLE WILL TELL YOU WHAT
19 THEY THINK, BUT WHEN IT COMES TO WRITING THEIR NAME DOWN,
20 THEY HESITATE; THEY DON'T WANT TO. WOULD YOU -- IF YOU
21 THOUGHT DEATH WAS APPROPRIATE, WOULD YOU BE ABLE TO WRITE
22 YOUR NAME DOWN ON THAT VERDICT FORM?

23 A. IF I FELT IT WAS APPROPRIATE, YES.

24 Q. OKAY. BUT, AGAIN, YOU WOULD WANT TO HEAR FROM BOTH
25 SIDES OR WHATEVER IS PRESENTED. IS THAT RIGHT?

1 A. CORRECT.

2 Q. AND YOU WOULD BE WILLING TO FOLLOW WHATEVER
3 DIRECTIONS AND INSTRUCTIONS THE JUDGE GAVE YOU?

4 A. TO MY BEST -- TO THE BEST OF MY ABILITIES, YES.

5 Q. IS THERE ANYTHING ABOUT YOU OR ANYTHING IN YOUR
6 EXPERIENCES THAT WOULD PREVENT YOU FROM GIVING BOTH SIDES A
7 FAIR TRIAL?

8 A. NO.

9 MR. HUBBARD: THAT'S ALL WE CAN ASK. THANK YOU,
10 SIR.

11 CROSS-EXAMINATION

12 BY MR. LITTLEJOHN:

13 Q. GOOD AFTERNOON, MR. SHIRK.

14 A. GOOD AFTERNOON.

15 Q. MR. SHIRK, MY NAME IS CAM LITTLEJOHN, AND I, ALONG
16 WITH LISA KIMBROUGH, REPRESENT KEVIN MERCER WHO IS THE
17 DEFENDANT IN THIS CASE. IF I MAY ASK YOU A FEW QUESTIONS
18 ABOUT YOUR ANSWERS TO THE QUESTIONNAIRE. I SEE YOU WERE BORN
19 IN PENNSYLVANIA?

20 A. THAT IS CORRECT.

21 Q. OKAY. WHERE DID YOU GO TO SCHOOL? WAS THAT IN
22 GEORGIA?

23 A. CORRECT.

24 Q. OKAY. THAT'S WHERE YOU GREW UP?

25 A. CORRECT.

1 Q. IN GEORGIA? I UNDERSTAND. AND YOU'VE BEEN WITH
2 SCANA FOR 19 YEARS?

3 A. YES.

4 Q. OKAY. CAN YOU TELL ME A LITTLE BIT ABOUT WHAT YOUR
5 JOB ENTAILS, WHAT YOU DO?

6 A. CURRENTLY I'M THE SUPERVISOR OF THE GAS MEASUREMENT
7 GROUP WHICH IS A BILLING AND -- BILLING DEPARTMENT FOR SOUTH
8 CAROLINA PIPELINE.

9 Q. UH-HUH.

10 A. WE ALSO MEASURE NATURAL GAS FLOWING TO LARGE
11 INDUSTRIAL AND COMMERCIAL CUSTOMERS ALONG WITH LOCAL
12 DISTRIBUTION COMPANIES. A LOCAL DISTRIBUTION COMPANY WOULD
13 BE SCE&G, YORK COUNTY NATURAL GAS, CHESTER NATURAL GAS, ET
14 CETERA, WHO THEY, IN TURN, SELL TO RESIDENTIAL CUSTOMERS.

15 Q. I UNDERSTAND. YOU WORK AT THE SCANA OFFICE IN
16 DOWNTOWN COLUMBIA?

17 A. I DO NOT. I WORK ON -- AT ALPINE ROAD.

18 Q. OKAY. GREAT. ANOTHER MATTER. YOU PUT IN HERE THAT
19 -- IN RESPONSE TO THE QUESTION ABOUT A MEMBER OF YOUR FAMILY
20 EVER BEING IN LAW ENFORCEMENT AND YOU ANSWERED "YES" IN
21 HARRISBURG, PENNSYLVANIA?

22 A. THAT IS CORRECT.

23 Q. CAN YOU TELL ME ABOUT THAT, PLEASE, SIR?

24 A. THAT'S MY SISTER'S HUSBAND. HE IS A RETIRED STATE
25 PATROL OFFICER.

1 Q. UH-HUH.

2 A. HE -- I THINK HE RETIRED AFTER 20 YEARS.

3 Q. OKAY.

4 A. HE WAS ASSOCIATED WITH THE ALCOHOL BOARD IN
5 PENNSYLVANIA.

6 Q. ALL RIGHT. THE STATE PATROL IN PENNSYLVANIA, THEY
7 DO A MULTITUDE OF POLICE FUNCTIONS, DO THEY NOT---

8 A. THEY DO.

9 Q. ---OTHER THAN JUST PATROLLING THE ROADS LIKE THE
10 TROOPERS DOWN HERE?

11 A. THAT'S CORRECT.

12 Q. OKAY. THAT'S WHAT I THOUGHT. AND YOU INDICATED YOU
13 HAD BEEN ON A CIVIL JURY.

14 A. THAT'S CORRECT.

15 Q. COULD YOU TELL ME BRIEFLY ABOUT THAT AND WHETHER
16 THAT WAS A GOOD EXPERIENCE FOR YOU?

17 A. IT WAS NOT A BAD EXPERIENCE.

18 Q. OKAY.

19 A. IT WAS A GOOD EXPERIENCE. I ENJOYED IT. IT WAS
20 BETWEEN A -- THE PLAINTIFF WAS SUING A FUNERAL HOME OVER A
21 MISSING PIECE OF PROPERTY ON A DECEDENT'S -- OF A DECEDENT.

22 Q. OKAY. YOU SAID MISSING AND I WAS HOPING---

23 A. TAKEN---

24 Q. ---YOU WERE GOING TO SAY PIECE OF PROPERTY AND NOT
25 SOMETHING ELSE.

1 A. RIGHT.

2 Q. THAT WAS HERE IN LEXINGTON?

3 A. YES. IT WAS IN THE OLD COURTHOUSE BUILDING.

4 Q. RIGHT. MR. SHIRK, AS INDICATED BY JUDGE FEW, THIS
5 IS A CASE WHERE THE DEFENDANT IS CHARGED WITH MURDER AND
6 OTHER CRIMES. AND THIS COULD BE A TWO-PART PROCEEDING, BUT
7 THE FIRST PART OF IT WILL DEFINITELY BE A TRIAL AS TO WHETHER
8 THE STATE HAS PROVEN THE GUILT OF THE DEFENDANT, MR. MERCER,
9 OR NOT. AND HIS HONOR WOULD INSTRUCT YOU IF YOU WERE ON THE
10 JURY THAT BEFORE YOU COULD FIND THE DEFENDANT GUILTY, YOU'D
11 HAVE TO BE SATISFIED THAT THE STATE HAD PROVEN HIS GUILT
12 BEYOND A REASONABLE DOUBT. AND I WOULD ASK YOU: IF YOU WERE
13 ON THE JURY, WOULD YOU HAVE ANY PROBLEMS ACCEPTING THAT
14 BURDEN OF PROOF AND PUTTING THE STATE TO THAT BURDEN OF
15 PROOF?

16 A. I WOULD NOT.

17 Q. OKAY. ONLY IF YOU AND THE REST OF THE JURORS, IF
18 YOU WERE ON THE JURY, WERE CONVINCED THAT THE STATE HAD
19 PROVEN THAT WOULD WE GET TO THE SECOND PHASE. I DIDN'T WANT
20 YOU TO THINK THAT THE SECOND PHASE WAS A FOREGONE CONCLUSION
21 OR IT WAS DEFINITELY GOING TO HAPPEN.

22 A. I UNDERSTAND.

23 Q. BUT THEY WOULD HAVE TO PROVE HIM GUILTY BEFORE WE
24 EVEN GOT TO THAT. CONCERNING THAT STAGE OF THE CASE, I
25 NOTICE THAT YOU TOLD JUDGE FEW YOU THOUGHT THAT YOU WERE THE

1 THIRD TYPE OF JUROR AS INDICATED ON THAT FORM.

2 A. CORRECT.

3 Q. COULD YOU EXPLAIN TO ME HOW YOU ARRIVED AT THAT
4 CONCLUSION?

5 A. I BELIEVE THAT EVIDENCE MUST BE PROVEN BEYOND A
6 SHADOW OF A DOUBT THAT A PERSON IS GUILTY. I DON'T FEEL LIKE
7 THAT A -- IF FOUND GUILTY THAT THE DEFENDANT SHOULD BE
8 AUTOMATICALLY GIVEN THE DEATH SENTENCE. I ALSO BELIEVE THAT
9 -- THAT'S THE FIRST TYPE. THE SECOND TYPE THAT AN INDIVIDUAL
10 SHOULD ONLY BE GIVEN A LIFE SENTENCE - THAT SHOULD BE
11 DETERMINED BY THE CIRCUMSTANCES SURROUNDING THE INCIDENT.

12 Q. OKAY. AND HIS BACKGROUND AND OTHER THINGS ABOUT
13 HIM?

14 A. AND HIS BACKGROUND, CORRECT.

15 Q. IF WE GET TO THAT STAGE, THERE WOULD BE PRESENTED TO
16 YOU EVIDENCE IN WHAT WE CALL MITIGATION, AND THAT WOULD BE
17 EVIDENCE THAT WOULD TEND TO BEAR ON THE DEFENDANT'S
18 BACKGROUND, HIS FAMILY, GOOD THINGS ABOUT HIM, PERHAPS BAD
19 THINGS THAT HAD HAPPENED TO HIM. THERE MIGHT BE SOME MEDICAL
20 EVIDENCE. WOULD YOU LISTEN TO ALL THAT EVIDENCE AND WEIGH IT
21 VERY CAREFULLY BEFORE ARRIVING AT YOUR DECISION AS TO WHAT
22 THE PENALTY SHOULD BE IF WE GET TO THERE?

23 A. I WOULD.

24 Q. WOULD YOU WANT TO DO THAT?

25 A. ABSOLUTELY.

1 MR. LITTLEJOHN: OKAY. MR. SHIRK, THANK YOU FOR
2 ANSWERING MY QUESTIONS.

3 RE-EXAMINATION BY THE COURT

4 Q. MR. SHIRK, YOU SAID ONE THING A SECOND AGO THAT I
5 WANT TO FOLLOW UP ON. YOU SAID SOMETHING ABOUT THAT YOU
6 BELIEVED THE DEFENDANT SHOULD BE PROVEN GUILTY BEYOND A
7 SHADOW OF A DOUBT. MAYBE I MISUNDERSTOOD YOU, BUT IF YOU
8 THINK BACK TO WHEN I WAS TALKING TO YOU IN THE BEGINNING, I
9 TOLD YOU THAT THE BURDEN OF PROOF THAT'S PLACED ON THE
10 DEFENDANT WOULD BE THAT THE -- I MEAN -- I'M SORRY. THERE IS
11 NO BURDEN OF PROOF ON THE DEFENDANT. THE BURDEN OF PROOF
12 THAT WOULD BE PLACED ON THE STATE WOULD BE TO PROVE THE
13 DEFENDANT GUILTY BEYOND A REASONABLE DOUBT, AND THE BURDEN IS
14 NOT TO PROVE HIM GUILTY BEYOND A SHADOW OF A DOUBT. DO YOU
15 UNDERSTAND THAT DISTINCTION?

16 A. YES, SIR.

17 Q. NOW, IS THERE ANY PROBLEM THAT YOU FORESEE IN
18 FOLLOWING MY INSTRUCTION THAT THE STATE'S BURDEN IS TO PROVE
19 HIM GUILTY BEYOND A REASONABLE DOUBT?

20 A. NO, SIR.

21 Q. ALL RIGHT. SIR?

22 A. I GUESS IT WAS A -- JUST A STATEMENT.

23 THE COURT: OKAY. ANY FOLLOW-UP QUESTIONS OR
24 ANYTHING Y'ALL NEED TO SAY BEFORE I RULE?

25 MR. MYERS: NO, SIR.

1 MR. LITTLEJOHN: NO, YOUR HONOR.

2 THE COURT: ALL RIGHT. MR. SHIRK, YOU ARE QUALIFIED
3 TO SERVE AS A JUROR IN THIS CASE. THAT DOESN'T MEAN YOU'RE
4 ON THE JURY. IT MEANS YOU'RE ELIGIBLE TO BE ON THE JURY. WE
5 WILL NOT NEED YOU AGAIN UNTIL MONDAY MORNING, SO I WOULD LIKE
6 FOR YOU TO PREPARE TO BE HERE ON MONDAY MORNING. IF YOU WILL
7 CALL SUNDAY NIGHT AFTER 6:00 TO THE TELEPHONE NUMBER THAT IS
8 ON THAT PINK CARD THAT YOU'VE BEEN GIVEN, THERE WILL BE A
9 RECORDED MESSAGE ON THAT LINE THAT TELLS YOU EXACTLY WHEN YOU
10 NEED TO BE HERE AND WHETHER OR NOT YOU NEED TO BRING YOUR
11 CLOTHING AND PERSONAL ITEMS TO STAY WITH US DURING THE COURSE
12 OF THE TRIAL IF I DECIDE TO SEQUESTER THE JURY.

13 BETWEEN NOW AND THEN, YOU MAY NOT DISCUSS THIS CASE
14 WITH ANYONE NOR MAY YOU ALLOW ANYONE TO DISCUSS THIS CASE
15 WITH YOU, AND PLEASE BE VERY CAREFUL NOT TO ALLOW YOURSELF TO
16 BE EXPOSED TO ANY MEDIA COVERAGE ABOUT THE CASE.

17 THE WITNESS: I'M DOING MY BEST.

18 THE COURT: ALL RIGHT, SIR. THANK YOU.

19 THE WITNESS: THANK YOU.

20 THE COURT: WE'LL SEE YOU MONDAY MORNING.

21 THE WITNESS: OKAY.

22 THE COURT: THANK YOU.

23 (JUROR SHIRK LEAVES THE COURTROOM. JUROR KRISTI
24 POTTER IS BROUGHT INTO THE COURTROOM.)

25 KRISTI POTTER, HAVING BEEN PREVIOUSLY SWORN AS

1 A PART OF THE JURY VOIR DIRE AND REMAINING UNDER OATH,
2 TESTIFIED AS FOLLOWS:

3 EXAMINATION BY THE COURT

4 Q. GOOD AFTERNOON, MS. POTTER.

5 A. HI.

6 Q. HOW ARE YOU?

7 A. GOOD.

8 Q. NOW, WHEN YOU WERE HERE ON MONDAY MORNING WE PUT YOU
9 UNDER OATH, AND YOU'RE STILL UNDER OATH TODAY. DO YOU
10 UNDERSTAND THAT?

11 A. UH-HUH.

12 Q. NOW, SINCE YOU LEFT US ON MONDAY, HAVE YOU TALKED
13 ABOUT THIS CASE WITH ANYONE OR HAS ANYONE TALKED TO YOU ABOUT
14 THE CASE?

15 A. HUH-UH.

16 Q. OKAY. I'M GOING TO NEED YOU TO TELL ME YES OR NO SO
17 IT WILL BE CLEAR ON THE RECORD WHAT YOUR ANSWER IS.

18 A. NO.

19 Q. OKAY. THANK YOU. AND NOW I'M GOING TO ASK YOU SOME
20 QUESTIONS. WHEN I'M DONE, THE LAWYERS WILL PROBABLY HAVE
21 SOME FOLLOW-UP QUESTIONS THAT THEY WILL ASK YOU. THERE ARE
22 NO RIGHT OR WRONG ANSWERS TO THESE QUESTIONS. WE JUST WANT
23 YOU TO LISTEN VERY CAREFULLY TO THE QUESTIONS. BE OPEN AND
24 HONEST WITH US. TELL US HOW YOU FEEL AND WHAT YOU THINK
25 ABOUT THESE ISSUES THAT WE'LL BE DISCUSSING.

1 IF YOU ARE A JUROR IN THIS CASE, COULD YOU ACCEPT
2 AND APPLY THE LAW PRECISELY AS I WOULD EXPLAIN IT TO YOU, SET
3 ASIDE ANYTHING THAT YOU MIGHT HAVE HEARD OR LEARNED ABOUT THE
4 CASE BEFORE THE TRIAL BEGAN, AND RENDER A VERDICT THAT'S
5 BASED SOLELY ON THE TESTIMONY AND EVIDENCE THAT WOULD BE
6 PRESENTED BEFORE YOU IN THIS COURTROOM? COULD YOU DO THAT?

7 A. YES.

8 Q. DO YOU UNDERSTAND THAT IN A CRIMINAL CASE THE STATE
9 HAS THE BURDEN OF PROVING THE DEFENDANT GUILTY BEYOND A
10 REASONABLE DOUBT?

11 A. YES.

12 Q. COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES
13 THAT YOU FIND TO HAVE BEEN PROVEN AND CONSIDERING THE LAW AS
14 I WOULD EXPLAIN IT TO YOU, COULD YOU RETURN A VERDICT OF
15 EITHER GUILTY OR NOT GUILTY DEPENDING ON WHETHER OR NOT YOU
16 BELIEVE THE STATE HAS MET ITS BURDEN OF PROOF?

17 A. YES.

18 Q. NOW, MA'AM, IF YOU WERE ON THE JURY IN THIS CASE AND
19 IF THE JURY FOUND THE DEFENDANT GUILTY OF MURDER, WE WOULD
20 MOVE INTO THE SECOND PHASE OR THE PENALTY PHASE OF THE TRIAL,
21 AND THERE ARE SEVERAL THINGS THAT WILL COME UP DURING THAT
22 PHASE THAT I WANT TO TALK TO YOU ABOUT RIGHT NOW. FIRST OF
23 ALL, AGGRAVATING CIRCUMSTANCES ARE FACTS OR INCIDENTS OR
24 DETAILS THAT THE STATE OF SOUTH CAROLINA HAS DECLARED TO
25 AGGRAVATE THE CRIME OF MURDER OR TO MAKE IT WORSE.

1 AGGRAVATING CIRCUMSTANCES INCREASE THE ENORMITY OF THE CRIME
2 AND ADD TO THE INJURY RESULTING FROM THE CRIME.

3 MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE
4 FACTS OR INCIDENTS OR DETAILS THAT SOUTH CAROLINA HAS
5 DECLARED TO LESSEN THE SEVERITY OF THE CRIME OF MURDER. THEY
6 SERVE TO EXTENUATE OR TO REDUCE THE DEGREE OF MORAL
7 CULPABILITY OR RESPONSIBILITY FOR THE CRIME. DO YOU
8 UNDERSTAND THE CONCEPT OF AGGRAVATING AND MITIGATING
9 CIRCUMSTANCES?

10 A. YES.

11 Q. NOW, WHEN YOU CAME IN THIS AFTERNOON, YOU WERE GIVEN
12 A COPY OF THIS SHEET THAT SHOWS THREE DIFFERENT TYPES OF
13 JURORS. DID YOU UNDERSTAND THOSE THREE TYPES OF JURORS?

14 A. YES.

15 Q. WHICH OF THOSE THREE TYPES DO YOU THINK YOU WOULD
16 BE, MA'AM?

17 A. THE THIRD.

18 Q. THE THIRD? IF YOU ARE A JUROR ON THIS CASE AND IF
19 THE JURY FINDS THE DEFENDANT GUILTY OF MURDER, OF COURSE, AS
20 I SAID, WE WOULD MOVE INTO THAT SECOND PHASE OR THAT PENALTY
21 PHASE OF THE TRIAL. NOW, I WANT TO TELL YOU THAT THE
22 DEFINITION OF MURDER IS AN INTENTIONAL AND UNLAWFUL KILLING
23 OF ANOTHER PERSON WITH MALICE AFORETHOUGHT. AND IT WOULD BE
24 THE RESPONSIBILITY OF THE JUROR -- OF THE JURY IN THAT SECOND
25 PHASE OF THE TRIAL TO DECIDE WHAT THE PENALTY SHOULD BE FOR

1 THAT CRIME. THERE WOULD BE TWO OPTIONS. THE FIRST OPTION
2 WOULD BE A LIFE SENTENCE WITHOUT THE POSSIBILITY OF PAROLE,
3 AND THE SECOND OPTION WOULD BE THE DEATH PENALTY. COULD YOU,
4 DEPENDING ON THE FACTS AND CIRCUMSTANCES THAT YOU FIND TO
5 EXIST AND CONSIDERING THE LAW AS I WOULD EXPLAIN IT TO YOU,
6 COULD YOU VOTE TO RETURN A VERDICT FOR A LIFE SENTENCE?

7 A. YES.

8 Q. COULD YOU VOTE TO RETURN A VERDICT IMPOSING THE
9 DEATH PENALTY?

10 A. YES.

11 Q. IF YOU ARE ON THE JURY AND IF I DECIDE TO SEQUESTER
12 THE JURY, THEN YOU WOULD BE PUT UP IN A HOTEL FOR FIVE OR SIX
13 DAYS, AND YOU WOULD NOT BE ALLOWED TO GO HOME. WOULD THAT BE
14 A TERRIBLE BURDEN ON YOU?

15 A. NO.

16 Q. DID YOU GET A CHANCE TO LOOK OVER THAT WITNESS LIST
17 THAT YOU WERE GIVEN?

18 A. YES.

19 Q. DID YOU READ EVERY NAME ON THAT LIST?

20 A. YES.

21 Q. IS THERE ANYBODY WHOSE NAME IS ON THAT LIST WHOM YOU
22 KNOW OR TO WHOM YOU ARE RELATED?

23 A. NO.

24 THE COURT: ALL RIGHT. THANK YOU, MA'AM. THE
25 LAWYERS ARE GOING TO ASK YOU SOME FOLLOW-UP QUESTIONS NOW.

DIRECT EXAMINATION

BY MR. HUBBARD:

Q. GOOD AFTERNOON, MS. POTTER. HOW ARE YOU?

A. GOOD.

Q. MS. POTTER, HAVE YOU EVER SERVED ON A JURY BEFORE?

A. I SERVED ON A JURY THAT WAS -- I GUESS IT WAS A
COUNTY RIGHT OFF OF OLD BUSH RIVER ROAD.

Q. LIKE A MAGISTRATE'S COURT?

A. RIGHT.

Q. OKAY. ALL RIGHT. WELL, IN SOME WAYS THAT'S SIMILAR
TO THIS. DID YOU ACTUALLY HEAR A CASE OR A TRIAL?

A. YES, SIR.

Q. DO YOU REMEMBER IF IT WAS CRIMINAL OR CIVIL OR WHAT
IT WAS ABOUT?

A. IT WAS CRIMINAL.

Q. OKAY. WELL, THIS CASE, THE FIRST HALF THAT THE
JUDGE WAS EXPLAINING, FOCUSES SIMPLY ON AND SOLELY ON WHETHER
THE DEFENDANT IS GUILTY OR NOT GUILTY OF THE CHARGE OF MURDER
AND THE OTHER CHARGES, AND IN THAT RESPECT THIS CASE IS
FAIRLY NORMAL. WE'LL HAVE 12 PEOPLE SITTING HERE. WE'LL
PRESENT EVIDENCE. PEOPLE WILL BE SITTING UP THERE IN THAT
WITNESS STAND WHERE YOU ARE RIGHT NOW. IT WILL BE PRETTY
MUCH LIKE A NORMAL CRIMINAL CASE IN THAT REGARD. THEN AFTER
ALL THE EVIDENCE IS IN, THIS JURY WILL GO BACK TO THEIR JURY
ROOM AND THEY'LL DECIDE WHETHER THE DEFENDANT IS GUILTY OR

1 NOT GUILTY. AT THAT TIME THERE'S NO TALK ABOUT PUNISHMENT,
2 YOU KNOW, ABOUT LIFE OR DEATH. IN FACT, THAT DOESN'T ENTER
3 INTO IT AT THAT POINT. YOU UNDERSTAND THAT PART.

4 A. UH-HUH. YES.

5 Q. AS I UNDERSTAND YOUR ANSWERS TO THE JUDGE, YOU SAID
6 YOU WOULD LISTEN TO EVERYTHING BEFORE YOU MAKE A DECISION.

7 A. YES.

8 Q. WHAT'S DIFFERENT ABOUT THIS CASE IS THAT IF THE
9 DEFENDANT IS FOUND GUILTY OF MURDER, IT'S NOT THE JUDGE WHO
10 DOES THE SENTENCING; IT'S THE JURY. AND I THINK HE EXPLAINED
11 THAT TO YOU. YOU UNDERSTOOD HIM WHEN HE WAS EXPLAINING THAT?

12 A. YES.

13 Q. AND THAT'S THAT SECOND PHASE, THAT SECOND TRIAL,
14 WHERE WE COME BACK IN HERE, AND THESE SAME JURORS SIT RIGHT
15 HERE AND THEN EVERYONE HAS AN OPPORTUNITY TO PUT UP MORE
16 EVIDENCE: SOME AGGRAVATING EVIDENCE, EVIDENCE SHOWING BAD
17 CIRCUMSTANCES ABOUT THE CRIME OR BAD THINGS ABOUT THE
18 DEFENDANT, ALSO MITIGATING EVIDENCE, THINGS THAT MIGHT
19 MITIGATE THE CRIME OR LESSEN THE DEFENDANT'S RESPONSIBILITY
20 OF THE CRIME. AS I UNDERSTAND IT, YOU WOULD WANT TO LISTEN
21 TO ALL THAT BEFORE YOU MADE A DECISION.

22 A. YES.

23 Q. AND IF I UNDERSTOOD YOU CORRECTLY, YOU WOULD LISTEN
24 TO ALL THAT INFORMATION, AND IN LISTENING TO IT, IF YOU
25 THOUGHT LIFE WAS APPROPRIATE, YOU COULD VOTE FOR LIFE.

1 A. YES.

2 Q. IF YOU THOUGHT DEATH WAS APPROPRIATE, YOU COULD VOTE
3 FOR DEATH.

4 A. YES.

5 Q. REGARDLESS, THOUGH, YOU'D WANT TO HEAR EVERYTHING.

6 A. YES.

7 Q. LET ME ASK YOU SOMETHING ELSE, TOO. THIS CASE IS A
8 LITTLE DIFFERENT BECAUSE OF THE VERDICT FORM. IF THE JURY
9 FINDS SOMEONE IS NOT ONLY GUILTY BUT IF THEY GO ON AND SAY
10 DEATH IS THE APPROPRIATE SENTENCE, ALL 12 JURORS SIGN THAT
11 JURY FORM. DO YOU THINK YOU COULD SIGN THAT JURY FORM IF YOU
12 THOUGHT DEATH WAS THE -- THAT VERDICT FORM IF YOU FELT DEATH
13 WAS THE APPROPRIATE SENTENCE?

14 A. YES.

15 Q. NO PROBLEM AT ALL?

16 A. (WITNESS SHOOK HEAD FROM SIDE TO SIDE.)

17 Q. OKAY. BUT BEFORE YOU DO THAT, YOU WOULD WANT TO
18 HEAR EVERYTHING.

19 A. YES.

20 Q. AND YOU WOULD FOLLOW THE JUDGE'S INSTRUCTIONS?

21 A. YES, DEFINITELY.

22 Q. OKAY. THAT'S ALL WE COULD ASK OF YOU. THANK YOU,
23 MA'AM.

24 A. OKAY.

25

CROSS-EXAMINATION

BY MS. KIMBROUGH:

Q. GOOD AFTERNOON, MS. POTTER. HOW ARE YOU?

A. GOOD.

Q. GOOD. I'M LISA KIMBROUGH AND THIS IS CAM LITTLEJOHN, AND THIS IS OUR CLIENT, KEVIN MERCER. IT'S GETTING KIND OF LATE IN THE DAY, SO I'M JUST GOING TO ASK YOU A FEW QUICK QUESTIONS.

A. OKAY.

Q. DO YOU UNDERSTAND THERE'S POTENTIALLY WHAT AMOUNTS TO TWO TRIALS? THE TRIAL ON WHETHER OR NOT MR. MERCER COMMITTED THE OFFENSES THAT THE STATE ALLEGES HE DID -- AND THOSE ARE VERY SERIOUS OFFENSES AND SO, YOU KNOW, OBVIOUSLY FROM OUR STANDPOINT WE WOULD WANT TO MAKE SURE THAT EVERY JUROR WHO'S IN THIS JURY BOX CAN PAY CLOSE ATTENTION AND HOLD THE STATE TO ITS BURDEN, THE STANDARD OF PROOF BEING REASONABLE DOUBT WHICH IS THE HIGHEST STANDARD THAT THE LAW IN THIS COUNTRY IMPOSES. AND SO IN LISTENING TO YOUR RESPONSES TO THE JUDGE AND TO MR. HUBBARD, IT DOESN'T SOUND LIKE YOU'D HAVE ANY PROBLEM APPLYING THE LAW AS THE JUDGE INSTRUCTS TO THE FACTS IN THIS CASE.

A. NO.

Q. OKAY. NO PREDISPOSITIONS ONE WAY OR THE OTHER.

A. NO.

Q. OKAY. AND YOU'VE NOT HEARD OF THIS CASE?

1 A. NO.

2 Q. NO? OKAY. NOW -- AND I BELIEVE THIS HAS ALSO BEEN
3 TOUCHED UPON, BUT THE VICTIM IN THIS CASE, TRACY DAVIS, WAS A
4 CAREER MILITARY MAN. WOULD THAT FACT ALONE MAKE IT DIFFICULT
5 FOR YOU TO REMAIN NEUTRAL AND OBJECTIVE?

6 A. NO.

7 Q. OKAY. ALL RIGHT. LET'S SEE. I SEE YOU'RE MARRIED
8 AND HAVE A YOUNG CHILD?

9 A. YES.

10 Q. BOY OR GIRL?

11 A. GIRL.

12 Q. GIRL. AND SHE'S TWO AND A HALF?

13 A. (WITNESS NODDED HEAD UP AND DOWN.)

14 Q. BEING SEQUESTERED WOULDN'T BE A PROBLEM?

15 A. NO.

16 Q. SOMETHING OF A BREAK, I SUSPECT?

17 A. YEAH. WELL, I HAVE -- MY HUSBAND IS VERY, VERY GOOD
18 WITH HER, AND I TRUST HIM FULLY WITH -- WITH, YOU KNOW,
19 WHATEVER NEEDS TO BE DONE.

20 Q. HE CAN HANDLE THE TERRIBLE TWO'S?

21 A. YEAH. SHE HASN'T HIT THAT ACTUALLY.

22 Q. LUCKY YOU. OKAY. ASSUMING WE GET TO THE SECOND
23 PHASE WHICH, AGAIN, YOU ESSENTIALLY, IF YOU WERE ON THIS
24 JURY, WOULD BE FACED WITH THE PROSPECT OF WHAT AMOUNTS TO TWO
25 DIFFERENT TRIALS. IF THE STATE MEETS ITS BURDEN AND MR.

1 MERCER IS CONVICTED OF THESE THREE VERY SERIOUS OFFENSES -
2 MURDER, ARMED ROBBERY, AND POSSESSION OF A WEAPON, IN THIS
3 CASE A GUN THAT WAS USED TO SHOOT THE VICTIM - IF YOU AND THE
4 OTHER JURORS FIND HIM GUILTY, WE'LL MOVE ON TO THAT SECOND
5 PHASE.

6 THE SECOND PHASE IS, YOU KNOW, EQUALLY IMPORTANT.
7 THE STAKES ARE EXTREMELY HIGH, AS YOU WELL KNOW. THIS IS A
8 DEATH PENALTY CASE. THIS IS PROBABLY THE MOST SERIOUS
9 CRIMINAL CASE THAT ANYBODY COULD BE ASKED TO SIT ON, AND IT'S
10 -- IT'S GOING TO BE A HUGE OBLIGATION. YOU'LL BE PRESENTED
11 WITH ADDITIONAL INFORMATION AT THAT POINT. YOU WILL HAVE
12 HEARD THE FACTS THAT UNDERLIE THE CONVICTION. HOWEVER, THERE
13 WILL BE ADDITIONAL FACTS, AND THOSE FACTS WOULD CONSIST OF A
14 LOT OF DIFFERENT TYPES OF INFORMATION. NO TWO CASES ARE THE
15 SAME, SO IT WOULD BE IMPOSSIBLE FOR EITHER SIDE TO PREDICT
16 ACCURATELY WHAT THAT INFORMATION IS GOING TO BE.

17 CHANCES ARE YOU COULD EXPECT TO HEAR THINGS SUCH AS
18 CHARACTER EVIDENCE THAT WOULD RELATE NOT ONLY TO THE VICTIM,
19 TRACY DAVIS, BUT ALSO TO KEVIN MERCER. YOU MAY ALSO HEAR
20 INFORMATION FROM EXPERTS. SOME OF THAT WOULD INCLUDE
21 POTENTIALLY PSYCHIATRIC AND PSYCHOLOGICAL INFORMATION AND --
22 AS WELL AS HISTORICAL INFORMATION. DO YOU THINK YOU WOULD
23 HAVE ANY TROUBLE GIVING DUE CONSIDERATION TO EACH AND EVERY
24 TYPE OF EVIDENCE THAT WOULD BE PRESENTED?

25 A. NO.

1 Q. OKAY. THE LAST QUESTION: ASSUMING YOU'RE ON THE
2 JURY IN EITHER PHASE OF THE TRIAL, ASSUMING WE GET TO BOTH,
3 WOULD YOU HAVE ANY TROUBLE MAINTAINING YOUR BELIEFS ABOUT THE
4 FACTS IN EITHER PHASE IF FACED WITH THE PROSPECT THAT, SAY, A
5 MAJORITY OF THE JURORS DISAGREED WITH YOU? WOULD YOU BE ABLE
6 TO MAINTAIN YOUR POSITION UNLESS AND UNTIL YOU WERE CONVINCED
7 OTHERWISE?

8 A. YES.

9 MS. KIMBROUGH: OKAY. THANK YOU. I APPRECIATE IT:

10 THE COURT: MS. POTTER, YOU ARE QUALIFIED TO SERVE
11 AS A JUROR IN THIS CASE. THAT DOES NOT MEAN YOU'RE ON THE
12 JURY. IT MEANS YOU'RE ELIGIBLE TO BE ON THE JURY. YOU WILL
13 NOT BE NEEDED AGAIN UNTIL MONDAY MORNING, SO I WOULD LIKE FOR
14 YOU TO BE PREPARED TO BE HERE ON MONDAY MORNING. IF YOU
15 WOULD CALL ON SUNDAY NIGHT AFTER 6:00 TO THAT TELEPHONE
16 NUMBER THAT IS LISTED ON THE LITTLE PINK CARD THAT YOU WERE
17 GIVEN, THEN THERE WILL BE A MESSAGE ON THAT LINE THAT WILL
18 TELL YOU IN DETAIL WHEN YOU NEED TO BE HERE AND WHETHER OR
19 NOT YOU NEED TO BRING ENOUGH CLOTHING AND PERSONAL ITEMS TO
20 STAY HERE IF THE JURY IS GOING TO BE SEQUESTERED.

21 BETWEEN NOW AND THEN, YOU MAY NOT DISCUSS THIS CASE
22 WITH ANYONE NOR MAY YOU ALLOW ANYONE TO DISCUSS THIS CASE
23 WITH YOU. PLEASE BE CAREFUL NOT TO ALLOW YOURSELF TO BE
24 EXPOSED TO ANY MEDIA COVERAGE ABOUT THE CASE, AND WE WILL SEE
25 YOU ON MONDAY MORNING.

1 THE WITNESS: YES, SIR.

2 THE COURT: THANK YOU, MA'AM.

3 THE WITNESS: CAN I ASK YOU A QUESTION?

4 THE COURT: CERTAINLY.

5 THE WITNESS: IF -- IF WE -- IF WE ARE SEQUESTERED
6 OR WHATEVER, WHAT DOES THAT MEAN? I MEAN AS FAR AS -- I
7 MEAN, I KNOW YOU HAVE TO STAY IN A HOTEL BUT LIKE...

8 THE COURT: YOU WOULD -- YOU WOULD -- YOU'D STAY IN
9 A HOTEL. YOU WOULD BE FED BREAKFAST PROBABLY IN THE HOTEL,
10 AND THERE WOULD BE SOME COURT STAFF THAT WOULD BE WITH YOU
11 THAT WOULD KIND OF GUIDE YOU AROUND. THEY'D DRIVE YOU FROM
12 THE HOTEL TO THE COURTHOUSE. THEY WOULD BE WITH YOU WHEN YOU
13 ATE AND THAT KIND OF THING.

14 WHEN YOU GOT TO THE COURTHOUSE, WE WOULD -- WE WOULD
15 WORK UNTIL LUNCH. YOU'D PROBABLY BE FED LUNCH HERE IN THE
16 COURTHOUSE, AND THEN WE WOULD WORK THROUGH THE EVENING 'TIL
17 PROBABLY 6:00 OR 7:00, DEPENDING ON WHAT NIGHT IT WAS AND
18 THEN WHERE WE WERE IN THE TRIAL. THEN YOU'D BE TAKEN OUT TO
19 DINNER AT SOME LOCAL RESTAURANT AS A GROUP WITH THE COURT
20 STAFF, AND THEN YOU'D BE TAKEN BACK TO THE HOTEL. AND THERE
21 WOULD BE OPPORTUNITIES FOR YOU TO USE THE TELEPHONE TO TALK
22 TO YOUR FAMILY AND THINGS LIKE THAT. OF COURSE, YOU CAN --
23 THERE ONLY WOULD BE CERTAIN -- YOU WOULDN'T BE ABLE TO TALK
24 ABOUT THE CASE.

25 THE WITNESS: NO.

1 THE COURT: BUT YOU'D BE ABLE TO TALK ABOUT YOUR
2 FAMILY AND FIND OUT HOW YOUR CHILD IS DOING AND HOW YOUR
3 HUSBAND IS DOING.

4 THE WITNESS: GREAT.

5 THE COURT: HE WOULD PLEAD FOR YOU TO COME HOME AND
6 HELP HIM, AND YOU WOULD TELL HIM THAT YOU CAN'T.

7 THE WITNESS: THAT WAS THE REASON I WAS MAINLY
8 ASKING. I DIDN'T KNOW LIKE ABOUT THE PHONE PRIVILEGES AND
9 THINGS LIKE THAT.

10 THE COURT: WELL, YOU WOULD BE ABLE TO TALK TO HIM,
11 BUT WE'RE GOING TO BE VERY BUSY.

12 THE WITNESS: OKAY.

13 THE COURT: SO, YOU KNOW, PROBABLY YOU WOULD HAVE AN
14 OPPORTUNITY IN THE MORNING TO TALK TO HIM AND IN THE EVENING.

15 THE WITNESS: OKAY.

16 THE COURT: AND, YOU KNOW, IF YOU REALLY NEEDED TO,
17 WE COULD ARRANGE SOMETHING IN THE MIDDLE OF THE DAY. WE CAN
18 WORK WITH YOUR INDIVIDUAL NEEDS, BUT WHAT I OUTLINED IS THE
19 BASIC PROGRAM IF YOU WERE GOING TO BE SEQUESTERED.

20 THE WITNESS: RIGHT. I MEAN, I HAVE CHILD CARE
21 DURING THE DAY BECAUSE SHE GOES TO SCHOOL.

22 THE COURT: UH-HUH.

23 THE WITNESS: BUT -- AND AT NIGHT HE WOULD BE THE
24 ONE. SO IF I COULD JUST CHECK IN THE MORNING AND AT NIGHT, I
25 JUST WANTED TO MAKE SURE I COULD---

1 THE COURT: YOU WOULD BE ABLE TO DO THAT.

2 THE WITNESS: OKAY. ALL RIGHT.

3 THE COURT: NOW, IF SOME -- IF SOME NON-EMERGENCY
4 PROBLEM AROSE---

5 THE WITNESS: RIGHT.

6 THE COURT: ---SOMEBODY -- YOU COULD ADVISE HIM OVER
7 THE TELEPHONE, BUT YOU WOULD NOT BE ABLE TO COME HOME AND---

8 THE WITNESS: CORRECT.

9 THE COURT: ---SHOW HIM HOW TO GIVE THE CHILD A BATH
10 OR ANYTHING LIKE THAT. I MEAN, HE'S GOING TO HAVE TO DO THAT
11 BASIC STUFF ON HIS OWN.

12 THE WITNESS: HE CAN DO THAT.

13 THE COURT: OKAY. ALL RIGHT. THANK YOU. WE'LL SEE
14 YOU MONDAY.

15 THE WITNESS: ALL RIGHT. THANK YOU.

16 (JUROR POTTER LEAVES THE COURTROOM.)

17 THE COURT: ALL RIGHT. MR. BAKER, THIS JUROR NUMBER
18 10'S HUSBAND, HAS TOLD HOPE THAT THEY WILL BE HERE TOMORROW
19 MORNING AT 9 TO ADDRESS THE QUESTION OF HER SITUATION. NOW,
20 HOPE, YOU MIGHT WANT TO MAKE SURE THAT HE UNDERSTANDS THAT WE
21 MAY NEED A MEDICAL EXPLANATION.

22 THE CLERK: YES, SIR. HE SAID THAT HE HAD MEDICAL
23 PAPERS.

24 THE COURT: OKAY.

25 THE CLERK: I SAID, WELL, IF SHE COMES OR BOTH COME,

1 YOU NEED TO BRING SOMETHING WITH YOU.

2 THE COURT: OKAY.

3 THE CLERK: JUST ALONG THAT LINE.

4 THE COURT: OKAY. THANK YOU.

5 THE CLERK: YES, SIR. ALSO, WHAT DO YOU WANT TO DO
6 ABOUT THE BALANCE THAT'S ON STANDBY? I'VE ALREADY HAD A
7 COUPLE CALL, AND THEY'RE NOT SUPPOSED TO CALL UNTIL 6.

8 THE COURT: FOR TOMORROW?

9 THE CLERK: YES, SIR, ALL THE BALANCES THAT ARE
10 SUPPOSED TO CALL AFTER 6.

11 THE COURT: LET'S -- LET'S JUST HOLD OFF BECAUSE WE
12 MAY NOT NEED THEM. WE'VE GOT 41. WE'LL SEE WHAT HAPPENS
13 OVER THE NEXT HOUR.

14 THE CLERK: I DIDN'T KNOW IF YOU WANTED ME TO
15 INSTRUCT MAYBE ONE OR TWO PANELS TO COME IN MONDAY.

16 THE COURT: PROBABLY SO, BUT LET'S WAIT A MINUTE.
17 LET'S SEE WHAT WE CAN DO OVER THE NEXT HOUR.

18 THE CLERK: THAT'S FINE. I'LL BE DOWNSTAIRS. YOU
19 CAN CALL ME. I'LL BE IN MY OFFICE.

20 THE COURT: OKAY. BRING US A JUROR, PLEASE.

21 (JUROR ANNE CAVANAUGH IS BROUGHT INTO THE
22 COURTROOM.)

23 ANNE CAVANAUGH, HAVING BEEN PREVIOUSLY SWORN AS
24 A PART OF THE JURY VOIR DIRE AND REMAINING UNDER OATH,
25 TESTIFIED AS FOLLOWS:

EXAMINATION BY THE COURT

1

2

Q. GOOD AFTERNOON, MS. CAVANAUGH.

3

A. GOOD AFTERNOON.

4

Q. WHEN YOU WERE HERE ON MONDAY, YOU WERE PUT UNDER OATH, AND YOU'RE STILL UNDER OATH THIS AFTERNOON. DO YOU UNDERSTAND THAT?

6

7

A. YES, SIR.

8

Q. SINCE YOU WERE HERE ON MONDAY, HAS ANYONE TRIED TO TALK TO YOU ABOUT THIS CASE OR HAVE YOU TALKED TO ANYBODY ABOUT THE CASE?

10

11

A. MY SISTER CALLED ME AND I HUNG UP ON HER, BUT... AND I QUITE ENJOYED THAT, TO TELL YOU THE TRUTH.

12

13

Q. PLEASE CALL YOUR SISTER BACK AND TELL HER THAT YOU'RE SORRY FOR THAT. BUT, NO, YOU -- YOU WERE KIDDING WITH ME, I SUPPOSE.

15

16

A. UH-HUH.

17

Q. YOU DON'T -- YOU DID NOT TALK TO HER. SHE PROBABLY ASKED YOU WHAT IN THE WORLD IS GOING ON, AND YOU SAID, "I CAN'T TALK TO YOU"?

19

20

A. UH-HUH.

21

Q. OKAY. GOOD JOB. I APPRECIATE THAT. NOW, I'M GOING TO ASK YOU SOME QUESTIONS -- AND, YOU KNOW, WE NEEDED THAT. WE'VE BEEN SITTING IN HERE ALL DAY DOING THIS. WE NEEDED A LITTLE LIGHT---

24

25

A. OKAY.

1 Q. ---MOMENT, SO THANK YOU. I'M GOING TO ASK YOU SOME
2 QUESTIONS, AND THEN THE LAWYERS ARE PROBABLY GOING TO ASK YOU
3 SOME FOLLOW-UP QUESTIONS. WE DON'T MEAN TO PRY TOO DEEP INTO
4 YOUR PERSONAL LIFE, BUT WE DO HAVE TO ASK YOU THESE
5 QUESTIONS. THERE ARE NO RIGHT OR WRONG ANSWERS TO THE
6 QUESTIONS. WE JUST WANT YOU TO LISTEN VERY CAREFULLY AND
7 THEN BE OPEN AND HONEST WITH US AND TELL US WHAT YOU THINK
8 AND HOW YOU FEEL ABOUT THESE ISSUES THAT WE'RE GOING TO BE
9 DISCUSSING.

10 IF YOU ARE A JUROR IN THIS CASE AND IF THE JURY --
11 I'M SORRY. IF YOU ARE A JUROR IN THIS CASE, COULD YOU ACCEPT
12 AND APPLY THE LAW PRECISELY AS I WOULD EXPLAIN IT TO YOU AND
13 SET ASIDE ANYTHING THAT YOU MIGHT HAVE HEARD OR LEARNED ABOUT
14 THE CASE BEFORE THE TRIAL BEGAN AND THEN RENDER A VERDICT
15 THAT'S BASED SOLELY ON THE TESTIMONY AND EVIDENCE THAT YOU
16 WOULD SEE AND HEAR IN THIS COURTROOM? COULD YOU DO THAT?

17 A. YES, SIR.

18 Q. DO YOU UNDERSTAND THAT IN A CRIMINAL CASE THE STATE
19 HAS THE BURDEN OF PROVING THE DEFENDANT GUILTY BEYOND A
20 REASONABLE DOUBT?

21 A. YES, SIR.

22 Q. COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES
23 THAT YOU FIND TO HAVE BEEN PROVEN AND IN LIGHT OF THE LAW AS
24 I WOULD EXPLAIN IT TO YOU, COULD YOU FIND THE DEFENDANT
25 EITHER GUILTY OR NOT GUILTY DEPENDING ON WHETHER OR NOT YOU

1 BELIEVE THE STATE HAS MET ITS BURDEN OF PROOF?

2 A. YES. YES, SIR.

3 Q. NOW, IF YOU'RE A JUROR IN THIS CASE AND IF THE JURY
4 FINDS THE DEFENDANT GUILTY OF MURDER, WE WOULD MOVE INTO THE
5 SECOND PHASE OR THE PENALTY PHASE OF THE TRIAL, AND I'M GOING
6 TO TALK TO YOU NOW ABOUT SOME OF THE ISSUES THAT WILL COME UP
7 IN THAT PHASE IF WE GET THERE. AGGRAVATING CIRCUMSTANCES ARE
8 FACTS OR INCIDENTS OR DETAILS THAT THE STATE OF SOUTH
9 CAROLINA HAS DECLARED TO AGGRAVATE THE CRIME OF MURDER OR TO
10 MAKE IT WORSE. AGGRAVATING CIRCUMSTANCES INCREASE THE
11 ENORMITY OF THE CRIME AND ADD TO THE INJURY RESULTING FROM
12 THE CRIME.

13 MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE
14 FACTS OR INCIDENTS OR DETAILS THAT SOUTH CAROLINA HAS
15 DECLARED TO LESSEN THE SEVERITY OF THE CRIME OF MURDER. THEY
16 SERVE TO EXTENUATE OR TO REDUCE THE DEGREE OF MORAL
17 CULPABILITY OR RESPONSIBILITY FOR THE CRIME. DO YOU
18 UNDERSTAND THE CONCEPT OF AGGRAVATING AND MITIGATING
19 CIRCUMSTANCES?

20 A. I BELIEVE I DO, YES.

21 Q. WHEN YOU CAME IN THIS AFTERNOON, YOU WERE GIVEN A
22 COPY OF THIS SHEET THAT SHOWS THREE DIFFERENT TYPES OF
23 JURORS. DO YOU UNDERSTAND THOSE THREE DIFFERENT TYPES OF
24 JURORS?

25 A. YES, SIR.

1 Q. WHICH OF THOSE THREE TYPES OF JURORS DO YOU BELIEVE
2 YOU ARE, MA'AM?

3 A. THE THIRD TYPE.

4 Q. IF YOU ARE A JUROR IN THIS CASE AND IF THE JURY
5 FINDS THE DEFENDANT GUILTY OF MURDER, THEN WE WOULD MOVE, AS
6 I SAID, INTO THE SENTENCING PHASE. NOW, I WANT TO MAKE SURE
7 YOU UNDERSTAND THAT THE DEFINITION OF MURDER IS AN
8 INTENTIONAL AND UNLAWFUL KILLING OF ANOTHER PERSON WITH
9 MALICE AFORETHOUGHT. IN THE SECOND PHASE OF THE TRIAL IT
10 WOULD BE UP TO THE JURY TO DETERMINE WHAT IS THE PENALTY TO
11 BE IMPOSED FOR MURDER, AND THERE WOULD BE TWO OPTIONS THAT
12 THE JURY WOULD HAVE. ONE OPTION IS A LIFE SENTENCE WITHOUT
13 THE POSSIBILITY OF PAROLE, AND THE OTHER OPTION IS THE DEATH
14 PENALTY. COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES
15 THAT YOU FIND TO EXIST AND CONSIDERING THE LAW AS I WOULD
16 EXPLAIN IT TO YOU, COULD YOU VOTE TO RETURN A VERDICT FOR A
17 LIFE SENTENCE?

18 A. I COULD, YES.

19 Q. COULD YOU VOTE TO RETURN A VERDICT IMPOSING THE
20 DEATH PENALTY?

21 A. YES, SIR.

22 Q. IF I DECIDE TO SEQUESTER THE JURY IN THIS CASE, YOU
23 WOULD BE PUT UP IN A HOTEL FOR FIVE OR SIX DAYS, AND YOU
24 WOULD BE FED ALL YOUR MEALS WITH US AS A GROUP, AND YOU WOULD
25 NOT BE ALLOWED TO GO HOME DURING THAT PERIOD OF TIME. WOULD

1 THAT IMPOSE A TERRIBLE BURDEN ON YOU?

2 A. NO, SIR.

3 Q. HAVE YOU HAD A CHANCE TO READ OVER THAT WITNESS LIST
4 THAT---

5 A. YES.

6 Q. ---I GAVE YOU EARLIER?

7 A. YES, SIR.

8 Q. DID YOU READ EVERY NAME ON THAT LIST?

9 A. YES, SIR.

10 Q. DO YOU KNOW OR ARE YOU RELATED TO ANYONE WHOSE NAME
11 APPEARS ON THAT LIST?

12 A. I DID NOT RECOGNIZE ANY OF THOSE NAMES.

13 Q. OKAY. THANK YOU, MA'AM.

14 A. UH-HUH.

15 Q. THE LAWYERS ARE GOING TO ASK YOU SOME FOLLOW-UP
16 QUESTIONS NOW.

17 A. OKAY.

18 DIRECT EXAMINATION

19 BY MR. HUBBARD:

20 Q. MS. CAVANAUGH, HOW ARE YOU DOING?

21 A. JUST FINE.

22 Q. I'M JUST GOING TO ASK YOU A FEW QUESTIONS FOLLOWING
23 UP ON WHAT THE JUDGE WAS ASKING.

24 A. UH-HUH..

25 Q. I UNDERSTAND YOU'VE NEVER SERVED ON A JURY BEFORE?

1 A. NO, SIR. THIS IS MY FIRST EXPERIENCE.

2 Q. SO YOU PICKED A DEATH PENALTY CASE FOR YOUR FIRST
3 EXPERIENCE, HUH?

4 A. UH-HUH.

5 Q. WELL, I TELL YOU BASICALLY WHAT THE JUDGE WAS
6 TELLING YOU IS THAT THERE'S TWO PARTS TO THIS CASE. THE
7 FIRST PART IS JUST LIKE ANY OTHER CASE, LIKE A NORMAL CASE,
8 WHERE EVIDENCE IS PRESENTED TO JURORS. WITNESSES TAKE THE
9 WITNESS STAND RIGHT WHERE YOU'RE SEATED RIGHT NOW.

10 A. UH-HUH.

11 Q. AND WHEN ALL THE EVIDENCE IS IN, THE JURORS GO BACK
12 AND THEY DECIDE WHETHER THE DEFENDANT IS GUILTY OR NOT
13 GUILTY, JUST LIKE ANY CASE YOU WOULD HAVE PROBABLY IMAGINED
14 IN THE CRIMINAL SETTING, JUST THE QUESTION OF GUILT OR NOT
15 GUILTY. AND TYPICALLY -- AND WHAT MAKES THIS DIFFERENT IS
16 TYPICALLY WHEN A DEFENDANT IS CONVICTED, WE STAND HIM UP IN
17 FRONT OF A JUDGE AND THE JUDGE DOES THE SENTENCING. IS THAT
18 PRETTY MUCH YOUR UNDERSTANDING OF HOW OUR SYSTEM WORKS?

19 A. I'VE JUST SEEN IT ON TELEVISION, TO BE HONEST WITH
20 YOU, BUT, YES. UH-HUH.

21 Q. WELL, IT'S PRETTY MUCH LIKE THAT IN THAT RESPECT.

22 A. UH-HUH.

23 Q. IT MAY WORK A LITTLE SLOWER, BUT WE PRESENT
24 EVIDENCE. THE JURY GOES BACK, DISCUSSES THE MATTER, AND THEN
25 THEY DECIDE JUST THAT ISSUE OF GUILT OR NOT GUILTY. YOU

1 DON'T TALK ABOUT PUNISHMENT AT THAT POINT. THERE'S NO TALK
2 ABOUT MERCY AT THAT POINT. IT'S JUST ABOUT: DID HE DO IT?
3 WAS IT PROVEN? AND YOU UNDERSTAND THAT.

4 A. YES, SIR.

5 Q. NOW, WHAT MAKES THIS DIFFERENT TODAY IN THIS CASE IS
6 THAT IF THE JURY CONVICTS HIM OF MURDER, THE JUDGE DOESN'T DO
7 THE SENTENCING LIKE HE WOULD IN MOST ANY OTHER CASE; THE JURY
8 DOES. AND THAT'S THAT SECOND HALF OR THAT SECOND PHASE THE
9 JUDGE WAS TALKING ABOUT.

10 A. UH-HUH.

11 Q. WHERE THE JURY COMES BACK IN AND SITS IN THESE SAME
12 CHAIRS AND THEN MORE EVIDENCE AND MORE INFORMATION IS
13 PRESENTED ON THAT WITNESS STAND ABOUT THE DEFENDANT, ABOUT
14 THE CRIME, AGGRAVATING CIRCUMSTANCES AND MITIGATING
15 CIRCUMSTANCES, JUST LIKE THE JUDGE WAS EXPLAINING. AND I
16 THINK YOU UNDERSTOOD THAT.

17 A. UH-HUH.

18 Q. AND, AGAIN, THAT TYPE OF EVIDENCE -- SOME OF IT WILL
19 SHOW BAD THINGS ABOUT THE CRIME, YOU KNOW, THAT MAKE IT
20 WORSE, THINGS ABOUT THE DEFENDANT. THERE MAY BE THINGS
21 PRESENTED GOOD ABOUT THE DEFENDANT, BUT AS I UNDERSTAND YOUR
22 ANSWERS WITH THE JUDGE, BEFORE YOU MAKE A DECISION ON LIFE OR
23 DEATH, YOU WANT ALL THE INFORMATION.

24 A. YES, SIR.

25 Q. AND YOU WOULD CONSIDER ALL THE INFORMATION BEFORE

1 YOU MADE A DECISION.

2 A. YES, SIR.

3 Q. AND IF YOU THOUGHT LIFE WAS APPROPRIATE, AS I
4 UNDERSTAND YOUR ANSWER---

5 A. UH-HUH.

6 Q. ---YOU WOULD GIVE LIFE.

7 A. THAT'S CORRECT.

8 Q. AND IF YOU THOUGHT DEATH WAS APPROPRIATE, YOU FEEL
9 LIKE YOU COULD GIVE A DEATH SENTENCE.

10 A. YES, SIR.

11 Q. THERE'S SOMETHING ELSE THAT'S A LITTLE BIT DIFFERENT
12 ABOUT THIS PROCESS. NOT ONLY DOES THE JURY DO THE
13 SENTENCING, BUT IF THE JURY DECIDES THAT DEATH IS
14 APPROPRIATE, ON THE VERDICT FORM EVERY JUROR MUST SIGN HIS OR
15 HER NAME SAYING THIS IS WHAT I THINK. NOW, IT MAY SOUND KIND
16 OF FUNNY BUT -- FOR ME TO ASK THIS, BUT SOME PEOPLE WILL TELL
17 YOU WHAT THEIR THOUGHTS ARE, WILL TELL YOU WHAT THEY'RE
18 THINKING, WHAT THEIR OPINIONS ARE, BUT THEY DON'T WANT TO
19 SIGN THEIR NAME ON ANYTHING. IF YOU THOUGHT DEATH WAS
20 APPROPRIATE, COULD YOU SIGN THAT VERDICT FORM?

21 A. IF I THOUGHT IT WAS APPROPRIATE, YES, SIR.

22 Q. AND BEFORE YOU'D DO THAT, YOU WOULD WANT TO HEAR
23 EVERYTHING.

24 A. YES, DEFINITELY.

25 Q. AND YOU WOULD FOLLOW THE JUDGE'S INSTRUCTIONS.

1 A. MOST DEFINITELY.

2 Q. MS. CAVANAUGH, THAT'S ALL WE COULD ASK OF YOU.

3 THANK YOU.

4 A. THANK YOU.

5 CROSS-EXAMINATION

6 BY MR. LITTLEJOHN:

7 Q. GOOD AFTERNOON, MS. CAVANAUGH.

8 A. HEY.

9 Q. I'M CAM LITTLEJOHN, AND I, ALONG WITH LISA
10 KIMBROUGH, REPRESENT KEVIN MERCER WHO'S THE DEFENDANT IN THIS
11 CASE.

12 A. UH-HUH.

13 Q. MS. CAVANAUGH, LET ME ASK YOU A COUPLE OF THINGS
14 ABOUT YOUR QUESTIONNAIRE.

15 A. OKAY.

16 Q. IT SAYS YOU'VE LIVED IN LEXINGTON COUNTY FOR FIVE
17 YEARS?

18 A. YES, AT LEAST.

19 Q. RIGHT.

20 A. I MEAN, BACK AND FORTH ACTUALLY MORE THAN FIVE
21 YEARS.

22 Q. OKAY. DID YOU GROW UP IN COLUMBIA?

23 A. YES.

24 Q. OKAY. I NOTICE YOU WENT TO SCHOOL IN COLUMBIA.

25 A. UH-HUH.

1 Q. I ALSO NOTICE YOU'RE AN L.P.N. AT PALMETTO RICHLAND?

2 A. YES, SIR.

3 Q. AND TELL ME A LITTLE BIT ABOUT WHAT YOUR DUTIES ARE,
4 WHAT YOU DO AT THE HOSPITAL.

5 A. TOTAL PATIENT CARE. EVERYTHING FROM MONITORING I.V.
6 FLUIDS, MEDS, TO TURNING THEM AND DRESSINGS, I MEAN,
7 EVERYTHING, TOTAL PATIENT CARE.

8 Q. YOU WORK ON THE FLOORS---

9 A. RIGHT.

10 Q. ---WITH THE PATIENTS?

11 A. I'M ON A NEPHROLOGY FLOOR.

12 Q. OKAY.

13 A. RENAL.

14 Q. ALL RIGHT. AND LET'S SEE. YOU'VE DONE THAT FOR
15 THREE YEARS AT PALMETTO RICHLAND?

16 A. AT PALMETTO RICHLAND, RIGHT.

17 Q. WHERE WERE YOU BEFORE THAT?

18 A. I WORKED FOR AN AGENCY.

19 Q. OKAY. I NOTICE YOU LIVED IN GERMANY FOR AWHILE?

20 A. UH-HUH. SIX MONTHS.

21 Q. WAS THAT -- WAS THAT RELATED TO SOME SERVICE?

22 A. MY HUSBAND WAS IN THE SERVICE.

23 Q. OKAY.

24 A. THEN HE GOT ORDERS FOR VIETNAM AND THEN WE LEFT,

25 SO...

1 Q. LET ME ASK YOU, MS. CAVANAUGH, AND IT'S BEEN ALLUDED
2 TO THAT THE VICTIM IN THIS CASE WAS A SERGEANT IN THE ARMY.

3 A. UH-HUH.

4 Q. NOW, WOULD THAT FACT COUPLED WITH YOUR MILITARY
5 EXPERIENCE -- DO YOU THINK THAT WOULD HAVE ANY BEARING ON
6 YOUR ABILITY TO LISTEN TO EVERYTHING IN THIS CASE?

7 A. NO, SIR. MY MILITARY EXPERIENCE WAS IN 1968. I
8 DON'T THINK THAT WOULD, NO.

9 Q. UH-HUH. OKAY. AS THE JUDGE EXPLAINED TO YOU,
10 KEVIN'S CHARGED WITH MURDER, ARMED ROBBERY, AND ANOTHER
11 CRIME.

12 A. UH-HUH.

13 Q. AND IN THIS CASE THERE WOULD BE POSSIBLY TWO PARTS
14 TO IT, BUT THE FIRST PART WOULD DEAL ONLY WITH WHETHER THE
15 STATE HAD PROVEN HIM GUILTY BEYOND A REASONABLE DOUBT.
16 THAT'S THE LEGAL STANDARD THAT THE STATE MUST MEET, AND ALL
17 THE JURORS WOULD HAVE TO DECIDE THAT THEY HAD MET THAT
18 BURDEN---

19 A. UH-HUH.

20 Q. ---BEFORE THEY COULD FIND HIM GUILTY, AND IT WOULD
21 ONLY BE IF THAT BURDEN WAS MET THAT WE WOULD GET INTO THE
22 SECOND PHASE.

23 A. UH-HUH.

24 Q. SO I DIDN'T WANT YOU TO THINK THAT IT WAS AUTOMATIC
25 OR ANYTHING OR A FOREGONE CONCLUSION, BUT ONLY IF THE

1 DEFENDANT IS FOUND GUILTY DO WE GET INTO THE SENTENCING
2 ASPECT OF THE CASE. DO YOU UNDERSTAND THAT?

3 A. OH, YES. YES.

4 Q. OKAY. IN THAT REGARD, YOU INDICATED TO JUDGE FEW
5 THAT AFTER REVIEWING THAT FORM THAT YOU THOUGHT YOU WERE THE
6 THIRD TYPE OF JUROR.

7 A. DEFINITELY.

8 Q. OKAY. YOU SAID DEFINITELY. TELL ME HOW YOU ARRIVED
9 AT THAT CONCLUSION, IF YOU WOULD, JUST IN YOUR WORDS.

10 A. THIS IS NOT SOMETHING THAT I HAVEN'T THOUGHT ABOUT.

11 Q. UH-HUH.

12 A. YOU KNOW, I THINK WE ALL THINK ABOUT THESE THINGS
13 WHEN WE SEE THEM POP UP AROUND US. BUT I JUST -- I JUST KNOW
14 THAT THAT'S -- THAT'S THE WAY I WOULD GO WITH THIS. I DON'T
15 BELIEVE THAT THE DEATH PENALTY IS APPROPRIATE IN SOME CASES
16 AND THEN IN OTHERS IT IS. IT JUST DEPENDS ON THE
17 CIRCUMSTANCES.

18 Q. OKAY. YOU'D WANT TO LISTEN TO ALL THE EVIDENCE
19 BEFORE YOU MADE YOUR MIND UP.

20 A. EVERY BIT OF IT, YES. UH-HUH.

21 Q. AND LET ME ASK YOU -- AND I THINK I KNOW THE ANSWER
22 TO THIS.

23 A. UH-HUH.

24 Q. BUT IN THIS CASE, IF WE GET TO THAT PART OF THE
25 CASE, WE WOULD PRESENT EVIDENCE IN MITIGATION ON KEVIN'S

1 BEHALF---

2 A. UH-HUH.

3 Q. ---AND THAT INFORMATION WOULD INCLUDE THINGS ABOUT
4 HIS BACKGROUND, HIS FAMILY, PROBABLY SOME MEDICAL EVIDENCE.

5 A. UH-HUH.

6 Q. THINGS THAT WERE GOOD ABOUT KEVIN, THINGS THAT HAD
7 HAPPENED TO HIM THAT WERE BAD. WOULD YOU LISTEN TO ALL THAT
8 INFORMATION BEFORE MAKING YOUR MIND UP?

9 A. ALL OF IT.

10 Q. YOU'D WANT TO, WOULDN'T YOU?

11 A. DEFINITELY.

12 Q. OKAY.

13 A. THIS IS VERY SERIOUS.

14 Q. YES, MA'AM.

15 A. I MEAN, I'M TAKING THIS VERY SERIOUS.

16 Q. IT REALLY IS.

17 A. I WOULD WANT TO HEAR IT ALL.

18 Q. OKAY. WELL, I APPRECIATE THAT. THANK YOU FOR
19 ANSWERING MY QUESTIONS.

20 A. YOU'RE QUITE WELCOME.

21 THE COURT: ANYTHING BEFORE I RULE?

22 MR. LITTLEJOHN: NO, YOUR HONOR.

23 THE COURT: MS. CAVANAUGH, YOU ARE QUALIFIED TO
24 SERVE AS A JUROR IN THIS CASE. THAT DOES NOT MEAN THAT YOU
25 ARE ON THE JURY. IT JUST MEANS THAT YOU'RE ELIGIBLE TO BE ON

1 THE JURY.

2 THE WITNESS: UH-HUH.

3 THE COURT: WE WOULD NOT NEED YOU BACK UNTIL MONDAY
4 MORNING, AND IF YOU WOULD PLEASE CALL SUNDAY NIGHT AFTER 6:00
5 TO THAT TELEPHONE NUMBER THAT YOU WERE GIVEN ON THE PINK
6 CARD---

7 THE WITNESS: RIGHT.

8 THE COURT: ---THERE WILL BE A MESSAGE ON THAT LINE
9 THAT WILL TELL YOU EXACTLY WHEN YOU NEED TO REPORT AND
10 WHETHER OR NOT YOU NEED TO BRING YOUR PERSONAL ITEMS AND
11 CLOTHING IN CASE YOU ARE SEQUESTERED. BETWEEN NOW AND THEN,
12 YOU ARE NOT PERMITTED TO DISCUSS THIS CASE WITH ANYONE NOR IS
13 ANYONE PERMITTED TO DISCUSS THIS CASE WITH YOU. PLEASE BE
14 CAREFUL NOT TO ALLOW YOURSELF TO BE EXPOSED TO ANY MEDIA
15 COVERAGE ABOUT THE CASE, AND WE'LL SEE YOU MONDAY MORNING.

16 THE WITNESS: OKAY. THANK YOU.

17 THE COURT: THANK YOU, MA'AM.

18 THE WITNESS: DO I LEAVE THESE WITH YOU?

19 THE COURT: HE'LL TAKE THOSE FROM YOU.

20 THE WITNESS: OKAY.

21 (JUROR CAVANAUGH LEAVES THE COURTROOM.)

22 THE COURT: ALL RIGHT. I GOT TO TAKE A BREAK.
23 WE'LL BE... WE'LL TAKE ABOUT A FIVE-MINUTE BREAK.

24 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

25 THE COURT: ALL RIGHT. BRING US MS. EDWARDS. WE'RE

1 READY.

2 (JUROR PEGGY EDWARDS IS BROUGHT INTO THE COURTROOM.)

3 PEGGY EDWARDS, HAVING BEEN PREVIOUSLY SWORN AS
4 A PART OF THE JURY VOIR DIRE AND REMAINING UNDER OATH,
5 TESTIFIED AS FOLLOWS:

6 EXAMINATION BY THE COURT

7 Q. HOW ARE YOU, MS. EDWARDS?

8 A. DOING PRETTY GOOD.

9 Q. ON MONDAY WHEN YOU WERE HERE WE PUT YOU UNDER OATH.
10 DO YOU RECALL THIS?

11 A. YES, SIR.

12 Q. AND YOU UNDERSTAND YOU'RE STILL UNDER OATH TODAY.

13 A. YES, SIR.

14 Q. SINCE MONDAY, HAVE YOU TALKED ABOUT THIS CASE TO
15 ANYONE?

16 A. NO, SIR.

17 Q. HAS ANYONE TALKED TO YOU ABOUT THE CASE?

18 A. NO, SIR.

19 Q. NOW, I'M GOING TO ASK YOU SOME QUESTIONS, AND AFTER
20 I'M DONE, THE LAWYERS WILL PROBABLY ASK YOU SOME FOLLOW-UP
21 QUESTIONS. WE DON'T MEAN TO PROBE TOO DEEP INTO YOUR PRIVATE
22 LIFE, BUT WE DO HAVE TO ASK YOU THESE QUESTIONS. THERE ARE
23 NO RIGHT OR WRONG ANSWERS TO THE QUESTIONS. WE JUST WANT YOU
24 TO LISTEN VERY CAREFULLY AND THEN TO BE OPEN AND HONEST WITH
25 US. TELL US HOW YOU FEEL AND WHAT YOU THINK ABOUT THESE

1 ISSUES THAT WE'LL BE DISCUSSING.

2 A. OKAY.

3 Q. IF YOU ARE A JUROR IN THIS CASE, CAN YOU ACCEPT AND
4 APPLY THE LAW PRECISELY AS I WILL EXPLAIN IT TO YOU AND SET
5 ASIDE ANYTHING THAT YOU MIGHT HAVE HEARD OR LEARNED ABOUT THE
6 CASE BEFORE THE TRIAL BEGAN AND THEN RENDER A VERDICT THAT IS
7 BASED SOLELY ON THE TESTIMONY AND EVIDENCE THAT YOU WOULD
8 HEAR AND SEE IN THIS COURTROOM? CAN YOU DO THAT?

9 A. YES, SIR.

10 Q. DO YOU UNDERSTAND THAT THE STATE HAS THE BURDEN OF
11 PROVING THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT?

12 A. YES, SIR.

13 Q. COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES
14 THAT YOU FIND TO HAVE BEEN PROVEN AND IN LIGHT OF THE LAW AS
15 I WILL EXPLAIN IT TO YOU, COULD YOU FIND THE DEFENDANT EITHER
16 GUILTY OR NOT GUILTY DEPENDING ON WHETHER YOU BELIEVE THE
17 STATE HAS MET THAT BURDEN OF PROOF?

18 A. YES, SIR.

19 Q. NOW, IF YOU'RE ON THE JURY IN THIS CASE AND IF THE
20 JURY FINDS THE DEFENDANT GUILTY OF MURDER, WE WOULD MOVE INTO
21 THE SECOND PHASE OR THE PENALTY PHASE OF THE TRIAL. I'M
22 GOING TO TALK TO YOU NOW ABOUT SOME OF THE THINGS THAT WILL
23 COME UP THEN. AGGRAVATING CIRCUMSTANCES ARE FACTS OR
24 INCIDENTS OR DETAILS THAT THE STATE OF SOUTH CAROLINA HAS
25 DECLARED TO AGGRAVATE OR TO MAKE WORSE THE CRIME OF MURDER.

1 AGGRAVATING CIRCUMSTANCES INCREASE THE ENORMITY OF THE CRIME
2 AND ADD TO THE INJURY THAT RESULTS FROM THE CRIME.

3 A. UH-HUH.

4 Q. MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE
5 FACTS OR INCIDENTS OR DETAILS THAT SOUTH CAROLINA HAS
6 DECLARED TO LESSEN THE SEVERITY OF THE CRIME OF MURDER. THEY
7 SERVE TO EXTENUATE OR TO REDUCE THE DEGREE OF MORAL
8 CULPABILITY OR RESPONSIBILITY FOR THE CRIME. DO YOU
9 UNDERSTAND THE CONCEPTS OF AGGRAVATING AND MITIGATING
10 CIRCUMSTANCES?

11 A. NOT REALLY.

12 Q. AGGRAVATING CIRCUMSTANCES WOULD BE SOME FACT OR SOME
13 DETAIL OR SOME INCIDENT THAT MAKES THE CRIME OF MURDER WORSE.

14 A. OKAY.

15 Q. A MITIGATING CIRCUMSTANCE WOULD BE SOME -- SOME FACT
16 OR SOME INCIDENT OR SOME DETAIL THAT WOULD MAKE THE CRIME OF
17 MURDER LESS WORSE. IT WOULD MAKE IT LESS SEVERE.

18 A. OKAY.

19 Q. DO YOU UNDERSTAND?

20 A. YES, SIR.

21 Q. WHEN YOU CAME IN THIS AFTERNOON, YOU WERE GIVEN THIS
22 SHEET THAT EXPLAINS THE THREE TYPES OF JURORS.

23 A. YES, SIR.

24 Q. DO YOU UNDERSTAND THE THREE TYPES OF JURORS?

25 A. YES, SIR.

1 Q. WHICH OF THOSE TYPES DO YOU BELIEVE YOU WOULD BE?

2 A. THE THIRD ONE. I COULD DETERMINE, YOU KNOW, IF
3 IT -- IF THE DEATH PENALTY NEEDED TO BE APPLIED, I BELIEVE I
4 COULD DO THAT.

5 Q. ALL RIGHT. AND WOULD YOU APPLY THE -- WOULD YOU
6 IMPOSE THE DEATH PENALTY IN EVERY CASE IN WHICH SOMEONE HAS
7 BEEN CONVICTED OF MURDER?

8 A. NO, SIR.

9 Q. NOW, IF YOU ARE A JUROR IN THIS CASE AND IF THE
10 DEFENDANT IS CONVICTED OF MURDER -- AND LET ME MAKE SURE YOU
11 UNDERSTAND THAT MURDER IS DEFINED AS THE INTENTIONAL AND
12 UNLAWFUL KILLING OF ANOTHER PERSON WITH MALICE AFORETHOUGHT.
13 SO IF THE JURY WERE TO FIND THE DEFENDANT GUILTY OF MURDER,
14 THEN IT WOULD BE UP TO THE JURY IN THIS CASE TO DETERMINE
15 WHAT THE SENTENCE SHOULD BE, AND THERE WOULD BE TWO OPTIONS.
16 THE FIRST OPTION WOULD BE A LIFE SENTENCE WITHOUT THE
17 POSSIBILITY OF PAROLE, AND THE SECOND OPTION WOULD BE THE
18 DEATH PENALTY. COULD YOU, DEPENDING ON THE FACTS AND
19 CIRCUMSTANCES THAT YOU FIND TO EXIST AND CONSIDERING THE LAW
20 AS I WOULD EXPLAIN IT TO YOU, COULD YOU VOTE TO RETURN A
21 VERDICT FOR A LIFE SENTENCE?

22 A. YES, SIR.

23 Q. COULD YOU VOTE TO RETURN A VERDICT IMPOSING THE
24 DEATH PENALTY?

25 A. YES, SIR.

1 Q. MA'AM, IF I DECIDE TO SEQUESTER THE JURY IN THIS
2 CASE, YOU WOULD BE PUT UP IN A HOTEL FOR FIVE OR SIX DAYS
3 WHILE WE TRY THIS CASE. WE'D PROVIDE ALL YOUR MEALS TO YOU,
4 AND YOU WOULD NOT BE ALLOWED TO GO HOME. WOULD THAT IMPOSE A
5 TERRIBLE BURDEN ON YOU?

6 A. BESIDES MISSING WORK, NO, SIR.

7 Q. OKAY. DID YOU GET A CHANCE TO READ OVER THAT
8 WITNESS LIST THAT YOU WERE GIVEN EARLIER TODAY?

9 A. YES, SIR.

10 Q. DID YOU READ EVERY NAME ON THAT LIST?

11 A. I SURE DID.

12 Q. DO YOU KNOW OR ARE YOU RELATED TO ANYONE WHOSE NAME
13 APPEARS ON THAT LIST?

14 A. NO, SIR.

15 THE COURT: ALL RIGHT. THANK YOU, MA'AM. THE
16 LAWYERS ARE GOING TO ASK YOU SOME FOLLOW-UP QUESTIONS AT THIS
17 TIME.

18 DIRECT EXAMINATION

19 BY MR. HUBBARD:

20 Q. MS. EDWARDS, HOW ARE YOU DOING?

21 A. DOING PRETTY GOOD.

22 Q. I'VE JUST GOT A FEW QUESTIONS. I JUST WANT TO
23 FOLLOW UP WITH WHAT THE JUDGE WAS ASKING YOU. HAVE YOU EVER
24 SERVED ON A JURY?

25 A. NO, SIR.

1 Q. SO THIS WOULD BE YOUR FIRST EXPERIENCE.

2 A. THIS IS MY FIRST EXPERIENCE.

3 Q. ALL RIGHT. WELL, AS THE JUDGE WAS SAYING, THERE'S
4 BASICALLY TWO PARTS TO THIS PROCESS. THE FIRST PART IS WHAT
5 WE CALL THE GUILT PHASE. IT'S WHERE THE JURY COMES IN. THE
6 STATE PRESENTS EVIDENCE. THE WITNESSES TAKE THAT STAND, AND
7 THEN THE JURY GOES BACK AND DETERMINES WHETHER THE DEFENDANT
8 IS GUILTY OR NOT GUILTY OF MURDER AND THE OTHER CHARGES.

9 A. UH-HUH.

10 Q. AND YOU UNDERSTAND THAT.

11 A. UH-HUH.

12 Q. THERE'S NO TALK AT THAT POINT ABOUT PUNISHMENT,
13 ABOUT LIFE SENTENCE, DEATH PENALTY, ABOUT MERCY OR ANYTHING
14 LIKE THAT. IT'S SIMPLY GUILTY OR NOT GUILTY.

15 A. YES, SIR.

16 Q. YOU UNDERSTAND THAT.

17 A. UH-HUH.

18 Q. AND IN THAT RESPECT, THIS IS NORMAL. THAT'S THE
19 NORMAL PART OF THE CASE. AND TYPICALLY WHEN SOMEBODY IS
20 GUILTY OR CONVICTED, THEY STAND IN FRONT OF THE JUDGE AND THE
21 JUDGE SENTENCES THEM.

22 A. UH-HUH.

23 Q. IN THIS CASE THE JURY SENTENCES THEM, AND THAT'S THE
24 SECOND HALF OF THE TRIAL THE JUDGE WAS EXPLAINING TO YOU, THE
25 SECOND PHASE, AND IN THAT PHASE -- WHICH IS ALMOST LIKE A

1 SECOND TRIAL. THE JURY SITS IN THESE SAME SEATS. MORE
2 EVIDENCE IS PRESENTED, AND AS THE JUDGE WAS SAYING, THERE'S
3 AGGRAVATING AND MITIGATING CIRCUMSTANCES THAT ARE PRESENTED,
4 BAD THINGS ABOUT THE DEFENDANT, GOOD THINGS ABOUT THE
5 DEFENDANT, BAD THINGS ABOUT THE CRIME THAT MAKE IT WORSE,
6 THINGS ABOUT THE CRIME THAT MAY LESSEN THE RESPONSIBILITY OF
7 THE DEFENDANT. DO YOU UNDERSTAND THAT?

8 A. YES, SIR.

9 Q. AS I UNDERSTAND YOUR ANSWERS WITH THE JUDGE, YOU'D
10 WANT TO HEAR ALL OF IT BEFORE YOU MAKE A DECISION.

11 A. YES, SIR.

12 Q. AND YOU WOULD WANT TO HEAR EVERY WITNESS THAT
13 TESTIFIED. YOU'D WANT TO HEAR WHAT THEY SAY, AND YOU'D WANT
14 TO LOOK AT EVERY PIECE OF EVIDENCE THAT'S PRESENTED. IS THAT
15 RIGHT?

16 A. YES, SIR.

17 Q. AND AFTER YOU DO ALL OF THAT, IF YOU THOUGHT LIFE
18 WAS APPROPRIATE, YOU'D VOTE FOR LIFE. IS THAT RIGHT?

19 A. UH-HUH.

20 Q. AND IF YOU THOUGHT DEATH WAS APPROPRIATE, YOU'D VOTE
21 FOR DEATH.

22 A. YES, SIR.

23 Q. NOW, THERE IS ONE OTHER THING THAT'S A LITTLE BIT
24 DIFFERENT ABOUT THIS PROCESS, AND IT'S THE VERDICT FORM. IN
25 THAT SECOND HALF WHEN YOU'RE DECIDING WHAT THE PUNISHMENT

1 SHOULD BE, LIFE OR DEATH, IF IT'S LIFE, JUST THE FOREPERSON
2 SIGNS IT, BUT IF IT'S DEATH, EVERY SINGLE JUROR ON THAT JURY
3 SIGNS THEIR NAME TO THAT FORM SAYING THIS IS WHAT WE THINK.
4 COULD YOU, IF YOU WERE SITTING ON THAT JURY AND YOU THOUGHT
5 DEATH WAS THE RIGHT SENTENCE, COULD YOU SIGN YOUR NAME TO
6 THAT VERDICT FORM?

7 A. YES, SIR. IF I THOUGHT THAT THEY DESERVED IT FOR
8 THE CRIME, I WOULD, YES.

9 Q. OKAY. THAT'S -- THAT'S WHAT I NEED TO KNOW. LET ME
10 ASK YOU THIS, TOO. ONE FINAL THOUGHT: IS THERE ANYTHING
11 ABOUT YOU, YOUR PAST, YOUR EXPERIENCES, ANYTHING IN YOUR LIFE
12 THAT WOULD PREVENT YOU FROM GIVING EITHER SIDE A FAIR TRIAL?

13 A. NO, SIR.

14 Q. YOU'D WANT TO HEAR FROM BOTH.

15 A. YES, SIR.

16 Q. OR YOU WOULD HEAR FROM WHATEVER IS PRESENTED.

17 A. YES, SIR.

18 Q. AND YOU'D FOLLOW THE JUDGE'S INSTRUCTIONS?

19 A. UH-HUH.

20 Q. MS. EDWARDS, THAT'S ALL WE CAN ASK OF YOU. THANK
21 YOU.

22 A. THANK YOU.

23 CROSS-EXAMINATION

24 BY MS. KIMBROUGH:

25 Q. GOOD EVENING, MS. EDWARDS. HOW ARE YOU?

1 A. DOING GOOD.

2 Q. GOOD. I'M LISA KIMBROUGH AND THIS IS CAM
3 LITTLEJOHN, AND THIS IS MY CLIENT, KEVIN MERCER. I JUST HAVE
4 A FEW QUESTIONS. I REALIZE IT'S GETTING LATE, AND WE
5 APPRECIATE YOU COMING BACK. I THINK YOU INDICATED YOU'RE A
6 NUMBER THREE JUROR. COULD YOU EXPLAIN -- OR WHEN YOU WERE
7 LOOKING AT THAT SHEET AND YOU SAW THE THREE CHOICES---

8 A. UH-HUH.

9 Q. ---WAS THERE EVER ANY QUESTION IN YOUR MIND AFTER
10 YOU READ THEM AND CONSIDERED THEM AS TO WHICH GROUP YOU FELL
11 INTO?

12 A. WELL, I THINK IF YOU'RE GOING TO TAKE SOMEONE'S
13 LIFE, YOU KNOW, THE ONLY PUNISHMENT NECESSARY IS YOUR LIFE,
14 THE WAY I SEE IT. BUT, YOU KNOW, SOMETIMES THERE'S
15 CIRCUMSTANCES, YOU KNOW, SOMETHING HAPPENED ONE WAY OR
16 ANOTHER, YOU KNOW, THAT MIGHT DETERMINE WHETHER YOU DIE OR
17 NOT.

18 Q. OKAY. IF SOMEONE INTENTIONALLY KILLED SOMEBODY, NO
19 JUST CAUSE, NO EXCUSE, DO YOU THINK THEY WOULD ALWAYS DESERVE
20 TO GIVE UP THEIR LIFE?

21 A. THERE'S SOME CIRCUMSTANCES -- CERTAIN CIRCUMSTANCES,
22 YOU KNOW---

23 Q. OKAY.

24 A. ---THAT MIGHT TURN YOU ONE WAY OR THE OTHER.

25 Q. OKAY. SO -- AND THAT'S SORT OF WHAT THIS TRIAL IS

1 ABOUT OR AT LEAST IF WE GET TO THAT SECOND TRIAL, THAT'S WHAT
2 IT'S ABOUT BECAUSE, I MEAN, ESSENTIALLY IF YOU'RE ON THIS
3 JURY YOU WILL BE INVOLVED IN POTENTIALLY TWO TRIALS. NO
4 DOUBT ABOUT IT YOU'RE INVOLVED IN THE FIRST ONE BECAUSE
5 THAT'S ABOUT GUILT OR INNOCENCE. THERE ARE THREE CHARGES YOU
6 WILL HAVE TO CONSIDER. THE STANDARD IS THE SAME FOR ALL
7 THREE OF THOSE CHARGES: MURDER, ARMED ROBBERY, AND
8 POSSESSION OF A FIREARM. THE VICTIM IN THIS CASE, TRACY
9 DAVIS, WAS SHOT AND KILLED, AND, YOU KNOW, IT'S GOING TO BE
10 TOUGH. YOU KNOW, YOU'RE GOING TO HAVE TO HOLD THE STATE TO A
11 HIGH BURDEN OF PROOF DESPITE HAVING SOME VERY TRAGIC FACTS.
12 AND YOU CAN'T IMAGINE OR CAN YOU IMAGINE ANYTHING THAT WOULD
13 INTERFERE WITH YOUR ABILITY TO KEEP AN OPEN MIND AND TO BE
14 OBJECTIVE ABOUT WHAT THOSE FACTS ARE?

15 A. I DON'T THINK THERE WOULD BE ANYTHING THAT WOULD
16 KEEP ME FROM THAT, NO.

17 Q. OKAY. BUT ASSUMING YOU AND THE OTHER 11 JURORS
18 DECIDED THAT THE STATE HAD PROVED BEYOND A REASONABLE DOUBT
19 THAT KEVIN MERCER IS GUILTY OF COMMITTING THOSE THREE CRIMES,
20 YOU WOULD HAVE TO FIND THAT HE DID IT INTENTIONALLY AND THEN
21 YOU WOULD MOVE ON TO THAT SECOND PHASE. NOW, WOULD YOU BE
22 CAPABLE AS OF THAT SECOND PHASE TO KEEP AN OPEN MIND AGAIN?
23 EXCEPT THIS TIME THE EVIDENCE YOU'RE GOING TO HEAR WILL GO AS
24 TO -- WILL BE RELEVANT TO PENALTY. IN OTHER WORDS, SHOULD
25 YOU IMPOSE DEATH OR SHOULD MR. MERCER BE GIVEN A

1 LIFE-WITHOUT-PAROLE SENTENCE?

2 NOW, YOU WILL PROBABLY HEAR A VARIETY OF TESTIMONY.
3 I MEAN, I CAN'T, YOU KNOW, TELL YOU FOR CERTAIN BECAUSE WE'RE
4 NOT THERE YET. WE DON'T EVEN KNOW IF WE'RE GOING TO GET
5 THERE. HOWEVER, I SUSPECT AND IT'S REASONABLE FOR YOU TO
6 ANTICIPATE THAT YOU WOULD HEAR THINGS THAT WOULD MAKE THE
7 CRIME WORSE. THAT'S WHAT THE STATE WOULD WANT YOU TO
8 CONSIDER.

9 A. UH-HUH.

10 Q. THINGS ABOUT THE VICTIM THAT WERE GOOD THAT INCREASE
11 THE MAGNITUDE OF THE TRAGEDY AND ALSO EVIDENCE ABOUT MR.
12 MERCER. THEY MAY WANT TO TELL YOU THINGS ABOUT HIM THAT THEY
13 THINK MAKES HIM WORSE OR MORE DESERVING OF THE DEATH PENALTY.

14 A. UH-HUH.

15 Q. ON THE OTHER HAND, MR. MERCER COULD PRESENT EVIDENCE
16 OF GOOD THINGS THAT HE'S DONE AND POSSIBLY EVIDENCE ABOUT HIS
17 BACKGROUND, HIS FAMILY HISTORY, OF THINGS THAT HAPPENED TO
18 HIM IN HIS LIFE THAT MAY HAVE AFFECTED HOW HE, YOU KNOW, CAME
19 TO BE IN THIS POSITION.

20 A. UH-HUH.

21 Q. WOULD YOU BE ABLE TO KEEP AN OPEN MIND ABOUT ALL
22 THOSE FACTS UNTIL THE END OF THE EVIDENCE AND THE
23 DELIBERATIONS IN THE JURY ROOM?

24 A. YES, I BELIEVE I COULD.

25 Q. OKAY. AND YOU THINK YOU COULD FAIRLY CONSIDER IT

1 ALL EVEN AFTER THAT FIRST PHASE.

2 A. I BELIEVE I COULD, YES.

3 Q. OKAY. I MAY HAVE ALREADY ASKED YOU THIS QUESTION,
4 BUT THE FACT THAT THIS -- THAT THE VICTIM WAS A CAREER
5 MILITARY PERSON, THAT WOULD NOT HAVE ANY IMPACT ON YOUR---

6 A. NO, SIR.

7 Q. ---YOUR THINKING?

8 A. NO.

9 MS. KIMBROUGH: OKAY. I THINK THAT'S ALL I HAVE.
10 THANK YOU.

11 THE COURT: ANYTHING BEFORE I RULE?

12 MS. KIMBROUGH: NO, YOUR HONOR.

13 THE COURT: MS. EDWARDS, YOU ARE QUALIFIED TO BE A
14 JUROR IN THIS CASE. THAT DOES NOT MEAN YOU'RE ON THE JURY.
15 IT MEANS YOU ARE ELIGIBLE TO BE ON THE JURY. WE WILL NOT
16 NEED YOU BACK UNTIL MONDAY. I WOULD LIKE FOR YOU -- IT WOULD
17 BE MONDAY MORNING. I WOULD LIKE FOR YOU TO CALL ON SUNDAY
18 NIGHT AFTER 6:00 TO THAT TELEPHONE NUMBER THAT YOU WERE GIVEN
19 ON THE PINK SLIP OR THE PINK CARD. ON THAT LINE THERE WILL
20 BE A RECORDED MESSAGE THAT WILL GIVE YOU DETAILED
21 INSTRUCTIONS ABOUT WHEN YOU NEED TO BE HERE AND WHETHER OR
22 NOT YOU NEED TO BRING YOUR CLOTHING AND PERSONAL ITEMS IN
23 CASE I DECIDE TO SEQUESTER THE JURY.

24 BETWEEN NOW AND THEN, YOU MAY NOT DISCUSS THIS CASE
25 WITH ANYONE, AND YOU MAY NOT ALLOW ANYONE TO DISCUSS THIS

1 CASE WITH YOU. PLEASE BE VERY CAREFUL NOT TO ALLOW YOURSELF
2 TO BE EXPOSED TO ANY PRESS COVERAGE ABOUT THIS CASE.

3 THE WITNESS: I'M GOING OUT OF TOWN.

4 THE COURT: OKAY. AND WE WILL SEE YOU ON MONDAY
5 MORNING. HAVE A GOOD TRIP.

6 THE WITNESS: YOU, TOO. Y'ALL HAVE A HAPPY EASTER.

7 THE COURT: THANK YOU.

8 (JUROR EDWARDS LEAVES THE COURTROOM.)

9 THE COURT: IS THE NEXT PANEL READY TO GO?

10 BAILIFF: YES, SIR.

11 THE CLERK: ACTUALLY WE HAVE ONE JUROR THAT IS
12 RUNNING LATE, NUMBER 263, ARRON ROCKWOOD, AND HE SAID IT WAS
13 GOING TO BE ABOUT AN HOUR BEFORE HE COULD GET HERE.

14 THE COURT: OKAY. WELL, THANK YOU. WE'LL GO AHEAD
15 AND GO WITH MR. GOODWIN.

16 (JUROR ANTHONY GOODWIN IS BROUGHT INTO THE
17 COURTROOM.)

18 ANTHONY GOODWIN, HAVING BEEN PREVIOUSLY SWORN
19 AS A PART OF THE JURY VOIR DIRE AND REMAINING UNDER OATH,
20 TESTIFIED AS FOLLOWS:

21 EXAMINATION BY THE COURT

22 Q. HOW ARE YOU DOING, MR. GOODWIN?

23 A. FINE, SIR.

24 Q. GOOD. MR. GOODWIN, ON MONDAY YOU WERE PUT UNDER
25 OATH, AND YOU'RE STILL UNDER OATH TODAY. DO YOU UNDERSTAND

1 THAT?

2 A. YES.

3 Q. SINCE YOU LEFT HERE ON MONDAY, HAVE YOU TALKED ABOUT
4 THIS CASE WITH ANYONE OR HAS ANYONE TALKED TO YOU ABOUT THE
5 CASE?

6 A. NO.

7 Q. NOW, MR. GOODWIN, I'M GOING TO ASK YOU SOME
8 QUESTIONS, AND THEN AFTER I'M DONE, THE LAWYERS MAY HAVE SOME
9 FOLLOW-UP QUESTIONS THAT THEY WANT TO ASK YOU. WE DON'T MEAN
10 TO PRY TOO FAR INTO YOUR PRIVATE LIFE, BUT WE DO NEED TO ASK
11 YOU THESE QUESTIONS. WHAT WE NEED FOR YOU TO DO IS JUST
12 LISTEN CAREFULLY TO THE QUESTIONS AND THEN BE OPEN AND HONEST
13 WITH US. TELL US WHAT YOU THINK AND HOW YOU FEEL ABOUT THESE
14 ISSUES THAT WE'LL BE ASKING YOU ABOUT.

15 IF YOU ARE A JUROR IN THIS CASE, CAN YOU ACCEPT AND
16 APPLY THE LAW PRECISELY AS I WOULD EXPLAIN IT TO YOU AND SET
17 ASIDE ANYTHING THAT YOU MIGHT HAVE HEARD OR LEARNED ABOUT THE
18 CASE BEFORE IT BEGAN AND THEN RENDER A VERDICT THAT'S BASED
19 SOLELY ON THE TESTIMONY AND THE EVIDENCE THAT YOU WOULD SEE
20 AND HEAR IN THIS COURTROOM? COULD YOU DO THAT?

21 A. YES.

22 Q. DO YOU UNDERSTAND THAT IN A CRIMINAL CASE THE STATE
23 HAS THE BURDEN OF PROVING THE DEFENDANT GUILTY BEYOND A
24 REASONABLE DOUBT?

25 A. YES.

1 Q. COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES
2 THAT YOU FIND TO HAVE BEEN PROVEN AND IN LIGHT OF THE LAW AS
3 I WOULD EXPLAIN IT TO YOU, COULD YOU FIND THE DEFENDANT
4 EITHER GUILTY OR NOT GUILTY DEPENDING ON WHETHER OR NOT YOU
5 FEEL THE STATE HAS MET ITS BURDEN OF PROOF?

6 A. YES.

7 Q. NOW, IF YOU'RE ON THE JURY IN THIS CASE AND IF THE
8 JURY FINDS THE DEFENDANT GUILTY OF MURDER, WE WOULD MOVE INTO
9 THE SECOND PHASE OR THE PENALTY PHASE OF THE TRIAL. I'M
10 GOING TO ASK YOU SOME QUESTIONS NOW ABOUT SOME OF THE THINGS
11 THAT WILL COME UP IN THAT PHASE IF WE GET THERE. AGGRAVATING
12 CIRCUMSTANCES ARE FACTS OR CIRCUMSTANCES - I'M SORRY - FACTS
13 OR INCIDENTS OR DETAILS THAT THE STATE OF SOUTH CAROLINA HAS
14 DECLARED TO AGGRAVATE THE CRIME OF MURDER OR TO MAKE IT
15 WORSE. AGGRAVATING CIRCUMSTANCES INCREASE THE ENORMITY OF
16 THE CRIME AND ADD TO THE INJURY RESULTING FROM THE CRIME.

17 MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE
18 FACTS OR INCIDENTS OR DETAILS THAT SOUTH CAROLINA HAS
19 DECLARED TO LESSEN THE SEVERITY OF THE CRIME OF MURDER, AND
20 THEY SERVE TO EXTENUATE OR TO REDUCE THE DEGREE OF MORAL
21 CULPABILITY OR RESPONSIBILITY FOR THE CRIME. DO YOU
22 UNDERSTAND THE CONCEPT OF AGGRAVATING AND MITIGATING
23 CIRCUMSTANCES?

24 A. YES, I DO.

25 Q. NOW, WHEN YOU CAME IN THIS AFTERNOON, YOU WERE GIVEN

1 A COPY OF THIS SHEET THAT SHOWS THREE DIFFERENT TYPES OF
2 JURORS. DID YOU UNDERSTAND THOSE THREE TYPES OF JURORS?

3 A. YES, I DO.

4 Q. WHICH OF THOSE TYPES DO YOU THINK WOULD BE -- WOULD
5 FIT YOU?

6 A. THREE.

7 Q. NUMBER THREE. IF YOU ARE A JUROR IN THIS CASE AND
8 IF THE JURY FINDS THE DEFENDANT GUILTY OF MURDER, THEN AS WE
9 MOVE INTO THE THIRD -- INTO THE SECOND PHASE OF THE TRIAL --
10 OR WE WOULD MOVE INTO THE SECOND PHASE OF THE TRIAL. I WANT
11 YOU TO UNDERSTAND THAT THE DEFINITION OF MURDER IS AN
12 INTENTIONAL AND UNLAWFUL KILLING OF ANOTHER PERSON WITH
13 MALICE AFORETHOUGHT. IN THAT INSTANCE THE JURY WOULD DECIDE
14 IN THAT SECOND PHASE WHICH -- WHAT SHOULD BE THE PUNISHMENT
15 FOR THE CRIME OF MURDER, AND THE JURY WOULD HAVE TWO OPTIONS.
16 THE FIRST OPTION WOULD BE A LIFE SENTENCE WITHOUT THE
17 POSSIBILITY OF PAROLE, AND THE SECOND OPTION WOULD BE THE
18 DEATH PENALTY. COULD YOU, DEPENDING ON THE FACTS AND
19 CIRCUMSTANCES THAT YOU FIND TO EXIST AND CONSIDERING THE LAW
20 AS I WOULD EXPLAIN IT TO YOU, COULD YOU VOTE TO RETURN A
21 VERDICT FOR A LIFE SENTENCE?

22 A. YES.

23 Q. COULD YOU VOTE TO RETURN A VERDICT IMPOSING THE
24 DEATH PENALTY?

25 A. YES.

1 Q. NOW, MR. GOODWIN, IF I DECIDE TO SEQUESTER THE JURY
2 IN THIS CASE, YOU WOULD BE PUT UP IN A HOTEL FOR FIVE OR SIX
3 DAYS, AND WE WOULD FEED YOU ALL YOUR MEALS, AND YOU WOULD NOT
4 BE ALLOWED TO GO HOME. WOULD THAT IMPOSE A TERRIBLE BURDEN
5 ON YOU?

6 A. NO, BUT YOU COULD ASK MY WIFE THOUGH. SHE WOULDN'T
7 MIND.

8 Q. ALL RIGHT. SO -- WELL, AS FAR AS YOU'RE CONCERNED,
9 YOU ALL COULD HANDLE THAT IF YOU WERE SEQUESTERED.

10 A. YES.

11 Q. ALL RIGHT. NOW, DID YOU GET A CHANCE TO READ OVER
12 THAT WITNESS LIST THAT WE SENT BACK THERE?

13 A. YES.

14 Q. DID YOU READ EVERY NAME ON THAT LIST?

15 A. YES.

16 Q. DO YOU KNOW OR ARE YOU RELATED TO ANYBODY WHOSE NAME
17 APPEARS ON THAT LIST?

18 A. NO, I'M NOT.

19 Q. ALL RIGHT, SIR. I'M GOING TO LET THE LAWYERS ASK
20 YOU SOME FOLLOW-UP QUESTIONS NOW, AND THEN I'LL COME BACK AND
21 SPEAK TO YOU AGAIN IN A FEW MINUTES.

22 A. OKAY.

23 THE COURT: THANK YOU.
24
25

DIRECT EXAMINATION

BY MR. HUBBARD:

Q. MR. GOODWIN, HOW ARE YOU?

A. FINE. AND YOU?

Q. GOOD. A LITTLE TIRED. I BET YOU MIGHT BE, TOO,
WAITING AROUND FOR US.

A. NO.

Q. OKAY. GOOD. GOOD. I JUST WANT TO ASK YOU A FEW
QUESTIONS. HAVE YOU EVER SERVED ON A JURY BEFORE?

A. YES.

Q. YOU HAVE?

A. YES.

Q. DO YOU KNOW HOW LONG AGO THAT WAS?

A. IT WAS TRAFFIC COURT.

Q. OKAY. SO IT WAS---

A. ABOUT TWO YEARS AGO, SOMETHING LIKE THAT.

Q. DO YOU KNOW IF IT WAS IN LEXINGTON COUNTY?

A. CAYCE.

Q. CAYCE?

A. YES.

Q. OKAY. ALL RIGHT. AND THIS IS THE FIRST TIME YOU'VE
SERVED UP HERE IN COUNTY COURT?

A. ACROSS THE STREET I DID. I THINK IT WAS A CIVIL
CASE.

Q. OKAY.

1 A. THAT'S BEEN YEARS AGO.

2 Q. SO YOU'VE HAD SOME EXPERIENCE SERVING AS A JUROR.

3 A. YES, I HAVE.

4 Q. IN SOME WAYS THIS WOULD BE SIMILAR. THIS FIRST HALF
5 OF THE PORTION OF THE TRIAL -- THE JUDGE WAS TELLING YOU
6 THERE'S BASICALLY TWO PHASES.

7 A. UH-HUH.

8 Q. THAT FIRST PHASE OUGHT TO BE FAIRLY SIMILAR.
9 THERE'S 12 JURORS THAT SIT HERE IN THE JURY BOX. THE STATE
10 WILL PRESENT EVIDENCE. WE'LL HAVE WITNESSES SEATED RIGHT
11 WHERE YOU ARE RIGHT NOW. AND THE SOLE FOCUS WILL BE ON THE
12 GUILT OR WHETHER THE DEFENDANT IS NOT GUILTY OF THE CRIMES
13 WE'VE CHARGED HIM WITH---

14 A. OKAY.

15 Q. ---AND YOU UNDERSTAND THAT.

16 A. YES, I DO.

17 Q. AND AT THAT POINT IN TIME WHEN WE'RE ALL DONE WITH
18 THAT, THE JURY WILL GO BACK AND RENDER A VERDICT, AND WHEN
19 THEY DO THAT, THEY WON'T CONSIDER LIFE OR DEATH. THEY WON'T
20 CONSIDER MERCY OR PUNISHMENT AT ALL. YOU UNDERSTAND THAT.

21 A. RIGHT.

22 Q. AND AFTER THAT'S DONE, IF THE JURY CONVICTS THE
23 DEFENDANT, RATHER THAN STANDING HIM IN FRONT OF THE JUDGE TO
24 BE SENTENCED, THE JURY WILL THEN GO ON TO THE SECOND PHASE OF
25 THIS PROCESS TO DETERMINE WHAT THE PENALTY IS.

1 A. CORRECT.

2 Q. AND YOUR CHOICES THEN ARE LIFE OR DEATH, AND I THINK
3 YOU UNDERSTAND THAT FROM---

4 A. YES.

5 Q. ---WHAT THE JUDGE WAS SAYING.

6 A. UH-HUH.

7 Q. AND I THINK I GATHER FROM YOUR RESPONSES TO THE
8 JUDGE YOU WOULD WANT TO HEAR EVERYTHING THAT'S PRESENTED IN
9 THAT SECOND PHASE SO YOU'D KNOW WHAT TO DO AS FAR AS A
10 VERDICT.

11 A. CORRECT.

12 Q. AND IN THAT SECOND PHASE THE STATE WILL PRESENT
13 EVIDENCE, AGGRAVATING CIRCUMSTANCES SURROUNDING THAT CRIME.
14 THEY MAY PRESENT THINGS ABOUT THE DEFENDANT HIMSELF, THINGS
15 THAT WOULD HELP US EXPLAIN WHY WE'RE ASKING FOR DEATH.

16 A. UH-HUH.

17 Q. YOU UNDERSTAND THAT.

18 A. I UNDERSTAND.

19 Q. YOU MAY ALSO HEAR MITIGATING CIRCUMSTANCES, THINGS
20 PRESENTED TO SHOW THAT THE DEFENDANT IS NOT SO BAD.

21 A. UH-HUH.

22 Q. THAT THERE MAY BE SOME THINGS ABOUT THE CRIME THAT
23 LESSEN HIS RESPONSIBILITY. YOU UNDERSTAND THAT.

24 A. YES, I DO.

25 Q. AND, OF COURSE, THEY WOULD BE SEEKING LIFE IF WE GET

1 TO THAT POINT.

2 A. OKAY.

3 Q. AND AT THAT POINT THERE'S NOT A QUESTION OF WHETHER
4 HE'S GUILTY OR NOT; IT'S ALREADY BEEN DECIDED. IT'S JUST A
5 QUESTION OF PUNISHMENT.

6 A. OKAY.

7 Q. AND YOU UNDERSTAND.

8 A. YES.

9 Q. ALL RIGHT. FROM YOUR RESPONSES TO THE JUDGE, YOU'VE
10 TOLD HIM YOU WOULD WANT TO HEAR EVERYTHING BEFORE YOU MADE UP
11 YOUR MIND.

12 A. CORRECT.

13 Q. YOU WOULDN'T COME INTO THAT PROCESS WITH YOUR MIND
14 ALREADY MADE UP.

15 A. CORRECT.

16 Q. AND EVERY WITNESS THAT WOULD TAKE THE STAND, EVERY
17 PIECE OF EVIDENCE YOU WOULD LISTEN TO AND CONSIDER.

18 A. YES.

19 Q. AND IF YOU THOUGHT IT WAS APPROPRIATE TO GIVE LIFE,
20 YOU WOULD GIVE LIFE.

21 A. RIGHT.

22 Q. AND IF YOU THOUGHT IT WAS APPROPRIATE TO GIVE DEATH,
23 YOU WOULD GIVE DEATH.

24 A. CORRECT.

25 Q. THERE IS ONE OTHER THING THAT'S A LITTLE BIT

1 DIFFERENT ABOUT THIS PROCESS, TOO. NOT ONLY DOES THE JURY
2 DECIDE THE PUNISHMENT, BUT THE VERDICT FORM ITSELF IS
3 DIFFERENT. IF THE JURY DECIDES LIFE, JUST THE FOREMAN SIGNS
4 IT, BUT IF THEY DECIDE DEATH IS THE APPROPRIATE SENTENCE,
5 EVERY SINGLE JUROR SIGNS THEIR NAME SAYING THIS IS WHAT I
6 THINK IS APPROPRIATE. NOW, I KNOW SOME PEOPLE WILL WILLINGLY
7 TELL YOU WHAT THEIR THOUGHTS ARE, WHAT THEIR BELIEFS ARE,
8 WHAT THEIR OPINIONS ARE, BUT WHEN YOU ASK THEM TO SIGN THEIR
9 NAME TO IT---

10 A. UH-HUH.

11 Q. ---THEY GOT A PROBLEM WITH IT.

12 A. I KNOW.

13 Q. SO IT MAY SOUND KIND OF FUNNY, BUT IF YOU THOUGHT
14 DEATH WAS APPROPRIATE, COULD YOU PUT YOUR NAME ON THAT
15 VERDICT FORM?

16 A. YES.

17 Q. YOU COULD. AND YOU WOULD DO IT ONLY AFTER YOU'VE
18 HEARD EVERYTHING?

19 A. CORRECT.

20 Q. AND YOU WOULD FOLLOW THE JUDGE'S INSTRUCTIONS.

21 A. CORRECT.

22 Q. SIR, THAT'S ALL WE COULD ASK OF YOU.

23 A. THANK YOU.

24 MR. HUBBARD: THANK YOU.

25

CROSS-EXAMINATION

BY MR. LITTLEJOHN:

Q. GOOD AFTERNOON, MR. GOODWIN.

A. HOW ARE YOU DOING?

Q. GOOD. I'M CAM LITTLEJOHN, AND I, ALONG WITH LISA KIMBROUGH, REPRESENT KEVIN MERCER WHO IS THE DEFENDANT IN THIS CASE.

A. OKAY.

Q. MR. GOODWIN?

A. YES.

Q. JUST A FEW QUESTIONS. YOU WORK FOR THE POSTAL SERVICE?

A. CORRECT.

Q. AND WHICH OFFICE DO YOU WORK OUT OF?

A. I'M AT THE PLANT ON DIXIEANNA.

Q. IN DIXIEANNA?

A. YES.

Q. OKAY. AND YOU'VE BEEN DOING THAT FOR 18 YEARS?

A. YES.

Q. IN THE AIR FORCE BEFORE THAT?

A. YES.

Q. HOW LONG WERE YOU IN THE AIR FORCE?

A. THREE AND A HALF YEARS.

Q. WHAT RANK DID YOU OBTAIN?

A. E-4.

1 Q. E-4?

2 A. YES.

3 Q. OKAY. YOU PROBABLY HEARD THE VICTIM IN THIS CASE
4 WAS A MEMBER OF THE U.S. ARMY?

5 A. YES.

6 Q. WOULD THAT FACT HAVE ANY BEARING ON -- GIVEN YOUR
7 MILITARY BACKGROUND, WOULD THAT HAVE ANY EFFECT ON YOUR
8 ABILITY TO BE A FAIR JUROR IN THIS CASE?

9 A. NO, IT WON'T.

10 Q. OKAY. YOU UNDERSTOOD THAT MR. MERCER'S CHARGED WITH
11 MURDER, ARMED ROBBERY, POSSESSION OF A FIREARM DURING A
12 VIOLENT CRIME.

13 A. YES.

14 Q. IT'S BEEN MENTIONED THAT THERE COULD BE TWO ASPECTS
15 TO THIS CASE OR TWO PHASES TO IT.

16 A. UH-HUH.

17 Q. OF COURSE, THE FIRST PHASE OR THE FIRST TRIAL WOULD
18 DEAL WITH WHETHER THE STATE HAS PROVEN HIM GUILTY OF THESE
19 OFFENSES BEYOND A REASONABLE DOUBT.

20 A. OKAY.

21 Q. AND THE JUDGE WOULD GIVE YOU INSTRUCTION ON THAT
22 BEING THE BURDEN OF PROOF THAT THE STATE WOULD HAVE TO MEET.

23 A. OKAY.

24 Q. WOULD YOU HAVE ANY PROBLEM APPLYING THAT BURDEN OF
25 PROOF?

1 A. NO, I WOULDN'T.

2 Q. WOULD YOU HAVE ANY PROBLEM MAKING THE STATE PROVE
3 THAT TO YOU BEFORE YOU COULD FIND KEVIN GUILTY OF ANYTHING?

4 A. I WOULD.

5 Q. YOU UNDERSTAND, OF COURSE, THAT ONLY IF THE STATE
6 WAS ABLE TO MEET THAT BURDEN WOULD WE GET TO OR EVEN DISCUSS
7 THE SECOND PHASE OF THE CASE, THE PUNISHMENT PHASE.

8 A. OKAY.

9 Q. YOU UNDERSTAND THAT.

10 A. I UNDERSTAND.

11 Q. OKAY. THE JUDGE GAVE YOU A FORM THERE---

12 A. UH-HUH.

13 Q. ---THAT HAD THREE DIFFERENT TYPES OF JURORS.

14 A. CORRECT.

15 Q. YOU INDICATED YOU WERE THE THIRD TYPE OF JUROR.

16 A. CORRECT.

17 Q. CAN YOU TELL ME HOW YOU ARRIVED AT THAT CONCLUSION?
18 WHAT MAKES YOU THINK YOU'RE THAT TYPE JUROR?

19 A. I'M A SHOP STEWARD AT THE POST OFFICE, SO I HAVE TO
20 DEAL WITH CIRCUMSTANCES LIKE -- NOT LIKE THIS BUT, YOU KNOW,
21 GRIEVANCES AND WHAT HAVE YOU. SO THAT'S WHY I COME TO THAT
22 CONCLUSION. I NEED ALL THE FACTS BEFORE I CAN, YOU KNOW, GO
23 AHEAD WITH A GRIEVANCE OR NOT.

24 Q. ALL RIGHT. DID YOU EVEN -- DID YOU HAVE TO TAKE ANY
25 TIME TO CONSIDER WHETHER YOU WERE A NUMBER ONE JUROR OR A

1 NUMBER TWO JUROR?

2 A. NO.

3 Q. OKAY. FAIR ENOUGH. IN THAT REGARD, IF WE GET TO
4 THE SECOND PHASE OF THIS TRIAL, AS MR. HUBBARD INDICATED
5 THERE WOULD BE EVIDENCE PRESENTED IN WHAT WE CALL AGGRAVATION
6 AND THERE WOULD BE EVIDENCE PRESENTED IN WHAT WE CALL
7 MITIGATION, AND THE EVIDENCE IN MITIGATION WOULD BE THINGS
8 ABOUT KEVIN'S BACKGROUND, ABOUT HIS LIFE, ABOUT GROWING UP,
9 PERHAPS SOME MEDICAL INFORMATION, PERHAPS SOME EVIDENCE ABOUT
10 BAD THINGS THAT HAD OCCURRED TO KEVIN.

11 A. OKAY.

12 Q. WOULD YOU BE WILLING TO LISTEN TO ALL OF THAT
13 INFORMATION BEFORE MAKING YOUR DECISION?

14 A. I HAVE TO.

15 Q. WOULD YOU WANT TO?

16 A. YES.

17 Q. OKAY. JUST ONE FINAL THING. MR. GOODWIN, IF YOU
18 WERE ON THE JURY EITHER -- AND EITHER DURING THE FIRST PHASE
19 OR THE SECOND PHASE OF THIS CASE AND YOU FOUND THAT YOU HAD
20 ARRIVED AT AN OPINION AS TO WHAT YOUR VERDICT OR WHAT THE
21 PUNISHMENT SHOULD BE AND YOU FOUND THAT YOUR OPINION WAS
22 DIFFERENT FROM THE OTHER MEMBERS OF THE JURY, DO YOU THINK
23 YOU'D EVER CONSIDER CHANGING YOUR OPINION JUST TO ARRIVE AT A
24 VERDICT IN THIS CASE?

25 A. NO, I WON'T.

1 Q. OKAY. WOULD YOU -- IF YOU HAD A FIRMLY-HELD
2 OPINION, COULD YOU STICK BY THAT UNLESS YOU WERE CONVINCED
3 OTHERWISE?

4 A. YES, I WOULD.

5 Q. ALL RIGHT. THANK YOU, MR. GOODWIN. I APPRECIATE
6 YOUR ANSWERS.

7 A. YOU'RE WELCOME.

8 THE COURT: MR. GOODWIN, YOU ARE QUALIFIED TO SERVE
9 AS A JUROR IN THIS CASE. WE WILL NOT -- THAT DOES NOT MEAN
10 YOU'RE ON THE JURY. IT MEANS YOU'RE ELIGIBLE TO BE ON THE
11 JURY. WE WILL NEED YOU TO COME BACK ON MONDAY MORNING. I
12 WOULD LIKE FOR YOU TO MAKE -- TO CALL THE TELEPHONE NUMBER ON
13 SUNDAY NIGHT AFTER 6:00, THE TELEPHONE NUMBER THAT'S ON THAT
14 PINK CARD THAT YOU'VE BEEN GIVEN.

15 THE WITNESS: OKAY.

16 THE COURT: AND ON THAT LINE THERE WILL BE A
17 RECORDED MESSAGE THAT GIVES YOU DETAILED INSTRUCTIONS ABOUT
18 WHEN YOU NEED TO BE HERE AND WHETHER OR NOT YOU NEED TO BRING
19 YOUR CLOTHING AND PERSONAL ITEMS IN CASE I DECIDE TO
20 SEQUESTER THE JURY.

21 THE WITNESS: OKAY.

22 THE COURT: BETWEEN NOW AND THEN, YOU MAY NOT
23 DISCUSS THIS CASE WITH ANYONE NOR MAY YOU ALLOW ANYONE TO
24 DISCUSS THIS CASE WITH YOU. PLEASE BE VERY CAREFUL NOT TO
25 ALLOW YOURSELF TO BE EXPOSED TO ANY MEDIA COVERAGE ABOUT THE

1 CASE, AND WE WILL SEE YOU MONDAY MORNING.

2 THE WITNESS: OKAY.

3 THE COURT: THANK YOU, SIR.

4 THE WITNESS: THANK YOU.

5 (JUROR GOODWIN LEAVES THE COURTROOM.)

6 THE COURT: ALL RIGHT. BRING HIM IN.

7 (JUROR RONNIE BOLAND IS BROUGHT INTO THE COURTROOM.)

8 RONNIE BOLAND, HAVING BEEN PREVIOUSLY SWORN AS

9 A PART OF THE JURY VOIR DIRE AND REMAINING UNDER OATH,
10 TESTIFIED AS FOLLOWS:

11 EXAMINATION BY THE COURT

12 Q. MR. BOLAND, HOW ARE YOU?

13 A. DOING FINE.

14 Q. GOOD. ON MONDAY YOU WERE PUT UNDER OATH. DO YOU
15 RECALL THAT?

16 A. YES, SIR.

17 Q. AND YOU'RE STILL UNDER OATH THIS AFTERNOON.

18 A. RIGHT.

19 Q. DO YOU UNDERSTAND THAT?

20 A. YES, SIR.

21 Q. SINCE YOU LEFT US ON MONDAY, HAVE YOU TALKED ABOUT
22 THIS CASE WITH ANYONE OR HAS ANYBODY TALKED TO YOU ABOUT THE
23 CASE?

24 A. NO, SIR.

25 Q. I'M GOING TO ASK YOU A FEW QUESTIONS, AND THEN I'M

1 GOING TO LET THE LAWYERS ASK YOU SOME FOLLOW-UP QUESTIONS IF
2 THEY CHOOSE TO. WE DON'T MEAN TO PRY TOO DEEP INTO YOUR
3 PRIVATE LIFE, BUT WE DO HAVE TO ASK YOU THESE QUESTIONS.
4 THERE ARE NO RIGHT OR WRONG ANSWERS TO THE QUESTIONS. WE
5 JUST WANT YOU TO LISTEN CAREFULLY TO THE QUESTIONS AND THEN
6 TO BE OPEN AND HONEST WITH US AND TELL US HOW YOU FEEL AND
7 WHAT YOU THINK ABOUT THESE ISSUES THAT WE'RE GOING TO BE
8 TALKING ABOUT.

9 IF YOU ARE A JUROR IN THIS CASE, CAN YOU ACCEPT AND
10 APPLY THE LAW PRECISELY AS I WOULD EXPLAIN IT TO YOU, SETTING
11 ASIDE ANYTHING THAT YOU MIGHT HAVE HEARD OR LEARNED ABOUT THE
12 CASE BEFORE THE TRIAL BEGAN, AND RENDER A VERDICT THAT'S
13 BASED SOLELY ON THE TESTIMONY AND THE EVIDENCE THAT YOU WOULD
14 SEE AND HEAR IN THIS COURTROOM? CAN YOU DO THAT?

15 A. YES, SIR.

16 Q. DO YOU UNDERSTAND THAT IN A CRIMINAL CASE THE STATE
17 HAS THE BURDEN OF PROVING THE DEFENDANT GUILTY BEYOND A
18 REASONABLE DOUBT?

19 A. YES, SIR.

20 Q. COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES
21 THAT YOU FIND TO HAVE BEEN PROVEN AND IN LIGHT OF THE LAW AS
22 I WOULD EXPLAIN IT TO YOU, COULD YOU FIND THE DEFENDANT
23 EITHER GUILTY OR NOT GUILTY DEPENDING ON WHETHER OR NOT YOU
24 FEEL THE STATE HAS MET ITS BURDEN OF PROOF?

25 A. YES, SIR.

1 Q. NOW, IF YOU'RE ON THE JURY IN THIS CASE AND IF THE
2 JURY FINDS THE DEFENDANT GUILTY OF MURDER, WE WOULD MOVE INTO
3 THE SECOND PHASE OR THE PENALTY PHASE OF THE TRIAL, AND
4 THERE'S SEVERAL THINGS THAT WILL COME UP DURING THAT PHASE
5 THAT I AM GOING TO GO OVER WITH YOU NOW. AGGRAVATING
6 CIRCUMSTANCES ARE FACTS OR INCIDENTS OR DETAILS THAT THE
7 STATE OF SOUTH CAROLINA HAS DECLARED TO AGGRAVATE OR TO MAKE
8 WORSE THE CRIME OF MURDER. AGGRAVATING CIRCUMSTANCES
9 INCREASE THE ENORMITY OF THE CRIME AND ADD TO THE INJURY
10 RESULTING FROM THE CRIME.

11 MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE
12 FACTS OR INCIDENTS OR DETAILS THAT SOUTH CAROLINA HAS
13 DECLARED TO LESSEN THE SEVERITY OF THE CRIME OF MURDER. THEY
14 SERVE TO EXTENUATE OR TO REDUCE THE DEGREE OF MORAL
15 CULPABILITY OR RESPONSIBILITY FOR THE CRIME. DO YOU
16 UNDERSTAND THE CONCEPTS OF AGGRAVATING AND MITIGATING
17 CIRCUMSTANCES?

18 A. I THINK I DO.

19 Q. NOW, WHEN YOU CAME IN THIS AFTERNOON, YOU WERE GIVEN
20 A COPY OF THIS SHEET THAT SHOWS THREE DIFFERENT TYPES OF
21 JURORS.

22 A. YES, SIR.

23 Q. DO YOU UNDERSTAND THOSE THREE DIFFERENT TYPES OF
24 JURORS?

25 A. YES, SIR.

1 Q. WHICH OF THOSE THREE TYPES WOULD YOU BE?

2 A. I WOULD SAY PROBABLY NUMBER ONE.

3 Q. ALL RIGHT. DOES THAT MEAN THAT YOU WOULD NEVER BE
4 ABLE TO CONSIDER IMPOSING A LIFE SENTENCE FOR SOMEONE WHO IS
5 CONVICTED OF MURDER?

6 A. I WOULD SAY THE DEATH SENTENCE.

7 Q. YOU WOULD ALWAYS IMPOSE THE DEATH PENALTY?

8 A. I WOULD NOT. -- I DON'T THINK I WOULD BE ABLE TO.

9 Q. YOU WOULD ALWAYS IMPOSE A LIFE SENTENCE.

10 A. YES, SIR.

11 Q. YOU WOULD NEVER BE ABLE TO IMPOSE THE DEATH PENALTY.

12 A. I DON'T THINK MY CONSCIENCE WOULD LET ME DO IT.

13 THE COURT: ALL RIGHT, SIR. ALL RIGHT. ARE THERE
14 ANY FOLLOW-UP QUESTIONS THAT Y'ALL WANT TO ASK?

15 MR. HUBBARD: NO, SIR, YOUR HONOR.

16 MR. LITTLEJOHN: JUDGE, I JUST -- I WOULD ASK THE
17 COURT TO MAKE INQUIRY ABOUT NUMBER ONE VERSUS NUMBER TWO.

18 THE COURT: OKAY.

19 MR. LITTLEJOHN: JUST TO MAKE SURE WE'RE ON --
20 EVERYBODY IS ON THE SAME PAGE.

21 EXAMINATION BY THE COURT (CONTINUED)

22 Q. LET ME ASK YOU A COUPLE MORE QUESTIONS THEN.

23 A. OKAY.

24 Q. IF YOU ARE A JUROR IN THIS CASE AND IF THE JURY
25 FINDS THE DEFENDANT GUILTY OF MURDER---

1 A. UH-HUH.

2 Q. NOW, LET ME MAKE SURE YOU UNDERSTAND THAT MURDER IS
3 DEFINED AS THE INTENTIONAL AND UNLAWFUL KILLING OF ANOTHER
4 PERSON WITH MALICE AFORETHOUGHT. THAT'S WHAT MURDER IS. SO
5 IF THE JURY HAS ALREADY FOUND THE DEFENDANT GUILTY OF MURDER
6 AND IF WE MOVE INTO THE SENTENCING PHASE, IT WOULD BE UP TO
7 THE JURY TO DETERMINE WHAT SHOULD BE THE PENALTY FOR THAT
8 CRIME, AND THE JURY WOULD HAVE TWO OPTIONS. THE FIRST OF
9 THOSE OPTIONS WOULD BE A LIFE SENTENCE WITHOUT THE
10 POSSIBILITY OF PAROLE, AND THE SECOND OPTION WOULD BE THE
11 DEATH PENALTY. NOW, COULD YOU, DEPENDING ON THE FACTS AND
12 CIRCUMSTANCES THAT YOU FOUND TO EXIST AND CONSIDERING THE LAW
13 AS I WOULD EXPLAIN IT TO YOU, COULD YOU VOTE TO RETURN A
14 VERDICT FOR A LIFE SENTENCE?

15 A. YES, SIR.

16 Q. NOW, DEPENDING ON THE FACTS AND CIRCUMSTANCES, IF
17 THE FACTS AND CIRCUMSTANCES WERE SUCH OR WERE -- UNDER
18 CERTAIN FACTS AND CIRCUMSTANCES COULD YOU VOTE TO IMPOSE THE
19 DEATH PENALTY?

20 A. NO, SIR.

21 Q. NOW, WHEN WE WERE TALKING ABOUT THE TYPES OF JURORS,
22 THE FIRST TYPE WOULD BE SOMEONE WHO WHEN THERE IS A MURDER
23 THAT HAS BEEN COMMITTED AND THE DEFENDANT HAS BEEN CONVICTED
24 OF MURDER, THAT IS A JUROR WHO WOULD ALWAYS IMPOSE THE DEATH
25 PENALTY. THAT'S NOT YOU, YOU'RE SAYING.

1 A. THAT'S NOT ME; NO, SIR.

2 Q. NOW, TYPE TWO IS A JUROR WHO AFTER A CONVICTION OF
3 MURDER WOULD ALWAYS IMPOSE A LIFE SENTENCE AND COULD NEVER
4 IMPOSE THE DEATH PENALTY.

5 A. THAT WOULD BE ME.

6 Q. THAT'S YOU?

7 A. YES, SIR.

8 THE COURT: ALL RIGHT, SIR. ANY FOLLOW-UP?

9 MR. LITTLEJOHN: NO, YOUR HONOR.

10 THE COURT: OKAY. MR. BOLAND, WE WILL NOT NEED YOUR
11 SERVICES AS A JUROR IN THIS CASE. WE APPRECIATE YOUR TIME.
12 WE APPRECIATE YOU COMING UP HERE, AND YOU'RE FREE TO GO.
13 YOUR SERVICE AS A JUROR IS OVER.

14 THE WITNESS: THANK YOU.

15 THE COURT: THANK YOU.

16 THE WITNESS: THANK YOU.

17 (JUROR BOLAND LEAVES THE COURTROOM.)

18 MR. LITTLEJOHN: JUDGE, COULD I ASK -- ARE WE
19 SHOOTING FOR 45?

20 THE COURT: (NODDED HEAD UP AND DOWN.)

21 MR. LITTLEJOHN: OKAY.

22 THE COURT: DO YOU WANT TO QUIT AT 44?

23 MR. LITTLEJOHN: WHATEVER YOU WANT TO DO IS FINE
24 WITH ME. I MEAN...

25 THE COURT: WELL...

1 MR. LITTLEJOHN: I THINK 44 IS PLENTY BUT...

2 THE COURT: I THINK IT'S PROBABLY PLENTY, TOO, BUT
3 WE HAVE AT LEAST TWO OR MAYBE THREE JURORS WHO CANNOT SERVE
4 IF I DECIDE TO SEQUESTER THE JURY, AND WE ALSO HAVE THIS MS.
5 BAKER WHO MIGHT NOT BE ABLE TO SERVE. SO WE MIGHT ONLY HAVE
6 40 AT THIS POINT. THIRTY-NINE IS THE NUMBER THAT WE -- IS
7 SORT OF A WORST-CASE SCENARIO. WE NEED TO GET THREE
8 ALTERNATES.

9 THERE ARE FOUR OR FIVE DAYS BETWEEN NOW AND MONDAY,
10 AND A LITTLE CUSHION IS NOT GOING TO HURT US. SO I FIGURE
11 THAT I GOT AT LEAST LIKE 10 OR 15 MINUTES OF GASOLINE LEFT IN
12 MY TANK, AND I DON'T SEE ANY REASON TO QUIT BEFORE I RUN
13 COMPLETELY OUT OF GAS. DO Y'ALL?

14 MR. LITTLEJOHN: NO, YOUR HONOR.

15 THE COURT: NO. I MEAN, I FIGURED THAT WE WILL NOT
16 GO PAST ABOUT 6:20 OR 6:30 TONIGHT ANYWAY.

17 MR. LITTLEJOHN: THAT'S FINE.

18 THE COURT: IF WE DON'T HAVE ANOTHER ONE OR TWO BY
19 THEN, THEN WE'LL JUST STOP. DOES THAT SUIT EVERYBODY?

20 MR. HUBBARD: YES, SIR.

21 MR. LITTLEJOHN: THAT'S FINE.

22 THE COURT: ALL RIGHT. BRING IN MS. WELLS.

23 (JUROR JO WELLS IS BROUGHT INTO THE COURTROOM.)

24 JO WELLS, HAVING BEEN PREVIOUSLY SWORN AS A
25 PART OF THE JURY VOIR DIRE AND REMAINING UNDER OATH,

1 TESTIFIED AS FOLLOWS:

2 EXAMINATION BY THE COURT

3 Q. MS. WELLS?

4 A. UH-HUH. HI.

5 Q. GOOD AFTERNOON.

6 A. HI.

7 Q. NOW, WHEN YOU WERE HERE ON MONDAY WE PUT YOU UNDER
8 OATH, AND YOU'RE STILL UNDER OATH THIS AFTERNOON. DO YOU
9 UNDERSTAND THAT?

10 A. UH-HUH. YES, SIR.

11 Q. SINCE YOU LEFT HERE ON MONDAY, HAVE YOU TALKED ABOUT
12 THIS CASE WITH ANYONE OR HAS ANYONE TRIED TO TALK TO YOU
13 ABOUT THE CASE?

14 A. THEY'VE TRIED.

15 Q. AND THEY DIDN'T HAVE ANY LUCK?

16 A. NO, SIR. IT'S PEOPLE AT WORK JUST BEING NOSY, BUT,
17 NO, I DIDN'T TELL ANYTHING.

18 Q. AND THEY WOULD ASK YOU WHAT YOU WERE UP HERE DOING
19 AND WHAT KIND OF CASE IT WAS AND THINGS LIKE THAT?

20 A. YEAH.

21 Q. NOW, IN THE COURSE OF ASKING THOSE QUESTIONS, DID
22 THEY TRY TO TELL YOU ANYTHING ABOUT THE CASE?

23 A. NO. ONE OF THEM -- ONE OF THEM SAID THAT THEY HAD
24 SEEN IN THE PAPER THERE WAS SOMETHING ABOUT THE FIRES, YOU
25 KNOW, THE LADY, THE ARSON CASE, BUT I DIDN'T SAY ANYTHING. I

1 WAS LIKE, "I'M SORRY. I'M NOT ALLOWED TO TELL YOU ANYTHING."
2 BUT SHE FINALLY QUIT. MY BOSS YELLED AT HER, SO...

3 Q. OKAY. ALL RIGHT. IF YOU -- NOW, I AM GOING TO ASK
4 YOU SOME QUESTIONS, AND AFTER I DO THAT, THE LAWYERS MAY ASK
5 YOU SOME FOLLOW-UP QUESTIONS.

6 A. OKAY.

7 Q. WE'RE NOT TRYING TO PRY TOO DEEP INTO YOUR PERSONAL
8 LIFE, BUT WE DO HAVE TO ASK YOU THESE QUESTIONS. THERE ARE
9 NOT ANY RIGHT OR WRONG ANSWERS TO THE QUESTIONS. WE JUST
10 WANT YOU TO LISTEN VERY CAREFULLY AND THEN TO BE OPEN AND
11 HONEST WITH US AND TELL US HOW YOU FEEL AND WHAT YOU THINK
12 ABOUT THESE ISSUES THAT WE'RE GOING TO BE TALKING ABOUT.

13 A. OKAY.

14 Q. IF YOU ARE A JUROR IN THIS CASE, COULD YOU ACCEPT
15 AND APPLY THE LAW PRECISELY AS I WOULD EXPLAIN IT TO YOU AND
16 SET ASIDE ANYTHING THAT YOU MAY HAVE LEARNED OR HEARD ABOUT
17 THE CASE BEFORE THE TRIAL BEGAN AND THEN RENDER A VERDICT
18 THAT IS BASED SOLELY ON THE TESTIMONY AND THE EVIDENCE THAT
19 YOU WOULD HEAR AND SEE IN THIS COURTROOM? COULD YOU DO THAT?

20 A. YES, SIR.

21 Q. DO YOU UNDERSTAND THAT IN A CRIMINAL CASE THE STATE
22 HAS THE BURDEN OF PROVING THE DEFENDANT GUILTY BEYOND A
23 REASONABLE DOUBT?

24 A. UH-HUH.

25 Q. COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES

1 THAT YOU FIND TO HAVE BEEN PROVEN AND IN LIGHT OF THE LAW AS
2 I WOULD EXPLAIN IT TO YOU, COULD YOU FIND THE DEFENDANT
3 EITHER GUILTY OR NOT GUILTY DEPENDING ON WHETHER OR NOT YOU
4 FEEL THE STATE HAS MET ITS BURDEN OF PROOF?

5 A. YES, SIR.

6 Q. IF YOU'RE ON THE JURY IN THIS CASE AND IF THE JURY
7 WERE TO FIND THE DEFENDANT GUILTY OF MURDER, THEN WE WOULD
8 MOVE INTO THE SECOND PHASE OR THE PENALTY PHASE OF THE TRIAL.
9 THERE'S SEVERAL ISSUES THAT WILL COME UP IN THAT PHASE THAT
10 I'M GOING TO TALK TO YOU ABOUT NOW. AGGRAVATING
11 CIRCUMSTANCES ARE FACTS OR INCIDENTS OR DETAILS THAT THE
12 STATE OF SOUTH CAROLINA HAS DECLARED TO AGGRAVATE THE CRIME
13 OF MURDER OR TO MAKE IT WORSE.

14 A. UH-HUH.

15 Q. AGGRAVATING CIRCUMSTANCES INCREASE THE ENORMITY OF
16 THE CRIME, AND THEY ADD TO THE INJURY RESULTING FROM THE
17 CRIME. MITIGATING CIRCUMSTANCES, ON THE OTHER HAND, ARE
18 FACTS OR INCIDENTS OR DETAILS THAT SOUTH CAROLINA HAS
19 DECLARED TO LESSEN THE SEVERITY OF THE CRIME OF MURDER. THEY
20 SERVE TO EXTENUATE OR TO REDUCE THE DEGREE OF MORAL
21 CULPABILITY OR RESPONSIBILITY FOR THE CRIME. DO YOU
22 UNDERSTAND THE CONCEPTS OF AGGRAVATING AND MITIGATING
23 CIRCUMSTANCES?

24 A. I THINK SO NOW, BUT THANK YOU FOR SAYING THAT
25 BECAUSE I WROTE IT ON HERE THAT I WASN'T SURE.

1 Q. OKAY. WHEN YOU CAME IN THIS AFTERNOON, YOU WERE
2 GIVEN THIS SHEET THAT SUMMARIZES THE THREE TYPES OF JURORS.

3 A. UH-HUH.

4 Q. DID YOU UNDERSTAND THOSE THREE TYPES OF JURORS?

5 A. YES, SIR.

6 Q. WHICH OF THOSE THREE TYPES WOULD YOU BE?

7 A. I THINK THE THIRD, YEAH. I MEAN, THAT'S WHAT
8 YOU'RE...

9 Q. THE THIRD?

10 A. UH-HUH. WHERE YOU CAN REALLY JUST LISTEN TO THAT
11 CASE AS AN INDIVIDUAL AND THEN...

12 Q. OKAY. IF YOU ARE A JUROR IN THIS CASE AND IF THE
13 DEFENDANT IS FOUND GUILTY OF MURDER, THEN WE WOULD MOVE INTO
14 THE SECOND PHASE OF THE TRIAL. AND LET ME JUST TELL YOU THAT
15 THE DEFINITION OF MURDER IS AN INTENTIONAL AND UNLAWFUL
16 KILLING OF ANOTHER PERSON WITH MALICE AFORETHOUGHT. IN THAT
17 SECOND PHASE IT WOULD BE THE JURY'S RESPONSIBILITY TO
18 DETERMINE THE SENTENCE THAT WOULD BE APPROPRIATE IN THIS
19 CASE.

20 A. UH-HUH.

21 Q. OR DETERMINE THE SENTENCE TO IMPOSE IN THIS CASE AND
22 THERE WOULD BE TWO OPTIONS. THE FIRST OPTION WOULD BE FOR A
23 LIFE SENTENCE WITHOUT THE POSSIBILITY OF PAROLE, AND THE
24 SECOND OPTION WOULD BE THE DEATH PENALTY. COULD YOU,
25 DEPENDING ON THE FACTS AND CIRCUMSTANCES THAT YOU FIND TO

1 EXIST AND CONSIDERING THE LAW AS I WOULD EXPLAIN IT TO YOU,
2 COULD YOU VOTE TO RETURN A VERDICT FOR A LIFE SENTENCE?

3 A. YES, SIR, I BELIEVE SO.

4 Q. COULD YOU VOTE TO RETURN A VERDICT IMPOSING THE
5 DEATH PENALTY?

6 A. YES, SIR, I BELIEVE SO.

7 Q. NOW, MA'AM, IF YOU'RE ON THE JURY IN THIS CASE AND
8 IF I DECIDE TO SEQUESTER THE JURY, YOU WOULD BE PUT UP IN A
9 HOTEL FOR FIVE OR SIX DAYS, AND YOU WOULD BE FED ALL YOUR
10 MEALS WITH US AND YOU WOULD NOT BE ALLOWED TO GO HOME.

11 A. UH-HUH.

12 Q. WOULD THAT IMPOSE A TERRIBLE BURDEN ON YOU?

13 A. IT WOULD NOT BE FUN, BUT I MEAN, NO, I SUPPOSE NOT A
14 TERRIBLE BURDEN. I DON'T HAVE KIDS OR ANYTHING.

15 Q. OKAY. DID YOU GET A CHANCE TO LOOK OVER THAT
16 WITNESS LIST?

17 A. I DID; YES, SIR. I READ IT.

18 Q. DID YOU READ EVERY NAME ON THE LIST?

19 A. I DID.

20 Q. DO YOU KNOW OR ARE YOU RELATED TO ANYONE WHOSE NAME
21 APPEARS ON THAT LIST?

22 A. NO, SIR, NOT TO THE BEST OF MY KNOWLEDGE. NONE OF
23 THEM LOOKED FAMILIAR OR ANYTHING.

24 Q. THANK YOU.

25 A. UH-HUH.

1 Q. I'M GOING TO ALLOW THE LAWYERS TO ASK YOU SOME
2 QUESTIONS NOW.

3 A. OKAY.

4 DIRECT EXAMINATION

5 BY MR. HUBBARD:

6 Q. MS. WELLS, HOW ARE YOU DOING?

7 A. HEY. ALL RIGHT. HOW ARE YOU?

8 Q. DOING GOOD. Tired.

9 A. I'M SURE. Y'ALL HAVE HAD SOME LONG DAYS.

10 Q. WE HAVE. BUT I'M NOT GOING TO BE TOO LONG WITH YOU.
11 I'M JUST GOING TO KIND OF GO OVER WHAT THE JUDGE HAS ALREADY
12 GONE OVER, JUST SOME QUESTIONS THAT WE ASK.

13 A. OKAY.

14 Q. AS YOU UNDERSTAND, THE JUDGE SAID THIS PROCESS IS
15 BASICALLY A TWO-PART PROCESS. THE FIRST PART IS PRETTY MUCH
16 LIKE A NORMAL TRIAL---

17 A. UH-HUH.

18 Q. ---WHERE EVIDENCE IS PRESENTED TO JURORS WHO SIT
19 RIGHT OVER HERE. WITNESSES SIT RIGHT WHERE YOU'RE SITTING
20 RIGHT NOW, AND WHEN WE'RE ALL DONE, THEY DO GO BACK AND
21 DETERMINE WHETHER THE DEFENDANT IS GUILTY OR NOT GUILTY OF
22 MURDER AND THERE'S SOME OTHER CHARGES. THAT YOU HEARD MONDAY.
23 BUT THEY GO BACK AND DECIDE GUILT OR NOT GUILTY. GUILTY.
24 NOT GUILTY.

25 A. UH-HUH.

1 Q. THERE'S NO TALK AT THAT POINT OF PUNISHMENT, NO TALK
2 AT THAT POINT OF LIFE OR DEATH. IT'S SIMPLY: IS HE GUILTY
3 OF THIS CRIME? AND YOU UNDERSTAND THAT.

4 A. YES, SIR.

5 Q. AND MY UNDERSTANDING FROM YOUR ANSWERS TO THE JUDGE
6 IS YOU WOULD WANT TO HEAR ALL THE EVIDENCE BEFORE YOU MADE UP
7 YOUR MIND.

8 A. UH-HUH. YES, SIR.

9 Q. AND THEN THE OTHER THING THAT MAKES THIS CASE
10 DIFFERENT IS THAT IF THE DEFENDANT -- IF THE JURY FINDS THE
11 DEFENDANT GUILTY, THE JUDGE DOESN'T SENTENCE HIM BUT THE JURY
12 DOES.

13 A. UH-HUH.

14 Q. AND THAT'S THE SECOND HALF OF THE TRIAL -- THE
15 SECOND PHASE THE JUDGE WAS TALKING TO YOU ABOUT. AND IN THAT
16 SIDE, WHEN WE GET TO THAT PART OF THE PROCESS, ADDITIONAL
17 INFORMATION IS GIVEN TO THE JURY TO HELP THEM DECIDE LIFE OR
18 DEATH. FROM YOUR RESPONSES, YOU WOULD WANT THAT INFORMATION.

19 A. OH, YES, SIR.

20 Q. BECAUSE YOU'RE IN THAT THIRD CATEGORY.

21 A. UH-HUH.

22 Q. AND, AGAIN, INFORMATION WOULD BE PRESENTED,
23 INFORMATION AGGRAVATING THE CRIME, AGGRAVATING CIRCUMSTANCES,
24 THINGS ABOUT THE DEFENDANT THAT AREN'T GOOD. YOU MIGHT ALSO
25 HEAR MITIGATING CIRCUMSTANCES, THINGS THAT MITIGATE THE CRIME

1 OR THINGS THAT MAY BE GOOD ABOUT THE DEFENDANT. AND MY
2 UNDERSTANDING IS YOU'D WANT TO HEAR ALL OF THAT BEFORE YOU
3 MADE YOUR DECISION.

4 A. YES, SIR.

5 Q. AND I ALSO UNDERSTAND YOU THAT IF YOU THOUGHT LIFE
6 WAS APPROPRIATE, YOU COULD VOTE FOR LIFE.

7 A. UH-HUH.

8 Q. AND IF YOU THOUGHT DEATH WAS APPROPRIATE, YOU COULD
9 VOTE FOR DEATH. IS THAT RIGHT?

10 A. YES, SIR.

11 Q. AND YOU'D WANT TO HEAR EVERYTHING BEFORE YOU DID
12 EITHER ONE.

13 A. YES, SIR.

14 Q. OKAY. ONE DIFFERENCE ABOUT THIS PROCESS, TOO, IS
15 NOT JUST THE JURY SENTENCING THE DEFENDANT BUT THE VERDICT
16 FORM ITSELF. IN THAT SECOND PHASE, IF THE JURY IS GOING TO
17 COME BACK WITH A DEATH VERDICT, EVERY SINGLE JUROR PUTS THEIR
18 NAME ON THAT VERDICT FORM SAYING WE VOTE FOR DEATH.

19 A. UH-HUH. OKAY.

20 Q. NOW, SOME PEOPLE WOULD SAY, "YEAH, I CAN SUPPORT
21 THAT, BUT I REALLY DON'T WANT TO PUT MY NAME ON THAT PIECE OF
22 PAPER." COULD YOU PUT YOUR NAME ON THAT VERDICT FORM IF YOU
23 THOUGHT IT WAS THE APPROPRIATE SENTENCE?

24 A. I BELIEVE SO, AND THAT'S NOT AN EASY ANSWER TO GIVE.
25 I MEAN, I BELIEVE TRUTHFULLY IN MY HEART THAT I -- I HAVE

1 THAT ABILITY THAT IF EVERYTHING, YOU KNOW, POINTED TO THAT I
2 COULD MAKE THAT DECISION.

3 Q. YES, MA'AM.

4 A. AND THAT'S A HARD ANSWER TO GIVE BECAUSE OBVIOUSLY
5 I'VE NEVER EVEN HAD ANY JURY DUTY BEFORE. THIS IS KIND OF A
6 BIG ONE.

7 Q. YEAH.

8 A. BUT, YES, SIR, I TRUTHFULLY FEEL THAT I COULD LISTEN
9 TO EVERYTHING AND DO THAT. I THINK I COULD SIGN MY NAME ON
10 THAT PAPER.

11 Q. AND, AGAIN, THAT WOULD BE AFTER YOU'VE HEARD
12 EVERYTHING AND CONSIDERED EVERYTHING---

13 A. UH-HUH.

14 Q. ---AND REACHED THAT CONCLUSION. RIGHT?

15 A. UH-HUH.

16 Q. AND MY UNDERSTANDING ALSO IS YOU WOULD FOLLOW ALL
17 THE INSTRUCTIONS THE JUDGE WOULD GIVE IN THAT PROCESS BECAUSE
18 HE WOULD TELL YOU ABOUT AGGRAVATING CIRCUMSTANCES AND
19 MITIGATING CIRCUMSTANCES AND, IN FACT, HE'D PROBABLY GIVE
20 THEM TO YOU IN WRITING, SOME THINGS TO GO BY, SOME THINGS TO
21 LOOK FOR. AND YOU WOULD CONSIDER THAT AS WELL?

22 A. YES, SIR.

23 Q. AND YOU'D GIVE BOTH SIDES A FAIR TRIAL.

24 A. YES, SIR, I WOULD.

25 Q. MS. WELLS, THAT'S ALL WE CAN ASK.

1 A. OKAY.

2 Q. THANK YOU.

3 A. THANK YOU.

4 CROSS-EXAMINATION

5 BY MR. LITTLEJOHN:

6 Q. GOOD EVENING, MS. WELLS.

7 A. HI.

8 Q. I'M CAM LITTLEJOHN, AND I, ALONG WITH LISA
9 KIMBROUGH, REPRESENT KEVIN MERCER WHO IS THE DEFENDANT HERE.
10 HOW ARE YOU THIS EVENING?

11 A. I'M DOING ALL RIGHT.

12 Q. YOU SEEM TO HAVE A LOT MORE ENERGY THAN WE DO.

13 A. WELL, YEAH. MY DAY HASN'T BEEN THAT MUCH SHORTER
14 BUT A LITTLE BIT.

15 Q. OH, OKAY.

16 A. I WAS JUST GLAD I GOT HERE ON TIME.

17 Q. MS. WELLS, I JUST WANT TO ASK YOU A FEW QUESTIONS.

18 I SEE FROM YOUR QUESTIONNAIRE THAT YOU WENT TO THE COLLEGE OF
19 CHARLESTON?

20 A. YES, SIR.

21 Q. AND YOU ALSO WENT TO M.U.S.C.?

22 A. YES, SIR.

23 Q. OKAY. AND YOU GOT A MASTER'S DEGREE?

24 A. YES, SIR.

25 Q. OKAY. AND WHERE -- YOU INDICATED YOU'D LIVED IN

1 LEXINGTON FOR A YEAR AND A HALF?

2 A. YES, SIR, IN LEXINGTON COUNTY---

3 Q. UH-HUH.

4 A. ---I HAVE. WE MOVED BACK -- IT'S ACTUALLY ALMOST
5 TWO YEARS NOW. WE MOVED BACK JULY YEAR BEFORE LAST.

6 Q. WHERE DID YOU LIVE BEFORE YOU MOVED TO LEXINGTON?

7 A. WE LIVED IN -- I WAS IN CHARLESTON FOR SEVEN YEARS,
8 BUT I GREW UP IN IRMO.

9 Q. IN IRMO.

10 A. UH-HUH.

11 Q. OKAY.

12 A. SO BACK AND FORTH BETWEEN THE TWO. I WAS DOWN THERE
13 FOR COLLEGE---

14 Q. RIGHT.

15 A. ---BASICALLY.

16 Q. OKAY. MS. WELLS, AS HAS BEEN EXPLAINED TO YOU, THE
17 CHARGES IN THIS CASE ARE MURDER, ARMED ROBBERY, AND THERE'S
18 ANOTHER CHARGE ALSO.

19 A. UH-HUH.

20 Q. AND THERE'S BEEN SOME DISCUSSION ABOUT TWO PHASES TO
21 THIS CASE OR TWO PARTS TO IT. THE FIRST PART WOULD DEAL ONLY
22 WITH WHETHER THE STATE HAS PROVEN THE GUILT OF KEVIN MERCER
23 BEYOND A REASONABLE DOUBT, AND IF YOU WERE ON THE JURY, THE
24 JUDGE WOULD INSTRUCT YOU AS TO THE BURDEN OF PROOF THAT THE
25 STATE MUST MEET BEFORE YOU AS A JUROR COULD FIND KEVIN GUILTY

1 OF ANY OF THESE CRIMES. WOULD YOU HAVE ANY PROBLEM FOLLOWING
2 HIS INSTRUCTION OR MAKING THE STATE MEET THAT BURDEN OF
3 PROOF?

4 A. NO, SIR.

5 Q. OKAY. ONLY IF THAT HAPPENS WOULD WE GET TO THE
6 SECOND PART OF THE CASE, THE PUNISHMENT PART, BECAUSE IF
7 KEVIN WASN'T FOUND GUILTY, THEN OBVIOUSLY WE WOULDN'T NEED
8 THE PUNISHMENT PART..

9 A. RIGHT.

10 Q. BUT IN REGARD TO THE PUNISHMENT PART, YOU WERE GIVEN
11 A FORM THERE THAT INDICATED THERE WERE THREE DIFFERENT TYPES
12 OF JURORS, AND YOU TOLD US THAT YOU WERE NUMBER THREE. CAN
13 YOU TELL ME: HOW DID YOU ARRIVE AT THAT CONCLUSION? WHAT
14 MAKES YOU THINK YOU'RE A NUMBER THREE?

15 A. WELL, I DON'T FEEL THAT IT'S RIGHT -- I KNOW THAT IF
16 THE SITUATION WAS REVERSED AND I WAS NOT SITTING HERE AND I
17 WAS MAYBE SITTING THERE, I WOULD REALLY WANT SOMEBODY TO
18 TRUTHFULLY LISTEN TO THIS CASE, NOT BASE IT ON T.V. WHICH IS
19 WHERE MOST PEOPLE GO FOR INFORMATION OR EVEN, YOU KNOW,
20 SHOWS, LAW SHOWS, AND I JUST FEEL LIKE -- I FEEL LIKE
21 THAT'S -- I DON'T KNOW. I WOULD HATE TO THINK THAT I WAS
22 COMING IN THINKING OF SOMETHING BEFORE I HAD EVEN HEARD ANY
23 OF THE INFORMATION BECAUSE I DON'T THINK THAT'S FAIR.

24 Q. OKAY.

25 A. DOES THAT ANSWER YOUR QUESTION?

1 Q. PRETTY MUCH. I TAKE IT FROM YOUR ANSWER THAT YOU
2 DON'T THINK THE DEATH PENALTY IS APPROPRIATE IN ALL CASES.

3 A. NO, SIR, I MEAN, NOT NECESSARILY. I THINK -- I
4 DON'T.

5 Q. OKAY.

6 A. NOT IN ALL CASES.

7 Q. ALL RIGHT. AND YOU'D CONSIDER A LIFE SENTENCE AS
8 BEING APPROPRIATE. YOU'D -- AFTER HEARING ALL THE EVIDENCE,
9 YOU'D WANT TO CONSIDER THAT, WOULD YOU NOT?

10 A. UH-HUH. YES, SIR.

11 Q. OKAY.

12 A. I THINK IT DEPENDS.

13 Q. ALL RIGHT. AND LET ME JUST FINALLY TELL YOU THAT IF
14 WE GOT TO THE PENALTY PHASE, THERE WOULD BE EVIDENCE IN
15 MITIGATION OR EVIDENCE TO LESSEN THE SEVERITY OF THE CRIME,
16 AND THAT EVIDENCE MIGHT CONCERN THINGS ABOUT KEVIN'S
17 BACKGROUND, ABOUT HIS UPRISING. THERE MIGHT BE SOME
18 MEDICAL INFORMATION IN THERE. THERE MIGHT BE INFORMATION
19 ABOUT BAD THINGS THAT HAD HAPPENED TO KEVIN AS HE WAS GROWING
20 UP. WOULD YOU BE WILLING TO LISTEN TO ALL OF THAT
21 INFORMATION BEFORE MAKING YOUR DECISION?

22 A. YES, SIR.

23 Q. WOULD YOU WANT TO?

24 A. YES, SIR.

25 Q. OKAY. THANK YOU FOR YOUR ANSWERS.

1 A. YOU'RE WELCOME.

2 Q. THANK YOU FOR BRINGING A LITTLE ENERGY INTO THE
3 COURTROOM.

4 A. YOU'RE WELCOME. ANYTHING ELSE? AM I DONE?

5 THE COURT: YOU ARE QUALIFIED TO SERVE AS A JUROR IN
6 THIS CASE. THAT DOES NOT MEAN YOU'RE ON THE JURY, BUT IT
7 MEANS THAT YOU ARE ELIGIBLE TO BE ON THE JURY. WE WON'T NEED
8 YOU AGAIN UNTIL MONDAY MORNING.

9 THE WITNESS: OKAY.

10 THE COURT: SO I WOULD LIKE FOR YOU TO CALL ON
11 SUNDAY NIGHT AFTER 6:00 TO THAT TELEPHONE NUMBER THAT YOU
12 WERE GIVEN ON THAT PINK CARD, AND THERE WILL BE A RECORDED
13 MESSAGE THERE THAT WILL GIVE YOU DETAILED INSTRUCTIONS ABOUT
14 WHEN YOU NEED TO REPORT AND WHETHER OR NOT YOU NEED TO BRING
15 YOUR CLOTHING AND YOUR PERSONAL ITEMS IF WE -- IF YOU -- IF
16 THE -- I ALMOST MADE IT -- IF THE JURY IS GOING TO BE
17 SEQUESTERED FOR SEVERAL DAYS.

18 THE WITNESS: OKAY.

19 THE COURT: BETWEEN NOW AND THEN, YOU MAY NOT
20 DISCUSS THIS CASE WITH ANYONE NOR MAY YOU ALLOW ANYONE TO
21 DISCUSS THIS CASE WITH YOU. PLEASE BE VERY CAREFUL NOT TO
22 ALLOW YOURSELF TO BE EXPOSED TO ANY MEDIA COVERAGE ABOUT THIS
23 CASE.

24 THE WITNESS: UH-HUH. YES, SIR.

25 THE COURT: SO YOU ARE FREE TO GO.

1 THE WITNESS: OKAY. THANK YOU.

2 THE COURT: SEE YOU MONDAY.

3 THE WITNESS: OKAY. THANK YOU.

4 (JUROR WELLS LEAVES THE COURTROOM.)

5 THE COURT: I GIVE. THAT'S ENOUGH.

6 MR. HUBBARD: YEAH.

7 THE COURT: DON'T Y'ALL THINK?

8 MR. LITTLEJOHN: YES, SIR.

9 THE COURT: OKAY. NOW, SO WE'VE GOT -- THE BAKERS
10 ARE COMING IN TOMORROW MORNING AT 9. WE HAVE MISTER...

11 MR. LITTLEJOHN: BOYLES (SIC).

12 THE COURT: BOYLE? BOYLE? MR. BOYLE IS COMING IN
13 AT 9:30 TO TEST HIS HEARING ASSISTANCE DEVICE. I'M GOING TO
14 RULE IN THE MORNING ON THE QUESTION OF WHETHER OR NOT I'M
15 GOING TO SEQUESTER THE JURY. IF THERE ARE ANY OUTSTANDING
16 MOTIONS THAT NEED TO BE ADDRESSED, I WANT TO -- I WANT TO
17 HAVE THOSE HEARD AND RULED ON TOMORROW. ANY EX PARTE ISSUES
18 THAT NEED TO BE ADDRESSED, I WANT TO ADDRESS THOSE TOMORROW.

19 I BASICALLY WANT TO LEAVE HERE AROUND LUNCHTIME
20 TOMORROW WITH EVERYTHING RESOLVED THAT CAN BE RESOLVED. ARE
21 THERE GOING TO BE ANY PRETRIAL ISSUES? ANY EVIDENTIARY
22 MOTIONS?

23 MR. HUBBARD: YOUR HONOR, WE STILL HAVE THAT ISSUE
24 OUTSTANDING ON THE BLAIR MOTION. WE'VE BEEN TOLD THEY DON'T
25 THINK THEY'RE GOING TO PUT UP ANYTHING ON THAT ISSUE, BUT IT

1 HAS NOT BEEN FIRMLY RESOLVED, AT LEAST ON OUR PART.

2 THE COURT: OKAY. WELL, MY MEMORY MIGHT HAVE TO BE
3 REFRESHED, BUT DIDN'T WE LEAVE IT THE LAST TIME THAT YOU ALL
4 WERE GOING TO LET US KNOW WHETHER OR NOT YOU CONSENT TO HAVE
5 THE REPORT ENTERED INTO -- ENTERED INTO EVIDENCE IN THE BLAIR
6 HEARING?

7 MR. LITTLEJOHN: YES, YOUR HONOR, AND WE WOULD AGREE
8 TO THAT.

9 THE COURT: OKAY. SO THAT MEANS THAT YOU AGREE TO
10 WAIVE ALL OF THE EVIDENTIARY FOUNDATIONS TO THE ADMISSIBILITY
11 OF THAT REPORT INTO EVIDENCE ON THE QUESTION OF THE
12 DEFENDANT'S COMPETENCE TO STAND TRIAL.

13 MR. LITTLEJOHN: SOLELY LIMITED TO THE ISSUE, TO THE
14 BLAIR ISSUE.

15 THE COURT: RIGHT. IT WON'T COME IN BEFORE THE
16 JURY---

17 MR. LITTLEJOHN: RIGHT.

18 THE COURT: ---BUT IT COMES IN ON THE QUESTION OF
19 COMPETENCE. OKAY. NOW, HOW ABOUT ANYTHING OTHER -- ANYTHING
20 ELSE REGARDING THE DEFENDANT'S MENTAL HEALTH? IS THERE --
21 ARE THERE ANY OTHER ISSUES THAT THE DEFENDANT INTENDS TO
22 RAISE REGARDING HIS MENTAL HEALTH? ANYTHING REGARDING HIS
23 CAPACITY TO CONFORM OR HIS INSANITY OR ANYTHING LIKE THAT?

24 MR. LITTLEJOHN: NO, YOUR HONOR. THERE MAY BE SOME
25 MENTAL HEALTH ISSUES ADDRESSED AT THE SECOND PHASE---

1 THE COURT: I CERTAINLY UNDERSTAND THAT.

2 MR. LITTLEJOHN: ---IF WE GET THERE.

3 THE COURT: OKAY. DOES THAT -- DOES THAT SOLVE THAT
4 PROBLEM?

5 MR. HUBBARD: YES, SIR, YOUR HONOR.

6 THE COURT: ALL RIGHT. ANYTHING ELSE?

7 MR. LITTLEJOHN: NOT AT THIS TIME, YOUR HONOR.

8 MR. HUBBARD: ONE MOMENT. ONE MOMENT.

9 MR. GRAHAM: YOUR HONOR, HAVE YOU EVER MADE A RULING
10 ON WHETHER THE DEFENDANT'S EXPERTS HAVE TO WRITE REPORTS OR
11 NOT?

12 THE COURT: NO, I HAVEN'T, HAVE I? I MEAN, I
13 THOUGHT ABOUT THAT. I THOUGHT ABOUT THAT EITHER MONDAY OR
14 YESTERDAY. I'M GOING TO -- I'M GOING -- I'M NOT GOING TO
15 REQUIRE THAT ANY REPORT THAT IS NOT ALREADY PREPARED BE
16 PREPARED, IF THERE HAS BEEN SOMETHING PREPARED, AND THAT
17 WOULD INCLUDE ANY KIND OF WRITTEN SUMMARY OF WHAT THE
18 EXPERTS' OPINIONS ARE. THAT NEEDS TO BE DISCLOSED.

19 NOW, ARE THERE ANY -- YOU ALL HAVE SEEN THE WITNESS
20 LIST, AND FROM THAT YOU ALL CAN INFER, I'M SURE, A GREAT DEAL
21 ABOUT WHAT THE OPINIONS ARE. IS THERE ANYTHING SPECIFIC THAT
22 YOU WANT TO RAISE WITH REGARD TO ANY OF THE EXPERTS THAT THEY
23 HAVE LISTED THAT YOU WANT TO ADDRESS WITH ME NOW THAT YOU
24 FEEL MIGHT PREJUDICE THE STATE IF YOU DON'T HAVE ANY FURTHER
25 INFORMATION ABOUT THE OPINIONS OF THOSE WITNESSES?

1 MR. MYERS: NO. WE DON'T HAVE ANY OPINIONS.

2 THE COURT: I KNOW, BUT I MEAN, I'M TALKING ABOUT --
3 YOU KNOW THE IDENTITY OF THEIR WITNESSES. FROM THAT LIST OF
4 WHO THE WITNESSES ARE, IS THERE ANYTHING THAT YOU WANT TO
5 RAISE NOW REGARDING SOMETHING YOU FEAR MIGHT PREJUDICE THE
6 STATE IF YOU'RE NOT TOLD WHAT THOSE OPINIONS ARE?

7 MR. HUBBARD: YOUR HONOR, PART OF THE PROBLEM IS---

8 THE COURT: ANYTHING SPECIFIC?

9 MR. HUBBARD: ---WE'VE JUST MONDAY JUST GOT THESE
10 NAMES, AND SO WE'RE JUST TRYING TO FIGURE OUT WHO THEY ARE,
11 MUCH LESS WHAT THEY MIGHT SAY. SO, I MEAN, THAT'S KIND OF
12 THE DISADVANTAGE WE'RE IN, AND THAT'S WHY WE'RE ASKING FOR A
13 REPORT JUST SO IT DOESN'T SLOW THE TRIAL DOWN. WE COULD CALL
14 SOMEBODY UP AND SAY, "HEY. YOU KNOW, WHAT DO YOU THINK ABOUT
15 THIS MATTER?" OR, YOU KNOW, GET OUR OWN OPINION, OUR OWN
16 EXPERT, TO REPLY TO WHATEVER THEY MIGHT PUT UP. WE'RE KIND
17 OF STILL WALKING IN THE DARK.

18 THE COURT: YES, MA'AM.

19 MS. KIMBROUGH: I REALIZE ON MONDAY THAT'S THE FIRST
20 TIME WE EXCHANGED OUR WITNESS LIST, BUT MR. LITTLEJOHN AND I
21 SAW QUITE A FEW NAMES, PEOPLE THAT WE DON'T KNOW WHO THEY ARE
22 OR WHAT THEY'RE GOING TO SAY EITHER. AND JUST TO SORT OF
23 REITERATE OUR POSITION, I FEEL LIKE WE'RE BOTH SORT OF IN A
24 -- YOU KNOW, WE'RE ALL IN THE SAME BOAT. WE DON'T KNOW
25 EXACTLY WHAT THEY'RE GOING TO PRODUCE, AND THEY DON'T KNOW

1 EXACTLY WHAT WE'RE GOING TO PRODUCE BUT...

2 MR. MYERS: THEY KNOW EVERYTHING ABOUT---

3 MS. KIMBROUGH: WE TRIED TO IDENTIFY THE EXPERTS --

4 EXCUSE ME. AS MUCH AS POSSIBLE, WE IDENTIFIED WHAT THEIR
5 SPECIALTY WAS, AND WE CERTAINLY AREN'T HIDING THEIR IDENTITY.

6 MR. MYERS: WELL, THAT DOESN'T HELP US WITH ANYTHING
7 BECAUSE THEY'VE GOT EVERYTHING THAT WE'VE GOT BECAUSE
8 EVERYBODY WE HAD HAD TO WRITE REPORTS INCLUDING ALL THE STATE
9 HOSPITAL LOGS THE TIMES HE WENT OVER THERE, SO THEY HAVE ALL
10 THAT. NAMES DON'T HELP US A WHOLE LOT, AND IT MAY DELAY THE
11 TRIAL A GOOD BIT BECAUSE WE DON'T KNOW ANYTHING OF WHAT
12 THEY'RE GOING TO PUT UP, WHAT THEY'RE GOING TO SAY, WHAT
13 THEIR OPINIONS ARE, WHERE THEY'RE COMING FROM WHERE WE'RE
14 JUST SITTING OVER HERE AND JUST KIND OF BEING AMBUSHED
15 AGAINST.

16 THE COURT: ALL RIGHT. I TELL YOU WHAT -- I TELL
17 YOU WHAT I WANT TO DO THEN. I AM -- BECAUSE OF THE FACT THAT
18 WE ARE STARTING THE TRIAL ON MONDAY WHEREAS WE WOULD NORMALLY
19 BE STARTING IT, SAY, TOMORROW AND WE'VE HAD PLENTY OF TIME TO
20 COMPLETE IT IN A TWO-WEEK TERM, I AM SOMEWHAT CONCERNED ABOUT
21 GETTING THE TRIAL DONE. I DON'T THINK THAT'S GOING TO BE A
22 PROBLEM, BUT I ALSO DON'T KNOW -- I MEAN, I KNOW THE GENERAL
23 NATURE OF THE EXPERTS, BUT I ALSO DON'T KNOW THE EXTENT TO
24 WHICH A CERTAIN OPINION MIGHT SURPRISE THE STATE AND LEAD TO
25 A SIGNIFICANT DELAY. SO -- BUT AT THIS POINT -- AT THIS

1 POINT I DON'T THINK THAT IT IS FEASIBLE TO DEMAND THAT THE
2 EXPERTS PREPARE A REPORT. I DO EXPECT THAT THE LAWYERS KNOW
3 ESSENTIALLY WHAT THOSE OPINIONS ARE. IS THAT CORRECT?

4 MS. KIMBROUGH: YES.

5 THE COURT: ALL RIGHT. SO I AM GOING TO DIRECT THAT
6 YOU ALL HAVE A CONVERSATION TOMORROW MORNING IN WHICH YOU ALL
7 DISCUSS THE INDIVIDUAL EXPERTS THAT BOTH SIDES HAVE CALLED
8 AND WHAT IS THE NATURE -- THE GENERAL NATURE AND SUBSTANCE OF
9 THE OPINIONS THAT WILL BE OFFERED BY THOSE EXPERTS. IS THERE
10 ANY PROBLEM WITH THAT? I UNDERSTAND THAT YOU DON'T WANT ME
11 TO DO THAT, BUT IS THERE ANY PROBLEM WITH YOU---

12 MS. KIMBROUGH: NO, I DON'T---

13 THE COURT: ---WITH YOUR BEING ABLE TO DO THAT?

14 MS. KIMBROUGH: I DON'T OBJECT TO THAT. HOWEVER, WE
15 WOULD ASK, YOU KNOW, SORT OF FOR A TWO-WAY STREET HERE.
16 THERE ARE NAMES THAT WE HAVEN'T EVER SEEN.

17 THE COURT: I THINK -- I THINK I MADE IT CLEAR THAT
18 IT WAS A TWO-WAY STREET.

19 MS. KIMBROUGH: OKAY. NOT JUST WITH EXPERTS THOUGH.
20 WE HAVE NAMES OF PEOPLE THAT -- IN ALL THE THOUSANDS OF PAGES
21 OF DISCOVERY I'VE SEEN, SOME OF THE NAMES ON THAT LIST I HAVE
22 NO IDEA WHO THEY ARE. I DON'T KNOW IF THEY'RE, YOU KNOW---

23 THE COURT: ALL RIGHT. THAT'S FINE.

24 MS. KIMBROUGH: ---LAY WITNESSES OR...

25 THE COURT: THAT'S FINE. THEN YOU CAN -- YOU CAN

1 ASK GENERALLY WHAT THOSE WITNESSES ARE GOING TO TESTIFY TO,
2 BUT NOW LISTEN. NOW, WE HAVE BEEN THROUGH A -- A LOT IN
3 THREE DAYS, AND WE ALSO HAD A NUMBER OF HEARINGS BEFORE THIS
4 AND I THINK THAT EVERYBODY HAS GOTTEN ALONG WELL. I THINK
5 THAT -- I'M VERY PLEASED WITH THE WAY IN WHICH YOU ALL HAVE
6 COOPERATED.

7 I DON'T ANTICIPATE THAT THERE'S ANY WAY THAT THERE
8 COULD BE A PROBLEM WITH THIS MEETING AS LONG AS THAT SAME
9 LEVEL OF COOPERATION IS MAINTAINED. HOW LONG DO YOU THINK
10 IT'S GOING TO TAKE YOU TO EXPLAIN TO THEM IN SUMMARY FASHION,
11 AS I DESCRIBED IT, WHAT THE OPINIONS OF THE DEFENSE EXPERTS
12 ARE?

13 MS. KIMBROUGH: NOT LONG. TWENTY MINUTES?

14 THE COURT: TWENTY MINUTES.

15 MS. KIMBROUGH: IF THEY HAVE QUESTIONS, OF COURSE,
16 WE---

17 MR. MYERS: JUST FOR THE RECORD, LIKE CORRECTIONAL
18 OFFICERS AND THINGS LIKE THAT, WE'VE GIVEN THEM THOSE
19 REPORTS, THOSE NAMES ON THOSE REPORTS. THE ONLY THING WE'VE
20 RECEIVED, I'M TOLD, ARE SOME XEROXED COPIES OF PHOTOGRAPHS
21 AND A TWO-PAGE DOCUMENT HERE OF A BRAIN SCAN, AND THE PEOPLE
22 WHO CONDUCTED IT ARE NOT ON THE WITNESS LIST. SO THAT'S JUST
23 KIND OF WHERE WE ARE.

24 THE COURT: I'VE ALREADY ADDRESSED IT IN THE WAY
25 THAT I BELIEVE IS THE ONLY WAY TO ADDRESS IT AT THIS POINT.

1 MR. MYERS: THAT'S FINE.

2 THE COURT: I'M ANTICIPATING THAT YOU ALL CAN HAVE
3 THIS CONVERSATION FIRST IN THE MORNING. LET'S SAY -- IS
4 THERE ANY REASON WHY Y'ALL CAN'T MEET AT 8:30?

5 MS. KIMBROUGH: THAT'S FINE, YOUR HONOR.

6 THE COURT: FROM Y'ALL'S STANDPOINT?

7 MR. HUBBARD: YES, SIR.

8 THE COURT: AND THEN I'LL JUST SAY WE'LL BEGIN COURT
9 AT 9:30, AND WE'LL TAKE THE BAKERS UP AND WE'LL TAKE MR.
10 BOYLE UP AT 9:30. AND THEN AFTERWARDS IF THERE'S ANY
11 LINGERING DISPUTE REMAINING ABOUT THE OPINIONS OF THESE
12 EXPERTS, THEN I WILL ASSIST IN RESOLVING THAT DISPUTE. ALL
13 RIGHT? ALL RIGHT. AND THEN -- ALL RIGHT. SO WE'RE GOING TO
14 DO THOSE THINGS. I'M GOING TO RULE ON THE SEQUESTRATION.
15 ARE THERE ANY KIND OF MOTIONS TO SUPPRESS, ANY KIND OF
16 JACKSON V. DENNO HEARING, ANYTHING LIKE THAT THAT WE NEED TO
17 TAKE UP PRETRIAL?

18 MR. MYERS: NONE THAT I KNOW OF. WE RECEIVED NO
19 MOTIONS FOR SUPPRESSION OR ANYTHING OF THAT NATURE.

20 MS. KIMBROUGH: YOUR HONOR, IF WE COULD ADVISE THE
21 COURT IN THE MORNING IF WE -- IF WE HAVE ANYTHING. WE DO NOT
22 ANTICIPATE THAT WE WOULD HAVE MANY MOTIONS, BUT THERE MAY BE
23 AN ISSUE OR TWO THAT WE NEED TO ADDRESS BASED ON SOME NEW
24 DISCOVERY.

25 THE COURT: OKAY.

1 MS. KIMBROUGH: OR RELATIVELY NEW.

2 THE COURT: WELL, I'M NOT INCLINED AND I'M NEVER
3 INCLINED TO SPEND A WHOLE LOT OF TIME DEALING WITH
4 EVIDENTIARY MOTIONS TO -- IN LIMINE BECAUSE THE VAST MAJORITY
5 OF ISSUES THAT ARE BROUGHT UP IN LIMINE DEPEND ON THE
6 FOUNDATION THAT IS PRESENTED AT TRIAL, AND SO IT'S A WASTE OF
7 TIME TO DEAL WITH THEM IN LIMINE. IF THERE ARE
8 CONSTITUTIONAL ISSUES THAT NEED TO BE BROUGHT UP, WE CAN
9 ADDRESS THOSE PRETRIAL. SO Y'ALL LET ME KNOW IN THE MORNING
10 AND IF WE -- AND WE'LL TRY TO RESOLVE WHAT WE CAN TOMORROW.
11 I'M ANTICIPATING THAT WE'LL BE DONE BY LUNCH AND WE'LL BE OUT
12 OF HERE. AND THEN Y'ALL WILL -- Y'ALL ALREADY KNOW MY CELL
13 PHONE NUMBER AND EVERYTHING, SO IF YOU NEED TO GET IN TOUCH
14 WITH ME OVER THE WEEKEND, YOU CAN. AND THEN I'LL BE BACK IN
15 THE LEXINGTON AREA SUNDAY EVENING AND I'LL BE HERE MONDAY
16 MORNING. OKAY. SEE Y'ALL IN THE MORNING.

17 OH, YEAH, HOLD ON JUST ONE SECOND. I THINK WHAT
18 WE'LL DO IS UNTIL -- WE'VE GOT -- WE'VE GOT THREE MORE JURORS
19 ON THIS PANEL. I'M GOING TO TELL THOSE THREE JURORS AND AT
20 LEAST ONE MORE PANEL TO BE HERE ON MONDAY MORNING AND -- JUST
21 IN CASE WE RUN INTO A PROBLEM WHERE WE NEED ADDITIONAL
22 JURORS.

23 THE CLERK: WE NEED TO KNOW WHAT TIME.

24 THE COURT: I THINK WE'LL TELL TWO PANELS PLUS THESE
25 THREE TO BE HERE ON MONDAY MORNING, SO WE'LL HAVE WHATEVER

1 THAT IS, 15 JURORS IN CASE WE NEED THEM. OKAY?

2 MR. MYERS: THANK YOU, SIR.

3 THE CLERK: DO YOU WANT TO GO IN SEQUENCE 13 AND 14
4 FOR MONDAY MORNING AND THEN THE THREE JURORS YOU HAVE GOT IN
5 THE BACK?

6 THE COURT: RIGHT. THAT'S CORRECT.

7 (WHEREUPON, THE TRIAL CONCLUDED FOR THE DAY AND
8 RESUMED THE FOLLOWING DAY, APRIL 13TH, 2006, AS FOLLOWS:)

9 THE COURT: BE SEATED. GOOD MORNING. ALL RIGHT.
10 WE HAVE MR. BOYLE IN HERE. AND, MR. BOYLE, YOU'RE TESTING
11 OUT A DEVICE THAT THE CLERK OF COURT HAS OBTAINED TO TRY TO
12 ASSIST YOU IN HEARING EVERYTHING THAT'S GOING ON. IS THAT
13 HELPING?

14 JUROR BOYLE: YES, SIR.

15 THE COURT: I KNOW A SECOND AGO YOU WERE -- MS.
16 KIMBROUGH WAS SPEAKING. WERE YOU ABLE TO HEAR EVERYTHING SHE
17 SAID?

18 JUROR BOYLE: I HEARD HER. IT WAS MUMBLED A LITTLE
19 BIT; YES, SIR.

20 THE COURT: YOU ASKED HIM ABOUT SOME MATHEMATICAL
21 THINGS, DIDN'T YOU?

22 MS. KIMBROUGH: I DID.

23 THE COURT: WERE YOU ABLE TO HEAR THAT?

24 JUROR BOYLE: THE FIRST TIME SHE ASKED ME I DID NOT
25 FULLY UNDERSTAND WHAT SHE WAS ASKING. SHE HAD HER MOUTH

1 COVERED. WHEN SHE TOOK HER HAND AWAY, I EASILY HEARD HER;
2 YES, SIR.

3 THE COURT: ALL RIGHT. IS THAT SOMETHING YOU'RE
4 INTERESTED IN TRYING, TO USE THAT?

5 JUROR BOYLE: I THINK IT WOULD HELP ME A LOT; YES,
6 SIR.

7 THE COURT: WOULD YOU LIKE TO TRY IT, LIKE TO USE
8 IT? WE DON'T WANT TO MAKE YOU USE IT IF USING THAT MAKES YOU
9 FEEL UNCOMFORTABLE.

10 JUROR BOYLE: ON A DAY-TO-DAY BASIS I WOULD NOT WANT
11 TO USE THIS DEVICE, BUT FOR THIS I DON'T MIND AT ALL, SIR.

12 THE COURT: FOR THIS TRIAL?

13 JUROR BOYLE: YES, SIR.

14 THE COURT: SO IF YOU WERE ON THE JURY IN THIS CASE,
15 WOULD YOU BE WILLING TO USE THAT DEVICE DURING THE ENTIRE
16 COURSE OF THE TRIAL?

17 JUROR BOYLE: YES, SIR.

18 THE COURT: AND IT REALLY SEEMS TO BE HELPING; IS
19 THAT CORRECT?

20 JUROR BOYLE: YES, SIR.

21 THE COURT: ALL RIGHT. WELL, I THINK THAT IS ALL WE
22 NEEDED TO DO THIS MORNING, ALL WE NEEDED FOR YOU TO DO THIS
23 MORNING. SO UNLESS THERE'S SOME OTHER WAY THAT WE MIGHT
24 COULD TWEAK THAT THING OR UNLESS THERE'S SOME OTHER CONCERN
25 THAT YOU HAVE, THEN YOU'RE FREE TO GO.

1 JUROR BOYLE: THANK YOU. I'M FINE WITH THIS DEVICE,
2 SIR,

3 THE COURT: ALL RIGHT, SIR. THANK YOU FOR COMING.
4 WE APPRECIATE IT.

5 JUROR BOYLE: YES, SIR.

6 THE COURT: REMEMBER NOW TO CALL -- CALL SUNDAY
7 NIGHT AFTER 6:00.

8 JUROR BOYLE: CALL SUNDAY AFTER 6?

9 THE COURT: SIX FOR THAT -- AT THAT -- ON THAT
10 RECORDED MESSAGE THERE WILL BE SOME DETAILS ABOUT WHEN YOU
11 NEED TO COME UP HERE.

12 JUROR BOYLE: OKAY.

13 THE COURT: ALL RIGHT. THANK YOU.

14 JUROR BOYLE: THANK YOU, SIR.

15 (JUROR BOYLE LEAVES THE COURTROOM.)

16 THE COURT: OKAY. THE OTHER THING IS MS. BAKER WHO
17 IS HERE. IS THAT CORRECT?

18 THE CLERK: YES, SIR.

19 THE COURT: AND WHERE IS SHE?

20 THE CLERK: GRAND JURY ROOM.

21 THE COURT: GRAND JURY ROOM. AND IS HER HUSBAND
22 HERE, TOO?

23 THE CLERK: THAT I DO NOT KNOW.

24 SECOND CLERK: I DON'T KNOW.

25 THE COURT: SOMEBODY -- THERE'S A BAILIFF OVER THERE

1 WITH HER?

2 THE CLERK: (NODDED HEAD UP AND DOWN.)

3 THE COURT: ALL RIGHT. APPARENTLY SOMEBODY
4 REPRESENTING HER CALLED UP HERE LAST NIGHT AND PERHAPS
5 UNINTENTIONALLY LEFT A RECORDED MESSAGE. SO I'M GOING TO ASK
6 YOU TO TELL ME ABOUT THAT. YOU DON'T HAVE TO GET INTO THE
7 DETAILS, BUT TELL ME JUST GENERALLY WHAT IT IS AND THEN WE'LL
8 GO FROM THERE.

9 THE CLERK: WELL, IT JUST APPEARED THAT HE CALLED UP
10 HERE IN AN EFFORT TO GET MS. BAKER OUT OF THIS SITUATION, AND
11 WHEN HE WAS PLACED ON HOLD SO THAT SONJA COULD GO AND GET
12 SOME INFORMATION, HE APPARENTLY HAD ANOTHER CONVERSATION ON
13 HIS CELL PHONE NOT REALIZING THAT HE WAS BEING RECORDED BY
14 OUR SYSTEM.

15 THE COURT: OKAY. AND IS THAT RECORDING AVAILABLE
16 FOR US? IS IT -- I MEAN, YOU TELL ME THIS, I THINK, BECAUSE
17 YOU THINK WE -- YOU HAVE DETERMINED THAT WE NEED TO LISTEN TO
18 IT.

19 THE CLERK: I THINK IT MIGHT HELP YOU DETERMINE
20 WHETHER OR NOT---

21 THE COURT: OKAY.

22 THE CLERK: ---THIS WOULD BE---

23 THE COURT: SO YOU DO THINK WE NEED TO LISTEN TO IT.
24 CAN I AND THE LAWYERS GO SOMEWHERE IN THE COURTHOUSE TO
25 LISTEN TO THIS?

1 THE CLERK: ABSOLUTELY. SONJA'S DESK.

2 THE COURT: IS THAT WHAT Y'ALL WANT TO DO?

3 MR. MYERS: YES, SIR.

4 MR. LITTLEJOHN: SOUNDS LIKE WE SHOULD, YES, SIR.

5 THE CLERK: SHE CAN PUT IT ON THE SPEAKER PHONE,
6 YOUR HONOR.

7 THE COURT: LET'S GO DO THAT NOW IF THAT SUITS
8 Y'ALL.

9 MR. MYERS: OKAY.

10 (PAUSE IN PROCEEDINGS WHILE THE COURT AND THE
11 ATTORNEYS LISTEN TO THE RECORDED MESSAGE.)

12 THE COURT: BE SEATED. OKAY. WHAT DO Y'ALL HAVE TO
13 SAY ABOUT OUR JUROR?

14 MR. LITTLEJOHN: JUDGE, I THINK GIVEN THE
15 CIRCUMSTANCES THAT THE JUROR SHOULD BE EXCUSED, AND I THINK
16 GIVEN THE OVERALL PICTURE OF WHAT HAS HAPPENED THAT THE COURT
17 COULD EXERCISE ITS DISCRETION IN EXCUSING THIS JUROR.

18 THE COURT: WHAT DOES THE STATE SAY?

19 MR. MYERS: WE LEAVE IT UP TO YOUR DISCRETION.

20 THE COURT: SO THE RECORD WILL BE CLEAR ABOUT WHAT
21 HAPPENED, THERE WAS -- APPARENTLY THE HUSBAND OF MS. BAKER
22 WAS CALLING -- THIS WAS YESTERDAY?

23 THE CLERK: YESTERDAY AFTERNOON, SIR.

24 THE COURT: YESTERDAY AFTERNOON. AND WAS PUT ON
25 HOLD AND HE DIDN'T REALIZE THAT THE ASSISTANT CLERK'S VOICE

1 MAIL HAD ALREADY KICKED IN, AND WHILE HE WAS ON HOLD HE WAS
2 HAVING A CELL PHONE CONVERSATION WITH SOMEBODY, AND HE WAS
3 SAYING THAT HE WAS TRYING TO GET HER OUT OF IT. HE SOUNDED
4 -- TO ME HE SOUNDED SINCERE IN HIS BELIEF THAT SHE WAS UNABLE
5 TO DO THIS. IT WASN'T -- IT DID NOT SOUND TO ME LIKE HE WAS
6 TRYING TO GET HER OUT JUST TO GET HER OUT OF JURY SERVICE.

7 IT SOUNDED TO ME LIKE HE WAS LEGITIMATELY CONCERNED
8 ABOUT HER ABILITY TO SERVE AS A JUROR, BUT HE DID MAKE SOME
9 COMMENTS THAT ARE OF CONCERN. HE, FIRST OF ALL, SAID THAT I
10 WAS -- IMPLIED THAT I WAS A MEAN S.O.B. AND WOULDN'T LET
11 ANYBODY OUT OF JURY SERVICE. NOT REALLY. BUT THEN HE SAID
12 THAT -- HE IMPLIED THAT SHE FELT LIKE SHE HAD BEEN HARASSED A
13 LITTLE BIT BY THE SOLICITOR DURING HIS QUESTIONING, AND HE
14 SAID THAT HE FELT LIKE - I THINK HE WAS REFERRING TO THE
15 DEFENDANT - THAT THE DEFENDANT WAS WINKING AT HER OR
16 SOMETHING LIKE THAT AND THAT THAT FREAKED HER OUT. AND THEN
17 HE MADE A COMMENT THAT SOUNDED AS IF HE WAS QUOTING HER. IS
18 THAT WHAT Y'ALL THOUGHT?

19 MR. LITTLEJOHN: YES, YOUR HONOR.

20 THE COURT: AND SHE SAID SOMETHING LIKE -- AND I
21 COULDN'T TELL WHO SHE WAS TALKING ABOUT, BUT IT WAS SOMETHING
22 LIKE, "IF I'D HAVE HAD MY GUN, HE WOULDN'T HAVE BEEN DOING
23 THAT," OR SOMETHING LIKE THAT. SO I REGRET THAT THE HUSBAND
24 FOUND IT NECESSARY TO GET HIMSELF SO PERSONALLY INVOLVED IN
25 THIS BECAUSE THAT COULD HAVE -- THAT COULD HAVE LED TO WHAT

1 IS NOW A RECORD THAT IS MISLEADING ABOUT THE WAY THIS JUROR
2 ACTUALLY -- ABOUT HER CAPABILITY TO SERVE. IF Y'ALL AGREE
3 THAT IT IS WITHIN MY DISCRETION, YOU'RE ASKING ME TO EXCUSE
4 HER - THE DEFENSE.

5 MR. LITTLEJOHN: THAT'S CORRECT, YOUR HONOR.

6 THE COURT: AND THE STATE AGREES THAT IT IS WITHIN
7 MY DISCRETION.

8 MR. MYERS: YES, SIR.

9 THE COURT: I'M GOING TO EXCUSE HER, AND THAT'S
10 BASED NOT ONLY ON WHAT WE JUST WENT THROUGH, BUT I WAS
11 CONCERNED ABOUT HER DEMEANOR WHEN SHE WAS HERE. I THINK IT
12 WAS MONDAY OR TUESDAY, WHENEVER IT WAS SHE WAS QUALIFIED. I
13 WAS CONCERNED ABOUT HER DEMEANOR. SHE SEEMED SPACEY, AND I
14 DON'T KNOW WHETHER THAT'S HER PERSONALITY OR WHETHER THAT IS
15 RELATED TO THESE MENTAL ISSUES THAT THE HUSBAND CLAIMS SHE
16 HAS HAD ALL HER LIFE. BUT I'M CONCERNED ABOUT THE JUROR AND
17 HER ABILITY TO SERVE AS AN IMPARTIAL JUROR, PARTICULARLY IN
18 LIGHT OF WHAT WAS ON THAT MESSAGE. SO I'M GOING TO EXCUSE
19 HER, AND I THINK THAT IT WOULD BE OKAY WITH ME IF SOMEBODY
20 FROM THE CLERK'S OFFICE WOULD JUST GO OVER THERE TO THE GRAND
21 JURY AND TELL HER SHE'S EXCUSED AND SHE DOESN'T HAVE TO COME
22 BACK.

23 NOW, WHEN Y'ALL MET THIS MORNING TO DISCUSS THE
24 OPINIONS OF EXPERTS, DID Y'ALL GET ALL THAT RESOLVED?

25 MR. LITTLEJOHN: YES, YOUR HONOR, I BELIEVE SO.

1 THERE WERE -- THERE WERE A FEW WITNESSES THAT WERE ON THE
2 LIST THAT THE STATE IS GOING TO GET US SOME ADDITIONAL
3 INFORMATION ON.

4 THE COURT: ALL RIGHT. DOES THE STATE FEEL YOU GOT
5 SATISFACTORY INFORMATION ABOUT WHAT THE OPINIONS OF THE
6 DEFENSE EXPERTS ARE GOING TO BE?

7 MR. HUBBARD: WE DIDN'T DISCUSS THEIR OPINIONS AS
8 MUCH AS WHAT THEIR PURPOSE IN THE TRIAL WOULD BE, YOU KNOW,
9 THAT -- FOR INSTANCE, THERE'S A NEUROLOGIST. WE KNOW TESTS
10 HAVE BEEN RUN. WE DON'T KNOW ANYTHING ABOUT THOSE TESTS OR
11 WHAT THEIR CONCLUSIONS WILL BE.

12 MR. LITTLEJOHN: YOUR HONOR, IN REGARDS TO THE
13 NEUROLOGIST, HE IS STILL REVIEWING THE RAW DATA THAT HE'S
14 BEEN GIVEN. HE HAS NOT GIVEN US AN OPINION YET. WE TOLD THE
15 SOLICITOR AS SOON AS WE HAD THAT OPINION WE WOULD GIVE THEM A
16 HEADS-UP ON WHAT HE WAS GOING TO TESTIFY TO.

17 THE COURT: OKAY. WELL, LET ME ASK IT THIS WAY: IS
18 THERE ANYTHING ELSE THAT THE STATE WANTS ME TO DO IN THIS
19 REGARD?

20 MR. HUBBARD: WHAT WAS THAT AGAIN, YOUR HONOR?

21 THE COURT: IS THERE ANYTHING ELSE THAT YOU WANT ME
22 TO DO REGARDING YOUR GETTING INFORMATION ABOUT WHAT THE
23 DEFENSE EXPERTS' OPINIONS ARE GOING TO BE?

24 MR. HUBBARD: YOUR HONOR, IS IT MY UNDERSTANDING
25 THAT THE TEST BY THE NEUROLOGIST HAS NOT BEEN COMPLETED OR

1 IT'S NOT BEEN PUT IN A REPORT YET OR IS IT GOING TO BE PUT IN
2 A REPORT?

3 MS. KIMBROUGH: RIGHT NOW THE NEUROLOGIST HAS A SPEC
4 SCAN WHICH I UNDERSTAND THE COPY WE'VE PROVIDED IS NOT
5 SUFFICIENTLY CLEAR. WE'RE GOING TO PROVIDE A CLEANER COPY,
6 ONE THAT IS NOT FAXED. I COULD PROBABLY DO THAT THIS
7 MORNING; I THINK IT'S IN OUR OFFICE. HE'S DONE A PHYSICAL
8 EXAMINATION AND HE'S JUST RECEIVED THE SPEC SCAN RESULTS.
9 SO, I MEAN, HE'S OBVIOUSLY GOING TO HAVE TO INTERPRET THOSE
10 BEFORE HE CAN TESTIFY OR COMMENT ON THE INITIAL FINDINGS OF
11 THE SPEC SCAN. I GUESS IT WOULD BE A RADIOLOGIST WHO READ
12 THE INITIAL SPEC SCAN, BUT WE DON'T HAVE A REPORT FROM HIM.
13 TO THE BEST OF MY KNOWLEDGE, HE COULDN'T REALLY GENERATE A
14 FULL REPORT AT THIS POINT ANYWAY BECAUSE WE JUST GOT THE SPEC
15 SCAN.

16 MR. HUBBARD: IT'S MY UNDERSTANDING Y'ALL DON'T HAVE
17 A WRITTEN REPORT FROM DONNA SCHWARTZ-WATTS.

18 MS. KIMBROUGH: NO, BUT WE DO HAVE A DIAGNOSIS AND I
19 THINK WE HAD---

20 MR. HUBBARD: POST-TRAUMATIC STRESS DISORDER?

21 MS. KIMBROUGH: POST-TRAUMATIC STRESS DISORDER.
22 THERE IS A LEARNING DISABILITY. WE'RE GOING TO PROVIDE THE
23 SPECIAL EDUCATION CERTIFICATE DOCUMENTING HIS HISTORY AS A
24 SPECIAL ED STUDENT. DR. LORING IS GOING TO TESTIFY. SHE'S
25 OUR SOCIAL WORKER SOCIOLOGIST. SHE'S GOING TO TESTIFY TO THE

1 TRAUMA, THE EARLY CHILDHOOD TRAUMA, AND THE NEURO-
2 PHARMACOLOGIST -- AS WE DISCUSSED, THERE'S SPECIFIC DRUGS
3 THAT ARE RELEVANT TO MR. MERCER'S HISTORY. HE'S GOING TO
4 DISCUSS THOSE, THE EFFECTS ON THE BRAIN.

5 AND THEN OUR FORENSIC EXPERTS, I THINK Y'ALL ARE
6 PRETTY FAMILIAR WITH THEM: JEFF HOLLIFIELD AND JIM SPRINGS.
7 THOSE ARE GUNSHOT RESIDUE AND CRIME SCENE ANALYSIS, AND THEIR
8 OPINIONS ARE GOING TO BE BASED SOLELY ON THE INFORMATION
9 PROVIDED BY THE STATE.

10 MR. HUBBARD: OKAY. YOUR HONOR, I THINK WE'LL BE
11 OKAY AS LONG AS WE HAVE BOTH THE CURRICULUM VITAE OF THESE
12 PEOPLE, AND WHATEVER YOU GET FROM THE NEUROLOGIST I THINK
13 WE'LL BE OKAY WITH.

14 MS. KIMBROUGH: I BELIEVE I CAN PROVIDE ALL OF THAT
15 THIS MORNING. I'LL GO TO THE OFFICE AND MAKE SURE THAT IT'S
16 IN OUR LITTLE WORKING AREA. IF IT'S NOT, I'LL GO DIRECTLY TO
17 MY OFFICE AND MAKE SURE YOU HAVE THE FULL BACKGROUND
18 INFORMATION ON THESE FOLKS.

19 THE COURT: ALL RIGHT. WHY DON'T Y'ALL CALL ME THIS
20 AFTERNOON JOINTLY AND LET ME KNOW WHETHER OR NOT THIS IS
21 RESOLVED?

22 MR. HUBBARD: OKAY.

23 THE COURT: AND IF IT IS, I'LL BE GLAD TO KNOW IT,
24 AND IF IT'S NOT, WE'LL RESOLVE IT RIGHT THEN.

25 MR. HUBBARD: YES, SIR.

1 THE COURT: ALL RIGHT?

2 MS. KIMBROUGH: THANK YOU, YOUR HONOR.

3 THE COURT: Y'ALL HAVE MY CELL PHONE NUMBER.

4 MS. KIMBROUGH: YES, YOUR HONOR.

5 THE COURT: OKAY. ANYTHING ELSE THAT WE NEED TO
6 RESOLVE OTHER THAN THE MOTION -- OTHER THAN THE ISSUE
7 REGARDING SEQUESTRATION?

8 MR. LITTLEJOHN: YOUR HONOR, JUST TO -- JUST TO MAKE
9 SURE, I'D LIKE TO MAKE SURE THAT WE'VE RECEIVED ALL THE
10 DISCOVERY FROM THE STATE, AND INCLUDED IN OUR REQUESTS WE'D
11 LIKE TO MAKE SURE THAT WE'VE RECEIVED ANY MATERIAL PURSUANT
12 TO BRADY VERSUS MARYLAND THAT COULD BE USED FOR IMPEACHMENT
13 OR TO SHOW ANY BIAS OR ANY PREJUDICE ON THE PART OF ANY OF
14 THE STATE'S WITNESSES.

15 MR. MYERS: WE'VE GIVEN THEM THINGS WE'RE NOT
16 REQUIRED TO GIVE THEM. WE HAVE PRODUCED DOCUMENT AFTER
17 DOCUMENT, AND AS THINGS HAVE COME IN THAT WE HAVEN'T SEEN
18 BEFORE, WE HAVE TRIED TO GET IT TO THEM THE SAME DAY OR THE
19 NEXT MORNING. TO OUR KNOWLEDGE, WE'VE PRODUCED EVERYTHING --
20 EVERYTHING THAT WE HAVE AND EVERYTHING WE COULD FIND THAT'S
21 REQUIRED UNDER DISCOVERY AND BRADY.

22 THE COURT: ALL RIGHT. OKAY. IS THERE ANYTHING
23 THEN -- I'M -- SO EVERYTHING IS RESOLVED EXCEPT FOR
24 SEQUESTRATION.

25 MR. MYERS: WE DON'T KNOW YET -- IT WAS MY

1 UNDERSTANDING THAT AT SOME HEARING IT WAS SAID THAT AS FAR AS
2 MONDAY MORNING THAT THE JURORS WOULD BE CALLED IN THE ORDER
3 QUALIFIED. IS THAT STILL THE COURT'S RULING?

4 THE COURT: WELL, ANYBODY HAVE ANY REASON NOT TO DO
5 THAT?

6 MR. LITTLEJOHN: NO, YOUR HONOR.

7 MR. MYERS: THAT SUITS US.

8 THE COURT: ALL RIGHT. WE WILL -- WE WILL -- WE'LL
9 CALL THE JURORS IN THE ORDER THAT THEY WERE QUALIFIED. NOW
10 -- NOT IN THE ORDER THAT THEY WERE QUALIFIED BUT IN THE ORDER
11 THEY APPEAR ON THESE STRIKE SHEETS.

12 MR. MYERS: DRAWN, YES, SIR.

13 THE COURT: SO, FOR EXAMPLE, THE COUPLE OF JURORS
14 WHO WERE TAKEN OUT OF ORDER---

15 MR. MYERS: YES, SIR.

16 THE COURT: ---WILL BE PUT BACK IN ORDER.

17 MR. MYERS: YES, SIR.

18 THE COURT: I MEAN, I DON'T THINK THERE'S ANY
19 CONFUSION ABOUT THAT. EVERYBODY GOT THAT STRAIGHT?

20 MR. MYERS: YES, SIR.

21 THE COURT: ALL RIGHT. AND WE'LL DO A LIVE STRIKE.
22 I MEAN, WE'LL STRIKE THEM AS THEY GO. THE STATE HAS FIVE
23 STRIKES; THE DEFENSE HAS TEN.

24 MR. MYERS: YES, SIR.

25 THE COURT: FOR EACH ALTERNATE THE STATE HAS ONE;

1 THE DEFENSE HAS TWO.

2 MR. MYERS: YES, SIR.

3 THE COURT: AND IT IS MY INTENTION TO GET THREE
4 ALTERNATES, AND HOPEFULLY THAT WILL LEAVE US WITH SEVERAL
5 EXTRA JURORS THAT WE DON'T NEED. WE WILL -- WE'RE HAVING --
6 ALL RIGHT. SO THE -- LET'S GO AHEAD AND ADDRESS
7 SEQUESTRATION, AND THEN WE'LL COME BACK AND WE'LL FINALLY
8 DISCUSS THE ISSUES REGARDING THE JURORS. IS THERE ANYTHING
9 ELSE THAT ANYBODY WANTS TO SAY ABOUT SEQUESTRATION THAT MIGHT
10 HAVE ARISEN THIS WEEK OR -- I DON'T THINK IT'S NECESSARY TO
11 REPEAT ARGUMENTS THAT WERE ALREADY MADE. IS THERE ANYTHING
12 ELSE THAT ANYBODY WANTS TO SAY?

13 MR. MYERS: NO, SIR. THE ONLY THING ELSE I THINK
14 THAT HAPPENED THIS WEEK IS EVEN DURING VOIR DIRE SOME JURORS
15 GOT ON THE ELEVATOR AND ANOTHER ATTORNEY WAS MAKING SOME
16 COMMENTS ABOUT THE CASE. THAT JUST SHOWS YOU THE DANGER OF
17 UNCONTROLLED JUROR ACCESS IN AND OUT OF THE COURTHOUSE AND
18 AWAY FROM THE COURTHOUSE.

19 MS. KIMBROUGH: YOUR HONOR, WE'D NOTE THERE'S BEEN
20 VIRTUALLY NO MEDIA COVERAGE ABOUT THIS CASE. ON MONDAY THERE
21 WAS AN ARTICLE THAT FOCUSED PRETTY EXTENSIVELY ON THE FUNDING
22 ISSUES AND THE BACKLOG IN THESE CASES BUT MINIMALLY ADDRESSED
23 THE CASE THAT WE'RE HERE FOR. I BELIEVE THERE WAS AN ARTICLE
24 ON TUESDAY THAT MISIDENTIFIED THIS CASE AS BEING HELD IN
25 RICHLAND COUNTY.

1 SINCE WE FIRST DISCUSSED THE ISSUE OF SEQUESTRATION,
2 WE'VE DONE SOME RESEARCH. WE DON'T HAVE A GREAT DEAL ON THE
3 MATTER. THERE ISN'T A WHOLE LOT IN THIS STATE THAT ADDRESSES
4 SEQUESTRATION. HOWEVER, THERE IS A CASE THAT I'D LIKE SIMPLY
5 TO SUBMIT FOR YOUR HONOR'S CONSIDERATION, AND I'VE GOT A COPY
6 FOR THE STATE. IT'S EX PARTE, THE STATE RECORD COMPANY
7 VERSUS IN RE: THE STATE OF SOUTH CAROLINA VERSUS B.J.
8 QUATTLEBAUM. FOOTNOTE 18 KIND OF DISCUSSES SOME OF THE
9 HAZARDS THAT WE HAD OUTLINED IN OUR MEMO INCLUDING THE
10 RESENTMENT THAT JURORS SOMETIMES WILL DEVELOP AS A RESULT OF
11 BEING ESSENTIALLY TRAPPED FOR DAYS ON END AND, YOU KNOW,
12 AGAIN OUR CONCERNS ARE MORE GENERAL THAN THEY ARE SPECIFIC,
13 BUT THE WHOLE QUESTION OF MEDIA EXPOSURE IN THIS CASE -- I
14 MEAN, IT'S MINIMAL. AND WE DON'T THINK SEQUESTRATION IS
15 EITHER NECESSARY AND WE CERTAINLY THINK THAT IT DOESN'T
16 BENEFIT MR. MERCER IN ANY WAY.

17 FURTHERMORE, I THINK THE JURORS WHO HAVE COME IN
18 AFTER THE INITIAL QUALIFICATION HAVE FOLLOWED YOUR HONOR'S
19 RULES. YOU KNOW, THERE WAS NO JUROR WHO HAD A -- WHO HAD
20 TROUBLE TELLING PEOPLE, "I CAN'T TALK TO YOU ABOUT THIS."
21 THERE'S BEEN NO FORMAL MOTION FROM THE STATE, ALTHOUGH WE
22 ACKNOWLEDGE THE STATE CLEARLY WANTS SEQUESTRATION. AND
23 THERE'S -- YOU KNOW, QUITE FRANKLY THERE'S JUST -- THERE'S NO
24 GROUNDS TO SEQUESTER THIS JURY.

25 MR. MYERS: FOR THE RECORD, I HAVE RECEIVED CALLS

1 FROM PRINT MEDIA NEWSPAPERS, CALLS FROM T.V.'S, AND CALLS
2 FROM RADIOS. I DON'T TALK WITH THOSE PEOPLE. I DON'T LIKE
3 THEM BECAUSE THEY'LL DISRUPT THE TRIAL, BUT I GUARANTEE YOU
4 THERE'S GOING TO BE PUBLICITY ON THIS CASE DURING THE TRIAL.
5 THE FREE ROAM OF JURORS WITH NEWSPAPERS, RADIO, AND
6 TELEVISION, IT'S VERY DANGEROUS BECAUSE THEY WILL NOT PRINT
7 THE TRUTH.

8 MR. LITTLEJOHN: YOUR HONOR, IF I MIGHT JUST RESPOND
9 TO THAT. IT SEEMS TO ME IT'S INCUMBENT UPON THE STATE TO
10 PRESENT SOMETHING ABOUT THE CIRCUMSTANCES OF THIS PARTICULAR
11 CASE THAT WOULD WARRANT SEQUESTRATION. AS INDICATED IN THAT
12 CASE THAT YOUR HONOR IS REVIEWING, THE COURT DISCUSSES WHAT A
13 BURDEN IT IS FOR JURORS, WHAT AN IMPOSITION IT IS. THE
14 ULTIMATE RESULT COULD BE RESENTMENT BY THE JURY FOR BEING
15 LOCKED UP FOR AN EXTENDED PERIOD OF TIME WHEN WE'RE QUITE
16 FRANKLY VERY CONCERNED ABOUT THAT RESENTMENT BEING HELD
17 AGAINST OUR CLIENT, AND WE DON'T THINK THAT THE STATE HAS
18 PROVIDED THE COURT ANY GROUNDS CONCERNING STATE VERSUS KEVIN
19 MERCER TO JUSTIFY THE COURT TAKING THE DRASTIC STEP OF
20 SEQUESTRATION.

21 YOUR HONOR, THE JURORS IN THIS CASE THROUGH THE
22 QUALIFICATION PROCESS HAVE SHOWN TO THE COURT THAT THEY ARE
23 WILLING AND ABLE TO FOLLOW THE COURT'S INSTRUCTIONS. SEVERAL
24 OF THE JURORS HAVE SAID, "SOMEBODY TRIED TO CONTACT ME, BUT I
25 TOLD THEM, 'I CAN'T TALK TO YOU,'" AND THEY HAVE CONTINUED

1 THAT AND STEADFASTLY ABIDED BY THE COURT'S INSTRUCTIONS.
2 YOUR HONOR, WE THINK THAT PUTTING THE JURY THROUGH THE
3 DRASTIC MEASURE OF SEQUESTRATION JUST WITHOUT ANY GROUNDS
4 ABOUT THIS PARTICULAR CASE IS AN EXTREME THING TO DO.

5 MR. MYERS: CAPITAL CASES, THE UNITED STATES SUPREME
6 COURT HAS SAID, ARE UNLIKE ANY OTHER CASES. THEY'RE CASES
7 UNTO THEMSELVES. I DIDN'T MAKE THE MOTION. THEY HAVE MADE
8 IT; I'M RESPONDING TO IT. THEY TALK ABOUT JUROR RESENTMENT.
9 I DON'T KNOW WHERE THAT'S COMING FROM. I HAVE NEVER HAD
10 JUROR RESENTMENT IN CASES THAT I HEARD OF. THAT'S JUST AN
11 OPINION OF SOMEBODY, AND I HAVE A DIFFERENT OPINION.

12 CAPITAL CASES ARE NOT INEXPENSIVE. THE WHOLE
13 PROCESS AND THE WAY IT WAS SET UP BY THE GENERAL ASSEMBLY
14 NECESSARILY CAUSES EXPENSES. AND WE HAVE TO RETRY CASES
15 ENOUGH WITHOUT JUROR MATTERS, LEGAL MATTERS, BUT IF WE WANT
16 TO ROLL THE DICE AND THAT COMES UP, IT'S AN EXCELLENT
17 OPPORTUNITY RIGHT WITHIN ITSELF TO HAVE TO RETRY THE CASE
18 BECAUSE OF OUTSIDE INFLUENCE OR ACTIONS INVOLVING JURORS, AND
19 PEOPLE WILL CONTACT JURORS IN LEXINGTON COUNTY; I GUARANTEE
20 IT. NOT THESE DEFENSE ATTORNEYS BUT THERE'S A GROUP IN
21 COLUMBIA THAT HATE THE DEATH PENALTY AND THEY GO OUT AND TALK
22 WITH EVERY JURY PANEL AFTER A DEATH PENALTY CASE. THEY DO IT
23 RELIGIOUSLY, AND IT WILL HAPPEN IN THIS CASE. WHO TALKED
24 WITH YOU? WHO DID YOU TALK WITH? THEY'LL EVEN ASK THEM WHAT
25 THEY DID IN THE JURY ROOM.

1 MS. KIMBROUGH: YOUR HONOR, I WOULD NOTE THAT THERE
2 HAS NEVER BEEN A CASE IN THIS STATE WHERE ANY MEMBER OF THE
3 CAPITAL LITIGATION GROUP WAS FOUND GUILTY OF JURY MISCONDUCT
4 IN ANY CASE IN WHICH A JUROR WAS THEN SEATED. THE OPTION TO
5 SPEAK TO PEOPLE WHO HAVE AN INTEREST IN THE OUTCOME OF A
6 CAPITAL TRIAL IS A FIRST AMENDMENT RIGHT. FOLKS CAN EITHER
7 SAY, "SURE, I'LL TALK TO YOU ABOUT IT," OR THEY CAN SAY, "GO
8 AWAY." BUT THERE'S NO -- IT'S AFTER THE FACT. IT IS AFTER
9 THAT TRIAL IS OVER. THEY DON'T HAVE A RIGHT TO HARASS, BUT
10 THEY DO HAVE A RIGHT TO ASK QUESTIONS: WHAT WAS THE JURY
11 EXPERIENCE LIKE? WHY DID YOU GIVE HIM DEATH? WHY DID YOU
12 FIND HIM GUILTY? I MEAN, THESE ARE SORT OF INVESTIGATIVE
13 TOOLS THAT THOSE FOLKS USE TO FIGURE OUT WHAT MAKES A
14 DIFFERENCE IN THESE CAPITAL CASES.

15 AND I WOULD NOTE THAT JUROR -- EXCUSE ME. CAPITAL
16 CASES ARE EXPENSIVE, BUT WE ARE RETRYING CASES NOT BECAUSE OF
17 SEQUESTRATION OR OUTSIDE INFLUENCE ISSUES. CASES GET RETRIED
18 FOR A VARIETY OF OTHER REASONS, BUT THERE ARE VERY FEW THAT
19 WERE RETRIED BECAUSE OF OUTSIDE INFLUENCES. TYPICALLY THEY
20 GET RETRIED BECAUSE OF ERRORS AND OVERREACHING DURING THE
21 TRIAL. PEOPLE MAKE MISTAKES. PEOPLE DO THINGS THEY
22 SHOULDN'T DO, AND THOSE ERRORS LEAD TO CASES BEING RETRIED,
23 AND IT IS EXPENSIVE BUT SO IS SEQUESTRATION.

24 IT'S GOING TO COST \$23,000 JUST TO PROVIDE THESE
25 PEOPLE WITH A PLACE TO STAY WHEN THEY COULD BE ALLOWED TO GO

1 HOME, AND THERE'S FOOD AND THERE ARE OTHER COSTS. SO WHILE I
2 REALIZE THAT RETRYING CASES ARE VERY -- IS VERY EXPENSIVE AND
3 THERE'S NO QUESTION ABOUT THAT, SEQUESTRATION IS NOT SOMEHOW
4 THIS MAGIC BULLET TO KEEP US FROM HAVING TO RETRY CASES. IF
5 IT WAS, WE WOULDN'T HAVE 15 CASES READY TO BE RETRIED RIGHT
6 NOW.

7 MR. MYERS: THAT'S BECAUSE THE ETHIC COMMISSION
8 WON'T GO AFTER THESE PEOPLE. WE'VE HAD THREE S.L.E.D.
9 INVESTIGATIONS OF CONTACT WITH JURORS IN CAPITAL CASES IN
10 LEXINGTON COUNTY ALONE.

11 MS. KIMBROUGH: AND THOSE CONTACTS WERE POST-TRIAL.
12 IF THEY WEREN'T, THOSE LAWYERS WOULD BE IN JAIL FOR CONTEMPT
13 OR BEFORE THE GRIEVANCE COMMITTEE.

14 MR. MYERS: THEY WON'T PUT THEM IN JAIL.

15 MS. KIMBROUGH: BECAUSE IT IS A FLAT VIOLATION.

16 THE COURT: WELL, I -- I HAVE THOUGHT A LOT ABOUT
17 THIS AND I THINK IT'S A -- THE FACT THAT SEQUESTRATION IN
18 CAPITAL CASES IS KIND OF LIKE THE TRADITION IN SOUTH CAROLINA
19 MAKES IT -- MAKES IT SORT OF SCARY TO TRY SOMETHING ELSE. I
20 MEAN, WE -- AND LAWYERS ARE PARTICULARLY LIKE THIS. YOU
21 KNOW, WE DO SOMETHING ONE WAY AND IT DOESN'T GET REVERSED, SO
22 WE KEEP DOING IT BECAUSE WE FIND SAFETY THERE, BUT THAT DOES
23 NOT MEAN THAT IT'S NECESSARILY THE BEST THING TO DO. I
24 DON'T -- YOU KNOW, I'M THINKING -- I HAVE -- I'VE HAD A LOT
25 OF CONVERSATIONS WITH THE CLERK OF COURT ABOUT HOW WE WOULD

1 MANAGE THE JURY IF WE DID NOT SEQUESTER THEM.

2 I'VE THOUGHT VERY CAREFULLY ABOUT THE UNIQUE ASPECTS
3 OF THIS COURTHOUSE. I'VE THOUGHT VERY CAREFULLY ABOUT THE
4 UNIQUE ASPECTS OF RICHLAND COUNTY, AND I SEE THAT -- I SEE
5 POTENTIAL CONCERN GOING BOTH WAYS. SOME OF THE INCIDENTS
6 THAT HAVE BEEN CITED IN THE PREVIOUS ARGUMENT THAT WE HAD
7 ABOUT OUTSIDE INFLUENCE ON JURORS, THOSE INCIDENTS; IN MY
8 VIEW, OR AT LEAST SOME OF THEM, IF NOT MOST OF THEM, AROSE
9 BECAUSE THE JURY WAS BEING SEQUESTERED, BECAUSE THE JURY
10 GOING OUT TO DINNER OR BEING IN A PUBLIC PLACE IS A -- IS AN
11 OBVIOUS -- IT'S OBVIOUS WHO THEY ARE.

12 THIS COMMUNITY KNOWS WHAT'S GONE ON IN THE CASE AND
13 -- OR THAT THE CASE IS GOING ON, AND THEY SEE THESE PEOPLE
14 THERE AND THEY CAN TELL THAT'S THE JURY. THERE'S GOING TO BE
15 SOME OF THAT ALSO WHEN YOU'RE TALKING ABOUT JURORS THAT ARE
16 GOING TO THEIR HOMES. I MEAN, THERE ARE -- THE PEOPLE IN THE
17 NEIGHBORHOOD ARE GOING TO KNOW THAT THESE PEOPLE ARE SERVING
18 ON THIS PARTICULAR JURY, AND THEY'RE GOING TO BE SEEING IT ON
19 T.V. I MEAN, WE'VE HAD A LOT OF COVERAGE -- A LOT OF
20 REQUESTS FOR FOLKS TO COME IN WITH T.V. CAMERAS AND FOR
21 NEWSPRINT.

22 SO GOING BOTH WAYS, IT'S GOING TO BE DIFFICULT TO
23 AVOID THE -- SOMEONE WHO INTENTIONALLY WANTS TO MAKE A
24 CONTACT WITH A JUROR. THERE ARE PROS AND CONS. IF THEY'RE
25 SEQUESTERED, THEN THIS KIND OF SECRET INTENTIONAL CONDUCT OR

1 CONTACT IS NOT GOING TO HAPPEN. SOMEBODY WHO WANTS TO
2 CONTACT A JUROR AND TRY TO INFLUENCE THEIR DECISION CAN DO IT
3 QUIETLY AND PRIVATELY. I DON'T THINK THAT CAN HAPPEN IF THE
4 JURY IS SEQUESTERED, BUT ON THE OTHER HAND, SOMEBODY WHO
5 MAKES A COMMENT LIKE SOME OF THE ONES THAT WERE MENTIONED IN
6 SOME OF THE RESTAURANTS, THAT'S LESS LIKELY TO HAPPEN, IT
7 SEEMS TO ME, IF THE JURY IS NOT SEQUESTERED.

8 I DON'T REALLY FIND ANY BASIS TO CONCLUDE THAT THERE
9 IS -- THE LIKELIHOOD THAT THE JURORS WOULD DEVELOP BIAS
10 AGAINST ONE SIDE OR THE OTHER IF THE -- IF THE JURY IS
11 SEQUESTERED OVER FIVE OR SIX DAYS. I DON'T -- I MEAN, IT'S
12 GOING TO BE INCONVENIENT, BUT I DON'T -- I DON'T SEE THE JURY
13 GETTING MAD ABOUT IT AND, IF THEY DO, I DON'T SEE ANY BASIS
14 FOR CONCLUDING THAT THEY'RE GOING TO GET MAD ONE WAY OR THE
15 OTHER. THE BIAS THING MAKES LITTLE SENSE TO ME IN THE
16 CONTEXT OF A FIVE OR SIX-DAY TRIAL. IF IT WAS A FIVE OR SIX-
17 WEEK TRIAL, THAT WOULD BE ANOTHER THING, AND I THINK THAT'S
18 WHAT THE SUPREME COURT IS TALKING ABOUT WHEN THEY TALK ABOUT
19 BIAS IN THIS FOOTNOTE THAT YOU HAVE CITED.

20 IT'S A DIFFICULT DECISION AND I AM NOT -- I'M NOT
21 TRYING TO ROLL THE DICE AT ALL, BUT I BELIEVE THAT IN THE
22 CONTEXT OF THIS CASE AND THE WAY THAT WE CAN WORK THIS OUT
23 WITH THE -- WITH THE JURY COMING IN AND OUT HERE IN LEXINGTON
24 THAT I'M NOT GOING TO SEQUESTER THE JURY.

25 NOW, HERE ARE SOME OF THE -- HERE IS THE WAY THAT

1 WE'RE GOING TO WORK IT. THE JURY WILL JUST COME IN ON MONDAY
2 MORNING AND THEY'LL PARK WHEREVER THEY CAN, AND WE'LL HAVE 60
3 JURORS COMING IN HERE. ONCE THE JURY IS STRUCK, THEN AT SOME
4 POINT DURING THE DAY WE CAN TALK ABOUT WHEN THAT'S GOING TO
5 OCCUR. THE JURORS WILL MOVE THEIR CARS TO SECURED PARKING
6 UNDER THE BUILDING, AND THAT IS -- THERE ARE TWO -- WELL, THE
7 CLERK CALLS THEM CAGES DOWNSTAIRS, ONE WHERE THE JUDGES PARK,
8 WHERE I PARK, WHERE THE SOLICITOR PARKS, WHERE THE CLERK
9 PARKS. THERE'S ANOTHER ONE WHERE STAFF PARKS AND SOME OF THE
10 OTHER -- THERE'S SOME STAFF MEMBERS IN THE SOLICITOR'S
11 OFFICE. THERE'S SOME STAFF MEMBERS IN THE CLERK'S OFFICE AND
12 STAFF MEMBERS IN THE JUDGE'S OFFICE WHO PARK THERE.

13 THAT PARKING CAGE IS GOING TO BE CLEARED, AND THE
14 JURORS WILL BE ABLE TO COME DIRECTLY TO THAT PARKING CAGE.
15 THEY'LL DRIVE UP UNDER THE BUILDING AND GO STRAIGHT THERE.
16 AND THIS IS ONE OF THE REASONS THAT I THINK NOT SEQUESTERING
17 THE JURY IS GOING TO -- I FEEL IS GOING TO WORK WELL HERE IS
18 BECAUSE THIS WILL ELIMINATE THE POSSIBILITY THAT SOMEONE
19 MIGHT HAVE CONTACT WITH A JUROR ON THEIR WAY INTO THE
20 COURTHOUSE OR AS THEY ARE LEAVING. THE ONLY PLACE THAT
21 SOMEONE COULD HAVE CONTACT WITH A JUROR WOULD BE AT THEIR
22 HOME IF THEY COME STRAIGHT HERE OR GO STRAIGHT -- AND GO
23 STRAIGHT HOME.

24 I'M GOING TO BE VERY CLEAR WITH THE JURY THAT THEY
25 ARE UNDER A REQUIREMENT FROM ME THAT THEY HAVE NO CONTACT

1 WITH ANYBODY ABOUT THIS CASE OR DISCUSS THIS CASE WITH NO ONE
2 AND THAT IF THEY VIOLATE THAT RULE THEY CAN BE HELD IN
3 CONTEMPT. I'M GOING TO DISCUSS THIS CANDIDLY WITH THEM AND
4 MAKE SURE THEY UNDERSTAND THAT IF SOMEBODY ATTEMPTS TO
5 CONTACT THEM, IF SOMEBODY ATTEMPTS TO INFLUENCE THEM, ALL
6 THEY HAVE TO DO IS TELL ME ABOUT IT AND THEY'RE OKAY. IF
7 THEY DON'T TELL ME ABOUT IT, THEN -- AND I FIND OUT ABOUT IT,
8 THEN THEY'RE NOT OKAY.

9 I AM WILLING TO CONSIDER ANY OTHER MEASURES THAT YOU
10 ALL WANT ME TO TAKE OR WANT ME TO CONSIDER, AND I GUESS ONE
11 OF THE THINGS THAT DOES CONCERN ME IS HOW TO HANDLE THE
12 WAITING PERIOD AND... SO ANY THOUGHTS THAT YOU MAY HAVE
13 ABOUT THAT, THEN I'LL BE GLAD TO LISTEN TO THEM.

14 MR. HUBBARD: YOUR HONOR, I'VE GOT ONE QUESTION. I
15 KNOW I PARK DOWN IN THAT AREA BUT -- AND I'M PROBABLY THE
16 ONLY ONE AND THE OTHER DEPUTY SOLICITOR THAT WOULD BE
17 AFFECTED; THAT'S NOT A PROBLEM. BUT THAT'S HOW MY OFFICE
18 GETS IN WHEN WE GET HERE DURING THE EARLY MORNING HOURS
19 BECAUSE SOME OF US HAVE A KEY ANYWAY TO GET THROUGH THAT
20 DOOR. ALL OF US -- OUR CARS CAN OPEN UP THAT GATE. I KNOW
21 I'M GOING TO BE PARKING HERE---

22 THE COURT: WE CAN TAKE CARE OF THAT PROBLEM.
23 YOU'RE RAISING THE CONCERN OF HOW YOU'RE GOING TO GET IN THE
24 BUILDING IF YOU WANT TO GET HERE EARLY?

25 MR. HUBBARD: CORRECT, OR IF I NEED TO GET BACK IN

1 AT NIGHT.

2 THE COURT: WE'LL SOLVE THAT PROBLEM SOMEHOW. YOU
3 WILL BE ABLE TO GET INTO THE BUILDING ANY TIME YOU WANT TO.

4 MR. HUBBARD: OKAY.

5 THE COURT: IS THERE -- IS THERE SOME OTHER ISSUE
6 WITH THAT?

7 MR. HUBBARD: WELL, I KNOW IT'S NOT JUST FOR ME BUT
8 OTHER MEMBERS OF MY OFFICE... I MEAN, OBVIOUSLY OTHER PEOPLE
9 IN THIS OFFICE WILL WORK TO ASSIST AND SUPPORT US. SOME OF
10 THEM WILL BE DOING RESEARCH, BE COMING IN EARLY IN THE
11 MORNING. THEY MAY BE COMING BACK LATER AT NIGHT.

12 THE COURT: OKAY.

13 MR. HUBBARD: OBVIOUSLY---

14 THE COURT: MADAM CLERK, CAN YOU -- CAN YOU SOLVE
15 THAT PROBLEM?

16 THE CLERK: I'LL DO MY BEST.

17 THE COURT: WELL, I MEAN, AT A MINIMUM---

18 THE CLERK: WELL, JUST SO YOU -- MAYBE IT WOULD BE
19 BEST IF YOU COULD WALK DOWN THERE AND SEE WHAT THEY'RE
20 ACTUALLY TALKING ABOUT, BUT RIGHT HERE IS THAT ELEVATOR.
21 THERE'S A DOOR THAT GOES INTO THE GARAGE HERE. THERE'S A
22 GLASS DOOR THAT GOES OUT TO THE UNDERNEATH GARAGE AREA HERE.
23 WHEN THEY GO INTO THE GATE, THERE IS AN ACCESS DOOR HERE AND
24 THERE'S AN ACCESS DOOR HERE.

25 THE COURT: WE'RE NOT TALKING -- WE'RE TALKING...

1 THE CLERK: AND THESE ARE THE ELEVATORS THAT HIS
2 STAFF USES TO COME UPSTAIRS.

3 THE COURT: OKAY.

4 THE CLERK: SO THEY HAVE KEYS TO THIS DOOR AND THE
5 FRONT DOOR OR JUST THE SIDE DOOR?

6 MR. HUBBARD: JUST THE SIDE DOOR.

7 THE CLERK: WE WOULD HAVE TO GET THEM KEYS TO THE
8 FRONT DOOR IF YOU WANTED THE JURY IN HERE WHERE THEY COULD
9 ACCESS THE INSIDE, AND DAYTON AND ALL THE SOLICITORS WOULD
10 JUST USE THE FRONT GLASS DOOR TO COME IN.

11 MR. HUBBARD: THAT'S HOW OUR ENTIRE OFFICE COMES
12 THROUGH THAT BASEMENT AND THROUGH THAT GARAGE. I DON'T THINK
13 YOU'RE GOING TO WANT ANYBODY EXPOSED TO THE JURY. BASICALLY
14 IT'S -- AND I KNOW A LOT OF THE CLERK'S STAFF COMES IN
15 THROUGH THAT DOOR. ANYBODY THAT PARKS UNDER THAT GARAGE,
16 UNDER THAT -- UNDER THE DRIVE DOWN THERE, COMES IN THROUGH
17 THAT ELEVATOR. SO THAT'S THE BULK OF YOUR PERSONNEL IN THIS
18 COURTHOUSE. I KNOW MY -- MY COWORKERS COME IN THAT WAY.

19 THE COURT: WELL, WE'LL FIGURE THAT OUT AND MAYBE
20 THAT -- MAYBE THAT'S NOT THE RIGHT PLACE FOR THEM TO PARK,
21 BUT THAT IS A -- THAT SEEMS TO ME JUST IN TERMS OF WHERE THEY
22 PARK THE BEST PLACE BECAUSE IT ELIMINATES THE POSSIBILITY
23 THAT THEY HAVE ANY CONTACT WITH THE -- WITH THE PUBLIC OR
24 WITH PARTICIPANTS IN THE TRIAL WHEN THEY ARE AROUND THE
25 COURTHOUSE. SEE WHAT YOU CAN DO WORKING WITH THE SOLICITOR'S

1 OFFICE TO TRY TO GET -- TO MAKE SURE THAT THEIR ACCESS TO THE
2 BUILDING IS NOT RESTRICTED DURING THAT TIME. NOW -- SO YOU
3 WOULD NORMALLY -- SOMEBODY WHO DOESN'T PARK UNDER THERE BUT
4 WHO USES THAT ACCESS, HOW DO THEY ACCESS IT?

5 I'M NOT SAYING THAT -- I DON'T SEE ANY REASON TO SAY
6 THAT YOU CAN'T CONTINUE TO USE THAT SAME ACCESS. THERE WILL
7 BE BAILIFFS DOWN THERE THAT WILL INSURE THAT THE JURY WHEN
8 THEY ARRIVE -- EACH JUROR AS THEY ARRIVE CAN GO UP THE
9 ELEVATOR BY THEMSELVES TO THE ROOM THAT THEY'LL BE USING FOR
10 THE JURY ROOM.

11 MR. HUBBARD: I GUESS THE WAY IT WORKS IS MOST OF US
12 OR ALL OF US NOW CAN GET INTO GARAGE THAT OPENS. SO IF WE
13 NEED AFTER-HOURS, THAT'S OUR SOURCE OF SECURITY; WE PARK
14 BEHIND THAT GARAGE. WE HAVE, I THINK, FIVE KEYS THAT ALLOW
15 US TO GET INTO THAT DOOR TO GET TO THE GARAGE, AND THAT'S AN
16 ISSUE. WE HAND THOSE OUT AS -- YOU KNOW, SOME OF US GIVE UP
17 OUR KEYS SO SOMEONE ELSE CAN GET IN, BUT MOST, IF NOT ALL, OF
18 OUR STAFF IS UNDER THAT PARKING DECK AND THEY'RE ALL GOING TO
19 BE COMING IN IN THE MORNINGS, WHATEVER TIME THEY GET HERE,
20 WHETHER IT'S 8, 8:30, COMING IN AND THEN THEY'LL BE LEAVING,
21 MOST OF THEM, AROUND 5 THROUGH THAT SAME -- SAME ELEVATOR.

22 YOU KNOW, I THINK IT'S -- AND I DON'T WANT TO
23 DISRUPT ANYTHING, BUT THAT'S JUST KIND OF A FOCAL POINT FOR
24 ENTRANCE, EGRESS AND INGRESS, INTO THIS BUILDING FOR STAFF
25 AND PERSONNEL THAT WORKS HERE. AND WE CAN ALL SHIFT AND COME

1 IN SOMEWHERE ELSE, BUT I THINK WE'RE GOING TO NEED -- FOR
2 THOSE OF US WHO ARE GOING TO BE GETTING IN HERE EARLY, WE'RE
3 GOING TO NEED KEYS TO THE FRONT DOORS AND WE'RE GOING TO NEED
4 SOME TYPE OF ACCESS SO WE CAN GET IN HERE BEFORE HOURS OR
5 AFTER HOURS AND...

6 THE COURT: WELL, WE CAN GO DOWN THERE AND LOOK AT
7 IT, BUT I DON'T SEE ANY REASON WHY, OTHER THAN PARKING THERE
8 -- YOU CAN PARK THERE AT NIGHT AFTER THE JURY LEAVES. BUT
9 OTHER THAN PARKING THERE IN A WAY THAT WOULD INTERFERE WITH
10 THE JURY BEING THERE, I DON'T SEE ANY REASON WHY YOU CAN'T
11 CONTINUE TO USE THAT SAME ACCESS. AM I MISUNDERSTANDING
12 SOMETHING? I MEAN, THAT'S LIKELY, SO CORRECT ME IF I AM.

13 MR. HUBBARD: I'M JUST CONCERNED. I MEAN, I -- I
14 UNDERSTAND WHAT YOU'RE SAYING. I'M JUST CONCERNED ABOUT THE
15 MASS COMING IN THERE AND MY OFFICE -- PEOPLE BEING ABLE TO
16 GET IN AND OUT. I DON'T WANT ANYBODY IN MY OFFICE ACCUSED AT
17 SOME POINT OF BUMPING INTO A JUROR, AND I DON'T THINK THE
18 DEFENSE WOULD ACCUSE US---

19 THE COURT: I UNDERSTAND.

20 MR. HUBBARD: ---BUT I DON'T WANT EVEN THAT
21 APPEARANCE THAT IF SOMEBODY IN MY OFFICE THAT HAS NOTHING TO
22 DO WITH THIS CASE SEES SOMEBODY -- THEY DON'T KNOW WHO A
23 JUROR IS. I MEAN, SOME OF OUR SUPPORT STAFF, THEY'RE NOT
24 GOING TO BE IN THIS COURTROOM. THEY'RE NOT GOING TO KNOW ANY
25 OF THE FACES ON THIS JURY. I'M JUST CONCERNED ABOUT A NUMBER

1 OF THINGS BECAUSE THAT IS THE FOCAL POINT FOR WHERE EVERYBODY
2 COMES IN.

3 THE COURT: DO Y'ALL SEE ANY CONCERN WITH THAT?

4 MR. LITTLEJOHN: JUDGE, I DON'T SEE ANY CONCERN THAT
5 CAN'T BE WORKED OUT. I MEAN, WE'RE TALKING ABOUT ONE WEEK.

6 THE CLERK: I CAN LOOK AT IT. DO YOU WANT TO LOOK
7 AT IT?

8 THE COURT: HUH?

9 THE CLERK: DO YOU WANT TO GO LOOK AT IT?

10 THE COURT: YEAH, LET'S -- LET'S -- LET'S TAKE
11 ANOTHER FIELD TRIP DOWN THERE AND LOOK AT IT. I DON'T THINK
12 IT'S NECESSARY FOR EVERYBODY TO GO, BUT I WANT RICK TO GO AND
13 AT LEAST ONE OF Y'ALL TO GO AND I'LL GO AND THE CLERK GOES,
14 AND WE'LL SEE WHAT WE SEE.

15 POLICE OFFICER: YOUR HONOR, I'VE GOT A CONCERN. WE
16 BRING THE DEFENDANT IN THE SAME -- IN THE GARAGE RIGHT BESIDE
17 THAT. WE BRING HIM IN THERE EVERY MORNING, GETTING READY FOR
18 TRIAL.

19 THE COURT: YOU BRING HIM IN WHERE?

20 POLICE OFFICER: THE GARAGE RIGHT BESIDE THE GARAGE
21 YOU'RE SPEAKING OF, WE BRING HIM IN EVERY MORNING.

22 THE COURT: IS THAT THE ONE I PARK IN?

23 THE CLERK: NO, SIR. IT'S THE SALLY PORT. AT THIS
24 END AS YOU COME IN, IT'S RIGHT BESIDE THAT.

25 POLICE OFFICER: MY CONCERN IS THEM SEEING HIM IN

1 JAIL GARB AND THEM SEEING HIM LOCKED UP IN CUSTODY.

2 THE COURT: WHAT KIND OF VEHICLE DO YOU BRING HIM
3 IN?

4 POLICE OFFICER: IN A SQUAD CAR, MARKED VEHICLE.

5 THE CLERK: THEY BRING HIM IN AND OUT OF WHERE THE
6 JURY IS SUPPOSED TO BE, BUT THIS IS THE ONLY SECURED PARKING.
7 SO IF THIS DOESN'T WORK, WE HAVE TO FIND AN ALTERNATE PLACE
8 IF...

9 THE COURT: WELL, Y'ALL -- CAN Y'ALL JUST MAKE SURE
10 THAT HE'S -- THAT YOU BRING HIM HERE BEFORE 8?

11 POLICE OFFICER: YES, SIR.

12 THE COURT: AND THEN WE'LL JUST -- I DON'T SEE ANY
13 JUROR ARRIVING IN THAT TIME FRAME IF WE'RE STARTING COURT AT
14 9, SO... WE'LL JUST -- WE'LL HAVE -- WE'LL HAVE SOMEONE FROM
15 THE BAILIFFS' STAFF TO BE DOWN THERE TO MAKE SURE THAT THERE
16 ARE NO JURORS AROUND WHEN HE ARRIVES, AND IF Y'ALL GET INTO A
17 SITUATION WHERE YOU -- FOR WHATEVER REASON WHY YOU'RE NOT
18 HERE BEFORE 8 AND YOU'RE CONCERNED THAT JURORS WILL POSSIBLY
19 SEE HIM, THEN WE CAN JUST CLEAR THE AREA AND THEN YOU CAN
20 COME IN. IT WON'T HAVE TO -- IT WOULDN'T BE FOR VERY LONG.
21 OKAY?

22 POLICE OFFICER: YES, SIR.

23 THE COURT: ALL RIGHT. LET'S GO LOOK.

24 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

25 THE COURT: BE SEATED. ALL RIGHT. NOW, WE HAVE

1 GONE DOWNSTAIRS AND EVERYBODY HAS SEEN WHERE THE JURORS WILL
2 BE PARKING, AND WE HAVE TRIED TO ADDRESS THE CONCERNS THAT
3 WERE RAISED BY THE SOLICITOR'S OFFICE. MR. LITTLEJOHN, ARE
4 YOU SATISFIED WITH WHAT WE HAVE PROPOSED---

5 MR. LITTLEJOHN: YES, YOUR HONOR.

6 THE COURT: ---AS TO HOW THE JURORS WILL BE HANDLED
7 WHEN THEY COME IN AND WHEN THEY LEAVE?

8 MR. LITTLEJOHN: YES, YOUR HONOR.

9 THE COURT: TO USE THE JUDGES' ELEVATOR... THEY
10 WILL BE TAKEN FROM THAT ONE PARKING CAGE THROUGH THE UNDER-
11 GROUND PARKING AREA, WALKING INTO THE JUDGES' PARKING GARAGE
12 -- I MEAN, IT'S NOT THE JUDGES' PARKING, BUT THE CLERK AND
13 THE SOLICITOR AND THE JUDGES PARK THERE -- THROUGH THAT
14 ELEVATOR THAT COMES UP THE BACK AND INTO THIS BACK HALL.

15 MR. LITTLEJOHN: THAT'S FINE WITH US, YOUR HONOR.

16 THE COURT: ALL RIGHT. SOLICITOR'S STANDPOINT?

17 MR. HUBBARD: WE UNDERSTAND THE ARRANGEMENTS, YOUR
18 HONOR.

19 THE COURT: DO YOU SEE ANY -- OTHER THAN OBVIOUSLY
20 YOU WOULD RATHER HAVE THE JURY SEQUESTERED, IS THERE ANY
21 CONCERN THAT YOU KNOW OF THAT YOU WANT TO ADDRESS?

22 MR. HUBBARD: I SEE HOW YOUR HONOR IS ADDRESSING THE
23 MATTER TO LIMIT ACCESS SO THAT -- TO TAKE CARE OF THE JURY.
24 I THINK I UNDERSTAND THE ARRANGEMENT.

25 THE COURT: ALL RIGHT. I MEAN, I CAN TELL YOU THAT

1 ONE -- ONE OF THE CONCERNS THAT HAS BEEN RAISED BY THE
2 SOLICITOR'S OFFICE IS THAT AFTER THE TRIAL SOMEONE - AND I'M
3 NOT IDENTIFYING ANYBODY - BUT SOMEONE WHO IS NOT CONNECTED
4 WITH THIS CASE BUT WHO HAS AN INTEREST -- LET'S JUST ASSUME
5 FOR THE PURPOSE OF THIS -- OF TRYING TO SOLVE THIS PROBLEM
6 THAT MR. MERCER IS CONVICTED AND THAT THE JURY DECIDES TO
7 IMPOSE THE DEATH PENALTY.

8 SOMEONE WHO IS UNCONNECTED WITH THE CASE BUT WHO HAS
9 AN INTEREST IN OPPOSITION TO THE DEATH PENALTY MIGHT TRY TO
10 CONTACT JURORS TO CREATE SOME SORT OF AN ISSUE AS TO WHAT
11 WENT ON IN THE JURY ROOM TO TRY TO CREATE SOME QUESTION OF
12 JUROR -- IMPROPER BEHAVIOR ON THE PART OF JURORS. NOW, IF
13 THE JURY IS SEQUESTERED, WE KNOW, WE HOPE, THAT THAT -- WE
14 CAN -- THAT THAT QUESTION CAN BE ANSWERED BECAUSE THE JURORS
15 WERE BEING SEQUESTERED AND THE REPRESENTATIVES OF S.L.E.D.
16 CAN TESTIFY, "NO, NO SUCH IMPROPER CONDUCT OCCURRED," OR
17 WHATEVER.

18 IN NEITHER CASE CAN WE GET INTO THE JURY ROOM -- DO
19 WE KNOW WHAT GOES ON IN THE JURY ROOM. SO IF SOMEBODY
20 CREATES SOME ISSUE AS TO WHAT WENT ON IN THE JURY ROOM, THAT
21 -- THERE -- WE CAN'T ADDRESS THAT. BUT IN A CASE WHERE
22 THEY'RE NOT SEQUESTERED, IS THERE REASON WHY WHEN THEY COME
23 IN EVERY MORNING I ASK THEM, "HAS ANYBODY MADE CONTACT WITH
24 ANY OF YOU? HAVE YOU DISCUSSED THIS CASE WITH ANYONE?" AND
25 AT THE END OF THE TRIAL AFTER THE VERDICT HAS BEEN RETURNED,

1 TAKE THE JURORS AND QUESTION THEM ABOUT WHETHER OR NOT THERE
2 HAS BEEN ANY IMPROPER CONTACT WITH A JUROR TO CREATE A RECORD
3 THAT COULD BE USED TO RESPOND TO ANY SUCH ALLEGATION THAT
4 MIGHT BE RAISED LATER. IS THERE ANY PROBLEM WITH THAT?

5 MR. MYERS: I HAVE NO OBJECTION TO YOU ASKING THEM
6 EVERY MORNING ABOUT ANY CONTACT. AFTER THE VERDICT IS IN, I
7 WOULD HAVE AN OBJECTION.

8 THE COURT: AFTER THE VERDICT?

9 MR. MYERS: YES, SIR.

10 THE COURT: WELL, I MEAN, I -- TELL ME WHY THAT IS.

11 MR. MYERS: I THINK ONCE THEY REACH THE VERDICTS,
12 THEN THERE'S A FORM THAT YOU HAVE TO GIVE THEM AND YOU HAVE
13 TO ADVISE THEM THAT IF ANYBODY CONTACTS THEM AND EXPLAIN ALL
14 THAT TO THEM AND GIVE THEM TELEPHONE NUMBERS. I THINK THAT
15 WOULD SUFFICE.

16 THE COURT: WELL, OKAY. I MIGHT HAVE -- I MIGHT NOT
17 HAVE BEEN CLEAR. I WAS NOT MEANING TO SAY TO TELL THEM HOW
18 TO GOVERN THEIR CONDUCT AFTER THE TRIAL. I WAS JUST MEANING
19 TO CREATE A RECORD AS TO WHETHER OR NOT THERE HAD BEEN ANY
20 CONTACT DURING THE TRIAL.

21 MR. MYERS: I THINK IF YOU ASK THEM EVERY MORNING
22 AND PRIOR TO THE VERDICT, THAT WILL SUFFICE. I DON'T SEE ANY
23 REASON TO DO IT AFTERWARDS.

24 THE COURT: WELL, THAT'S PROBABLY TRUE. MR.
25 LITTLEJOHN?

1 MR. LITTLEJOHN: YOUR HONOR, WE HAVE NO -- WE
2 CERTAINLY HAVE NO PROBLEM WITH THE COURT MAKING INQUIRY EVERY
3 MORNING, AND WE HAVE NO PROBLEM WITH THE COURT MAKING INQUIRY
4 AFTER THE VERDICT COMES IN.

5 THE COURT: OKAY. ALL RIGHT. NOW, PERHAPS BEING
6 OVER-CAUTIOUS, DO YOU BELIEVE THAT IT IS NECESSARY TO GIVE
7 THE JURORS A SPECIFIC PROCEDURE TO FOLLOW IF SOMEONE DOES
8 ATTEMPT TO CONTACT THEM, SAY, WHEN THEY'RE AT HOME AT NIGHT
9 AND THEY ARE UNABLE TO STOP THAT CONTACT BY JUST SAYING -- I
10 MEAN, I WAS THINKING OF TELLING THEM, "LOOK, IF YOU -- IF
11 SOMEBODY TRIES TO CONTACT YOU..." I DON'T WANT TO CREATE TOO
12 BIG OF AN ISSUE HERE BUT -- AND I THINK THAT THE CHANCES THAT
13 SOMEBODY WOULD -- WOULD TRY TO CONTACT THEM AFTER THE JUROR
14 SAYS, "NO," ARE FAIRLY SLIM. DOES ANYBODY THINK THAT IT'S
15 NECESSARY TO ADDRESS WHAT THEY MIGHT DO IF SOMEONE TRIES TO
16 CONTACT THEM AND THE JUROR SAYS, "NO, I'M NOT GOING TO TALK
17 TO YOU ABOUT IT," AND YET THAT PERSON PERSISTS, SUCH AS
18 TELLING THEM TO CALL 9-1-1 OR ANYTHING LIKE THAT?

19 MR. MYERS: NO, SIR. I DON'T THINK THAT'S
20 NECESSARY.

21 MR. LITTLEJOHN: YOUR HONOR, I WOULD HOPE THE JURORS
22 WOULD, BY THE TIME WE GET INTO THIS, KNOW THAT THEY COULD
23 CONTACT THE CLERK OF COURT IF SOMETHING CAME UP LIKE THAT
24 AFTER HOURS OR REPORT IT TO THE COURT IF IT WAS DURING COURT
25 HOURS.

1 THE COURT: WELL, WHAT I WOULD OTHERWISE SAY WOULD
2 BE TO -- THAT THEY JUST REPORT IT TO ME FIRST THING THE NEXT
3 MORNING.

4 MR. LITTLEJOHN: YES, SIR.

5 THE COURT: IS THAT SUFFICIENT?

6 MR. MYERS: YES, SIR.

7 MR. LITTLEJOHN: YES, SIR.

8 THE COURT: ALL RIGHT. NOW -- OKAY. ANYTHING ELSE
9 WE NEED TO DEAL WITH TODAY? ALL RIGHT. WHY DON'T WE TELL
10 THE JURY TO -- I'M JUST GOING TO -- I MEAN, I'M ANTICIPATING
11 THAT THERE'S GOING TO BE SOME SET-UP AND CONVERSATION THAT IS
12 PROBABLY GOING TO OCCUR AMONG US ON MONDAY MORNING AND THAT
13 WE PROBABLY WOULD NOT BE READY TO ACTUALLY BEGIN STRIKING THE
14 JURY AT 9. SO SHOULD I TELL THEM 9:30? SHOULD I TELL THEM
15 10? WHAT DO Y'ALL THINK?

16 MR. MYERS: AT LEAST 9:30, BUT 10 WE HAVE NO
17 OBJECTION TO.

18 THE COURT: OKAY.

19 MR. LITTLEJOHN: THAT WOULD BE FINE.

20 THE COURT: YOU ALL WERE GOING TO LET US KNOW, THE
21 DEFENSE, WHETHER OR NOT YOU HAD ANY PRETRIAL EVIDENTIARY OR
22 CONSTITUTIONAL ISSUES. YOU HAVEN'T SAID ANYTHING, AND I'M
23 ASSUMING THAT YOU HAVE NONE.

24 MR. LITTLEJOHN: YOUR HONOR, WE MAY HAVE TWO ISSUES
25 CONCERNING VERY SHORT STATEMENTS ATTRIBUTED TO THE DEFENDANT

1 DURING THE COURSE OF -- TWO DIFFERENT SITUATIONS: ONE AT THE
2 JAIL AND ONE WHEN HE WAS ARRESTED.

3 THE COURT: WELL, I'M TRYING TO WORK OUT THE
4 SCHEDULING OF THE TRIAL, AND SO NOW I THINK IS THE TIME TO
5 TELL ME WHETHER OR NOT WE'RE GOING TO HAVE TO LITIGATE THAT
6 BEFORE WE BEGIN THE TRIAL.

7 MR. LITTLEJOHN: JUDGE, I THINK WE COULD -- QUITE
8 FRANKLY, I THINK WE COULD LITIGATE THOSE AS WE'RE IN THE
9 TRIAL PRIOR TO THE WITNESS TESTIFYING. I DON'T THINK THEY
10 WOULD BE VERY LONG ISSUES OR VERY COMPLICATED AT ALL.

11 THE COURT: ARE YOU GOING TO RAISE A QUESTION OF --
12 ALL RIGHT. THERE ARE TWO STATEMENTS.

13 MR. LITTLEJOHN: YES, YOUR HONOR.

14 THE COURT: AND THERE ARE FOUR THINGS THAT THE STATE
15 HAS TO PROVE IN ORDER TO GET THOSE STATEMENTS INTO EVIDENCE.
16 ONE: THEY HAVE TO PROVE HE MADE THE STATEMENT. HE WAS IN
17 CUSTODY, I ASSUME, BOTH TIMES. IS THAT CORRECT?

18 MR. LITTLEJOHN: ONE -- ONE -- ONE CIRCUMSTANCE
19 WOULD BE A QUESTION OF WHETHER HE WAS IN CUSTODY OR NOT.

20 THE COURT: AND I MAKE THAT DECISION.

21 MR. LITTLEJOHN: YES, SIR.

22 THE COURT: ALL RIGHT. NOW, SO, I MEAN, THIS IS --
23 IF YOU'RE GOING TO CHALLENGE IT -- ALL RIGHT. LET ME JUST
24 ASK A QUESTION. DO YOU -- DO YOU DENY THAT HE MADE THE
25 STATEMENTS?

1 MR. LITTLEJOHN: JUDGE, I DON'T KNOW THAT WE CAN
2 CONCEDE HE MADE THE STATEMENTS ATTRIBUTED TO HIM EXACTLY.

3 THE COURT: SIR?

4 MR. LITTLEJOHN: I DON'T KNOW THAT WE COULD CONCEDE
5 THAT HE MADE THE STATEMENTS THAT ARE ATTRIBUTED TO HIM.

6 THE COURT: OKAY. WELL, I MEAN, I CAN ALREADY TELL
7 WE'RE GOING TO HAVE TO DO A JACKSON V. DENNO HEARING IF Y'ALL
8 ARE GOING TO OFFER THE STATEMENTS INTO EVIDENCE.

9 MR. MYERS: MY PREFERENCE WOULD BE, LIKE YOU SAID
10 THE OTHER DAY, IS TO TAKE IT AS THE TRIAL GOES ALONG.

11 THE COURT: OKAY.

12 MR. MYERS: WHICH IS WHAT I THINK MR. LITTLEJOHN
13 SAID.

14 THE COURT: Y'ALL KEEP IN MIND THAT WHEN YOU GET
15 READY TO OFFER THE SUBSTANCE OF THOSE STATEMENTS---

16 MR. MYERS: RIGHT.

17 THE COURT: ---LET ME KNOW SO THAT WE CAN TAKE A
18 BREAK AND DO THIS OUTSIDE THE PRESENCE OF THE JURY.

19 MR. MYERS: GOOD.

20 MR. LITTLEJOHN: YOUR HONOR, I DON'T THINK IT WILL
21 TAKE LONG BECAUSE, LIKE I SAY, I DON'T THINK THE ISSUES ARE
22 REAL COMPLICATED.

23 THE COURT: ALL RIGHT. ANYTHING ELSE?

24 MR. MYERS: NO, SIR.

25 MR. LITTLEJOHN: NO, YOUR HONOR.

1 THE COURT: OH, ONE MORE THING. THE CLERK HAS
2 REMINDED ME I GUESS ABOUT SIX TIMES AND I KEEP FORGETTING.
3 SHE WAS CONTACTED YESTERDAY, AS I UNDERSTAND IT, BY A
4 REPRESENTATIVE OF "THE STATE" NEWSPAPER ASKING FOR A JURY
5 LIST SO THAT THEY COULD FOLLOW ALONG AS WE GO THROUGH THE
6 STRIKING OF THE JURY. IS THAT CORRECT?

7 THE CLERK: THAT'S CORRECT.

8 THE COURT: AND SO I WANT TO GET Y'ALL'S RESPONSE TO
9 THAT. I DON'T -- I DON'T KNOW WHAT PURPOSE THEY INTEND TO
10 MAKE OF IT. DO THEY WANT JUST THE NAMES? THEY DON'T WANT
11 THE ADDRESSES, DO THEY?

12 THE CLERK: THEY ASKED FOR A JURY STRIKE LIST.

13 THE COURT: A STRIKE LIST.

14 THE CLERK: THAT WAS THE EXACT WORDS THAT HE USED.
15 HE WANTED A COPY OF THE JURY STRIKE LIST.

16 MR. MYERS: I WOULDN'T GIVE THEM A BOTTLE TO BREATHE
17 OUT OF.

18 THE CLERK: I DON'T KNOW HOW THEY GOT MY CELL PHONE
19 NUMBER EITHER.

20 THE COURT: ALL RIGHT. WELL, I TELL YOU WHAT. WILL
21 YOU CALL HIM BACK AND TELL HIM THAT I WOULD LIKE -- THAT I AM
22 NOT SAYING NO BUT THAT I'M CONCERNED ABOUT THE PURPOSE FOR
23 WHICH THIS MIGHT BE USED? AND PERHAPS THEY COULD ADDRESS
24 THAT DIRECTLY WITH ME, AND YOU CAN---

25 MR. MYERS: I'M NOT SURE OF THE RULES; I DON'T READ

1 THEM A WHOLE LOT.

2 THE COURT: YEAH, THAT'S KIND OF WHAT I WAS GOING TO
3 GET TO BECAUSE I WAS---

4 MR. MYERS: THE THING ABOUT MEDIA STUFF, I KNOW THEY
5 CAN'T TAKE PHOTOGRAPHS OF THE JURORS, BUT THERE MAY BE
6 SOMETHING IN THERE OR INHERENT IN YOUR POWER ABOUT REVEALING
7 THE NAMES OF JURORS UNTIL AFTER THE TRIAL.

8 THE COURT: AND THIS MAY BE AN OPPORTUNITY FOR ME TO
9 GAIN CONTROL OVER HOW THE JURORS' NAMES ARE USED BECAUSE THEY
10 COULD SIT OUT THERE IN THE COURTROOM AND WRITE THE NAMES DOWN
11 AS THE CLERK CALLS THEM AND THEN... SO I WAS SORT OF HOPING
12 THAT -- AND I GUESS I'LL SUGGEST IT DIRECTLY THAT MAYBE
13 SOMEBODY LIKE JAY BENDER WILL CALL ME BECAUSE I HAVE GOTTEN
14 INTO A FIX BEFORE WHERE I SAID A CERTAIN THING AND JAY CALLED
15 ME AND SHOWED ME THAT I WAS BLATANTLY WRONG. AND SO, YOU
16 KNOW, HE MAY -- HE'LL KNOW WHAT THE RULES ARE OR WHOEVER
17 WANTS TO -- WHOEVER IS THEIR LAWYER WHO WANTS TO CALL CAN
18 CALL ME. SO WOULD YOU -- WOULD YOU -- I'LL BE SPECIFIC WITH
19 YOU ABOUT WHAT TO TELL HIM.

20 THE CLERK: OKAY.

21 THE COURT: AND THEN I WILL -- WHO IS GOING TO PUT
22 THE MESSAGE ON ON SUNDAY?

23 THE CLERK: HOPE WILL.

24 SECOND CLERK: I'M GOING TO PUT IT ON.

25 THE CLERK: SHE'S GOING TO PUT IT ON TODAY.

1 THE COURT: OKAY.

2 SECOND CLERK: TELL ME EXACTLY WHAT YOU WANT ON IT.

3 THE COURT: WE'RE GOING TO BREAK NOW. I'M GOING TO
4 GIVE THE CLERK A SPECIFIC MESSAGE TO GIVE TO THE NEWSPAPER IN
5 RESPONSE TO THEIR INQUIRY, AND I'M GOING TO GIVE HOPE A
6 SPECIFIC MESSAGE TO PUT ON THE RECORDER ON SUNDAY NIGHT.
7 Y'ALL ARE WELCOME TO SEE WHAT THOSE ARE BUT...

8 MR. MYERS: THE STATE DOESN'T KNOW WHAT THEY ARE.
9 WE DON'T CARE ABOUT IT. WE DON'T NEED TO SEE WHAT THEY ARE.

10 THE COURT: OKAY. ALL RIGHT. THEN I'LL SEE Y'ALL
11 MONDAY. IF ANYTHING COMES UP, DO NOT HESITATE TO CALL ME.

12 MR. LITTLEJOHN: JUDGE, YOU WANT US HERE AT 9 AND
13 THE JURY AT 10? IS THAT -- DID I UNDERSTAND THE SCHEDULE?

14 THE COURT: LET'S JUST -- LET'S JUST GO AHEAD WITH
15 THE JURY AT 10.

16 MR. LITTLEJOHN: WE'LL JUST SHOW UP AT 10?

17 THE COURT: NO, Y'ALL BE HERE AT 9.

18 MR. LITTLEJOHN: ALL RIGHT, SIR.

19 BAILIFF: YOUR HONOR, JUST A REMINDER, WE TOLD THOSE
20 THREE JURORS LEFT OVER LAST NIGHT TO BE HERE AT 9:00.

21 THE COURT: OKAY. THAT'S NO PROBLEM.

22 (WHEREUPON, THE TRIAL CONCLUDED FOR THE DAY AT 10:57
23 A.M. THE TRIAL RESUMED MONDAY, APRIL 17, 2006, AS FOLLOWS:)

24 THE COURT: GOOD MORNING. BE SEATED, PLEASE. GOOD
25 MORNING, EVERYBODY. I KNOW WE HAVE TO DEAL WITH THE --

1 FINALIZING THE COMPETENCY ISSUE. IS THERE ANYTHING ELSE THAT
2 EITHER OF YOU KNOW THAT WE NEED TO DEAL WITH BEFORE WE --
3 BEFORE THE JURY COMES IN?

4 MR. LITTLEJOHN: JUDGE, WE WOULD MOVE TO -- UNDER
5 RULE 615 TO ASK THE COURT TO SEQUESTER THE WITNESSES---

6 THE COURT: ALL RIGHT.

7 MR. LITTLEJOHN: ---IN THIS CASE.

8 THE COURT: I'LL HEAR FROM YOU.

9 MR. LITTLEJOHN: YOUR HONOR---

10 THE COURT: JUST SO WE ALL ARE OPERATING OFF THE
11 SAME PAGE HERE, YOU'RE GOING TO HAVE TO ARTICULATE TO ME A --
12 A BASIS FOR MY SEQUESTERING THE WITNESSES THAT IS SPECIFIC IN
13 NATURE TO THIS CASE AND THE FACTS OF THIS CASE. SO GO AHEAD.

14 MR. LITTLEJOHN: YOUR HONOR, THERE ARE A NUMBER OF
15 WITNESSES THAT I ANTICIPATE WILL BE CALLED BY THE STATE AS TO
16 WHAT HAPPENED ON THE EVENING OF MAY 16TH. THE DETAILS IN
17 THAT PARTICULAR SCENARIO OF THE CASE WE THINK ARE VERY
18 IMPORTANT. ANY LISTENING TO OTHERS' TESTIMONY BY THOSE
19 WITNESSES COULD AFFECT THE WITNESSES THAT ARE ABOUT TO
20 TESTIFY. YOUR HONOR, ALSO THERE ARE NUMEROUS ITEMS OF
21 EVIDENCE. THERE'S A CHAIN OF CUSTODY THAT HAS TO BE
22 FOLLOWED, AND WE THINK THAT THE WITNESSES LISTENING TO EACH
23 OTHER -- THEY COULD PATTERN THEIR TESTIMONY. THERE ARE JUST
24 A NUMBER OF THINGS. WE THINK THIS CASE IS SO IMPORTANT THAT
25 THE WITNESSES SHOULD BE SEQUESTERED.

1 NOW, YOUR HONOR, I REALIZE THAT THERE COULD BE TWO
2 PHASES TO THIS CASE, AND I REALIZE THERE ARE VICTIMS INVOLVED
3 AND I REALIZE THERE ARE FAMILY MEMBERS INVOLVED OF THE
4 DEFENDANT, AND I WOULD LIMIT MY MOTION TO SEQUESTRATION AS TO
5 THE FIRST PHASE OF THE CASE INsofar AS THOSE WITNESSES THAT
6 ARE GOING TO TESTIFY IN THE FIRST PHASE OF THE CASE AND NOT
7 THE VICTIMS OR DEFENDANT FAMILY THAT ARE GOING TO TESTIFY IN
8 THE SECOND PHASE OF THE CASE.

9 THE COURT: WELL, RESPECTFULLY, I THINK EVERYTHING
10 YOU SAID IS TRUE IN EVERY CASE THAT WE EVER TRY, AND THERE
11 ARE FACT WITNESSES WHO CAN LISTEN TO EACH OTHER AND CONFORM
12 THEIR TESTIMONY TO EACH OTHER, AND THAT, I BELIEVE, IS AN
13 INSUFFICIENT BASIS TO SEQUESTER THE WITNESSES. SO IF THERE'S
14 SOMETHING SPECIFIC ABOUT THIS CASE THAT -- THAT -- THAT
15 CREATES A MORE-THAN-ORDINARY DANGER THAT WITNESSES' TESTIMONY
16 MIGHT BE DEPENDENT ON EACH OTHER OR WHATEVER, THEN I'LL BE
17 HAPPY TO HEAR THAT.

18 MR. LITTLEJOHN: YOUR HONOR, IF YOU COULD INDULGE ME
19 FOR JUST A MOMENT.

20 MR. HUBBARD: YOUR HONOR, I MIGHT BE ABLE TO SHORTEN
21 THINGS UP. WE'RE NOT GOING TO OPPOSE IT. WE'VE TALKED IT
22 OVER. I DON'T THINK IT'S GOING TO BE A PROBLEM FOR US.
23 WE'VE BEEN TRYING TO MAKE ARRANGEMENTS TO SET OUR PEOPLE UP
24 ACROSS THE HALL. WE JUST DON'T WANT TO DELAY THE PROCESS AS
25 WE'RE GOING. WE WANT TO BE ABLE TO GET A WITNESS IN AND A

1 WITNESS OUT.

2 THE COURT: WELL, IT'S NOT AS SIMPLE AS YOUR
3 CONSENTING TO IT BECAUSE -- I MEAN, THAT WORKS FINE IF YOU
4 WANT TO DO THAT BUT THEN -- BUT FOR ME TO COME IN AND ORDER
5 IT IS DIFFERENT SO...

6 MR. HUBBARD: YES, SIR.

7 THE COURT: IF YOU'RE GOING TO CONSENT TO IT AND
8 Y'ALL ARE GOING TO -- Y'ALL ARE GOING TO AGREE TO SEQUESTER
9 THE WITNESSES, THAT WILL BE FINE AND Y'ALL WILL JUST HAVE TO
10 MONITOR WHETHER OR NOT THE WITNESSES ARE, IN FACT, KEPT OUT
11 OF THE COURTROOM.

12 MR. HUBBARD: YES, SIR. THE ONLY THING THAT I WOULD
13 ADD IN OUR CONSENT WOULD BE THAT IT APPLIES ON BOTH SIDES.

14 MR. LITTLEJOHN: CERTAINLY.

15 MR. HUBBARD: THAT ANY WITNESSES OBVIOUSLY
16 UNDERSTAND HIS FAMILY MEMBERS CAN STAY IN THE COURTROOM BUT
17 THAT ANY WITNESSES THEY MIGHT WANT TO CALL---

18 THE COURT: ALL RIGHT. WELL, I WANT Y'ALL -- I JUST
19 WANT -- Y'ALL CAN USE -- HOW DO YOU ANTICIPATE GETTING THEM
20 IN AND OUT?

21 MR. HUBBARD: YOUR HONOR, THAT'S THE THING.
22 PROBABLY THROUGH THIS SIDE DOOR RIGHT HERE. WE'RE HAVING TO
23 FIX IT. I DON'T KNOW IF IT'S BEEN UNLOCKED OR IF WE FIXED IT
24 SO WE CAN GET IN AND OUT.

25 THE COURT: DOES THAT SUIT YOU?

1 MR. LITTLEJOHN: YES, YOUR HONOR.

2 THE COURT: ALL RIGHT. WELL, Y'ALL JUST -- BOTH
3 SIDES NOW, WHEN YOU GET READY TO BE CALLING WITNESSES, MAKE
4 SURE THAT THAT DOESN'T BECOME A DELAY.

5 MR. HUBBARD: YES, SIR.

6 THE COURT: AND THE NEXT WITNESS IS READY TO GO AND
7 WE WON'T HAVE TO WAIT TWO OR THREE MINUTES FOR EACH WITNESS
8 TO GET HERE.

9 MR. HUBBARD: YES, SIR, YOUR HONOR.

10 THE COURT: ALL RIGHT?

11 MR. LITTLEJOHN: THANK YOU.

12 THE COURT: BUT, NOW, I'M JUST GOING TO LET Y'ALL
13 AGREE TO THAT AND I'M NOT GOING TO ORDER IT. I'M JUST SAYING
14 Y'ALL KIND OF KEEP TRACK OF IT. IF Y'ALL WANT ME -- IF YOU
15 WANT ME TO ORDER IT, THEN YOU GIVE ME THE EVIDENTIARY BASIS
16 FOR IT, THE FACTUAL BASIS FOR IT, AND I'LL CONSIDER IT.

17 MR. LITTLEJOHN: YOUR HONOR, IF WE RUN INTO A
18 PARTICULAR PROBLEM, MAYBE I'LL COME BACK TO THE COURT AND ASK
19 FOR AN ORDER.

20 THE COURT: OKAY.

21 MR. LITTLEJOHN: YOUR HONOR, ONE MINOR THING THAT I
22 NOTICED DURING JURY SELECTION THAT -- YOUR HONOR, FROM THIS
23 POSITION IT'S VERY DIFFICULT FOR US TO SEE THE WITNESS
24 TESTIFY. IF I COULD ASK THE COURT FOR SOME HELP IN GETTING
25 MAYBE THE WITNESS TO GET OVER ON THAT SIDE OF THE BOX SO WE

1 CAN SEE AT THE ANGLE. I'M HAVING DIFFICULTY SITTING ON THIS
2 CORNER. I KNOW MS. KIMBROUGH IS.

3 THE COURT: LET ME WALK OVER THERE AND SEE WHAT THAT
4 LOOKS LIKE. I NOTICED THAT IT LOOKED LIKE Y'ALL MIGHT BE
5 HAVING TROUBLE THE OTHER DAY.

6 (JUDGE FEW SITS IN THE WITNESS BOX.)

7 THE COURT: OKAY. I'M KIND OF IN THE MIDDLE, BUT
8 I'M SITTING UP KIND OF TALL AND SOME OF THE WITNESSES WON'T
9 BE QUITE THIS TALL.

10 MR. LITTLEJOHN: JUDGE, THAT WAS KIND OF THE
11 PROBLEM. SOME OF THEM -- SOME OF THEM WILL NOT BE AS TALL AS
12 THE COURT.

13 THE COURT: ALL RIGHT. WELL, I'LL -- I'LL KEEP THAT
14 IN MIND. IF I FORGET, THEN JUST, YOU KNOW, EITHER -- EITHER
15 APPROACH THE BENCH OR -- YOU DON'T HAVE TO SAY IT OUT LOUD.
16 I'LL TAKE CARE OF IT FOR YOU.

17 MR. LITTLEJOHN: ALL RIGHT.

18 THE COURT: BUT MAYBE IF YOU JUST MAKE A MOVE LIKE
19 YOU CAN'T SEE, THAT WILL REMIND ME TO---

20 MR. LITTLEJOHN: ALL RIGHT. THANK YOU.

21 MR. HUBBARD: YOUR HONOR, WE WERE GOING TO TRY TO
22 PUT THE PROJECTOR DOWN A LITTLE BIT SO THAT DOESN'T OBSTRUCT.

23 THE COURT: OKAY. AND ALSO I WANT TO MAKE SURE THAT
24 MR. MERCER CAN SEE.

25 MR. LITTLEJOHN: YES, SIR. THAT WAS THE MOST

1 IMPORTANT BECAUSE HE'S---

2 THE COURT: Y'ALL KEEP ME POSTED IF THAT BECOMES A
3 PROBLEM. OKAY. ANYTHING ELSE BEFORE WE DO THE BLAIR
4 HEARING?

5 MR. LITTLEJOHN: NOTHING FROM THE DEFENSE AT THIS
6 TIME, YOUR HONOR.

7 THE COURT: WE -- WE NEED TO -- THERE ARE AT LEAST A
8 FEW QUESTIONS THAT I'M GOING TO ASK THE JURY PANEL AS A WHOLE
9 THIS MORNING THAT ARE IN THE WAY OF THE NORMAL VOIR DIRE
10 THAT... SO THOSE ARE -- I'M GOING TO ASK THEM WHETHER OR NOT
11 THEY HAVE SEEN ANY PRESS COVERAGE ABOUT THE CASE AND WHETHER
12 OR NOT THEY HAVE DISCUSSED THE CASE. I'M GOING TO ASK THEM
13 THE FOUR BASIC QUESTIONS THAT ARE SET FORTH, I THINK, IN THE
14 STATUTE: DO THEY HAVE ANY INTEREST IN THE OUTCOME OF THE
15 CASE? HAVE THEY FORMED OR EXPRESSED AN OPINION? ANY BIAS OR
16 PREJUDICE? AND ANY REASON WHY THEY COULD NOT GIVE THE STATE
17 AND THE DEFENDANT A FAIR AND IMPARTIAL TRIAL? IF THERE'S
18 ANYTHING ELSE THAT Y'ALL WANT ME TO CONSIDER ASKING AT THIS
19 TIME, I MEAN THIS MORNING, LET ME KNOW.

20 MR. HUBBARD: NO, SIR, YOUR HONOR.

21 MR. LITTLEJOHN: (SHOOK HEAD IN THE NEGATIVE.)

22 THE COURT: ALL RIGHT. IT'S MY INTENTION WHEN I
23 SPEAK TO THE JURY BEFORE -- AFTER WE HAVE STRUCK THE JURY AND
24 THEY HAVE BEEN IMPANELED AND BEEN SWORN TO GIVE THEM A FAIRLY
25 CLEAR INSTRUCTION ABOUT THE RULE THAT THEY NOT SPEAK ABOUT

1 THE CASE WITH ANYONE AND THAT THEY NOT SEE ANY PRESS COVERAGE
2 ABOUT THE CASE AND TO MAKE SURE THEY UNDERSTAND THE
3 CONSEQUENCES OF VIOLATING THOSE INSTRUCTIONS. SO I JUST WANT
4 TO LET Y'ALL KNOW THAT.

5 I HAVE ONE LETTER -- I SUPPOSE WE'RE GOING TO BE
6 GETTING SOME MORE OF THIS THIS MORNING, BUT I HAVE ONE LETTER
7 FROM A JUROR, ACTUALLY FROM HER EMPLOYER. IT'S DARLENE
8 STAGGS, NUMBER 298. I THINK YOU BOTH HAVE SEEN THIS LETTER?

9 MR. HUBBARD: YES, SIR.

10 MS. KIMBROUGH: (NODDED HEAD UP AND DOWN.)

11 THE COURT: I'M NOT -- THERE'S NOTHING I'M GOING TO
12 DO ABOUT THIS UNLESS Y'ALL ASK ME TO, BUT I'M GOING TO --
13 WHEN SHE COMES IN HERE, WHEN WE GET IN HERE, I'LL PROBABLY
14 ASK HER TO STEP DOWN FRONT AND EXPLAIN TO HER THAT I
15 APPRECIATE THE LETTER BUT THAT THERE'S NOTHING I CAN DO ABOUT
16 IT AND THEN MOVE ON. ANY PROBLEM?

17 MR. LITTLEJOHN: NO, YOUR HONOR.

18 MR. HUBBARD: NO, SIR, YOUR HONOR.

19 THE COURT: OKAY. NOW, IT'S MY UNDERSTANDING THAT
20 YOU ALL HAVE STIPULATED TO ADMIT INTO EVIDENCE THE REPORTS
21 FROM THE DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS OR THAT
22 REPORT REGARDING THE COMPETENCE OF THE DEFENDANT AND -- IS
23 THAT TRUE?

24 MR. LITTLEJOHN: THAT'S CORRECT, YOUR HONOR.

25 THE COURT: IS THERE ANY OTHER REPORT THAT'S TO BE

1 ADMITTED INTO EVIDENCE IN THIS HEARING, IN THE BLAIR HEARING?

2 MR. GRAHAM: I DON'T BELIEVE SO. WE HAVE THE
3 DEPARTMENT OF MENTAL HEALTH REPORT, BUT IT DOESN'T RELATE
4 SPECIFICALLY TO THE COMPETENCY, THOUGH I THINK HE DOES
5 MENTION IT IN THERE. SO WE PROBABLY WILL GO AHEAD AND ADMIT
6 THAT ONE, TOO.

7 THE COURT: SUITABLE?

8 MR. LITTLEJOHN: YOUR HONOR, WE STIPULATE TO THE
9 DOCUMENT COMING IN.

10 THE COURT: ALL RIGHT. BOTH -- BOTH THE DEPARTMENT
11 OF DISABILITIES AND SPECIAL NEEDS REPORT AND THE DEPARTMENT
12 OF MENTAL HEALTH REPORT.

13 MR. LITTLEJOHN: YES, YOUR HONOR.

14 THE COURT: ALL RIGHT.

15 MR. LITTLEJOHN: WE HAVE NO PROBLEM WITH IT BEING
16 AUTHENTICATED AND PRESENTED TO -- PRESENTED WITHOUT
17 AUTHENTICATION.

18 THE COURT: MARK THEM AND THEY'RE ADMITTED INTO
19 EVIDENCE FOR PURPOSES OF THE -- OF MY DETERMINING THE
20 DEFENDANT'S COMPETENCY TO STAND TRIAL. DOES EITHER SIDE HAVE
21 ANYTHING THAT THEY WISH TO OFFER IN ADDITION TO THOSE REPORTS
22 THAT WOULD RELATE TO THE DEFENDANT'S COMPETENCY TO STAND
23 TRIAL?

24 MR. HUBBARD: NOTHING ELSE FROM THE STATE, YOUR
25 HONOR.

1 MS. KIMBROUGH: NONE, YOUR HONOR.

2 THE COURT: WELL, JUST LET ME ASK YOU THIS SO THE
3 RECORD IS CLEAR. OVER THE COURSE OF THE LAST SEVERAL WEEKS
4 OR I GUESS SEVERAL MONTHS SINCE THIS REPORT WAS FINALIZED AND
5 CERTAINLY OVER THE COURSE OF LAST WEEK AND PARTICULARLY THIS
6 MORNING, DO YOU HAVE ANY REASON TO SUSPECT THAT YOUR CLIENT
7 IS NOT COMPETENT TO STAND TRIAL?

8 MS. KIMBROUGH: NO, YOUR HONOR, WE DON'T.

9 THE COURT: AND THAT IS TRUE FOR YOU ALSO, MR.
10 LITTLEJOHN?

11 MR. LITTLEJOHN: YES, YOUR HONOR.

12 THE COURT: ALL RIGHT. ANYTHING FURTHER ON THE
13 ISSUE OF COMPETENCE? ALL RIGHT. HE'S COMPETENT. ARE YOU
14 GOING TO OFFER THOSE?

15 MR. GRAHAM: YOUR HONOR, WE'VE GOT THE -- THE
16 D.D.S.N. REPORT IS A CERTIFIED COPY FROM THE CLERK'S OFFICE.
17 THE D.M.H. REPORT -- I DON'T BELIEVE THAT AN ORIGINAL SIGNED
18 COPY EVER MADE IT TO THE CLERK'S OFFICE, AND I WAS LOOKING AT
19 THE COPY THAT I HAVE AND IT'S GOT HANDWRITING ON THERE THAT I
20 DON'T BELIEVE WAS PUT ON THERE BY DR. FRIERSON. SO I WOULD
21 LIKE TO GO LOOK AND SEE IF WE CAN FIND A CLEANER COPY.

22 THE COURT: OKAY. WELL, MARK THE D.D.S.N. REPORT AS
23 A -- AS A COURT'S EXHIBIT AND WE'LL PUT ON THE RECORD WHAT
24 THE EXHIBIT NUMBER IS AND THEN IT'S IN.

25 COURT REPORTER: JUDGE, THIS WILL BE THE FIRST

1 COURT'S EXHIBIT.

2 (COURT'S EXHIBIT 1 WAS MARKED FOR IDENTIFICATION.)

3 THE COURT: OKAY. IS THERE ANYTHING FURTHER THAT WE
4 NEED TO TAKE UP BEFORE WE OPEN THE COURTROOM FOR THE JURY
5 PANEL?

6 MR. LITTLEJOHN: NOTHING FROM THE DEFENSE, YOUR
7 HONOR.

8 THE COURT: ALL RIGHT. SO WE'RE GOING TO -- WE'RE
9 DONE NOW. WE'RE GOING TO ALLOW THE JURORS TO COME. WE WILL
10 HOPEFULLY BE BACK AT 10:00. WE'LL GO RIGHT INTO THIS LIMITED
11 VOIR DIRE. WE THEN STRIKE THE JURY. WE'LL TAKE A BREAK
12 AFTER THAT, AND WE'LL COME BACK AFTER A SHORT BREAK TO BEGIN
13 OPENING STATEMENTS. WHAT I HAD PLANNED ON DOING WAS MAYBE
14 LET KIND OF EVERYTHING SETTLE DOWN. LET A LOT OF OTHER FOLKS
15 WHO WERE HERE, THE OTHER MEMBERS OF THE JURY PANEL, GO AHEAD
16 AND LEAVE IF THEY'RE GOING TO LEAVE. MAYBE TAKE SOME
17 TESTIMONY AND THEN MAYBE -- MAYBE RIGHT AFTER LUNCH,
18 DEPENDING ON WHEN THE BREAKS FALL, THEN LET THE JURORS DRIVE
19 THEIR CARS UP UNDER THE COURTHOUSE AS WE -- AS WE DISCUSSED.
20 IS THAT OKAY WITH EVERYBODY?

21 MR. LITTLEJOHN: YES, YOUR HONOR.

22 MR. HUBBARD: YES, SIR.

23 THE COURT: ALL RIGHT.

24 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

25 THE COURT: GOOD MORNING. BE SEATED, PLEASE. MADAM

1 CLERK?

2 (AN OFF-THE-RECORD DISCUSSION TAKES PLACE BETWEEN
3 THE COURT AND THE CLERK OF COURT.)

4 THE COURT: LADIES AND GENTLEMEN OF THE JURY, GOOD
5 MORNING. NICE TO SEE Y'ALL BACK HERE. WE HAVE SEVERAL
6 THINGS THAT WE HAVE TO DO THIS MORNING TO GET STARTED. SO
7 EACH OF YOU JUST SETTLE IN AND RELAX AND WE WILL -- WE'LL GET
8 THROUGH IT.

9 THE FIRST THING THAT WE'RE GOING TO DO IS TO CALL
10 THE ROLL TO MAKE SURE THAT ALL OF YOU WHO WERE QUALIFIED TO
11 SERVE ARE, IN FACT, HERE, AND AFTER THAT I HAVE A FEW MORE
12 QUESTIONS THAT I HAVE TO ASK YOU AND SOME THINGS THAT I HAVE
13 TO TALK TO YOU ABOUT, AND THEN WE'LL ACTUALLY MOVE INTO
14 STRIKING THE JURY.

15 (WHEREUPON, THE CLERK OF COURT CALLED THE ROLL OF
16 THE QUALIFIED JURORS, AND ALL JURORS WERE PRESENT.)

17 THE COURT: NOW, LADIES AND GENTLEMEN, I HAVE SOME
18 QUESTIONS THAT I'M GOING TO BE ASKING YOU THIS MORNING. SOME
19 OF THEM ARE GOING TO OVERLAP A LITTLE BIT WITH SOME OF THE
20 QUESTIONS THAT I ASKED YOU LAST WEEK BUT NOT TOO MUCH. I
21 FIRST WANT TO REMIND YOU THAT WHEN YOU WERE HERE LAST MONDAY
22 YOU WERE PUT UNDER OATH AND TO REMIND YOU ALSO THAT YOU ARE
23 STILL UNDER OATH FOR TODAY.

24 NOW, THE FIRST THING IS I WANT TO KNOW: IS THERE
25 ANY MEMBER OF THE JURY PANEL WHO SINCE YOU WERE HERE LAST

1 WEEK HAS TALKED TO ANYONE ABOUT THIS CASE OR HAS ANYONE
2 TALKED TO YOU ABOUT THIS CASE? AND I ALSO WANT TO KNOW
3 WHETHER OR NOT ANY MEMBER OF THE JURY PANEL HAS BEEN EXPOSED
4 IN ANY WAY TO ANY MEDIA COVERAGE ABOUT THIS CASE? NOW,
5 BEFORE I GET YOUR ANSWER, LET ME JUST SAY A FEW THINGS
6 ABOUT -- ABOUT THIS TO KIND OF PUT YOU AT EASE BECAUSE I
7 DON'T WANT ANY OF YOU TO FEEL AS THOUGH YOU MIGHT BE IN
8 TROUBLE IF YOU'RE GOING TO ANSWER THIS QUESTION. YOU'RE
9 CERTAINLY NOT, BUT IT IS VERY IMPORTANT THAT YOU DO TELL ME
10 IF YOU HAVE SPOKEN WITH ANYONE ABOUT THIS CASE OR IF ANYONE
11 HAS SPOKEN TO YOU ABOUT THE CASE OR IF YOU HAVE SEEN OR HEARD
12 OR READ ANY MEDIA COVERAGE ABOUT THE CASE. ALL YOU HAVE TO
13 DO IS JUST TELL ME ABOUT IT, AND EVERYTHING WILL BE FINE.

14 THE PROBLEMS ARISE WHEN FOLKS DON'T TELL ME ABOUT
15 IT. SO IF THERE'S ANY MEMBER OF THE JURY PANEL WHO HAS
16 TALKED ABOUT THIS CASE WITH ANYONE OR WHO HAS HAD ANYONE TALK
17 TO YOU ABOUT THE CASE OR IF YOU HAVE READ OR SEEN OR HEARD
18 ANY MEDIA COVERAGE ABOUT THE CASE SINCE YOU WERE HERE LAST
19 WEEK, THEN PLEASE STAND AND I'LL GET YOU TO COME DOWN FRONT
20 AND YOU CAN SPEAK TO ME AND THE LAWYERS PRIVATELY. PLEASE
21 STAND AT THIS TIME. ALL RIGHT. MA'AM, COME ON RIGHT UP HERE
22 TO THE -- TO THE FRONT RAIL.

23 NOW, AS I'M TALKING TO THIS LADY, IF THERE'S ANYBODY
24 WHO THINKS BACK AND RECALLS THAT THEY HAVE HAD SUCH A
25 CONVERSATION OR HAVE SEEN ANY OF THE MEDIA COVERAGE ABOUT THE

1 CASE -- AND THERE WAS MEDIA COVERAGE. I WAS -- I WAS AT THE
2 Y. IN COLUMBIA ABOUT 6:00 THIS MORNING AND I OVERHEARD A
3 STORY ON THE TELEVISION. SO THERE HAS BEEN SOME COVERAGE
4 ABOUT THE CASE. SO IF ANY OF YOU HAVE BEEN EXPOSED TO THAT,
5 THEN PLEASE DO STAND NOW AND COME FORWARD AND LET ME SPEAK TO
6 YOU. MA'AM, COME DOWN FRONT AND, LAWYERS, PLEASE COME DOWN
7 FRONT AS WELL.

8 (THE FOLLOWING BENCH CONFERENCES TOOK PLACE IN THE
9 HEARING OF THE COURT, THE ATTORNEYS, AND EACH INDIVIDUAL
10 JUROR AS THEY APPROACHED.)

11 BAILIFF: JUROR 157, YOUR HONOR.

12 (JUROR DONNA KEFFER APPROACHES.)

13 JUROR KEFFER: I JUST WANTED---

14 THE COURT: DONNA KEFFER. YOU SAW SOMETHING?

15 JUROR KEFFER: I HEARD -- I JUST HEARD IT ON THE
16 T.V. THIS MORNING. WHEN I WAS IN THE BATHROOM, A T.V. WAS ON
17 IN MY BEDROOM. IT WAS ABOUT -- IT WAS NO FULL DETAIL OR
18 NOTHING LIKE THAT.

19 THE COURT: OKAY. WELL, DO YOU RECALL -- SO YOU
20 WERE ABLE TO HEAR WHAT THEY WERE SAYING ON THE---

21 JUROR KEFFER: IT WAS JUST SAYING THE JURY HAD
22 STARTED TODAY AND WHAT HE WAS CONVICTED OF.

23 THE COURT: OKAY. NOW, DO YOU RECALL ANY SPECIFICS
24 ABOUT WHAT YOU HEARD OTHER THAN WHAT YOU JUST SAID?

25 JUROR KEFFER: JUST THAT SHE (SIC) WAS SHOT IN THE

1 HEAD IS ALL I KNOW.

2 THE COURT: ALL RIGHT. SO YOU REMEMBER HEARING THEM
3 SAY THAT THE VICTIM HAD BEEN SHOT?

4 JUROR KEFFER: UH-HUH.

5 THE COURT: IS THERE ANYTHING ELSE IN THE WAY OF
6 DETAIL ABOUT WHAT YOU HEARD?

7 JUROR KEFFER: NO.

8 THE COURT: AND YOU MENTIONED THAT THEY REFERRED TO
9 WHAT HE WAS CONVICTED OF. I SUPPOSE WHAT YOU MEAN IS THEY
10 REFERRED TO WHAT HE WAS CHARGED WITH.

11 JUROR KEFFER: RIGHT.

12 THE COURT: YOU UNDERSTAND AT THIS POINT HE IS
13 PRESUMED INNOCENT.

14 JUROR KEFFER: YES.

15 THE COURT: NOW, MA'AM, WE'LL TALK IN MORE DETAIL
16 ONCE THE JURY -- A LITTLE BIT WITH THE JURY A LITTLE BIT AS
17 WE GO FORWARD THIS MORNING, BUT OBVIOUSLY AS A JUROR IT'S
18 YOUR RESPONSIBILITY TO BE ABLE TO SET ASIDE ANYTHING THAT YOU
19 MIGHT HAVE HEARD BEFORE YOU CAME INTO COURT TODAY AND THEN TO
20 LISTEN CAREFULLY TO THE LAW AS I EXPLAIN IT TO YOU, TO LISTEN
21 CAREFULLY TO THE TESTIMONY THAT'S OFFERED BEFORE YOU AND THE
22 ARGUMENTS OF THE LAWYERS AND MAKE -- RENDER A VERDICT THAT'S
23 BASED SOLELY ON THE TESTIMONY AND EVIDENCE YOU HEAR IN THE
24 COURTROOM. DO YOU STILL BELIEVE THAT YOU'RE ABLE TO DO THAT?

25 JUROR KEFFER: YES, SIR.

1 THE COURT: DO YOU BELIEVE THE FACT THAT YOU HEARD
2 THIS REPORT ON T.V. THIS MORNING WOULD INFLUENCE YOU IN ANY
3 WAY CONCERNING YOUR ROLE AS A JUROR IN THIS CASE?

4 JUROR KEFFER: NO.

5 THE COURT: ALL RIGHT. LET ME GET YOU TO STAND
6 RIGHT BACK THERE AT THAT TABLE FOR JUST A SECOND.

7 (JUROR KEFFER STEPS AWAY.)

8 MR. MYERS: WHAT WAS HER NAME?

9 THE COURT: KEFFER. KEFFER. .OKAY. ANY -- ANY
10 FOLLOW-UP QUESTIONING THAT EITHER SIDE WANTS ME TO...

11 MR. MYERS: NO, SIR.

12 MR. LITTLEJOHN: NO.

13 THE COURT: DO I NEED TO GO ANY FARTHER WITH HER AT
14 ALL?

15 MR. MYERS: NOT FROM US.

16 MS. KIMBROUGH: NO.

17 MR. LITTLEJOHN: NO.

18 THE COURT: THANK YOU, MS. KEFFER. YOU CAN TAKE
19 YOUR SEAT.

20 (JUROR KEFFER LEAVES THE BENCH CONFERENCE.)

21 THE COURT: COME UP, MA'AM.

22 BAILIFF: JUROR NUMBER 240.

23 (JUROR KRISTI POTTER APPROACHES.)

24 THE COURT: YOUR NAME?

25 JUROR POTTER: KRISTI POTTER.

1 THE COURT: MS. POTTER?

2 JUROR POTTER: I WAS AT MY EASTER FAMILY THING OR
3 WHATEVER AND I WAS SITTING OUTSIDE AND THEY HAD THE T.V. ON
4 INSIDE, AND I COULD HEAR THE NEWS. I DON'T KNOW IF IT WAS
5 THE 6:00 NEWS OR WHATEVER.

6 THE COURT: THIS WAS LAST NIGHT?

7 JUROR POTTER: YEAH, BUT I JUST HEARD HIS NAME AND
8 THEN THAT'S WHEN I WAS LIKE, "OKAY. I'VE GOT TO WALK AROUND
9 OR DO SOMETHING SO I CAN'T HEAR IT," BECAUSE THEY WERE
10 WATCHING IT IN THE OTHER ROOM. THAT'S THE ONLY THING.

11 THE COURT: I SEE. DO YOU RECALL HEARING ANY DETAIL
12 OTHER THAN JUST HIS NAME?

13 JUROR POTTER: I HEARD HIS NAME, AND THEN I HEARD
14 LATER, LIKE A MINUTE LATER, THAT THE TRIAL WOULD BE STARTING
15 SOON.

16 THE COURT: OKAY.

17 JUROR POTTER: SO I CAN'T EVEN REMEMBER EXACT WORDS
18 IT WAS BUT...

19 THE COURT: DO YOU RECALL THEM SAYING ANYTHING ABOUT
20 WHAT THE FACTS ARE?

21 JUROR POTTER: NO.

22 THE COURT: OKAY. ALL RIGHT. DO YOU THINK THAT
23 HAVING HEARD THAT ON THE PRESS WOULD INFLUENCE YOUR ABILITY
24 TO BE A FAIR AND IMPARTIAL JUROR TO BOTH THE STATE AND THE
25 DEFENDANT IN THIS CASE?

1 JUROR POTTER: NO, SIR.

2 THE COURT: ALL RIGHT. THANK YOU. YOU CAN TAKE
3 YOUR SEAT.

4 (JUROR POTTER LEAVES THE BENCH CONFERENCE.)

5 THE COURT: I'M ASSUMING THAT THERE'S NO NEED FOR
6 FOLLOW-UP---

7 MR. MYERS: NOTHING.

8 MR. LITTLEJOHN: NO.

9 THE COURT: ---QUESTIONING OF HER? OKAY. ALL
10 RIGHT. Y'ALL THINK IT'S POSSIBLE THAT ONLY TWO JURORS
11 OVERHEARD SOME REFERENCE?

12 MR. MYERS: I DIDN'T HEAR ANYTHING.

13 THE COURT: YOU DIDN'T BECAUSE YOU DON'T LIKE THE
14 PRESS ANYWAY.

15 MR. MYERS: THAT'S RIGHT.

16 THE COURT: OKAY. ALL RIGHT.

17 (THE BENCH CONFERENCES CONCLUDED.)

18 THE COURT: NOW, THANK YOU, LADIES, FOR TELLING ME
19 ABOUT -- ABOUT YOUR EXPERIENCE YESTERDAY AND THIS MORNING.
20 AND FOR ANY OF THE REST OF YOU, IF YOU HAVE ANYTHING THAT
21 COMES INTO YOUR MIND THAT YOU WANT TO TELL ME DURING THE
22 COURSE OF THIS QUESTIONING THIS MORNING, PLEASE JUST STAND
23 AND I'LL RECOGNIZE YOU AND YOU CAN COME DOWN FRONT AND SPEAK
24 TO ME PRIVATELY.

25 NOW, LAST WEEK WHEN YOU ALL WERE IN HERE AS A GROUP

1 ON MONDAY AND ALSO WHEN YOU WERE IN HERE ONE AT A TIME
2 MONDAY, TUESDAY, AND WEDNESDAY, I ASKED YOU ALL SORTS OF
3 QUESTIONS AND THE LAWYERS ALSO ASKED YOU QUESTIONS, AND I
4 KNOW THAT PERHAPS YOU HAVE BEEN HOME OVER THE REST OF LAST
5 WEEK. AND OVER THE WEEKEND YOU MAY HAVE THOUGHT ABOUT SOME
6 OF THE QUESTIONS THAT WE ASKED YOU, AND MAYBE SOMETHING
7 OCCURRED TO YOU THAT YOU DIDN'T THINK ABOUT AT THE TIME.
8 THAT'S PERFECTLY NORMAL; IT HAPPENS ALL THE TIME. IS THERE
9 ANY MEMBER OF THE JURY PANEL WHO WANTS TO TELL ME ANYTHING
10 ELSE THAT MIGHT BE IN THE WAY OF A RESPONSE TO A QUESTION
11 THAT I ASKED LAST WEEK? THEN STAND AT THIS TIME, PLEASE.
12 YOU CAN EITHER TELL ME NOW OUT LOUD FROM WHERE YOU STAND OR
13 IF YOU FEEL ANY NEED TO COME DOWN FRONT AND SPEAK TO ME
14 PRIVATELY, THEN YOU MAY DO THAT. SIR?

15 JUROR STARKEY: DOWN FRONT, PLEASE.

16 THE COURT: ALL RIGHT. COME TO THE CENTER AND JUST
17 STAND RIGHT THERE AT THAT RAIL. DON'T COME THROUGH YET.
18 YES, MA'AM?

19 JUROR STARKEY: I'D LIKE TO SPEAK DOWN FRONT.

20 THE COURT: OKAY. NOW, LET ME GET YOUR NAME, SIR.

21 JUROR STARKEY: DARRELL STARKEY.

22 THE COURT: AND YOUR NAME, MA'AM?

23 JUROR PAXTON: MARY PAXTON.

24 THE COURT: OKAY. GOOD. Y'ALL COME RIGHT ON DOWN
25 HERE. MR. STARKEY, YOU STAY THERE. WE'LL -- AND YOUR NAME,

1 MA'AM?

2 JUROR WRENN: JANE WRENN.

3 THE COURT: MS. WRENN, DO YOU WANT TO SPEAK TO ME
4 PRIVATELY?

5 JUROR WRENN: YES.

6 THE COURT: OR DO YOU WANT TO TELL ME NOW?

7 JUROR WRENN: NO. I'LL JUST TELL YOU THAT I
8 COULDN'T VOTE FOR THE DEATH PENALTY.

9 THE COURT: MA'AM?

10 JUROR WRENN: I COULD NOT IN ALL CONSCIENCE VOTE FOR
11 THE DEATH PENALTY.

12 THE COURT: WELL, THAT -- THANK YOU FOR TELLING ME
13 THAT, MA'AM. THAT'S THE KIND OF COMMENT THAT I WOULD LIKE
14 FOR YOU ALL TO TELL ME PRIVATELY IF YOU -- IF ANY OF YOU HAVE
15 ANYTHING LIKE THAT TO SAY. MS. WRENN, WHY DON'T YOU GO AHEAD
16 AND GET IN THE LINE, PLEASE, AND I WILL SPEAK TO YOU
17 PRIVATELY? YES, MA'AM.

18 JUROR WRENN: IN THE LINE?

19 THE COURT: ALL RIGHT. REMIND ME OF YOUR NAME.

20 JUROR POTTER: KRISTI POTTER.

21 THE COURT: MS. POTTER.

22 JUROR BURRIS: RICHARD BURRIS.

23 THE COURT: ALL RIGHT, SIR.

24 JUROR LEITNER: TIM LEITNER.

25 THE COURT: ALL RIGHT.

1 THE CLERK: WHAT WAS THE LAST ONE?

2 THE COURT: LEITNER, 177.

3 (WHEREUPON, THE FOLLOWING BENCH CONFERENCES TOOK
4 PLACE IN THE HEARING OF THE COURT, THE ATTORNEYS, AND EACH
5 INDIVIDUAL JUROR AS THEY APPROACHED.)

6 THE COURT: ALL RIGHT, SIR.

7 (JUROR DARRELL STARKEY APPROACHES.)

8 THE COURT: MR. STARKEY?

9 JUROR STARKEY: YES, SIR.

10 THE COURT: ALL RIGHT. TELL ME...

11 JUROR STARKEY: I FORGOT BECAUSE THIS OCCURRED
12 PROBABLY ABOUT 22, 23 YEARS AGO. I WAS IN NEW JERSEY WITH MY
13 FAMILY, AND THERE WAS AN INCIDENT WITH MY SISTER-IN-LAW AND
14 SHE GOT BEATEN UP BY HER BOYFRIEND. MY WIFE AND I AND MY
15 OTHER SISTER-IN-LAW WENT TO THE HOUSE TO FIND OUT WHERE MY
16 SISTER-IN-LAW WAS AT. SHE WAS NO LONGER THERE. SHE TOOK OFF
17 AND RAN AWAY, SO WE TRIED TO FIND OUT WHERE SHE WENT TO.

18 MY SISTER-IN-LAW -- MY OTHER SISTER-IN-LAW KEPT
19 DOING THE TALKING, AND SHE ASKED -- SHE ASKED THE GENTLEMAN
20 WHERE -- IF HE COULD TELL US WHERE HER SISTER WAS AT, AND
21 BOTH OF THEM GOT INTO AN ARGUMENT AND HE SLAPPED MY SISTER-
22 IN-LAW'S HAND AND I GRABBED HIM AND I PUSHED HIM ON TO THE
23 FLOOR, AND HE AND I GOT INTO A SCUFFLE. HE PRESSED CHARGES
24 ON ME, AND I WENT TO COURT ABOUT THAT ABOUT THREE OR FOUR
25 DAYS LATER AND I WAS FOUND GUILTY OF ASSAULT, AND ALL I HAD

1 TO DO WAS I PAID THE COURT FEES WHICH WAS A HUNDRED DOLLARS.

2 THE COURT: ALL RIGHT. THANK YOU VERY MUCH. I
3 APPRECIATE YOU TELLING US THAT.

4 (JUROR STARKEY LEAVES THE BENCH CONFERENCE.)

5 THE COURT: IF THERE'S ANY FOLLOW-UP ANYBODY WANTS
6 TO KNOW, ASK -- LET ME KNOW.

7 MR. MYERS: NO FOLLOW-UP.

8 MR. LITTLEJOHN: JUDGE, HE'S GOT AN ASSAULT. I
9 DON'T KNOW IF IT'S SIMPLE ASSAULT.

10 MR. MYERS: HUNDRED-DOLLAR FINE. SIMPLE ASSAULT.

11 MR. LITTLEJOHN: HUH?

12 MR. MYERS: HUNDRED-DOLLAR FINE.

13 MR. LITTLEJOHN: THIS WAS IN NEW JERSEY.

14 MS. KIMBROUGH: DID HE HAVE A RAP SHEET?

15 MR. MYERS: (SHOOK HEAD FROM SIDE TO SIDE.)

16 THE COURT: DO YOU WANT ME TO ASK HIM?

17 MR. LITTLEJOHN: MIGHT BE GOOD JUST TO SEE IF HE --
18 IF IT CARRIED MORE THAN A YEAR. HE MAY BE DISQUALIFIED.

19 THE COURT: I WILL IF YOU WANT ME TO, BUT I'M
20 SATISFIED THAT BASED ON WHAT HE SAID THAT IT'S SOMETHING AKIN
21 TO OUR SIMPLE ASSAULT, BUT I'LL DO WHATEVER YOU WANT ME TO
22 DO.

23 MR. LITTLEJOHN: JUDGE, I THINK WE NEED TO MAKE THE
24 INQUIRY JUST TO BE SAFE.

25 THE COURT: OKAY. ALL RIGHT. COME UP, MA'AM.

1 (JUROR MARY PAXTON APPROACHES.)

2 THE CLERK: SHE'S JUROR 228.

3 THE COURT: OKAY.

4 JUROR PAXTON: OKAY.

5 THE COURT: YOUR NAME AGAIN?

6 JUROR PAXTON: MARY PAXTON.

7 THE COURT: MS. PAXTON?

8 JUROR PAXTON: ON THE PORTION THAT WE TALKED WHERE

9 MY BROTHER-IN-LAW IS A FEDERAL JUDGE, IT WAS TURNED OVER.

10 REMEMBER YOU DIDN'T GET THE COPY OF THE BACK? I HAD WRITTEN

11 OVER -- PUT THAT INFORMATION -- THERE WAS ANOTHER PIECE OF

12 INFORMATION BACK THERE ALSO. IT WAS JUST THAT MY DAUGHTER-

13 IN-LAW IS A DOCTOR, FORENSIC PSYCHOLOGIST, WHO WORKS FOR THE

14 BUREAU OF PRISONERS IN NORTH CAROLINA AND WORKS DIRECTLY WITH

15 THE PRISONERS.

16 THE COURT: OKAY. THAT'S YOUR DAUGHTER --

17 DAUGHTER-IN-LAW.

18 JUROR PAXTON: MY DAUGHTER-IN-LAW. DIFFERENT NAME.

19 THE COURT: WHAT KIND OF EDUCATIONAL BACKGROUND DOES

20 SHE HAVE?

21 JUROR PAXTON: SHE'S A PH.D.

22 THE COURT: OKAY. HOW LONG HAS SHE HELD THAT JOB?

23 JUROR PAXTON: SHE'S HELD IT FOR APPROXIMATELY THREE

24 YEARS NOW. BEFORE THAT SHE WORKED AT THE ONE IN MISSOURI.

25 THE COURT: HAVE YOU TALKED -- DOES SHE KNOW THAT

1 YOU'RE INVOLVED IN THIS CASE?

2 JUROR PAXTON: NO. SHE KNOWS THAT I'M ON JURY DUTY
3 THIS WEEK. I TALKED TO MY SON LAST NIGHT, BUT THAT'S ALL
4 I'VE SAID.

5 THE COURT: DO THEY KNOW THAT THIS IS A CASE IN
6 WHICH THE STATE IS SEEKING THE DEATH PENALTY?

7 JUROR PAXTON: I DON'T BELIEVE I TOLD THEM THAT.

8 THE COURT: OKAY. ALL RIGHT. AND IS IT TRUE THAT
9 YOU NOW -- THAT YOU HAVE NOT DISCUSSED ANY OF THE ISSUES THAT
10 MIGHT RELATE TO THE CASE WITH HER?

11 JUROR PAXTON: OH, NO, I HAVEN'T TALKED TO HER IN
12 SEVERAL WEEKS.

13 THE COURT: HAVE YOU EVER HAD ANY CONVERSATIONS WITH
14 HER ABOUT HER WORK EVEN BEFORE THIS CASE BEGAN?

15 JUROR PAXTON: JUST GENERALLY HOW SHE FEELS ABOUT IT
16 BUT NOT ABOUT PARTICULAR PEOPLE. THE ONLY PARTICULAR THING
17 SHE SAID TO ME WAS THAT SHE WAS AT A PRISON IN MISSOURI WHEN
18 JOHN GOTTI WAS THERE DYING AND HE ASKED HER TO BRING HIM SOLA
19 SANYA (PHONETIC). ONCE SHE TOLD ME THAT; THAT WAS IT.
20 THAT'S THE ONLY THING SHE'S EVER TOLD ME.

21 THE COURT: DOES SHE WORK -- DOES SHE HERSELF WORK
22 ON CASES---

23 JUROR PAXTON: SHE DOES---

24 THE COURT: WAIT A MINUTE.

25 JUROR PAXTON: I'M SORRY.

1 THE COURT: LET ME FINISH THE QUESTION. DOES SHE
2 WORK ON THE CASES IN WHICH THE GOVERNMENT SEEKS THE DEATH
3 PENALTY?

4 JUROR PAXTON: I DON'T KNOW THAT.

5 THE COURT: YOU DON'T KNOW?

6 JUROR PAXTON: NO.

7 THE COURT: HAVE YOU EVER DISCUSSED WITH HER
8 ANYTHING THAT RELATES TO WHAT YOU WOULD THINK OF AS AN ISSUE
9 THAT MIGHT COME UP IN A CASE IN WHICH THE STATE IS SEEKING
10 THE DEATH PENALTY?

11 JUROR PAXTON: (SHOOK HEAD FROM SIDE TO SIDE.) I
12 DON'T BELIEVE SO.

13 THE COURT: HAS SHE EVER EXPRESSED ANY KIND OF VIEW
14 THAT YOU MENTIONED THAT SHE MIGHT HAVE EXPRESSED VIEWS AND
15 WHAT ARE SOME OF THE VIEWS?

16 JUROR PAXTON: JUST HOW SHE FEELS ABOUT IT AND THAT
17 I ASKED HER IS IT DIFFICULT TO DO THIS DAY AFTER DAY. SHE
18 SAID, YES, SHE REALLY FINDS IT VERY INTERESTING AND THAT SHE
19 FEELS LIKE SHE'S HELPING PEOPLE SO...

20 THE COURT: LET ME GET YOU TO STAND OVER THERE AT
21 THAT TABLE FOR JUST ONE SECOND BEFORE YOU GO BACK TO YOUR
22 CHAIR.

23 JUROR PAXTON: OKAY.

24 THE COURT: ALL RIGHT.

25 (JUROR PAXTON STEPS AWAY.)

1 THE COURT: I MEAN, I SUPPOSE THAT EITHER ONE OF
2 Y'ALL REALLY HAVE THE RIGHT TO ASK HER QUESTIONS IF YOU WANT
3 TO OR I CAN ASK IN ANY FOLLOW-UP.

4 MR. MYERS: I DON'T HAVE ANY QUESTIONS.

5 MR. LITTLEJOHN: WE DON'T HAVE ANY.

6 THE COURT: MS. PAXTON, YOU CAN GO BACK TO YOUR
7 CHAIR. THANK YOU.

8 (JUROR PAXTON LEAVES THE BENCH CONFERENCE.)

9 THE COURT: NOW, HOLD ON JUST A SECOND, PLEASE.
10 WHAT'S HER NAME?

11 MS. KIMBROUGH: JANE WRENN.

12 THE COURT: WHAT'S HER...

13 THE CLERK: 345.

14 THE COURT: HUH?

15 THE CLERK: 345.

16 THE COURT: 345.

17 MR. LITTLEJOHN: SHE WAS THE TENTH ONE QUALIFIED.
18 SHE WILL BE THE EIGHTH NOW.

19 THE COURT: 345? OH, YEAH. OKAY. I DIDN'T WRITE
20 DOWN ANYTHING ABOUT HER. SHE MIGHT HAVE HAD AN UNREMARKABLE
21 HEARING. ALL RIGHT. LET'S SEE WHAT SHE SAYS. COME ON UP,
22 MS. WRENN.

23 (JUROR JANE WRENN APPROACHES.)

24 THE COURT: GOOD MORNING.

25 JUROR WRENN: GOOD MORNING.

1 THE COURT: ARE YOU DOING OKAY?

2 JUROR WRENN: NO. I'M SHAKING LIKE...

3 THE COURT: ARE YOU COLD OR ARE YOU JUST NERVOUS?

4 JUROR WRENN: JUST NERVOUS.

5 THE COURT: WELL, DON'T BE NERVOUS. JUST TELL US
6 WHAT'S ON YOUR MIND.

7 JUROR WRENN: I JUST KEPT SEEING THE YOUNG MAN'S
8 FACE ALL WEEKEND, SEEING MY CHILDREN OUT THERE HIDING EASTER
9 EGGS. CAN I REALLY SENTENCE THIS YOUNG MAN TO DEATH IF, IN
10 FACT, HE'S GUILTY?

11 THE COURT: ALL RIGHT. WELL, WE SPENT A LOT OF TIME
12 GOING OVER A LOT OF THINGS LAST WEEK. I'M NOT CHALLENGING
13 YOU AT ALL. I JUST KIND OF WANT TO GET BACK INTO THAT WAY OF
14 TALKING ABOUT THE CASE, AND ONE OF THE THINGS -- ONE OF THE
15 QUESTIONS THAT I ASKED YOU WAS, OF COURSE, UNDERSTANDING THAT
16 IF THE DEFENDANT IS FOUND GUILTY OF MURDER WE WOULD GET INTO
17 THE SECOND PHASE OF THE TRIAL, AND IN THAT PHASE IT WOULD BE
18 UP TO THE JURY TO DETERMINE WHAT THE SENTENCE WOULD BE. AND
19 I WOULD -- I WOULD -- I HAVE -- I INFORMED YOU WHEN I WAS
20 TALKING TO YOU THAT MURDER IS DEFINED AS THE INTENTIONAL AND
21 UNLAWFUL KILLING OF ANOTHER PERSON WITH MALICE AFORETHOUGHT.
22 NOW, SO IF YOU WERE ON THE JURY, COULD YOU, DEPENDING ON THE
23 FACTS AND CIRCUMSTANCES THAT YOU FOUND TO EXIST AND IN LIGHT
24 OF THE LAW AS I WOULD EXPLAIN IT, WOULD YOU BE ABLE TO VOTE
25 TO IMPOSE THE DEATH PENALTY?

1 JUROR WRENN: I HONESTLY DON'T KNOW.

2 THE COURT: OKAY. ALL RIGHT. WOULD YOU LIKE TO GET
3 A CHAIR AND SIT DOWN?

4 JUROR WRENN: YEAH.

5 THE COURT: OKAY. DO YOU WANT TO SIT RIGHT HERE
6 JUST FOR A SECOND? I'M GOING TO ASK YOU TO STAND OVER THERE.

7 (JUROR WRENN STEPS AWAY.)

8 THE COURT: OKAY. NOW, BEFORE I HEAR Y'ALL, I HAVE
9 TO SAY -- I'M GOING TO REMARK THAT HER HANDS ARE VISIBLY
10 SHAKING AND SHE APPEARED VERY NERVOUS. SO, I MEAN, Y'ALL
11 HAVE A RIGHT TO QUESTION HER AGAIN IF YOU WANT TO. WE CAN DO
12 IT IN A VARIETY OF DIFFERENT WAYS. WE CAN LET HER HAVE A
13 SEAT FOR AWHILE, SEND THE JURY OUT, OR GO BACK IN THE BACK
14 WHERE WE CAN BE IN PRIVATE. THERE'S NO NEED TO BE IN ANY
15 HURRY ABOUT IT, AND Y'ALL CAN ASK HER QUESTIONS OR PERHAPS
16 YOU ARE SATISFIED BASED ON WHAT SHE HAS ALREADY SAID THAT
17 THERE'S NO NEED FOR FURTHER INQUIRY. I THINK I KNOW THE
18 SOLICITOR'S POSITION.

19 MR. LITTLEJOHN: YES, SIR. JUDGE, I WOULD SUGGEST
20 WE BRIEFLY ASK HER ADDITIONAL QUESTIONS MAYBE IN PRIVATE AND,
21 LIKE YOU SUGGESTED, RATHER THAN SENDING THE WHOLE JURY PANEL
22 OUT...

23 THE COURT: ALL RIGHT. OKAY. YOU SAID YOU CAN MOVE
24 BACK IN THE BACK FAIRLY EASILY?

25 COURT REPORTER: YES, SIR.

1 THE COURT: MS. WRENN?

2 (JUROR WRENN APPROACHES.)

3 THE COURT: WE DON'T WANT TO MAKE THIS ANY MORE
4 DIFFICULT THAN IT HAS TO BE. WHAT WE'RE GOING TO DO IS I'M
5 GOING TO GO AHEAD AND TALK TO SOME OF THESE OTHER JURORS.
6 THEN WE'RE GOING TO TAKE A LITTLE BREAK. WE'RE GOING TO GO
7 BACK -- TAKE YOU BACK IN THE BACK IN A ROOM WHERE WE CAN
8 RELAX AND ASK YOU A QUESTION OR TWO AND SEE WHAT YOU HAVE TO
9 SAY. DOES THAT SUIT YOU?

10 JUROR WRENN: YEAH.

11 THE COURT: BEFORE WE DO THAT, I CAN LET YOU SIT
12 ANYWHERE YOU WANT TO. YOU CAN GO BACK TO YOUR CHAIR OUT
13 THERE.

14 JUROR WRENN: OKAY. THANK YOU.

15 THE COURT: YOU CAN SIT RIGHT OVER THERE. YOU CAN
16 SIT ON THE OTHER SIDE OF THE COURTROOM. I DON'T WANT TO MAKE
17 YOU FEEL LIKE EVERYBODY IS LOOKING AT YOU OR ANYTHING BECAUSE
18 THEY'RE NOT. THIS IS PERFECTLY NORMAL. IT'S PERFECTLY
19 NORMAL.

20 THE CLERK: SHE CAN GO BACK TO THE JURY ROOM IF SHE
21 WANTS TO.

22 THE COURT: WHY DON'T WE DO THAT? DOES THAT SUIT
23 YOU?

24 JUROR WRENN: I WOULD JUST AS SOON GO BACK THERE AND
25 SIT.

1 THE COURT: IN THE MEANTIME, GO TO WHERE THE BAILIFF
2 IS STANDING AND WE'LL GET YOU BACK IN THE BACK IN A LITTLE
3 BIT. OKAY?

4 (JUROR WRENN LEAVES THE BENCH CONFERENCE.)

5 THE COURT: COME UP, MA'AM.

6 (JUROR KRISTI POTTER APPROACHES.)

7 JUROR POTTER: HI.

8 THE COURT: GOOD MORNING, MS. POTTER.

9 JUROR POTTER: WHEN YOU WERE ASKING ME THE QUESTIONS
10 IN HERE ON WEDNESDAY AND ON THE FIRST DAY, I JUST -- I DIDN'T
11 THINK I COULD ELABORATE SO I JUST SAID YES AND NO, BUT I
12 WOULD LIKE TO ELABORATE IF I COULD.

13 THE COURT: SURE.

14 JUROR POTTER: BECAUSE I WANT Y'ALL -- I WANT Y'ALL
15 TO MAKE AN INFORMED DECISION IF YOU CHOOSE ME AS A JUROR.
16 WHEN YOU ASKED ABOUT THE MILITARY, MY FATHER WAS IN THE
17 MILITARY FOR 20 YEARS, AND SO I'M AN ARMY BRAT. SO I JUST --
18 BUT IT DOESN'T -- IT WON'T AFFECT NOTHING BECAUSE IT WON'T
19 AFFECT MY DECISION.

20 THE COURT: ALL RIGHT. WELL, NOW, FOLLOWING UP ON
21 THAT, LET ME -- SO DID YOU -- DID YOU MOVE AROUND TO
22 DIFFERENT PLACES WITH YOUR FATHER?

23 JUROR POTTER: (NODDED HEAD UP AND DOWN.)

24 THE COURT: HOW OLD WERE YOU WHEN YOU -- I MEAN, WAS
25 IT -- THE WHOLE TIME YOU WERE GROWING UP WAS HE IN THE

1 MILITARY?

2 JUROR POTTER: YEAH.

3 THE COURT: OKAY. HOW MANY DIFFERENT PLACES DID
4 Y'ALL MOVE?

5 JUROR POTTER: FLORIDA, NORTH CAROLINA, GERMANY, AND
6 FORT JACKSON. THAT'S WHERE WE ENDED UP.

7 THE COURT: HOW LONG WAS HE IN THE SERVICE AT FORT
8 JACKSON BEFORE HE RETIRED?

9 JUROR POTTER: I WANT TO SAY EIGHT YEARS.

10 THE COURT: ALL RIGHT. NOW, FROM THE FACT THAT YOUR
11 FATHER -- WHAT RANK WAS HE IN THE MILITARY?

12 JUROR POTTER: HE WAS A DRILL SERGEANT.

13 THE COURT: FROM THE FACT THAT YOUR FATHER WAS IN
14 THE MILITARY AND YOU GREW UP IN A MILITARY FAMILY AND MOVED
15 AROUND -- MOVED ON DIFFERENT MILITARY BASES, I ASSUME, WOULD
16 ANY OF THAT INTERFERE IN ANY WAY WITH EITHER YOUR WILLINGNESS
17 OR YOUR ABILITY TO GIVE BOTH THE STATE AND THE DEFENDANT A
18 FAIR AND IMPARTIAL TRIAL?

19 JUROR POTTER: NO.

20 THE COURT: ALL RIGHT. AND YOU UNDERSTAND -- YOU
21 RECALL THAT THE VICTIM, THE ALLEGED VICTIM, IN THE CASE IS --
22 WAS AN ACTIVE SERGEANT; CORRECT?

23 MR. LITTLEJOHN: YES, SIR.

24 THE COURT: IN THE ARMY STATIONED AT FORT JACKSON.

25 JUROR POTTER: RIGHT.

1 THE COURT: DO YOU BELIEVE THAT THAT WOULD INFLUENCE
2 YOUR DECISION AS A JUROR?

3 JUROR POTTER: NO.

4 THE COURT: OKAY. I WOULD---

5 JUROR POTTER: I WANT TO TELL YOU SOMETHING ELSE
6 ALSO. ON THE QUESTIONNAIRES WHEN WE HAD TO FILL THEM OUT,
7 Y'ALL ASKED ME IF I WAS CATHOLIC OR MY RELIGION. I'M
8 CATHOLIC, BUT I DON'T HAVE A BLANKET OPINION ON THE DEATH
9 PENALTY AS MOST OR A LOT OF CATHOLICS DO. I LIKE TO JUDGE
10 EVERYTHING ON AN INDIVIDUAL BASIS. THE DEATH PENALTY TO ME
11 DEFINITELY IS APPROPRIATE FOR SOME PEOPLE AND -- BUT NOT IN
12 ALL CASES. I DON'T THINK IT'S APPROPRIATE IN ALL CASES. SO
13 I JUST -- I DON'T KNOW. I JUST WANTED TO LET Y'ALL KNOW ALL
14 THAT BEFORE...

15 THE COURT: I'M GLAD YOU DID; I APPRECIATE IT. STEP
16 RIGHT OVER THERE WHERE THAT TABLE IS. I MAY HAVE YOU BACK UP
17 HERE IN A SECOND.

18 JUROR POTTER: OKAY.

19 (JUROR POTTER STEPS AWAY.)

20 THE COURT: ALL RIGHT. WHAT DO Y'ALL WANT TO DO
21 ABOUT HER, IF ANYTHING?

22 MR. MYERS: WE DON'T HAVE ANY QUESTIONS.

23 MS. KIMBROUGH: NO QUESTIONS.

24 MR. LITTLEJOHN: NO QUESTIONS.

25 THE COURT: SO I'M GOING TO SEND HER BACK. YOU CAN

1 GO SIT DOWN, MS. POTTER.

2 (JUROR POTTER LEAVES THE BENCH CONFERENCE.)

3 THE CLERK: THE NEXT ONE IS BURRIS, 44.

4 THE COURT: COME UP.

5 (JUROR RICHARD BURRIS APPROACHES.)

6 JUROR BURRIS: HEY. GOOD MORNING.

7 THE COURT: GOOD MORNING.

8 JUROR BURRIS: I JUST WANTED TO EXPLAIN SOMETHING.

9 BECAUSE OF THE MAGNITUDE OF THE CASE, I WANT TO DISCLOSE
10 SOMETHING. AND I JUST WASN'T SURE HOW IT WAS HANDLED OR
11 WHATEVER, AND I DON'T KNOW HOW -- I HAD A RECORD FOR SIMPLE
12 POSSESSION THAT WAS EXPUNGED, AND SO MY UNDERSTANDING IS I
13 DID NOT HAVE TO DISCLOSE THAT OR THINGS LIKE THAT.

14 THE COURT: YES.

15 JUROR BURRIS: BUT I JUST WANTED TO MAKE SURE THAT
16 WASN'T A HINDRANCE.

17 THE COURT: NO. WE APPRECIATE YOU TELLING US THAT
18 THIS MORNING, BUT YOU'RE RIGHT - IT'S EXPUNGED AND IT'S OFF
19 YOUR RECORD. YOU NO LONGER -- YOU DON'T HAVE TO DISCLOSE
20 THAT.

21 JUROR BURRIS: BECAUSE OF THE MAGNITUDE OF THE CASE,
22 I WASN'T SURE.

23 THE COURT: THANK YOU, MR. BURRIS. YOU CAN GO BACK
24 TO YOUR SEAT.

25 (JUROR BURRIS LEAVES THE BENCH CONFERENCE.)

1 THE COURT: COME UP, MR. LEITNER.

2 (JUROR TIMOTHY LEITNER APPROACHES.)

3 JUROR LEITNER: GOOD MORNING.

4 THE COURT: GOOD MORNING.

5 JUROR LEITNER: I KNOW YOU'RE GOING TO THINK I'M AN

6 IDIOT. I'M NOT SAYING---

7 THE COURT: WE WON'T. WE WON'T.

8 JUROR LEITNER: MY WIFE'S FATHER WAS SHOT AND KILLED
9 DURING AN ARMED ROBBERY IN GEORGIA. THIS HAS BEEN ABOUT 25
10 YEARS AGO.

11 THE COURT: OKAY.

12 JUROR LEITNER: I NEVER KNEW HIM. I MET---

13 THE COURT: THIS WAS -- THIS IS BEFORE Y'ALL GOT---

14 JUROR LEITNER: IT WAS JUST AFTER WE GOT MARRIED.

15 THE COURT: OKAY.

16 JUROR LEITNER: PROBABLY ABOUT TWO YEARS. I ONLY
17 MET HIM A COUPLE OF TIMES, DIDN'T REALLY KNOW HIM BUT... AND
18 ALSO I HAVE A FIRST COUSIN THAT IS SERVING IN LAW ENFORCEMENT
19 I BELIEVE IN WINNSBORO, BUT I HAVEN'T SEEN HER IN 10 OR 15
20 YEARS EITHER. SO I'M JUST LETTING YOU KNOW THAT'S OUT THERE.

21 THE COURT: I APPRECIATE IT. YOU DID A GOOD JOB OF
22 DIGGING BACK INTO THE RECESSES OF YOUR MEMORY, ESPECIALLY
23 WITH THAT FIRST COUSIN IN LAW ENFORCEMENT BUT...

24 JUROR LEITNER: WELL, I'M JUST...

25 THE COURT: WE APPRECIATE THAT. DO YOU BELIEVE THAT

1 EITHER ONE OF THOSE THINGS WOULD INTERFERE WITH YOUR
2 WILLINGNESS OR YOUR ABILITY TO GIVE BOTH STATE AND THE
3 DEFENDANT A FAIR AND IMPARTIAL TRIAL?

4 JUROR LEITNER: I DON'T THINK SO.

5 THE COURT: THANK YOU.

6 JUROR LEITNER: IT'S BEEN SO LONG AGO AND I DIDN'T
7 EVEN REALLY REMEMBER. I'M JUST LETTING YOU KNOW IT'S OUT
8 THERE.

9 THE COURT: LET ME -- LET ME ASK YOU ONE MORE
10 QUESTION. DO YOU KNOW ANYTHING ABOUT THE DETAILS OF HOW THAT
11 CRIME OCCURRED WHEN YOUR FATHER-IN-LAW WAS KILLED?

12 JUROR LEITNER: YEAH.

13 THE COURT: JUST REALLY BRIEFLY TELL ME THE DETAILS.

14 JUROR LEITNER: HE WORKED IN A LITTLE HOTEL AS LIKE
15 A CLERK, AND THERE WAS A COUPLE OF GUYS THAT CAME AND ROBBED
16 HIM AND IT WAS HIS OWN FAULT. HE PULLED A GUN, SO THEY
17 STARTED SHOOTING AT HIM. AS THEY WERE LEAVING, THEY TURNED
18 AROUND AND SHOT HIM -- SHOT HIM IN THE STOMACH AND HE DIED.

19 THE COURT: TO YOUR KNOWLEDGE, WAS ANYBODY EVER
20 PROSECUTED FOR THAT ROBBERY OR THAT SHOOTING?

21 JUROR LEITNER: I HAVE NO IDEA.

22 THE COURT: ALL RIGHT. OKAY. THANK YOU.

23 (JUROR LEITNER STEPS AWAY.)

24 THE COURT: ANY FOLLOW-UP?

25 MR. MYERS: NO, SIR.

1 MR. LITTLEJOHN: NO, SIR.

2 MS. KIMBROUGH: NO, SIR.

3 THE COURT: YOU CAN TAKE A YOUR SEAT, SIR.

4 (JUROR LEITNER LEAVES THE BENCH CONFERENCE.)

5 THE COURT: COME UP, MA'AM.

6 (JUROR GLORIA JOYE APPROACHES.)

7 JUROR JOYE: THIS WASN'T -- REALLY WASN'T IN
8 RESPONSE TO YOUR QUESTION, BUT IT WAS JUST SOMETHING THAT
9 CAME UP FRIDAY. MY NIECE---

10 MR. LITTLEJOHN: WE CAN'T HEAR.

11 JUROR JOYE: MY NIECE -- MY SISTER WAS KILLED IN
12 OCTOBER AND WE HAD TALKED ABOUT THAT LAST WEEK, BUT MY NIECE
13 IS PREGNANT AND JUST FOUND OUT FRIDAY THAT SHE MAY BE INDUCED
14 NEXT WEEK BECAUSE SHE'S NOT GROWING AS FAST AS THE BABY IS
15 GROWING, SO THEY'RE GOING TO INDUCE HER AND SHE JUST WANTED
16 ME THERE. SO I'M JUST...

17 THE COURT: WHEN DO THEY THINK THIS MIGHT HAPPEN?

18 JUROR JOYE: THEY THINK NEXT WEEK. THEY DON'T KNOW
19 THE DATE.

20 THE COURT: NOT THIS WEEK?

21 JUROR JOYE: NO.

22 THE COURT: SO AT LEAST A WEEK FROM TODAY?

23 JUROR JOYE: YEAH.

24 THE COURT: OKAY. THERE IS ALMOST A ZERO CHANCE
25 THAT WE WOULD STILL BE WORKING BY A WEEK FROM TODAY.

1 JUROR JOYE: OKAY.

2 THE COURT: I CAN'T SAY IT'S ZERO, BUT IT'S ABOUT AS
3 CLOSE TO ZERO AS YOU CAN GET, SO... BUT IN ANY EVENT, EVEN
4 IF -- EVEN IF WE WERE, WE WOULD HAVE THE FLEXIBILITY OF
5 TRYING TO ACCOMMODATE YOU. WE WOULD DO OUR BEST TO
6 ACCOMMODATE THAT SITUATION. ALL RIGHT?

7 JUROR JOYE: OKAY.

8 THE COURT: AND JUST TO MAKE IT CLEAR, THIS NIECE IS
9 THE DAUGHTER OF YOUR SISTER WHO WAS KILLED IN SPARTANBURG
10 LAST FALL?

11 JUROR JOYE: YEAH.

12 THE COURT: AND THANK YOU VERY MUCH.

13 (JUROR JOYE LEAVES THE BENCH CONFERENCE.)

14 THE COURT: COME UP, SIR.

15 (JUROR DARRELL STARKEY APPROACHES.)

16 JUROR STARKEY: YES, SIR?

17 THE COURT: I JUST WANTED TO ASK YOU ONE FOLLOW-UP
18 QUESTION ABOUT THE ASSAULT CHARGE. WAS THAT -- WHAT WOULD
19 HAVE BEEN THE MAXIMUM PENALTY FOR THAT?

20 JUROR STARKEY: I DON'T KNOW. I DON'T KNOW.

21 THE COURT: WHEN YOU WENT -- YOU SAID A COUPLE OF
22 DAYS LATER YOU WERE CONVICTED. DID YOU GO TO LIKE A
23 MAGISTRATE OR SOMETHING LIKE THAT?

24 JUROR STARKEY: I DON'T KNOW. I FEEL STUPID.

25 THE COURT: YOU'RE NOT STUPID. DID YOU HAVE A

1 LAWYER?

2 JUROR STARKEY: NO, I DID NOT.

3 THE COURT: ALL RIGHT. AND---

4 JUROR STARKEY: THERE WAS NO JURY.

5 THE COURT: YOU SUBSEQUENTLY JUST WENT INTO THE JAIL
6 AND PAID A FINE?

7 JUROR STARKEY: EXACTLY. EXACTLY.

8 THE COURT: ALL RIGHT. I THINK THAT'S ALL WE NEED.

9 JUROR STARKEY: OKAY.

10 THE COURT: THANK YOU.

11 (JUROR STARKEY LEAVES THE BENCH CONFERENCE.)

12 MR. MYERS: DO YOU WANT TO ASK HIM WHETHER IT WAS
13 ASSAULT AND BATTERY OR SIMPLE ASSAULT AND BATTERY?

14 THE COURT: I WILL.

15 MR. MYERS: I THINK IT'S CLEAR WHAT IT WAS. A
16 HUNDRED-DOLLAR FINE.

17 MR. LITTLEJOHN: IT WOULD BE CLEAR IF IT WAS IN
18 SOUTH CAROLINA BUT... WE MIGHT BE LOOKING -- WE DON'T KNOW
19 WHAT WE MIGHT BE LOOKING AT IN NEW JERSEY.

20 THE COURT: AS A PRACTICAL MATTER---

21 MR. LITTLEJOHN: I'M SURE IT WAS---

22 THE COURT: ---IF HE WENT AND ADDRESSED IT IN THREE
23 OR FOUR DAYS WITHOUT A LAWYER---

24 MR. LITTLEJOHN: I'M SURE---

25 THE COURT: ---IT WOULD HAVE BEEN SOMETHING LIKE OUR

1 MAGISTRATE'S COURT. I'M SATISFIED THAT HE'S NOT DISQUALIFIED
2 AS A RESULT OF THAT CONVICTION.

3 MR. LITTLEJOHN: I THINK SO.

4 THE COURT: BUT IF YOU WANT ME TO QUESTION --
5 CONTINUE THE INQUIRY OR IF THE SOLICITOR DOES...

6 MR. MYERS: I DON'T HAVE ANY QUESTIONS.

7 MR. LITTLEJOHN: I THINK YOU'RE ASSUMPTION IS RIGHT.
8 I JUST DIDN'T KNOW THE SOLICITOR WAS AN EXPERT ON NEW JERSEY.

9 MR. MYERS: I TRY TO STAY CURRENT ON ALL THE STATES.

10 (THIS CONCLUDES THE BENCH CONFERENCES.)

11 THE COURT: IS THERE ANYONE ELSE WHO WOULD LIKE TO
12 SPEAK WITH ME ABOUT FOLLOWING UP TO SOME QUESTION THAT I
13 ASKED YOU OR ANY OF THE LAWYERS ASKED YOU LAST WEEK? IF SO,
14 PLEASE STAND. OKAY. I HAVE A COUPLE MORE QUESTIONS TO ASK
15 YOU NOW. IS THERE ANY MEMBER OF THE JURY PANEL WHO HAS ANY
16 PARTICULAR INTEREST IN THE OUTCOME OF THIS CASE? IF SO,
17 PLEASE STAND. IS THERE ANY MEMBER OF THE JURY PANEL WHO HAS
18 FORMED OR EXPRESSED ANY OPINION AS TO THE GUILT OR INNOCENCE
19 OF THIS DEFENDANT? IF SO, PLEASE STAND.

20 IS THERE ANY MEMBER OF THE JURY PANEL WHO HAS ANY
21 BIAS OR PREJUDICE EITHER TOWARDS OR AGAINST THE STATE OR THE
22 DEFENDANT IN CONNECTION WITH THIS CASE? IF SO, PLEASE STAND.
23 IS THERE ANY MEMBER OF THE JURY PANEL WHO KNOWS OF ANY REASON
24 THAT YOU COULD NOT GIVE BOTH THE STATE AND THE DEFENDANT A
25 FAIR AND IMPARTIAL TRIAL IN THIS CASE? IF SO, PLEASE STAND.

1 ALL RIGHT. NOW, WE'RE GOING TO TAKE A SHORT BREAK.
2 I'M THINKING IT'S GOING TO BE ABOUT A 10-MINUTE BREAK. IF
3 YOU ALL NEED TO GO TO THE REST ROOM, THEN YOU MAY DO SO.
4 ONCE YOU HAVE BEEN TO THE REST ROOM, I WOULD LIKE FOR YOU TO
5 PLEASE COME IMMEDIATELY BACK AND BE SEATED AND DO NOT DISCUSS
6 ANYTHING. JUST REMAIN QUIET. AND THEN WE'LL GET BACK IN
7 HERE AS QUICKLY AS WE CAN.

8 IF YOU DON'T NEED TO TAKE A BREAK, THEN YOU CAN JUST
9 STAY WHERE YOU ARE. I EXPECT THAT WHEN WE GET BACK WE WILL
10 BE WORKING FOR ANOTHER 30 TO 45 MINUTES BEFORE WE ARE ABLE TO
11 TAKE ANOTHER BREAK. SO USE THAT INFORMATION TO HELP YOU
12 DECIDE WHETHER OR NOT YOU NEED TO TAKE A BREAK NOW. SO WE'LL
13 TAKE A BREAK AT THIS TIME, AND BE BACK IN JUST A FEW MINUTES.

14 (WHEREUPON, A SHORT BREAK WAS TAKEN. THE FOLLOWING
15 COLLOQUY BETWEEN THE COURT, THE ATTORNEYS, AND JUROR JANE
16 WRENN TOOK PLACE IN A JURY ROOM.)

17 JANE WRENN, HAVING BEEN PREVIOUSLY SWORN AS A
18 PART OF THE JURY VOIR DIRE AND REMAINING UNDER OATH,
19 TESTIFIED AS FOLLOWS:

20 EXAMINATION BY THE COURT

21 Q. ARE YOU READY, MS. WRENN?

22 A. YEAH.

23 Q. I'M GOING TO COME IN HERE AND THE LAWYERS ARE GOING
24 TO COME IN HERE, AND I'M GOING TO ASK YOU SOME QUESTIONS AND
25 THEN THEY MAY HAVE SOME FOLLOW-UP QUESTIONS. I'M ACTUALLY

1 JUST GOING TO PULL MY CHAIR AROUND HERE AND SIT ON THE END.
2 OKAY. DO YOU NEED ANYTHING? DO YOU NEED ANY WATER OR
3 ANYTHING?

4 A. (WITNESS SHOOK HEAD FROM SIDE TO SIDE.)

5 Q. OKAY. NOW, WE'RE JUST GOING TO -- I'M JUST GOING TO
6 MAINLY KIND OF GO BACK THROUGH THE CORE OF WHAT WE TALKED
7 ABOUT LAST WEEK. WHICH DAY DID YOU COME IN LAST WEEK?

8 A. ON TUESDAY.

9 Q. TUESDAY? ALL RIGHT. NOW, YOU RECALL -- JUST -- OF
10 COURSE, THIS THING POSSIBLY WILL BE IN TWO PHASES. I'M GOING
11 TO ASK YOU A QUESTION ABOUT THE FIRST PHASE FIRST. DO YOU
12 RECALL WHEN I TOLD YOU LAST WEEK THAT THE STATE IS -- HAS THE
13 BURDEN IN A CRIMINAL CASE SUCH AS THIS OF PROVING THE
14 DEFENDANT GUILTY BEYOND A REASONABLE DOUBT? DO YOU RECALL
15 THAT?

16 A. YES, SIR.

17 Q. NOW, REFERRING ALSO TO THAT FIRST PHASE OF THE
18 TRIAL, COULD YOU, DEPENDING ON THE FACTS AND CIRCUMSTANCES
19 THAT YOU FIND TO HAVE BEEN PROVEN AND CONSIDERING THE LAW AS
20 I WOULD EXPLAIN IT TO YOU, DO YOU STILL BELIEVE THAT YOU
21 WOULD BE ABLE TO FIND THE DEFENDANT EITHER GUILTY OR NOT
22 GUILTY DEPENDING ON WHETHER OR NOT YOU FEEL THAT THE STATE
23 HAS MET ITS BURDEN OF PROOF?

24 A. YES, SIR.

25 Q. ALL RIGHT. NOW, YOU RECALL WHEN I WAS DISCUSSING

1 WHEN I SAID WHAT AGGRAVATING CIRCUMSTANCES WERE AND WHAT
2 MITIGATING CIRCUMSTANCES WERE.

3 A. YES, SIR.

4 Q. DO YOU THINK I NEED TO GO OVER THAT WITH YOU AGAIN?

5 A. (WITNESS SHOOK HEAD FROM SIDE TO SIDE.)

6 Q. DO YOU STILL UNDERSTAND IT?

7 A. (WITNESS NODDED HEAD UP AND DOWN.)

8 Q. NOW, IF YOU WERE A JUROR IN THIS CASE AND IF THE
9 JURY FOUND THE DEFENDANT GUILTY OF MURDER -- WELL, LET ME
10 BACK UP. DO YOU RECALL THE SHEET THAT WE GAVE YOU THAT HAS
11 THE THREE DIFFERENT TYPES OF JURORS?

12 A. YES, SIR, I DO.

13 Q. ALL RIGHT. WELL, I'LL EXPLAIN IT TO YOU. I DON'T
14 HAVE A COPY OF IT RIGHT IN FRONT OF ME, BUT THE TYPE ONE
15 WOULD BE A JUROR WHO WHENEVER THERE IS A CONVICTION FOR
16 MURDER WOULD ALWAYS VOTE TO IMPOSE THE DEATH PENALTY, AND THE
17 TYPE TWO JUROR WAS WHENEVER THERE WAS A CONVICTION FOR MURDER
18 THE JUROR WOULD ALWAYS VOTE TO IMPOSE A LIFE SENTENCE AND
19 WOULD NEVER VOTE TO IMPOSE THE DEATH PENALTY. AND THEN
20 THERE'S THE THIRD TYPE JUROR WHO WOULD COME IN AFTER A
21 CONVICTION FOR MURDER, DURING THE SENTENCING PHASE, AND
22 LISTEN TO ALL THE TESTIMONY AND THE EVIDENCE THAT IS OFFERED
23 AND THEN DECIDE WHETHER OR NOT TO IMPOSE A LIFE SENTENCE OR
24 THE DEATH PENALTY AND COULD -- COULD IMPOSE EITHER ONE,
25 DEPENDING ON WHAT THE FACTS AND CIRCUMSTANCES ARE. WHICH OF

1 THOSE TYPES OF JURORS NOW -- AFTER HAVING SEVERAL DAYS TO
2 THINK ABOUT IT, WHICH OF THOSE TYPES OF JURORS DO YOU BELIEVE
3 YOU WOULD BE?

4 A. I THINK I WOULD HAVE TO IMPOSE LIFE.

5 Q. OKAY. NOW, WHEN YOU SAY THAT, DO YOU MEAN THAT YOU
6 WOULD NOT BE ABLE TO IMPOSE THE DEATH PENALTY UNDER ANY
7 CIRCUMSTANCES?

8 A. NO, SIR, I COULDN'T HONESTLY SAY THAT.

9 Q. YOU CAN'T SAY THAT?

10 A. HUH-UH.

11 Q. WELL, NOW, THEN REFERRING BACK TO THOSE THREE TYPES
12 OF JURORS, DO YOU THINK YOU'RE TYPE TWO? YOU KIND OF
13 ELIMINATED TYPE ONE; WE KNOW YOU'RE NOT TYPE ONE. DO YOU
14 THINK YOU MIGHT BE TYPE TWO OR TYPE THREE?

15 A. I THINK I MIGHT BE TYPE THREE.

16 Q. TYPE THREE. ALL RIGHT. SO LET ME ASK YOU ONE MORE
17 -- ONE MORE QUESTION, AND THEN I SUPPOSE THE LAWYERS ARE
18 PROBABLY GOING TO HAVE SOME MORE FOLLOW-UP QUESTIONS FOR YOU.
19 IF YOU WERE A JUROR AND WE HAD ALREADY GOTTEN PAST -- IF WE
20 GET PAST -- GET A VERDICT OF GUILT ON THE -- IN THE -- IN THE
21 FIRST PHASE AND WE'RE -- FOR MURDER AND WE'RE INTO THE SECOND
22 PHASE OF THE TRIAL -- AND I'LL REMIND YOU, AS I ALREADY DID
23 ONCE, BUT SINCE I STARTED, I'LL DO IT AGAIN. THE DEFINITION
24 OF MURDER IS THE INTENTIONAL AND UNLAWFUL KILLING OF ANOTHER
25 PERSON WITH MALICE AFORETHOUGHT.

1 A. YES, SIR.

2 Q. IF YOU'RE ON THE JURY IN THE CASE -- AND, AGAIN, THE
3 JURY IS THE ONE THAT WOULD DECIDE THE SENTENCE FOR MURDER.
4 THE JURY WOULD HAVE TWO OPTIONS. ONE WOULD BE FOR A LIFE
5 SENTENCE WITHOUT THE POSSIBILITY OF PAROLE, AND THE OTHER
6 OPTION WOULD BE FOR THE DEATH PENALTY. COULD YOU, DEPENDING
7 ON THE FACTS AND CIRCUMSTANCES THAT YOU FIND TO EXIST AND
8 CONSIDERING THE LAW AS I WOULD EXPLAIN IT TO YOU, COULD YOU
9 VOTE TO IMPOSE THE DEATH PENALTY?

10 A. NO, SIR.

11 THE COURT: OKAY. ALL RIGHT. DO EITHER OF Y'ALL
12 HAVE ANY FOLLOW-UP QUESTIONS?

13 DIRECT EXAMINATION

14 BY MR. MYERS:

15 Q. MS. WRENN, I MAY HAVE ASKED YOU THIS BEFORE OR ONE
16 OF US DID, AND I JUST DON'T RECALL SO I'LL ASK IT---

17 A. NO, SIR, I HAVEN'T TALKED TO YOU, MR. MYERS---

18 Q. OKAY.

19 A. ---SO YOU HAVEN'T.

20 Q. THANK YOU, MA'AM. OUR LAW WOULD SAY THAT IF THE
21 JURY DECIDED THAT THE DEATH PENALTY WAS THE RIGHT SENTENCE,
22 THEN THE LAW REQUIRES EVERY JUROR TO SIGN THEIR NAME ON A
23 DEATH PENALTY VERDICT.

24 A. YES, SIR.

25 Q. BASED ON YOUR BELIEFS, COULD YOU EVER SIGN YOUR NAME

1 ON A VERDICT SENTENCING SOMEONE TO DEATH?

2 A. IF I FOUND -- I'M NOT SURE I UNDERSTAND. IF I
3 CONVICTED THEM AND---

4 Q. NO, MA'AM. IT'S TWO DIFFERENT THINGS.

5 A. OKAY.

6 Q. LIKE THE JUDGE SAYS, YOU HAVE TWO PARTS. THE FIRST
7 PART IS GUILTY OR NOT GUILTY.

8 A. YES, SIR.

9 Q. YOU HAVE TO FIND SOMEBODY GUILTY BEFORE YOU WENT
10 INTO THE SECOND PART. THE FIRST PART, IF YOU FOUND THEM
11 GUILTY, ONLY THE FOREMAN WOULD HAVE TO SIGN THAT VERDICT FOR
12 GUILTY. THE FOREMAN WOULD SIGN THAT.

13 A. YES, SIR.

14 Q. IN THE SECOND PART, OUR LAW IS A LITTLE DIFFERENT.
15 IT SAYS THAT IF THE DEATH PENALTY IS THE SENTENCE, THEN EVERY
16 JUROR WOULD HAVE TO SIGN THEIR NAME ON A FORM SENTENCING
17 SOMEONE TO DEATH. SO MY QUESTION IS: COULD YOU EVER SIGN
18 YOUR NAME ON A SHEET OF PAPER SENTENCING SOMEBODY TO DEATH?

19 A. DID I OR COULD I?

20 Q. COULD YOU?

21 A. NO, SIR.

22 MR. MYERS: OKAY. THAT'S ALL I HAVE.

23 THE COURT: ANY FOLLOW-UP?

24

25

CROSS-EXAMINATION

BY MR. LITTLEJOHN:

Q. MS. WRENN, JUST BRIEFLY. I DON'T WANT TO BEAT THIS THING ANY MORE THAN WE HAVE. AS I UNDERSTOOD WHEN JUDGE FEW WAS ASKING YOU QUESTIONS A LITTLE WHILE AGO, YOU SAID YOU THOUGHT YOU WERE A TYPE THREE JUROR?

A. YES, SIR.

Q. OKAY. A TYPE THREE JUROR IS ONE THAT WOULD LISTEN TO ALL THE EVIDENCE AND CONSIDER BOTH A LIFE SENTENCE AND A DEATH SENTENCE. NOW, I MEAN, DO YOU THINK YOU COULD CONSIDER A DEATH SENTENCE?

A. YES, SIR.

Q. DO YOU THINK?

A. I---

Q. EXCUSE ME.

A. I'M -- I'M NOT OPPOSED TO THE DEATH SENTENCE.

Q. RIGHT.

A. BUT I WAS TELLING YOUR ASSOCIATE THERE, YOU KNOW, I GUESS -- I'M A NURSE, A MOTHER, AND A GRANDMOTHER, AND I JUST KEPT SEEING THAT YOUNG MAN'S FACE ALL WEEKEND AND I -- I JUST DON'T KNOW THAT I COULD SAY, YOU KNOW, THAT YOU DESERVE TO DIE, AND ALTHOUGH I KNOW THERE WERE AGGRAVATING CIRCUMSTANCES, AS YOU SAID, AND MITIGATING CIRCUMSTANCES...

Q. UH-HUH. WELL -- AND PLEASE UNDERSTAND NOBODY IS TRYING TO GET YOU TO COMMIT ONE WAY OR ANOTHER, BUT I GUESS

1 WHAT WE'RE TRYING TO FIND OUT IS IF YOU WOULD BE IN A
2 POSITION TO CONSIDER BOTH OF THOSE ALTERNATIVES: A LIFE
3 SENTENCE OR A DEATH VERDICT.

4 A. YES, SIR. I WOULD BE IN A POSITION TO JUDGE ONE WAY
5 OR THE OTHER; I THINK I COULD.

6 Q. OKAY. WELL, AFTER HEARING ALL THE EVIDENCE, IF YOU
7 FELT THAT A DEATH SENTENCE WAS APPROPRIATE UNDER THE
8 CIRCUMSTANCES THAT YOU HEARD, UNDER THE EVIDENCE THAT WAS
9 PRESENTED TO YOU, DO YOU THINK YOU COULD VOTE ALONG WITH THE
10 OTHER JURORS?

11 A. FOR A DEATH SENTENCE?

12 Q. FOR A DEATH SENTENCE, YES, MA'AM.

13 A. NO, SIR.

14 Q. YOU DON'T THINK THERE'S ANY WAY YOU COULD DO THAT?

15 A. I DON'T -- I DON'T WANT TO SAY THERE'S NO WAY. NO,
16 IF THERE WERE AGGRAVATING CIRCUMSTANCES...

17 Q. RIGHT. AND NOBODY WOULD WANT YOU TO VOTE LIKE THAT
18 UNLESS YOU FOUND AGGRAVATING CIRCUMSTANCES, BUT I GUESS WHAT
19 I'M TRYING TO SAY IF YOU -- IF YOU CAN TELL US IF UNDER THE
20 RIGHT CIRCUMSTANCES OR THE APPROPRIATE CIRCUMSTANCES IF YOU
21 COULD VOTE FOR A DEATH PENALTY.

22 A. I JUST DON'T KNOW. I'VE NEVER HAD...

23 Q. RIGHT.

24 A. I WOULD -- I WOULD -- I DON'T WANT TO SAY YES AND I
25 DON'T WANT TO SAY NO.

1 Q. OKAY.

2 A. I'M JUST UNDECIDED.

3 MR. LITTLEJOHN: THANK YOU, MS. WRENN.

4 THE COURT: ANY FURTHER FOLLOW-UP?

5 MR. MYERS: NO, SIR.

6 THE COURT: ALL RIGHT. MS. WRENN, YOU CAN GO AHEAD
7 AND STEP OUT INTO THE HALLWAY, BUT DON'T GO BACK IN THE
8 COURTROOM JUST YET.

9 THE WITNESS: THANK YOU.

10 THE COURT: RIGHT THROUGH THIS DOOR. THANK YOU.

11 (JUROR WRENN STEPS OUT OF THE JURY ROOM.)

12 THE COURT: OKAY. ONE THING I THOUGHT OF IS THAT WE
13 DON'T HAVE MR. MERCER IN HERE. IS THERE ANY OBJECTION TO
14 THAT?

15 MR. LITTLEJOHN: JUDGE, I DON'T -- I DON'T THINK SO.
16 I MEAN, AS FAR AS WE'RE CONCERNED, WE'LL WAIVE HIS PRESENCE.
17 I WILL -- I WILL CONFER WITH HIM---

18 THE COURT: WELL, I THINK THAT---

19 MR. LITTLEJOHN: ---AND MAKE SURE HE HAS NO PROBLEM
20 WITH THAT.

21 THE COURT: WELL, I'M GOING TO -- I'M GOING TO --
22 ALL RIGHT. I'M GOING TO GO AHEAD AND RULE. SHE'S NOT
23 QUALIFIED. SHE IS -- SHE IS THE TYPE OF JUROR -- I MEAN, NOT
24 ONLY ARE HER ANSWERS IMMEDIATELY CONFLICTING EACH OTHER, BUT
25 AS I NOTED IN THE COURTROOM ON THE RECORD, SHE'S -- SHE

1 DIDN'T SEEM AS NERVOUS NOW. SHE'S NOT SHAKING ANYMORE. SHE
2 SEEMS MORE RELAXED, BUT SHE WAS -- SHE WAS MAKING AN
3 EXASPERATED FACIAL EXPRESSION AND A VERY TROUBLED FACIAL
4 EXPRESSION EACH TIME SHE ANSWERED THE QUESTION OR MOST OF THE
5 TIME SHE ANSWERED THE QUESTIONS. SO SHE'S ONE OF THOSE
6 JURORS WHERE HER CONFLICTING RESPONSES AND HER -- JUST SHOW
7 TO ME OVERALL THAT HER VIEWS ON THE DEATH PENALTY WOULD
8 SUBSTANTIALLY IMPAIR HER ABILITY TO CARRY OUT MY INSTRUCTIONS
9 ON THE LAW, AND SHE'S NOT QUALIFIED. ALL RIGHT. I'M GOING
10 TO GO AHEAD AND JUST TELL THE BAILIFFS THAT THEY CAN TAKE HER
11 OUT AND EXCUSE HER. SHE DOESN'T HAVE TO GO BACK IN THE
12 COURTROOM.

13 MR. LITTLEJOHN: JUST FOR THE RECORD, COULD WE JUST
14 NOTE OUR OBJECTION?

15 THE COURT: CERTAINLY.

16 MR. LITTLEJOHN: THANK YOU.

17 (THIS CONCLUDES THE CONFERENCE IN THE JURY ROOM.
18 THE TRIAL CONTINUED IN THE COURTROOM AS FOLLOWS:)

19 THE COURT: MS. STAGGS, COME DOWN FRONT FOR A
20 SECOND, PLEASE. LET ME SEE ONE LAWYER FROM EACH SIDE,
21 PLEASE. COME ON UP HERE.

22 (THE FOLLOWING BENCH CONFERENCE TOOK PLACE BETWEEN
23 THE COURT, JUROR DARLENE STAGGS, AND THE ATTORNEYS.)

24 THE COURT: MS. STAGGS, I HAVE YOUR LETTER AND I'VE
25 READ YOUR LETTER. IS THAT MS. FOOT?

1 JUROR STAGGS: UH-HUH.

2 THE COURT: AND I'M SORRY ABOUT THE BURDEN THAT THIS
3 WILL PLACE ON YOU AND WILL PLACE ON THE COMPANY IF YOU ARE
4 SELECTED TO SERVE, BUT I CAN'T EXCUSE YOU FOR THIS AND I
5 APPRECIATE YOUR UNDERSTANDING AND WE'LL TRY TO GET THROUGH IT
6 AS QUICKLY AS WE CAN. IF YOU'RE ON THE JURY, WE'LL TRY TO
7 GET YOU BACK TO WORK AS EFFICIENTLY AS POSSIBLE.

8 JUROR STAGGS: THANK YOU.

9 THE COURT: ALL RIGHT. THANK YOU.

10 THE CLERK: THAT WAS STAGGS, 298?

11 THE COURT: YEAH.

12 (THIS CONCLUDES THE BENCH CONFERENCE.)

13 THE COURT: NOW, IS THERE ANY OTHER MEMBER OF THE
14 JURY PANEL WHO HAS ANYTHING THAT YOU WOULD LIKE TO TELL ME
15 NOW THAT IS ON YOUR MIND ABOUT THIS CASE OR THAT WOULD BE IN
16 RESPONSE TO ANY QUESTION THAT I HAVE ASKED YOU OR THAT THE
17 LAWYERS HAVE ASKED YOU EITHER TODAY OR AT ANY TIME LAST WEEK?
18 IF SO, PLEASE STAND. ANY ADDITIONAL VOIR DIRE FROM THE
19 STATE?

20 MR. MYERS: NO, SIR.

21 THE COURT: FROM THE DEFENSE?

22 MR. LITTLEJOHN: NO, YOUR HONOR.

23 THE COURT: ALL RIGHT. NOW, LADIES AND GENTLEMEN,
24 WE'RE GOING TO STRIKE THE JURY, AND THE PROCESS FOR DOING
25 THIS IS THAT THE CLERK WILL CALL THE NAMES OF THE JURORS.

1 WHEN YOUR NAME IS CALLED, PLEASE COME UP HERE TO THE FRONT OF
2 THE COURTROOM AND STAND RIGHT IN FRONT OF THIS PODIUM THAT IS
3 IN THE MIDDLE OF THE COURTROOM. YOU TURN AROUND AND FACE THE
4 LAWYERS.

5 WE'LL HEAR FROM THE SOLICITOR FIRST. THE SOLICITOR
6 WILL EITHER ASK THAT YOU BE EXCUSED FROM SERVICE IN THIS
7 CASE, AND IN THAT CASE YOU CAN GO BACK AND HAVE A SEAT IN
8 YOUR CHAIR, OR HE WILL ASK THAT YOU BE PRESENTED TO THE
9 DEFENSE. IF YOU ARE PRESENTED TO THE DEFENSE, THEN EITHER
10 MR. LITTLEJOHN OR MS. KIMBROUGH WILL ASK EITHER THAT YOU BE
11 EXCUSED FROM SERVICE IN THIS CASE IN WHICH CASE YOU CAN GO
12 BACK TO YOUR SEAT OR THAT YOU BE SEATED ON THE JURY, AND
13 WE'RE GOING TO KEEP THIS PROCESS UP UNTIL WE GET THE WHOLE
14 JURY AND THREE ALTERNATES. IT WILL TAKE A LITTLE WHILE.

15 DON'T FEEL ODD ABOUT HAVING TO WALK UP FRONT AND
16 STAND IN FRONT OF ALL THESE PEOPLE. THIS IS A -- TO YOU ALL
17 I'M SURE IT SEEMS LIKE A STRANGE WAY TO DO THIS AND PERHAPS
18 IT IS, BUT WE'VE BEEN DOING IT IN SOUTH CAROLINA THIS WAY FOR
19 HUNDREDS OF YEARS, MUCH LONGER THAN ANY OF US CAN REMEMBER,
20 AND WE'RE JUST GOING TO DO IT AGAIN, AT LEAST THIS ONE MORE
21 TIME. MADAM CLERK?

22 THE CLERK: JUROR NUMBER 294 IS MICHELLE SMOAK.
23 RIGHT THERE, MA'AM, IN FRONT OF THE -- YES, MA'AM. THANK
24 YOU. WHAT SAY YE FOR THE STATE?

25 MR. MYERS: EXCUSE MS. SMOAK.

1 THE CLERK: MA'AM, YOU MAY RETURN TO YOUR SEAT.
2 THANK YOU. JUROR NUMBER 321 IS BECKY VANLOOZEN. WHAT SAY YE
3 FOR THE STATE?

4 MR. MYERS: PRESENT MS. VANLOOZEN.

5 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

6 MR. LITTLEJOHN: PLEASE EXCUSE MS. VANLOOZEN.

7 THE CLERK: MS. VANLOOZEN, YOU MAY RETURN TO YOUR
8 SEAT, PLEASE, MA'AM. JUROR NUMBER 109 IS LAUREN GIBSON.
9 WHAT SAY YE FOR THE STATE?

10 MR. MYERS: PRESENT MRS. GIBSON.

11 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

12 MR. LITTLEJOHN: PLEASE SEAT MS. GIBSON.

13 THE CLERK: MS. GIBSON, IF YOU'LL TAKE A SEAT IN THE
14 JURY BOX TO OUR RIGHT, PLEASE, MA'AM.

15 JUROR GIBSON: I NEED TO GET MY PURSE.

16 THE CLERK: LADIES AND GENTLEMEN, WHEN YOUR NAME IS
17 CALLED AND YOU COME FORWARD TO THE PODIUM, PLEASE BRING ALL
18 OF YOUR PERSONAL BELONGINGS JUST IN CASE YOU ARE SEATED ON
19 THE JURY. THANK YOU. JUROR NUMBER 258 IS DIANA RIVERS.
20 WHAT SAY YE FOR THE STATE?

21 MR. MYERS: PRESENT MS. RIVERS.

22 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

23 MR. LITTLEJOHN: PLEASE SEAT MS. RIVERS.

24 THE CLERK: MS. RIVERS, IF YOU'LL HAVE A SEAT IN THE
25 JURY BOX TO MY RIGHT, PLEASE, MA'AM. JUROR NUMBER 186 IS

1 DEBORAH LUCAS. WHAT SAY YE FOR THE STATE?

2 MR. MYERS: PRESENT MRS. LUCAS.

3 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

4 MR. LITTLEJOHN: PLEASE EXCUSE MS. LUCAS.

5 THE CLERK: MS. LUCAS, YOU MAY RETURN TO YOUR SEAT,

6 PLEASE, MA'AM. JUROR NUMBER 177 IS TIMOTHY LEITNER. WHAT

7 SAY YE FOR THE STATE?

8 MR. MYERS: PRESENT MR. LEITNER.

9 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

10 MR. LITTLEJOHN: PLEASE SEAT MR. LEITNER.

11 THE CLERK: MR. LEITNER, IF YOU'LL HAVE A SEAT IN

12 THE JURY BOX TO MY RIGHT, PLEASE. JUROR NUMBER 196 IS SUSAN

13 HARTLEY. WHAT SAY YE FOR THE STATE?

14 MR. MYERS: EXCUSE MS. HARTLEY.

15 THE CLERK: MA'AM, YOU MAY RETURN TO YOUR SEAT.

16 THANK YOU. JUROR NUMBER 197 IS ADAM MCCULLOUGH. WHAT SAY YE

17 FOR THE STATE?

18 MR. MYERS: PRESENT MR. MCCULLOUGH.

19 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

20 MR. LITTLEJOHN: PLEASE EXCUSE MR. MCCULLOUGH.

21 THE CLERK: MR. MCCULLOUGH, IF YOU'LL RETURN TO YOUR

22 SEAT, PLEASE, SIR. JUROR NUMBER 36 IS MACK BROCK. WHAT SAY

23 YE FOR THE STATE?

24 MR. MYERS: EXCUSE MR. BROCK.

25 THE CLERK: MR. BROCK, YOU MAY RETURN TO YOUR SEAT.

1 THANK YOU. JUROR NUMBER 233 IS VICTOR PETRELLA. WHAT SAY YE
2 FOR THE STATE?

3 MR. MYERS: PRESENT MR. PETRELLA.

4 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

5 MR. LITTLEJOHN: PLEASE EXCUSE MR. PETRELLA.

6 THE CLERK: MR. PETRELLA, IF YOU'LL RETURN TO YOUR
7 SEAT, PLEASE. JUROR NUMBER 182 IS WILLIAM LIVINGSTON. WHAT
8 SAY YE FOR THE STATE?

9 MR. MYERS: PRESENT MR. LIVINGSTON.

10 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

11 MR. LITTLEJOHN: PLEASE SEAT MR. LIVINGSTON.

12 THE CLERK: MR. LIVINGSTON, IF YOU'LL TAKE A SEAT IN
13 THE JURY BOX TO MY RIGHT, PLEASE. JUROR NUMBER 298 IS
14 DARLENE STAGGS. WHAT SAY YE FOR THE STATE?

15 MR. MYERS: PRESENT MS. STAGGS.

16 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

17 MR. MYERS: PLEASE EXCUSE MS. STAGGS.

18 THE CLERK: MS. STAGGS, IF YOU'LL RETURN TO YOUR
19 SEAT, PLEASE. JUROR NUMBER 27 IS EDWARD BOYLE. WHAT SAY YE
20 FOR THE STATE?

21 MR. MYERS: PRESENT MR. BOYLE.

22 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

23 MR. LITTLEJOHN: PLEASE EXCUSE MR. BOYLE.

24 THE CLERK: MR. BOYLE, IF YOU'LL RETURN TO YOUR
25 SEAT, PLEASE, SIR. JUROR NUMBER 24 IS DIANE BOUYE. WHAT SAY

1 YE FOR THE STATE?

2 MR. MYERS: PRESENT MS. BOUYE.

3 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

4 MR. LITTLEJOHN: PLEASE SEAT MS. BOUYE.

5 THE CLERK: MS. BOUYE, IF YOU'LL HAVE A SEAT IN THE

6 JURY BOX TO THE RIGHT, PLEASE, MA'AM. JUROR NUMBER 228 IS

7 MARY PAXTON. WHAT SAY YE FOR THE STATE?

8 MR. MYERS: EXCUSE MS. PAXTON.

9 THE CLERK: MS. PAXTON, IF YOU WILL RETURN TO YOUR
10 SEAT, PLEASE, MA'AM. JUROR NUMBER 127 IS JANET HARMON. WHAT
11 SAY YE FOR THE STATE?

12 MR. MYERS: PRESENT MS. HARMON.

13 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

14 MR. LITTLEJOHN: PLEASE SEAT MS. HARMON.

15 THE CLERK: MS. HARMON, IF YOU'LL HAVE A SEAT IN THE

16 JURY BOX TO THE RIGHT, PLEASE, MA'AM. JUROR NUMBER 70 IS

17 CHRISTOPHER CUMING. WHAT SAY YE FOR THE STATE?

18 MR. MYERS: EXCUSE MR. CUMING.

19 THE CLERK: MR. CUMING, IF YOU'LL RETURN TO YOUR
20 SEAT, PLEASE. JUROR NUMBER 170 IS PHILLIP LAFOLLETTE. WHAT
21 SAY YE FOR THE STATE?

22 MR. MYERS: PRESENT MR. LAFAYETTE (SIC).

23 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

24 MR. LITTLEJOHN: PLEASE EXCUSE MR. LAFOLLETTE.

25 THE CLERK: IF YOU'LL RETURN TO YOUR SEAT, PLEASE,

1 SIR. JUROR NUMBER 198 IS CHARLES MCDANIEL. WHAT SAY YE FOR
2 THE STATE?

3 MR. MYERS: PRESENT MR. MCDANIEL.

4 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

5 MR. LITTLEJOHN: PLEASE SEAT MR. MCDANIEL.

6 THE CLERK: MR. MCDANIEL, IF YOU'LL HAVE A SEAT IN
7 THE JURY BOX, PLEASE, SIR. JUROR NUMBER 302 IS DARRELL
8 STARKEY. WHAT SAY YE FOR THE STATE?

9 MR. MYERS: PRESENT MR. STARKEY.

10 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

11 MR. LITTLEJOHN: PLEASE EXCUSE MR. STARKEY.

12 THE CLERK: MR. STARKEY, IF YOU'LL RETURN TO YOUR
13 SEAT, PLEASE. JUROR NUMBER 304 IS PAUL STEVENS. WHAT SAY YE
14 FOR THE STATE?

15 MR. MYERS: PRESENT MR. STEVENS.

16 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

17 MR. LITTLEJOHN: SEAT MR. STEVENS.

18 THE CLERK: MR. STEVENS, IF YOU'LL HAVE SEAT IN THE
19 JURY BOX TO THE RIGHT, PLEASE. JUROR NUMBER 225 IS EDWARD
20 OSEGUEDA. WHAT SAY YE FOR THE STATE?

21 MR. MYERS: PRESENT MR. OSEGUEDA.

22 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

23 MR. LITTLEJOHN: PLEASE SEAT MR. OSEGUEDA.

24 THE CLERK: IF YOU WILL HAVE A SEAT IN THE JURY BOX,
25 PLEASE, SIR. JUROR NUMBER 2 IS JENNIFER ADAMS. WHAT SAY YE

1 FOR THE STATE?

2 MR. MYERS: PRESENT MRS. ADAMS.

3 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

4 MR. LITTLEJOHN: PLEASE EXCUSE MS. ADAMS.

5 THE CLERK: MS. ADAMS, IF YOU'LL RETURN TO YOUR
6 SEAT, PLEASE, MA'AM. JUROR NUMBER 270 IS RONALD SCHROEDER.
7 WHAT SAY YE FOR THE STATE?

8 MR. MYERS: PRESENT MR. SCHROEDER.

9 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

10 MR. LITTLEJOHN: PLEASE SEAT MR. SCHROEDER.

11 THE CLERK: MR. SCHROEDER, IF YOU'LL HAVE A SEAT IN
12 THE JURY BOX TO THE RIGHT, PLEASE, SIR. JUROR NUMBER 191 IS
13 THOMAS MARINELLI. WHAT SAY YE FOR THE STATE?

14 MR. MYERS: PRESENT MR. MARINELLI.

15 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

16 MR. LITTLEJOHN: PLEASE SEAT MR. MARINELLI.

17 THE CLERK: MR. MARINELLI, IF YOU'LL HAVE A SEAT IN
18 THE JURY BOX TO THE RIGHT, PLEASE, SIR. JUROR NUMBER 291 IS
19 NEAL SMITH. WHAT SAY YE FOR THE STATE?

20 MR. MYERS: PRESENT MR. SMITH.

21 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

22 MR. LITTLEJOHN: PLEASE EXCUSE MR. SMITH.

23 THE CLERK: MR. SMITH, IF YOU'LL RETURN TO YOUR
24 SEAT, PLEASE. JUROR NUMBER 205 IS VICKY MILLS. WHAT SAY YE
25 FOR THE STATE?

1 MR. MYERS: PRESENT MRS. MILLS.

2 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

3 MR. LITTLEJOHN: PLEASE SEAT MS. MILLS.

4 THE CLERK: MS. MILLS, IF YOU'LL TAKE A SEAT IN THE
5 RIGHT JURY BOX, PLEASE.

6 THE COURT: STRIKES FOR ALTERNATES ARE ONE AND TWO.

7 THE CLERK: THANK YOU. JUROR NUMBER 275 IS PHILLIP
8 SHARPE. WHAT SAY YE FOR THE STATE?

9 MR. MYERS: PRESENT MR. SHARPE.

10 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

11 MR. LITTLEJOHN: PLEASE EXCUSE MR. SHARPE.

12 THE CLERK: MR. SHARPE, IF YOU'LL RETURN TO YOUR
13 SEAT, PLEASE. JUROR NUMBER 285 IS AMBER SMITH. WHAT SAY YE
14 FOR THE STATE?

15 MR. MYERS: EXCUSE MS. SMITH.

16 THE CLERK: MS. SMITH, IF YOU'LL RETURN TO YOUR
17 SEAT, PLEASE. JUROR NUMBER 260 IS WILLIAM RIVERS. WHAT SAY
18 YE FOR THE STATE?

19 MR. MYERS: PRESENT MR. RIVERS.

20 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

21 MR. LITTLEJOHN: PLEASE EXCUSE MR. RIVERS.

22 THE CLERK: MR. RIVERS, IF YOU'LL RETURN TO YOUR
23 SEAT, PLEASE. JUROR NUMBER 77 IS LAURA DAY. WHAT SAY YE FOR
24 THE STATE?

25 MR. MYERS: PRESENT MS. DAY.

1 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

2 MR. LITTLEJOHN: PLEASE SEAT MS. DAY.

3 THE CLERK: MS. DAY, IF YOU'LL TAKE A SEAT TO THE
4 RIGHT IN THE JURY BOX, PLEASE, MA'AM. JUROR NUMBER 235 IS
5 CHRISTILLE PHILLIPS. WHAT SAY YE FOR THE STATE?

6 MR. MYERS: PRESENT MRS. PHILLIPS.

7 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

8 MR. LITTLEJOHN: PLEASE EXCUSE MS. PHILLIPS.

9 THE CLERK: MS. PHILLIPS, IF YOU'LL RETURN TO YOUR
10 SEAT, PLEASE, MA'AM. JUROR NUMBER 278 IS RENEE SHEALY. WHAT
11 SAY YE FOR THE STATE?

12 MR. MYERS: PRESENT MS. SHEALY.

13 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

14 MR. LITTLEJOHN: PLEASE EXCUSE MS. SHEALY.

15 THE CLERK: MS. SHEALY, IF YOU'LL RETURN TO YOUR
16 SEAT, PLEASE, MA'AM. JUROR NUMBER 44 IS RICHARD BURRIS.
17 WHAT SAY YE FOR THE STATE?

18 MR. MYERS: PRESENT MR. BURRIS.

19 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

20 MR. LITTLEJOHN: PLEASE SEAT MR. BURRIS.

21 THE CLERK: MR. BURRIS, IF YOU'LL TAKE A SEAT IN THE
22 JURY BOX TO MY RIGHT, PLEASE. JUROR NUMBER 93 IS ROBIN
23 EZZELL. WHAT SAY YE FOR THE STATE?

24 MR. MYERS: EXCUSE MS. EZZELL.

25 THE COURT: MS. EZZELL, IF YOU'LL RETURN TO YOUR

1 SEAT, PLEASE, MA'AM. JUROR NUMBER 154 IS GLORIA JOYE. WHAT
2 SAY YE FOR THE STATE?

3 MR. MYERS: PRESENT MS. JOYE.

4 THE CLERK: WHAT SAY YE FOR THE DEFENSE?

5 MR. LITTLEJOHN: PLEASE SEAT MS. JOYE.

6 THE CLERK: MS. JOYE, IF YOU'LL TAKE A SEAT IN THE
7 JURY BOX TO THE RIGHT, PLEASE, MA'AM.

8 (WHEREUPON, THE JURY WAS IMPANELED AT 11:25 A.M.)

9 THE COURT: ANY EXCEPTION TO THE COMPOSITION OR
10 MANNER OF SELECTION FOR THE JURY? FROM THE STATE?

11 MR. MYERS: NOT AT THIS TIME, SIR.

12 THE COURT: FROM THE DEFENSE?

13 MR. LITTLEJOHN: NO, YOUR HONOR.

14 THE COURT: LADIES AND GENTLEMEN, WE'RE GOING TO
15 TAKE A SHORT BREAK RIGHT NOW, AND I'M GOING TO SEND YOU IN
16 JUST A MINUTE BACK INTO THE JURY ROOM WHERE YOU WILL BE
17 SPENDING A FAIR AMOUNT OF TIME OVER THE NEXT SEVERAL DAYS.

18 THERE ARE SOME DRINKS BACK THERE. THERE ARE REST
19 ROOMS. YOU ALL CAN JUST MAKE YOURSELVES COMFORTABLE. WE
20 WILL NOT BE ON A VERY LONG BREAK, AND THEN WE'LL GET YOU BACK
21 OUT HERE INTO THE COURTROOM AND I'M GOING TO TALK TO YOU SOME
22 MORE AND THEN WE WILL -- WE WILL PROCEED WITH THE TRIAL.

23 NOW, I WANT TO GO AHEAD AND STRESS TO YOU ONE MORE
24 TIME AND I'LL SAY IT AGAIN BEFORE -- EVEN BEFORE LUNCH: YOU
25 MAY NOT DISCUSS THIS CASE. YOU MAY NOT DISCUSS IT AMONG

1 YOURSELVES. SO WHEN YOU GO BACK INTO THE JURY ROOM, Y'ALL
2 CAN GET TO KNOW EACH OTHER A LITTLE BIT, TALK ABOUT THE
3 WEATHER, TALK ABOUT WHATEVER YOU WANT TO, ANYTHING OTHER THAN
4 THIS CASE, AND I'LL HAVE YOU BACK OUT HERE IN THE COURTROOM
5 IN JUST A FEW MINUTES. YOU CAN GO AHEAD AND TAKE THEM OUT
6 NOW.

7 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AT
8 11:27 A.M.)

9 THE COURT: NOW, FOR THOSE OF YOU WHO ARE ON THE
10 JURY PANEL WHO WERE NOT SELECTED TO SERVE IN THIS CASE, YOUR
11 SERVICE AS JURORS IS COMPLETE AND WE WILL NOT NEED YOU ANY
12 MORE. I WANT TO PERSONALLY THANK EACH ONE OF YOU FOR THE --
13 YOUR WILLINGNESS TO PARTICIPATE, YOUR OPENNESS WITH US DURING
14 THE COURSE OF LAST WEEK AND THIS MORNING.

15 YOU ARE NOT REQUIRED TO LEAVE. NOW, SOME OF YOU MAY
16 FEEL AS THOUGH YOU WANT TO SORT OF SEE WHAT'S GOING TO HAPPEN
17 HERE, AND YOU'RE WELCOME TO STAY. THE COURTROOM HERE -- THE
18 COURTHOUSE IS ALWAYS OPEN, AT LEAST DURING BUSINESS HOURS. I
19 KNOW MANY OF YOU ARE TICKLED BECAUSE YOU CAN GET BACK TO
20 WORK, AND SOME OF YOU MAY HAVE YOUR INTEREST PIQUED A LITTLE
21 BIT AND YOU WANT TO SEE WHAT'S GOING TO HAPPEN AND YOU'RE
22 WELCOME TO DO EITHER ONE OF THOSE THINGS.

23 WHEN I BREAK IN JUST A SECOND, YOU'LL BE FREE TO GO.
24 IT'S BEEN A PLEASURE TO WORK WITH YOU ALL, AND I HOPE THAT
25 SOME OTHER TIME WHEN I HAVE THE PRIVILEGE OF COMING BACK TO

1 LEXINGTON COUNTY THAT I CAN SEE YOU ALL UNDER MORE FAVORABLE
2 CIRCUMSTANCES. SO WE'RE GOING TO TAKE A SHORT BREAK, AND I
3 WANT TO SEE THE LAWYERS IN MY OFFICE BRIEFLY, AND THEN WE'LL
4 COME BACK TO BEGIN WITH MY REMARKS AND THEN OPENING
5 STATEMENTS.

6 (WHEREUPON, THE JURORS NOT IMPANELED WERE EXCUSED.
7 A SHORT BREAK WAS TAKEN. STATE'S EXHIBIT 1 WAS MARKED FOR
8 IDENTIFICATION ONLY. COURT'S EXHIBIT 2 WAS MARKED FOR
9 IDENTIFICATION ONLY.)

10 THE COURT: BE SEATED, PLEASE.

11 (THE COURT TALKS OFF THE RECORD WITH TELEVISION
12 CAMERA CREWS.)

13 THE COURT: DO Y'ALL NEED TO TAKE UP ANYTHING RIGHT
14 NOW?

15 MR. GRAHAM: YOUR HONOR, THE ONLY THING I COULD ADD
16 IS THAT THE DEPARTMENT OF MENTAL HEALTH REPORT THAT WE DIDN'T
17 HAVE BEFORE, I'VE GONE AHEAD AND GIVEN A COPY OF THAT TO THE
18 COURT REPORTER.

19 THE COURT: OKAY. ALL RIGHT.

20 MR. LITTLEJOHN: MAY I LOOK AT THE INDICTMENTS FOR
21 JUST A SECOND?

22 THE COURT: SIR?

23 MR. LITTLEJOHN: COULD I LOOK AT THE INDICTMENTS
24 JUST TO MAKE SURE WE'VE GOT COPIES JUST TO MAKE SURE...
25 WE'VE GOT COPIES.

1 THE COURT: HOPE OR BETH, Y'ALL GOING TO SWEAR THE
2 JURY AS SOON AS I BRING THEM IN. BRING IN THE JURY, PLEASE.

3 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT
4 11:43 A.M.)

5 THE COURT: SWEAR THE JURY, PLEASE.

6 (WHEREUPON, THE JURY WAS SWORN AT 11:44 A.M.)

7 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, I'M
8 GOING TO SPEND A FEW MINUTES TALKING TO YOU, AND THEN WE'RE
9 GOING TO MOVE INTO THE OPENING STATEMENTS OF THE LAWYERS AND
10 THEN WE'RE GOING TO BREAK FOR LUNCH. AND DURING THE PROCESS
11 OF ME TALKING TO YOU, ONE OF THE THINGS THAT I WANT TO
12 ACCOMPLISH IS TO MAKE YOU ALL FEEL COMFORTABLE WITH THE
13 PROCESS, MAKE YOU FEEL COMFORTABLE WITH BEING IN HERE.

14 NOW, YOU KNOW THAT WE REALLY HAVE BEEN TOGETHER FOR
15 SEVERAL DAYS ALREADY, AND WE'RE GOING TO BE TOGETHER SEVERAL
16 MORE DAYS BEFORE THIS IS DONE. THERE ARE A LOT OF PEOPLE IN
17 HERE THAT YOU ALL HAVE MET WHO ARE HERE PRIMARILY, IF NOT
18 EXCLUSIVELY, TO SERVE YOU ALL, SERVE THE JURY, AND MAINLY
19 IT'S THESE MEN IN THE RED COATS. AND IF YOU NEED ANYTHING
20 DURING THE COURSE OF THIS TRIAL, THEN THAT'S YOUR FIRST
21 SOURCE FOR WHAT YOU NEED IS JUST TO TURN TO THE BAILIFFS;
22 TELL THEM WHAT YOU NEED. THEY WILL -- IF IT'S SOMETHING THAT
23 THEY ARE USED TO BEING ABLE TO HANDLE, THEY WILL GET IT FOR
24 YOU AND THEY'LL TAKE CARE OF IT. IF IT'S SOMETHING THAT'S
25 OUT OF THE ORDINARY, THEN THEY KNOW TO CONTACT ME AND I CAN

1 ADDRESS IT.

2 NOW, DURING THE COURSE OF THE TRIAL WE'RE GOING TO
3 HAVE CONVERSATIONS BETWEEN ME AND THOSE OF YOU WHO ARE -- AND
4 YOU AS A GROUP, BUT ALSO I EXPECT THERE ARE GOING TO BE
5 PLENTY OF TIMES WHEN I'M GOING TO BE HAVING CONVERSATIONS OUT
6 HERE ON THE RECORD WITH INDIVIDUAL JURORS IF SOMETHING MAY
7 COME UP WHERE I'LL NEED TO ASK YOU A QUESTION. SO IF THAT
8 HAPPENS, DON'T -- DON'T WORRY ABOUT THAT. DON'T BE NERVOUS
9 ABOUT THAT. THAT'S NORMAL; THAT'S ROUTINE.

10 I'M GOING TO START BY GOING OVER THE INDICTMENT WITH
11 YOU AGAIN. THE INDICTMENT IS 2003-GS-32-409, AND IN COUNT 1
12 OF THAT INDICTMENT MR. MERCER HAS BEEN INDICTED FOR MURDER.
13 AND IN THAT COUNT OF THE INDICTMENT IT IS ALLEGED THAT KEVIN
14 J. MERCER DID IN LEXINGTON COUNTY ON OR ABOUT MAY 16TH, 2002,
15 WILLFULLY, FELONIOUSLY, AND WITH MALICE AFORETHOUGHT KILL ONE
16 TRACY LAMAR DAVIS BY MEANS OF SHOOTING THE VICTIM IN THE HEAD
17 WITH A PISTOL AND THE SAID TRACY LAMAR DAVIS DIED AS A
18 PROXIMATE RESULT THEREOF IN LEXINGTON COUNTY ON OR ABOUT
19 MAY 16TH, 2002, IN VIOLATION OF SECTION 16-3-10 OF THE SOUTH
20 CAROLINA CODE OF LAWS.

21 IN COUNT 2 OF THE INDICTMENT MR. MERCER HAS BEEN
22 INDICTED FOR ARMED ROBBERY, AND IN THAT COUNT IT IS ALLEGED
23 THAT KEVIN J. MERCER DID IN LEXINGTON COUNTY ON OR ABOUT
24 MAY 16TH, 2002, WHILE ARMED WITH A DEADLY WEAPON, TO WIT, A
25 PISTOL, DID UNLAWFULLY AND FELONIOUSLY TAKE FROM THE PERSON

1 OR IN THE PRESENCE OF TRACY LAMAR DAVIS BY MEANS OF FORCE OR
2 INTIMIDATION A VEHICLE, GOODS, MONIES, OR OTHER PERSONAL
3 PROPERTY ITEMS OF THE SAID TRACY LAMAR DAVIS OR OTHERS, SUCH
4 VEHICLE, GOODS, MONIES, OR OTHER PERSONAL ITEMS BEING
5 DESCRIBED AS A 1998 LINCOLN NAVIGATOR VEHICLE, GOODS, MONIES
6 OR OTHER PERSONAL ITEMS, WITH THE INTENT TO PERMANENTLY
7 DEPRIVE THE OWNER OF THE SAID ITEMS, IN VIOLATION OF SECTION
8 16-11-330 OF THE SOUTH CAROLINA CODE OF LAWS.

9 AND IN COUNT 3 OF THE INDICTMENT MR. MERCER HAS BEEN
10 INDICTED FOR POSSESSION OF A FIREARM OR A KNIFE DURING THE
11 COMMISSION OF A VIOLENT CRIME, AND IN THAT INDICTMENT -- IN
12 THAT COUNT OF THE INDICTMENT IT IS ALLEGED THAT KEVIN J.
13 MERCER DID IN LEXINGTON COUNTY ON OR ABOUT MAY 16TH, 2002,
14 WILLFULLY AND UNLAWFULLY HAVE IN HIS POSSESSION OR DID
15 VISIBLY DISPLAY A PISTOL DURING THE COMMISSION OF A VIOLENT
16 CRIME OR CRIMES, TO WIT, MURDER AND/OR ARMED ROBBERY, AS
17 DEFINED IN SECTION 16-1-60 AND ALL IN VIOLATION OF SECTION
18 16-23-490 OF THE SOUTH CAROLINA CODE OF LAWS.

19 NOW, AS I TOLD YOU ALL LAST WEEK WHEN I READ TO YOU
20 THE ALLEGATIONS THAT ARE CONTAINED IN THAT INDICTMENT, THE
21 INDICTMENT THAT I JUST READ TO YOU IS NOT IN ANY SENSE
22 EVIDENCE OF THE ALLEGATIONS THAT IT -- THAT IT CONTAINS. THE
23 INDICTMENT IS SIMPLY THE FORMAL DOCUMENT THAT CONTAINS THE
24 ALLEGATIONS OR THE CHARGES THAT HAVE BEEN MADE AGAINST THE
25 DEFENDANT, AND IT IS THE DOCUMENT THAT SERVES TO PROCESS THIS

1 CASE AND BRING IT INTO THIS COURT FOR TRIAL.

2 THE DEFENDANT HAS PLED NOT GUILTY TO THIS
3 INDICTMENT, TO ALL THREE COUNTS OF THIS INDICTMENT, AND THE
4 PLEA OF NOT GUILTY CASTS THE BURDEN ON THE STATE TO PROVE THE
5 DEFENDANT GUILTY BEYOND A REASONABLE DOUBT. AND AS MEMBERS
6 OF THE JURY, LADIES AND GENTLEMEN, THAT WILL BE YOUR JOB: TO
7 DETERMINE WHETHER OR NOT THE STATE HAS MET THAT BURDEN OF
8 PROOF.

9 NOW, LADIES AND GENTLEMEN, IT IS A VERY IMPORTANT
10 RULE OF LAW IN OUR COUNTRY THAT A DEFENDANT IN A CRIMINAL
11 TRIAL WILL ALWAYS BE PRESUMED TO BE INNOCENT OF THE CRIMES
12 THAT HAVE BEEN CHARGED AGAINST HIM UNLESS AND UNTIL HIS GUILT
13 HAS BEEN PROVEN BY EVIDENCE THAT SATISFIES YOU OF THAT GUILT
14 BEYOND A REASONABLE DOUBT. NOW, THIS PRESUMPTION OF
15 INNOCENCE IS NOT MERELY A LEGAL THEORY. IT'S NOT JUST A
16 LEGAL PHRASE THAT WE USE. IT IS A SUBSTANTIAL CONSTITUTIONAL
17 RIGHT TO WHICH EVERY DEFENDANT IS ENTITLED. THE PRESUMPTION
18 OF INNOCENCE REMAINS WITH THE DEFENDANT FROM THE TIME HE IS
19 CHARGED, THROUGHOUT THE TRIAL, AND INTO THE JURY ROOM, AND IT
20 IS TAKEN AWAY FROM HIM ONLY IF THE JURY FINDS THE DEFENDANT
21 GUILTY. THE DEFENDANT IN A CRIMINAL TRIAL IS NEVER REQUIRED
22 TO PROVE HIMSELF INNOCENT. THE BURDEN OF PROOF REMAINS ON
23 THE STATE AT ALL TIMES.

24 NOW, LADIES AND GENTLEMEN, WE'VE TALKED A LITTLE BIT
25 DURING THE COURSE OF LAST WEEK ABOUT THE STRUCTURE OF THIS

1 TRIAL. I MENTIONED THAT THIS IS WHAT WE CALL A BIFURCATED
2 TRIAL WHICH BASICALLY MEANS THAT IT IS DIVIDED UP INTO TWO
3 PHASES. THE PART THAT WE'RE ABOUT TO START RIGHT NOW, THE
4 FIRST PHASE, OR SOMETIMES IT IS REFERRED TO AS THE GUILT
5 PHASE, IS JUST LIKE ANY OTHER TRIAL, AND I'M GOING TO TALK TO
6 YOU ABOUT THE STRUCTURE OF THAT IN A FEW MINUTES.

7 THE RESPONSIBILITY OF THE STATE IN THE GUILT PHASE
8 OR THE FIRST PHASE IS TO PROVE THE DEFENDANT GUILTY BEYOND A
9 REASONABLE DOUBT. THAT'S WHY WE'RE HERE: FOR YOU ALL TO
10 DETERMINE IN THAT FIRST PHASE WHETHER OR NOT THE STATE HAS
11 PROVEN THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT. NOW,
12 DURING THIS FIRST PHASE THERE IS NO NEED FOR YOU ALL TO
13 CONCERN YOURSELVES IN ANY WAY WITH ANYTHING REGARDING A
14 SENTENCE. YOUR FOCUS IN THIS FIRST PHASE IS WHETHER OR NOT
15 THE STATE HAS PROVEN OR WILL PROVE THE DEFENDANT GUILTY
16 BEYOND A REASONABLE DOUBT.

17 IF YOU FIND, AS MEMBERS OF THE JURY, THAT THE STATE
18 HAS PROVEN THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT OF
19 THE CRIME OF MURDER, THEN WE WOULD MOVE INTO THE SECOND
20 PHASE. IF YOU FIND THAT THE STATE HAS NOT PROVEN THE
21 DEFENDANT GUILTY OF MURDER, THEN THAT WOULD END THE CASE AND
22 WE WOULD NOT MOVE INTO THE SECOND PHASE, AND THERE WOULD NOT
23 BE ANY NEED AT THAT POINT FOR YOU ALL TO GIVE ANY
24 CONSIDERATION TO THE QUESTION OF SENTENCE.

25 SO FOR RIGHT NOW, FOR THE NEXT DAY OR SO -- I'M NOT

1 SURE EXACTLY HOW LONG THIS IS GOING TO LAST, PROBABLY TWO
2 DAYS, THE FIRST PHASE -- SET ASIDE ANYTHING THAT MIGHT BE IN
3 YOUR MIND CONCERNING THE APPROPRIATE SENTENCE. THAT'S NOT A
4 MATTER FOR YOUR CONCERN AT THIS TIME.

5 NOW, THE STRUCTURE OF THE GUILT PHASE OR THE FIRST
6 PHASE OF THE TRIAL IS THE SAME AS THE STRUCTURE OF ANY CASE
7 WE EVER TRY UP HERE IN THIS COURTHOUSE. THERE ARE FIVE BASIC
8 PHASES TO THAT TRIAL, FIVE BASIC PARTS, AND I'M GOING TO GO
9 OVER THOSE WITH YOU NOW. THE FIRST PHASE IS WHAT -- IS THE
10 OPENING STATEMENTS WHEN THE LAWYERS WILL STAND BEFORE YOU AND
11 THEY WILL EXPLAIN TO YOU WHAT THIS CASE IS ABOUT. THEY'LL
12 TELL YOU WHAT THE ISSUES ARE IN THE CASE. THEY'LL TELL YOU
13 HOW EACH SIDE STANDS ON THOSE ISSUES, AND THEY WILL ALSO
14 DISCUSS FOR YOU SOME OF THE EVIDENCE THAT YOU WILL SEE THAT
15 WILL RELATE TO THOSE ISSUES.

16 AFTER THE OPENING STATEMENTS HAVE BEEN MADE, VERY
17 IMPORTANTLY WE'RE GOING TO HAVE LUNCH, AND THEN AFTER THAT
18 WE'LL COME BACK AND START THE SECOND PHASE OF THE TRIAL WHICH
19 IS THE EVIDENTIARY PHASE, AND OBVIOUSLY THAT WILL BE THE
20 LONGEST PHASE. IT WILL LAST MORE THAN A DAY, I SUSPECT. THE
21 WITNESSES WHO WILL TESTIFY WILL COME HERE TO THIS WITNESS
22 STAND. YOU'LL BE ABLE TO HEAR THEIR TESTIMONY. THERE WILL
23 ALSO BE PHYSICAL EVIDENCE AND OTHER EVIDENCE THAT WILL BE
24 OFFERED BEFORE YOU, ALL OF WHICH WILL BECOME THE BASIS ON
25 WHICH YOU WILL MAKE YOUR DECISION AS TO WHETHER OR NOT THE

1 STATE HAS MET ITS BURDEN OF PROOF.

2 NOW, THE THIRD PHASE OF THE -- OR THE THIRD STEP IN
3 THE GUILT PHASE OF THE TRIAL IS CLOSING ARGUMENTS WHEN THE
4 LAWYERS WILL STAND BEFORE YOU AGAIN, AND THIS TIME THEY WILL
5 ARGUE TO YOU AS TO WHETHER OR NOT THE STATE HAS MET ITS
6 BURDEN OF PROOF. AND THEN IN THE FOURTH STEP OR THE FOURTH
7 PHASE IS THE JURY CHARGE IN WHICH I WILL EXPLAIN TO YOU THE
8 LAW THAT IS APPLICABLE TO THIS CASE. THEN THE FIFTH PHASE IS
9 WHEN YOU WILL GO BACK INTO THE JURY ROOM AND YOU WILL
10 DELIBERATE. AND THOSE ARE THE FIVE BASIC STEPS THAT WE WILL
11 TAKE IN THE TRIAL IN THE -- IN THE GUILT PHASE OF THE TRIAL.
12 I KNOW SOMETIMES WHEN I USE THE WORD PHASE IN TWO DIFFERENT
13 RESPECTS IT MIGHT BE A LITTLE CONFUSING. IN THE OPENING
14 PHASE OF THE TRIAL WE WILL HAVE FIVE STEPS: OPENING
15 STATEMENT, EVIDENCE, CLOSING ARGUMENT. I'LL CHARGE YOU ON
16 THE LAW, AND THEN YOU WILL GO BACK INTO THE JURY ROOM TO
17 DELIBERATE.

18 NOW I'M GOING TO TALK TO YOU A LITTLE BIT ABOUT WHAT
19 SOME OF YOUR RESPONSIBILITIES ARE AND WHAT SOME OF YOUR
20 DUTIES ARE. YOUR BASIC RESPONSIBILITY AS JURORS IS TO SET
21 ASIDE ANYTHING THAT YOU MIGHT HAVE HEARD OR YOU MIGHT HAVE
22 LEARNED ABOUT THIS CASE BEFORE RIGHT NOW AND TO LISTEN VERY
23 CAREFULLY TO THE TESTIMONY AND THE EVIDENCE THAT WILL BE
24 PRESENTED BEFORE YOU AND THEN TO CONSIDER THAT TESTIMONY AND
25 EVIDENCE IN LIGHT OF THE LAW AS I WILL EXPLAIN IT TO YOU AND

1 TO RENDER A VERDICT THAT'S BASED SOLELY ON THAT TESTIMONY AND
2 EVIDENCE. THAT'S YOUR BASIC RESPONSIBILITY IN THIS CASE AS
3 JURORS.

4 NOW, IT'S VERY IMPORTANT THAT YOU NOT BEGIN TO MAKE
5 UP YOUR MIND ABOUT WHETHER OR NOT THE STATE HAS MET THAT
6 BURDEN OF PROOF UNTIL YOU'VE BEEN THROUGH ALL FIVE OF THOSE
7 PHASES THAT I'VE JUST OUTLINED FOR YOU. ONLY THEN WILL YOU
8 BE IN THE RIGHT POSITION TO BEGIN TO MAKE UP YOUR MIND.
9 SOMETIMES LAWYERS OR SOMETIMES JUDGES DESCRIBE A TRIAL SUCH
10 AS THIS AS FITTING TOGETHER A PUZZLE, AND NEITHER I, AND
11 SOMETIMES THE LAWYERS AND CERTAINLY YOU, DON'T KNOW WHEN THE
12 MOST IMPORTANT PIECES OF THAT PUZZLE ARE GOING TO COME INTO
13 EVIDENCE. SO IT'S VERY IMPORTANT FOR YOU TO KEEP AN OPEN
14 MIND AND NOT BEGIN TO MAKE UP YOUR MIND UNTIL YOU'VE BEEN
15 THROUGH ALL FIVE OF THOSE PHASES AND EVEN IN THE FIFTH PHASE
16 WHEN YOU HAVE A CHANCE TO LISTEN TO EACH OTHER DISCUSS THE
17 EVIDENCE BECAUSE ONLY THEN WILL YOU BE IN THE RIGHT POSITION
18 TO BEGIN TO MAKE UP YOUR MIND.

19 NOW, ONE MORE THING THAT -- THAT YOU HAVE HEARD ME
20 SAY SEVERAL TIMES, IF NOT A DOZEN TIMES ALREADY, IS THAT YOU
21 MAY NOT DISCUSS THIS CASE IN ANY WAY UNTIL I HAVE GIVEN YOU
22 PERMISSION TO BEGIN YOUR DELIBERATIONS. NOW, THAT'S VERY --
23 THAT'S OBVIOUS IN SOME RESPECTS AND PERHAPS NOT SO OBVIOUS IN
24 OTHERS. WHEN YOU GO BACK INTO THE JURY ROOM FOR A BREAK AS
25 YOU JUST DID, YOU MAY NOT DISCUSS THE CASE. WHEN YOU GO HOME

1 AT NIGHT, THEN YOU MAY NOT DISCUSS THIS CASE. YOU MAY NOT
2 ALLOW ANYONE TO DISCUSS THIS CASE WITH YOU, AND YOU MAY NOT
3 ALLOW YOURSELF TO BE EXPOSED TO ANY MEDIA COVERAGE THAT THERE
4 MAY BE ABOUT THIS CASE.

5 NOW, THAT IS -- THOSE ARE THE BASIC RULES. LET'S
6 TAKE THAT LAST COMPONENT THERE AND LET'S STOP FOR AWHILE AND
7 LET'S TALK ABOUT IT BECAUSE I WANT US TO UNDERSTAND HOW THIS
8 IS ALL GOING TO WORK, DISCUSSING THE CASE OR BEING EXPOSED TO
9 ANY MEDIA COVERAGE. NOW, THESE TWO CONCERNS HERE ARE VERY
10 IMPORTANT: THAT YOU NOT DISCUSS THE CASE AND THAT YOU NOT
11 ALLOW YOURSELF TO BE EXPOSED TO ANYTHING THAT ANYBODY ELSE
12 MIGHT SAY ABOUT THE CASE UNLESS IT HAPPENS RIGHT HERE IN THIS
13 COURTROOM UNDER MY SUPERVISION.

14 NOW, IT'S PROBABLY FAIRLY OBVIOUS TO YOU WHY THAT'S
15 THE LAW, BUT THE IMPORTANT THING FOR YOU TO REMEMBER IS THAT
16 THAT IS THE LAW, AND IT'S MY RESPONSIBILITY TO UPHOLD THE LAW
17 AND I'M COUNTING ON YOU ALL TO FOLLOW THOSE INSTRUCTIONS
18 REGARDING DISCUSSING THE CASE. IT WOULD BE, AS I'M SURE YOU
19 CAN UNDERSTAND, HIGHLY IMPROPER FOR ANY MEMBER OF THE JURY TO
20 LEARN ANYTHING ABOUT THIS CASE WHEN IT DIDN'T COME TO YOUR
21 ATTENTION RIGHT HERE IN THE COURTROOM UNDER MY SUPERVISION IN
22 COMPLIANCE WITH THE COURT RULES THAT WE HAVE REGARDING
23 EVIDENCE AND SUCH THINGS AS THAT.

24 NOW, YOU RECALL FROM LAST WEEK THAT I WAS
25 CONSIDERING SEQUESTERING THE JURY. THE PRIMARY PURPOSE OR

1 CERTAINLY ONE OF THE PRIMARY PURPOSES OF SEQUESTERING THE
2 JURY WOULD BE FOR ME TO BE ABLE TO INSURE THAT, FIRST OF ALL,
3 YOU ALL DIDN'T DISCUSS THIS CASE AND, SECOND OF ALL, THAT
4 NONE OF YOU BECAME EXPOSED TO ANY OUTSIDE INFLUENCE, WHETHER
5 IT BE SOMEONE WHO MIGHT HAVE SOMETHING THAT THEY WANT TO SAY
6 OR WHETHER IT BE SOMETHING THAT WOULD BE IN THE NEWSPAPER OR
7 ON TELEVISION. THAT WOULD BE THE PRIMARY PURPOSE OF MY
8 SEQUESTERING THE JURY, AND REALLY IT'S SORT OF TRADITIONAL IN
9 A CASE LIKE THIS THAT THE JURY WOULD BE SEQUESTERED, AND ONE
10 OF THE MAIN REASONS IS THAT.

11 NOW, I HAVE DECIDED THAT IT'S NOT NECESSARY IN THIS
12 CASE TO SEQUESTER THE JURY BECAUSE I BELIEVE THAT I CAN TRUST
13 YOU ALL AS INDIVIDUALS AND AS A GROUP TO UNDERSTAND
14 EVERYTHING THAT YOU AND I HAVE BEEN DISCUSSING OR THAT I HAVE
15 BEEN DISCUSSING OVER THE LAST FEW MINUTES AND TO -- AND TO
16 HELP ME TO MAKE SURE THAT THESE TWO THINGS DON'T HAPPEN.

17 AS I'M SURE YOU CAN IMAGINE, NOT ONLY SINCE LAST
18 MONDAY MORNING BUT FOR MONTHS BEFORE THIS PAST MONDAY
19 MORNING, A LOT GOES INTO THE LOGISTICALLY AND OTHERWISE
20 PLANNING OUT A TRIAL SUCH AS THIS, AND IT'S VERY IMPORTANT TO
21 ME AND I'M SURE YOU CAN UNDERSTAND AND IT'S VERY IMPORTANT TO
22 YOU THAT WE BE ABLE TO MAKE IT THROUGH THIS AND THAT THERE
23 NOT BE ANY VIOLATIONS OF ANY OF MY RULES THAT MIGHT PUT US IN
24 JEOPARDY PERHAPS OF HAVING TO GO BACK AND START THIS WHOLE
25 PROCESS OVER AGAIN.

1 NOW, IT'S PARTICULARLY IMPORTANT TO ME THAT YOU ALL
2 NOT FEEL THE BURDEN OF MAKING SURE THAT -- THAT THESE TWO
3 REQUIREMENTS ARE COMPLIED WITH, AND SO I WANT TO MAKE IT
4 REALLY EASY FOR YOU AND THAT IS IN THIS WAY: IF -- IF AT ANY
5 POINT DURING THIS TRIAL ANYBODY SAYS ANYTHING TO YOU OR IF
6 YOU MIGHT PERHAPS INADVERTENTLY COME IN CONTACT WITH A
7 NEWSPAPER ARTICLE OR YOU MIGHT BE STANDING IN YOUR KITCHEN AS
8 A COUPLE OF THESE FOLKS WERE THIS MORNING WHEN THE -- WHEN
9 THE NEWS CAME ON AND BEFORE THEY COULD GET INSIDE THE DEN TO
10 TURN THE T.V. OFF OR BEFORE THEY COULD GET OUTSIDE THE HOUSE
11 SO THEY COULDN'T HEAR, THEY OVERHEARD SOMETHING -- A PRESS
12 STORY ABOUT THIS CASE.

13 IF SOMETHING LIKE THAT HAPPENS, ALL YOU HAVE TO DO
14 IS TELL ME ABOUT IT THE NEXT TIME YOU SEE ME AND I'LL TAKE
15 CARE OF IT FROM THERE. IF YOU WILL DO THAT FOR ME, THEN I
16 ASSURE YOU THAT YOU DO NOT HAVE TO WORRY ABOUT ANYTHING IN
17 REGARDS TO SOMEBODY HAVING SOME INFLUENCE ON THE JURY. YOU
18 DON'T HAVE TO WORRY ABOUT IT. EVEN IF YOU MIGHT DO
19 SOMETHING -- HAVE A BRIEF CONVERSATION WITH SOMEBODY WHICH --
20 OR MAYBE THE NEWSPAPER IS SITTING THERE AND YOU LOOK AT IT
21 AND YOU THINK, "I'LL JUST TAKE A QUICK LOOK AT IT," OF COURSE
22 THAT WOULD BE IN VIOLATION OF THE -- OF THE ORDER THAT I HAVE
23 GIVEN YOU, BUT EVEN IF THAT WERE TO HAPPEN, PLEASE TELL ME
24 ABOUT IT. DON'T LET IT GET WORSE BY LETTING IT GO ON. IF
25 YOU'LL TELL ME ABOUT IT, WE'LL TAKE CARE OF IT; IT WILL NOT

1 BE A PROBLEM.

2 NOW, ORDINARILY AS ADULTS -- AND YOU INTERACT WITH
3 PEOPLE ON A DAILY BASIS THROUGHOUT YOUR LIFE AND I KNOW YOU
4 KNOW A LOT OF PEOPLE WHO WILL TELL YOU TO DO ONE THING OR TO
5 NOT DO ONE THING, AND ORDINARILY AS ADULTS, OF COURSE, YOU
6 CAN SAY, "I CHOOSE NOT TO DO WHAT THAT PERSON TELLS ME TO
7 DO." AND YOU CAN JUST IGNORE THAT IF YOU WANT TO, BUT YOU
8 UNDERSTAND THIS IS NOT ONE OF THOSE SITUATIONS. WHEN I --
9 WHEN I INSTRUCT YOU THAT YOU MAY NOT DISCUSS THIS CASE AND
10 THAT YOU MAY NOT ALLOW YOURSELF TO BE EXPOSED TO ANY MEDIA
11 COVERAGE ABOUT THIS CASE, THAT'S NOT ONE OF THOSE COMMENTS
12 THAT YOU CAN IGNORE. YOU MUST COMPLY WITH THAT INSTRUCTION.

13 NOW, WITH REGARD TO HOW WE'RE GOING TO GET YOU IN
14 AND OUT OF HERE IN THE MORNING, WE HAVE TAKEN A BLOCK OF
15 PARKING SPACES DOWN UNDER THE BUILDING THAT IS KIND OF IN A
16 SECURED PARKING AREA, AND WE HAVE EACH OF YOU A SPOT WHERE
17 YOU CAN COME IN IN THE MORNING. YOU GO STRAIGHT TO THAT
18 PARKING SPOT, AND THEN YOU WILL BE ESCORTED UPSTAIRS, NOT
19 THROUGH THE PUBLIC AREA, BUT BACK THROUGH AN ELEVATOR AND
20 THROUGH A HALLWAY BACK IN THE BACK AND STRAIGHT TO YOUR JURY
21 ROOM. YOU'LL BE FED LUNCH HERE IN THE COURTHOUSE EVERY DAY.
22 YOU WON'T HAVE TO WORRY ABOUT GOING OUT INTO THE -- INTO THE
23 PUBLIC DURING THE LUNCH HOUR. AND THEN WHEN WE'RE DONE AT
24 NIGHT, YOU'LL BE FREE TO GO HOME, AND YOU'LL AGAIN JUST GO
25 DOWN TO YOUR CAR AND YOU CAN LEAVE AND YOU WON'T HAVE ANY

1 OPPORTUNITY TO COME IN CONTACT WITH ANYONE DURING THE TIME
2 THAT YOU'RE HERE AT THE COURTHOUSE.

3 THE WAY I THINK WE'RE GOING TO WORK IT TODAY IS THAT
4 WHEN WE BREAK FOR LUNCH IN A LITTLE WHILE, DEPENDING ON WHEN
5 THE LUNCH GETS HERE, WE'RE GOING TO LET YOU ALL GO OUT AND
6 GET YOUR CARS AND THEN DRIVE THEM IN AND WE'LL TELL YOU
7 EXACTLY WHERE YOU NEED TO PARK THEM AND YOU CAN LEAVE THEM
8 THERE THEN FOR THE REST OF THE DAY. IT'S -- IT'S A NICE
9 PLACE TO PARK. YOU HAVE ACTUALLY A VERY CONVENIENT PLACE TO
10 PARK IN TERMS OF COMING TO COURT.

11 NOW, LADIES AND GENTLEMEN, YOU AND I HAVE VERY
12 DIFFERENT ROLES TO PLAY HERE. AS MEMBERS OF THE JURY, YOU
13 ARE THE EXCLUSIVE JUDGES OF THE FACTS IN THIS CASE, AND I AM
14 NOT PERMITTED TO INDICATE TO YOU HOW I MIGHT FEEL ABOUT THE
15 FACTS. SO IF DURING THE COURSE OF THIS TRIAL IF I SAY
16 ANYTHING OR IF I DO ANYTHING THAT MIGHT LEAD YOU TO BELIEVE
17 THAT I HAVE AN OPINION ABOUT THE FACTS, THEN YOU MUST
18 DISREGARD THAT. THIS JURY MUST INDEPENDENTLY WEIGH THE
19 TESTIMONY AND EVIDENCE THAT WILL BE OFFERED BEFORE YOU AND
20 THEN RENDER A VERDICT THAT IS BASED SOLELY ON THAT TESTIMONY
21 AND EVIDENCE IN LIGHT OF THE LAW AS I WILL EXPLAIN IT TO YOU.

22 ON THE OTHER HAND, I AM THE EXCLUSIVE JUDGE OF THE
23 LAW, AND IF YOU HAVE SOME IDEA AS TO WHAT THE LAW IS OR WHAT
24 THE LAW SHOULD BE, THEN UNDER THE OATH THAT YOU HAVE JUST
25 TAKEN AS JURORS, YOU MUST SET THAT NOTION OF THE LAW ASIDE

1 AND ACCEPT AND APPLY THE LAW PRECISELY AS I WILL EXPLAIN IT
2 TO YOU.

3 NOW, ONE OTHER ROLE THAT I PLAY IS TO DECIDE ON THE
4 ADMISSIBILITY OF EVIDENCE, AND FROM TIME TO TIME I'M QUITE
5 SURE THAT YOU WILL SEE THE LAWYERS STAND AND OBJECT WHEN
6 EVIDENCE IS OFFERED THAT THEY BELIEVE DOES NOT COMPLY WITH
7 OUR RULES OF EVIDENCE. THAT'S NORMAL. WHEN A LAWYER DOES
8 THAT, THAT'S NOT AN ATTEMPT ON THE PART OF THE LAWYER TO HIDE
9 ANYTHING FROM YOU. THAT'S JUST THE WAY OUR SYSTEM OF
10 EVIDENCE WORKS. WHEN ONE LAWYER MAKES AN OBJECTION, THEN IT
11 BECOMES MY RESPONSIBILITY TO RULE ON THE OBJECTION.

12 MANY TIMES I CAN RULE JUST AS I SIT HERE, AND THE
13 LAWYERS WILL THEN SAY, "OBJECTION." THEY MAY BRIEFLY STATE
14 THE GROUNDS FOR THEIR OBJECTION, AND THEN I'LL RULE. NOW, IF
15 I -- IF I SUSTAIN THE OBJECTION, THAT MEANS I BELIEVE THE
16 EVIDENCE IS NOT ADMISSIBLE AND I'LL NOT ALLOW IT IN FOR YOU
17 TO CONSIDER. IF I OVERRULE THE OBJECTION, THAT MEANS I
18 BELIEVE THE EVIDENCE IS ADMISSIBLE AND I WILL ALLOW IT IN AND
19 YOU CAN CONSIDER IT.

20 SOMETIMES, AS I SAID, THAT WILL HAPPEN JUST LIKE
21 THAT: "OBJECTION." "SUSTAINED." "OBJECTION." "OVERRULED."
22 SOMETIMES I MAY HAVE TO GET THE LAWYERS TO COME UP HERE TO
23 THE BENCH SO THAT WE CAN HAVE A PRIVATE DISCUSSION ABOUT IT
24 BEFORE I RULE. THERE WILL BE TIMES, I'M VERY SURE, THAT I'LL
25 HAVE TO SEND YOU ALL BACK INTO THE JURY ROOM SO THAT I CAN

1 OPENLY DISCUSS THE EVIDENCE WITH THE LAWYERS. SOMETIMES I
2 ACTUALLY HAVE TO LISTEN TO THE TESTIMONY BEFORE I CAN DECIDE
3 WHETHER OR NOT YOU CAN LISTEN TO IT.

4 ALL RIGHT. LADIES AND GENTLEMEN, WE'RE GOING TO
5 HAVE OPENING STATEMENTS NOW. SETTLE IN. PAY CLOSE
6 ATTENTION. WE'RE GOING TO TRY TO MAKE THIS PROCESS AS
7 SMOOTHLY -- GO AS SMOOTHLY AS WE CAN FOR YOU, AND ONE THING
8 THAT I DO WANT YOU TO UNDERSTAND IS THAT EVERY MORNING WHEN
9 YOU GET HERE THE VERY FIRST THING THAT'S GOING TO HAPPEN WHEN
10 YOU'RE BROUGHT OUT INTO THE COURTROOM IS THAT I'M GOING TO
11 ASK YOU WHETHER OR NOT YOU HAVE DISCUSSED THIS CASE WITH
12 ANYONE OR HAS ANYONE DISCUSSED THIS CASE WITH YOU OR HAVE YOU
13 BEEN EXPOSED TO ANY MEDIA COVERAGE ABOUT THE CASE.

14 NOW, YOU'RE GOING TO -- YOU WON'T HAVE TO SAY
15 ANYTHING IF THE ANSWER IS NO, BUT IF THE ANSWER IS YES, YOU
16 NEED TO TELL ME YES. IT MIGHT BE SIMPLER THAT IF OVERNIGHT
17 YOU -- YOU DO HAVE AN EVENT LIKE THAT OCCUR, JUST NOTIFY THE
18 BAILIFF ON YOUR WAY IN THAT YOU WOULD LIKE TO SPEAK TO ME
19 PRIVATELY. DON'T TELL ANYBODY THE SUBSTANCE OF IT. ALL YOU
20 HAVE TO DO IS SAY I'M SO-AND-SO AND I WOULD LIKE TO SPEAK
21 WITH THE JUDGE PRIVATELY. THEN BEFORE WE BRING THE JURY INTO
22 THE COURTROOM, WE'LL GET YOU OUT HERE INDIVIDUALLY. WE'LL
23 HAVE A PRIVATE, QUIET CONVERSATION ABOUT WHATEVER IT IS THAT
24 YOU WANT TO TELL ME BEFORE WE GET THE REST OF THE JURY IN
25 HERE. ANY EXCEPTIONS TO MY COMMENTS?

1 MR. MYERS: NONE FROM THE STATE.

2 MR. LITTLEJOHN: NO, YOUR HONOR.

3 THE COURT: ALL RIGHT. ONE OF THE JURORS -- MR.
4 LEITNER, YOU'VE RAISED YOUR HAND. NOW, HOLD ON BEFORE YOU
5 SPEAK. IF YOU HAVE A QUESTION THAT IS ABOUT THE LOGISTICS OF
6 THINGS, THE SCHEDULING OF THINGS, THEN YOU CAN ASK ME THAT.
7 WHAT I WOULD LIKE FOR YOU TO DO IS TO WRITE OUT THE QUESTION
8 AND THEN GIVE IT TO ME. IF IT'S A QUESTION THAT RELATES TO
9 THE CASE, THEN YOU JUST SIT ON IT. JUST THINK ABOUT IT IF
10 YOU WANT TO, BUT DON'T ASK THE QUESTION. IF YOU FEEL THAT IT
11 IS A QUESTION YOU MUST ASK ABOUT THE CASE, WRITE IT OUT; GIVE
12 IT TO ME. I WILL DISCUSS THE QUESTION WITH THE LAWYERS, AND
13 THEN I WILL DETERMINE WHETHER OR NOT I CAN ASK (SIC) THAT
14 QUESTION FOR YOU.

15 AS YOU MIGHT CAN IMAGINE, THERE ARE MANY TIMES WHEN
16 A QUESTION MAY OCCUR TO YOU THAT I CAN'T ANSWER. SO I WOULD
17 ENCOURAGE YOU TO BE PATIENT AND TO NOT THINK IN TERMS OF
18 ASKING QUESTIONS NOW. JUST LISTEN AND LET THE LAWYERS BRING
19 TO YOU THE EVIDENCE THAT YOU NEED TO HEAR AND THEN WE GO FROM
20 THERE. WAS THERE SOMETHING ELSE THAT YOU NEEDED TO...

21 JUROR LEITNER: I JUST WANTED TO KNOW IF I COULD
22 TAKE NOTES.

23 THE COURT: IF YOU CAN TAKE NOTES. ALL RIGHT. I
24 TELL YOU WHAT I'M GOING TO DO. I'M GOING TO ASK YOU ALL NOT
25 TO TAKE NOTES DURING THE OPENING STATEMENTS. I'M GOING TO

1 DISCUSS IT WITH THE LAWYERS DURING THE LUNCH BREAK, AND THEN
2 I WILL -- I WILL SPEAK TO YOU ABOUT THAT AFTER LUNCH. ALL
3 RIGHT? SOLICITOR?

4 MR. GRAHAM: MAY IT PLEASE THE COURT? WHAT IS THE
5 PRICE OF A LINCOLN NAVIGATOR? ON MAY 16TH, 2002, AT AROUND
6 11:33 P.M. AT 3500 FERNANDINA ROAD AT THE RAINTREE APARTMENTS
7 KEVIN MERCER MURDERED TRACY DAVIS, ALL FOR A LINCOLN
8 NAVIGATOR. KEVIN MERCER WANTED THE VEHICLE AND HE HAD A GUN,
9 A 357 REVOLVER. HE KNEW WHAT HE WANTED: THE VEHICLE. HE
10 KNEW WHERE IT WAS, AND HE KNEW HOW TO GET IT. KEVIN MERCER
11 HAD ROBBERY ON HIS MIND AND HE HAD MURDER IN HIS HEART.

12 KEVIN MERCER WENT OVER TO THOSE APARTMENTS THAT
13 NIGHT WITH A GUN, AND HE FOUND TRACY DAVIS AND HE POINTED
14 THAT GUN AT HIM AND ROBBED HIM OF HIS LINCOLN NAVIGATOR, BUT
15 THAT WASN'T ENOUGH. THAT'S WHEN KEVIN MERCER PULLED THE GUN
16 IN HIS HAND AND PULLED THE TRIGGER AND SHOT TRACY DAVIS IN
17 THE BACK OF THE HEAD, AND TRACY DAVIS DIED.

18 KEVIN MERCER HAD THE GUN IN THE LINCOLN NAVIGATOR
19 WHEN HE LEFT. KEVIN MERCER HAD THE GUN WHEN HE WAS ARRESTED
20 ABOUT 17 MINUTES LATER. CLIFTON MAGWOOD WAS TRACY DAVIS'S
21 FRIEND AND WAS HIS ROOMMATE, AND HE WAS IN HIS ROOM THAT
22 NIGHT AND HE HEARD A NOISE, AN ALTERCATION, OUT IN THE
23 PARKING LOT. AND CLIFTON MAGWOOD LOOKED OUT HIS WINDOW AND
24 HE SAW TRACY DAVIS BEING ROBBED. AND CLIFTON MAGWOOD RAN
25 ACROSS THE HALL INTO TRACY DAVIS'S ROOM AND HE PICKED UP A

1 PORTABLE PHONE AND HE CALLED 9-1-1 AND HE RAN DOWN THE
2 STAIRS, AND WHEN HE WAS RUNNING DOWN THE STAIRS HE HEARD A
3 GUNSHOT.

4 WHEN HE GOT OUTSIDE, HE SAW TRACY DAVIS'S WHITE
5 LINCOLN NAVIGATOR GOING OUT OF THE PARKING LOT AND TAKING A
6 RIGHT AND GOING TOWARDS BROAD RIVER ROAD. AND CLIFTON
7 MAGWOOD FOUND TRACY DAVIS WITH A GUNSHOT TO THE BACK OF THE
8 HEAD DYING.

9 THE 9-1-1 OPERATOR TOOK THAT INFORMATION - TRACY
10 SHOT IN THE HEAD, A WHITE LINCOLN NAVIGATOR GOING TOWARD
11 BROAD RIVER - AND DISPATCHED IT OVER THE RADIO TO THE
12 OFFICERS AND DEPUTIES OF LEXINGTON COUNTY. DEPUTY DENNIS
13 STAZER HEARD THAT INFORMATION OVER THE RADIO, AND HE SAID,
14 "MAYBE, JUST MAYBE, THAT CAR IS GOING TO GO ON I-20." THEN
15 HE HAD A CHOICE: I-20 EAST, I-20 WEST. DEPUTY DENNIS STAZER
16 CHOSE I-20 WEST TOWARDS ATLANTA, AND HE MOVED HIS CAR OVER
17 INTO THAT AREA AND HE WAITED.

18 MINUTES AFTER HE GOT THERE HE SAW A WHITE LINCOLN
19 NAVIGATOR GO BY, AND DENNIS STAZER PULLED IN BEHIND HIM AND
20 HE ACTIVATED HIS LIGHTS AND HE STOPPED THAT CAR. KEVIN
21 MERCER, THE MAN OVER THERE SEATED AT THAT TABLE ON TRIAL
22 TODAY, WAS DRIVING THAT CAR. UNDERNEATH HIS SEAT WAS THE
23 MURDER WEAPON, AND KEVIN MERCER HAD EVIDENCE ON HIS HAND.

24 KEVIN MERCER ALREADY HAD THE CAR AND HE ALREADY HAD
25 THE KEYS, BUT THAT WASN'T ENOUGH. THAT'S WHEN HE COMMITTED

1 MURDER . KEVIN MERCER HAD ROBBERY ON HIS MIND AND MURDER IN
2 HIS HEART. WHAT'S THE PRICE OF A LINCOLN NAVIGATOR? KEVIN
3 MERCER COMMITTED MURDER IN COLD BLOOD, ALL FOR A LINCOLN
4 NAVIGATOR.

5 MS. KIMBROUGH: THANK YOU, YOUR HONOR. MAY IT
6 PLEASE THE COURT? GOOD AFTERNOON. SOLICITOR. IN THINKING
7 ABOUT THIS CASE, I'M REMINDED OF A STORY IN THE OLD
8 TESTAMENT, A STORY THAT'S CONTAINED IN THE BOOK OF LEVITICUS,
9 AND IT'S A STORY ABOUT HOW IN ANCIENT TIMES ONCE A YEAR THERE
10 WAS AN OPPORTUNITY FOR THE VILLAGERS TO ABSOLVE THEMSELVES OF
11 THEIR SINS.

12 WHAT WOULD HAPPEN IS THE PRIEST IN THE TOWN WOULD
13 CALL UPON ONE OF THE VILLAGERS, ONE OF THE FARMERS, AND HE
14 WOULD TELL THAT FARMER, "BRING ME TWO GOATS, TWO MALE GOATS."
15 WELL, THE VILLAGER WOULD BRING THE TWO GOATS AND HE WOULD
16 TAKE THEM TO THE PRIEST, AND THE PRIEST WOULD SELECT ONE OF
17 THOSE TWO GOATS AND HE WOULD TAKE---

18 MR. MYERS: YOUR HONOR, I HATE TO CUT HER OFF, BUT
19 THAT'S AN OUTSIDE ARBITRARY MATTER BEING INJECTED INTO THE
20 TRIAL. THE SUPREME COURT HAS TALKED ABOUT THIS ISSUE AND
21 THEY SAID IT WASN'T IMPROPER.

22 THE COURT: I OVERRULE THE OBJECTION.

23 MS. KIMBROUGH: THANK YOU, YOUR HONOR. THE PRIEST
24 WOULD DIP HIS HANDS IN RED PAINT AND HE WOULD SELECT ONE OF
25 THE GOATS. HE WOULD TOUCH THE GOAT, THEREBY TRANSFERRING THE

1 SINS OF THE COMMUNITY ON TO THIS ANIMAL. THE ANIMAL WOULD
2 THEN BE SENT OFF INTO THE DESERT TO DIE. THAT'S WHERE WE GET
3 THE EXPRESSION SCAPEGOAT. THAT'S CERTAINLY AN EXPRESSION I
4 THINK WE'RE ALL FAMILIAR WITH AND, LADIES AND GENTLEMEN, I
5 SUGGEST TO YOU AND OUR THEORY IS THAT KEVIN MERCER IS A
6 SCAPEGOAT IN THIS MATTER.

7 IN LISTENING TO THE STATE'S OPENING, IT OCCURRED TO
8 ME THAT ONE OF THE KEY FACTORS IN THIS CASE WAS OMITTED, AND
9 THAT IS RIDING IN THE LINCOLN NAVIGATOR WAS A SECOND PERSON.
10 LADIES AND GENTLEMEN, THAT SECOND PERSON IS NOT HERE TODAY.
11 WE DON'T KNOW WHERE HE IS. LAST TIME I HEARD HE WAS OUT ON
12 BOND. LAST TIME I HEARD HE WASN'T EVEN CHARGED WITH MURDER
13 OR ARMED ROBBERY. THAT WASN'T HOW IT STARTED OUT. HE WAS
14 CHARGED WITH ALL THE SAME THINGS THAT KEVIN MERCER WAS.
15 SOMEHOW, THROUGH PROCESSES THAT I AM NOT PRIVY TO, THE STATE
16 DECIDED THAT THEY'D CUT HIM LOOSE.

17 MR. MYERS: THAT'S OBJECTIONABLE, YOUR HONOR.

18 THE COURT: SUSTAINED.

19 MR. MYERS: THAT'S OBJECTIONABLE, YOUR HONOR.

20 THE COURT: SUSTAINED. DO NOT ARGUE IN YOUR OPENING
21 STATEMENT.

22 MS. KIMBROUGH: I APOLOGIZE. SUFFICE IT TO SAY
23 MARCUS THOMPSON WAS IN THE NAVIGATOR AND HE'S NOT HERE TODAY,
24 AND WE BELIEVE THAT MARCUS THOMPSON, IN FACT, WAS THE
25 SHOOTER. THAT'S OUR THEORY. IT'S PRETTY SIMPLE.

1 NOW, THE ONLY WAY FOR YOU TO DETERMINE WHAT THE
2 FACTS ARE IS TO PAY VERY CLOSE ATTENTION TO THE EVIDENCE IN
3 THIS CASE, AND THE JUDGE WILL INSTRUCT YOU FURTHER, BUT
4 ESSENTIALLY WE'D LIKE YOU TO REMEMBER THREE IMPORTANT LEGAL
5 PRINCIPLES. THE FIRST IS THE PRESUMPTION OF INNOCENCE.
6 KEVIN MERCER IS INNOCENT UNLESS AND UNTIL THE STATE MEETS ITS
7 BURDEN OF PROOF, AND THE BURDEN OF PROOF IS THE HIGHEST
8 BURDEN THAT ANYONE EVER HAS IN A COURT OF LAW. IT'S BEYOND A
9 REASONABLE DOUBT. IT'S HIGHER THAN IN A CIVIL CASE WHERE THE
10 PLAINTIFF ONLY HAS TO PROVE THEIR CASE TO A GREATER WEIGHT OF
11 THE EVIDENCE, 51 PERCENT. IT'S HIGHER THAN THAT, AND THE
12 REASONS FOR THAT ARE PROBABLY FAIRLY CLEAR. THERE'S A MAN'S
13 LIFE ON THE LINE, HIS FREEDOM, AND IF WE GET TO THE SECOND
14 PHASE, LITERALLY HIS LIFE IS ON THE LINE. SO WE ASK YOU TO
15 PLEASE HOLD THEM TO THAT BURDEN, AND ALSO REMEMBER THAT THE
16 BURDEN OF PROOF IS ALWAYS ON THE STATE.

17 KEVIN DOESN'T HAVE TO PRESENT ANY EVIDENCE, ALTHOUGH
18 I ANTICIPATE WE WILL. IT'S HIS OPTION, AND WE ANTICIPATE
19 BEING ABLE TO SHOW YOU THAT THE STATE'S CASE IS NOT PROVEN
20 BEYOND A REASONABLE DOUBT. WE DON'T BELIEVE THEY CAN DO IT.

21 NOW, OBVIOUSLY YOU HAVE TO DETERMINE THE FACTS IN
22 THIS CASE, AND SO I ASK YOU TO REMEMBER THOSE THREE
23 PRINCIPLES AND ALSO REMEMBER THAT YOU ACT NOT ONLY
24 COLLECTIVELY THROUGH YOUR VERDICT BUT ALSO INDIVIDUALLY, AND
25 SO WE ASK YOU TO PAY VERY CLOSE ATTENTION SO THAT WHEN YOU'RE

1 IN THE JURY ROOM AND YOU'RE DEBATING OR DELIBERATING, YOU CAN
2 LET YOUR VOICE BE HEARD AND HOLD THE STATE TO ITS BURDEN.

3 FINALLY, I'D JUST LIKE TO SAY THAT THE JUDGE WILL
4 INSTRUCT YOU THAT YOU HAVE TO COME TO YOUR DECISION ABOUT
5 GUILT OR INNOCENCE AND YOU HAVE TO -- ONE OF YOU WILL HAVE TO
6 SIGN THE VERDICT FORM, AND A VERDICT -- THE TERM VERDICT
7 COMES FROM A LATIN WORD MEANING VEREDICTO WHICH IS TO SPEAK
8 THE TRUTH, AND SO WE ASK YOU TO PLEASE PAY VERY CLOSE
9 ATTENTION TO THE FACTS IN THIS CASE AND LET YOUR VERDICT
10 SPEAK THE TRUTH. THANK YOU.

11 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, I'M
12 GOING TO SEND YOU BACK INTO YOUR JURY ROOM NOW. I'M GOING TO
13 -- OR IN JUST A MINUTE. I'M GOING TO CHECK ON THE LUNCH. IF
14 YOUR LUNCH IS HERE -- DO YOU KNOW?

15 THE CLERK: ABOUT 10 MINUTES.

16 THE COURT: ABOUT 10 MORE MINUTES. SO SOMETIME
17 EITHER BEFORE YOUR LUNCH GETS HERE OR AFTER, DEPENDING IN
18 PART ON YOUR PREFERENCE AND PART ON SORT OF WHEN THE LUNCH IS
19 GOING TO GET HERE, YOU CAN GO AND GET YOUR CARS AND MOVE THEM
20 UP UNDER THE COURTHOUSE TO WHERE -- AND THE BAILIFFS WILL
21 SHOW YOU EXACTLY WHERE TO GO.

22 AND ONE MORE THING THAT I WANT TO SAY BEFORE --
23 BEFORE WE LEAVE IS -- IS YOU CAN SEE THAT THERE IS -- THE
24 PRESS IS IN HERE. THE T.V. CAMERAS ARE RIGHT HERE RIGHT NOW.
25 THEY'RE GOING TO BE MOVING. AFTER OPENING STATEMENTS,

1 THEY'LL BE IN OTHER PARTS OF THE COURTROOM. THAT'S ONE OF
2 THE THINGS I WANT YOU ALL TO NOT LET YOU BE DISTRACTED BY.

3 ANOTHER THING THAT IS A POTENTIAL DISTRACTION TO
4 YOU -- WELL, BEFORE I LEAVE THE CAMERAS, DON'T WORRY ABOUT
5 YOUR OWN APPEARANCE ON CAMERA. YOU WILL NOT APPEAR ON
6 CAMERA. THESE PEOPLE ARE PROFESSIONALS. THEY UNDERSTAND
7 THAT THEY ARE NOT PERMITTED UNDER LAW TO PUT YOUR FACES OR
8 YOU ON CAMERA, SO YOU DON'T HAVE TO WORRY ABOUT THAT. JUST
9 FOCUS ON WHAT WE HAVE TO FOCUS ON HERE WHICH IS THE TESTIMONY
10 AND THE EVIDENCE THAT WILL BE OFFERED BEFORE YOU.

11 I HAVE OTHER THINGS ALSO THAT I HAVE TO DO DURING
12 THE COURSE OF THIS TRIAL THAT RELATE TO THE LAW. SOME OF IT
13 RELATES TO EVIDENCE. THERE ARE THINGS THAT WILL HAPPEN
14 DURING THE COURSE OF THE TRIAL THAT WILL CAUSE ME TO
15 ANTICIPATE SOMETHING THAT'S COMING UP, AND I MAY BE OVER HERE
16 WORKING ON MY COMPUTER A LITTLE BIT DOING LEGAL RESEARCH THAT
17 RELATES TO EVIDENTIARY ISSUES OR SUBSTANTIVE LEGAL ISSUES IN
18 THIS CASE, BUT AT THE SAME TIME I'M DOING ALL THAT, I'M
19 LISTENING VERY CAREFULLY TO THE SAME TESTIMONY AND EVIDENCE
20 THAT YOU'RE LISTENING TO.

21 I AM -- I'M NOT UP HERE PLAYING COMPUTER GAMES.
22 I'VE HAD MANY, MANY TIMES WHEN PEOPLE -- JURORS HAVE SAID,
23 "WHAT IS HE PLAYING UP THERE?" BUT I DON'T EVEN HAVE ANY OF
24 THAT STUFF ON MY COMPUTER. SO DON'T LET ANY OF THAT BE A
25 DISTRACTION TO YOU. WE'LL TAKE UP THE NOTES QUESTION WHEN

1 Y'ALL GET BACK FROM LUNCH. Y'ALL ENJOY YOUR LUNCH. WE'LL BE
2 ON BREAK FROM NOW UNTIL ABOUT 2:00, MAYBE A LITTLE -- A FEW
3 MINUTES BEFORE, AND I'LL SEE YOU ALL AGAIN AT THAT TIME.

4 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT TO
5 GO TO LUNCH AT 12:20 P.M.)

6 THE COURT: OKAY. IS THERE ANYTHING THAT YOU ALL
7 WANT TO TAKE UP NOW BEFORE WE BREAK FOR LUNCH?

8 MR. MYERS: YES, SIR. YES, SIR. I HAVE A
9 HOUSEKEEPING MATTER. WOULD Y'ALL SEE IF SOMEBODY CAN COME IN
10 HERE? THERE'S A LIGHT UP HERE THAT KEEPS FLASHING ON AND
11 OFF, AND IT'S BOUNCING OFF THIS RAIL OVER HERE. SEE IF THEY
12 CAN FIX THAT LIGHT.

13 MR. LITTLEJOHN: JUDGE, THE ONLY THING I HAVE IS --
14 AS I UNDERSTAND, IF ONE ATTORNEY IS -- HAS A WITNESS THAT IT
15 WOULD BE UP TO THAT ATTORNEY TO OBJECT WHEN THE OPPOSING SIDE
16 IS EXAMINING THE WITNESS RATHER THAN MULTIPLE ATTORNEYS
17 JUMPING UP AND HANDLING THE WITNESS AND THEN OBJECTING. I'M
18 ASSUMING THAT WOULD BE THE COURT'S PROCEDURE.

19 THE COURT: YES, SIR. NOW, I -- I HAVE -- I HAVE
20 IN -- I HAVE NEVER SEEN A SITUATION IN ALL MY YEARS AS A
21 LAWYER AND A JUDGE WHERE THE FAILURE TO STRICTLY ADHERE TO
22 THAT RULE CAUSED SOME SORT OF PROBLEM. IF IT EVER BECOMES A
23 DISRUPTION, I WILL -- I WILL INTERVENE, BUT IN TERMS OF
24 WITNESSES IN PARTICULAR, IT CERTAINLY IS NORMAL THAT ONE --
25 WHOEVER IS GOING TO HANDLE THE QUESTIONING OF THAT WITNESS

1 ALSO HANDLES THE OBJECTION.

2 MR. LITTLEJOHN: THANK YOU, YOUR HONOR.

3 THE COURT: I THINK THAT -- I DON'T ANTICIPATE THAT
4 BEING A PROBLEM.

5 MR. LITTLEJOHN: ALL RIGHT.

6 THE COURT: NOW, SOLICITOR MYERS MADE AN OBJECTION
7 DURING OPENING STATEMENTS AND MR. GRAHAM WAS THE ONE WHO MADE
8 THE OPENING.

9 MR. LITTLEJOHN: YES, YOUR HONOR.

10 THE COURT: I ASSUME THAT'S WHAT YOU'RE REFERRING
11 TO.

12 MR. LITTLEJOHN: YES, YOUR HONOR.

13 MR. MYERS: I'LL PUT THIS ON THE RECORD. YOUR
14 HONOR, I'M NOT GOING TO PARTICIPATE IN QUESTIONING THE
15 WITNESSES DURING THIS PHASE OF THE CASE BECAUSE OF A PERSONAL
16 MATTER, BUT AT TIMES I WAS GOING TO MAKE OBJECTIONS BUT I'LL
17 ABIDE BY WHATEVER YOU WANT ME TO DO.

18 THE COURT: ALL RIGHT. WE'LL TAKE THAT UP AT THE
19 CONCLUSION OF LUNCH, BUT I THINK WHAT I'M GOING TO SUGGEST IS
20 THAT -- IS THAT -- YOU KNOW, THIS IS A -- THERE'S NO REASON
21 FOR US TO GET AT ANY TIME INTO A BIG HURRY ABOUT THIS. IF --
22 IF ONE SIDE OR THE OTHER WANTS TO MAKE AN OBJECTION AND THEN
23 TAKE A MOMENT TO CONFER AMONG YOURSELVES ABOUT HOW TO ARGUE
24 THE OBJECTION, IF AT ALL, YOU'RE FREE TO DO THAT, AND WITH
25 THAT FLEXIBILITY, IT SHOULD BE FAIRLY EASY TO ADHERE TO THE

1 TRADITIONAL RULE THAT MR. LITTLEJOHN HAS REFERRED TO SO THAT
2 ONE PERSON WILL SPEAK DURING THE COURSE OF THE TESTIMONY OF
3 EACH WITNESS.

4 MR. LITTLEJOHN: THANK YOU, YOUR HONOR.

5 THE COURT: ALL RIGHT?

6 MR. LITTLEJOHN: YOUR HONOR, THE ONLY THING I'D ADD:
7 DURING THE COLLOQUY WE HAD WITH THE JUROR, MS. WRENN, THE
8 COURT HAD MADE INQUIRY ABOUT THE PRESENCE OF THE DEFENDANT.
9 I'VE CONFERRED WITH THE DEFENDANT, AND HE IS -- HE CONSENTS
10 TO THE PROCEDURE THAT WAS FOLLOWED.

11 THE COURT: ALL RIGHT, SIR. NOW, DOES EITHER SIDE
12 HAVE ANY OBJECTION TO THE JURORS BEING ALLOWED TO TAKE NOTES
13 IF THEY CHOOSE TO?

14 MR. MYERS: I'VE HAD IT GO BOTH WAYS, YOUR HONOR.
15 SOMETIMES THEY WRAP UP IN TAKING NOTES AND MAYBE THEY MISS
16 SOMETHING IN THE COURTROOM.

17 THE COURT: I'M GOING TO---

18 MR. MYERS: I'LL LEAVE IT UP TO YOU, WHATEVER YOU
19 SAY.

20 THE COURT: I NORMALLY WILL ALLOW THEM TO IF THEY
21 WANT TO, BUT I GIVE THEM VERY CLEAR INSTRUCTIONS THAT THEY
22 CAN'T ALLOW THAT TO HAPPEN. I'M GOING TO STRESS TO THEM THAT
23 IT'S PROBABLY NOT -- THEY'RE PROBABLY NOT GOING TO CONSIDER
24 IT NECESSARY TO WRITE DOWN A WHOLE LOT OF STUFF DURING THIS
25 PHASE OF THE TRIAL, IF ANY, AND THERE'S A STANDARD

1 INSTRUCTION, AS YOU KNOW, THAT I MUST GIVE THEM IF I ALLOW
2 THEM TO TAKE NOTES AND I WILL. DO YOU HAVE ANY OBJECTION TO
3 IT?

4 MR. LITTLEJOHN: YOUR HONOR, I DON'T AS LONG AS THE
5 COURT DOES GIVE THEM THAT INSTRUCTION, AND IF THE COURT WOULD
6 FURTHER INSTRUCT THEM THAT ONCE THEY GO INTO DELIBERATIONS IF
7 ONE JUROR HAS WRITTEN DOWN SOMETHING, THAT'S NOT TO BE TAKEN
8 VERBATIM IF IT RUNS CONTRA TO THE OTHER JURORS' RECOLLECTION.

9 THE COURT: I MAKE IT CLEAR TO THEM THAT THEIR NOTES
10 ARE ONLY FOR THEIR OWN INDIVIDUAL USE, AND THEY CANNOT SHARE
11 THE CONTENT OF THOSE NOTES WITH ANY OTHER MEMBER OF THE JURY.

12 MR. LITTLEJOHN: THANK YOU, YOUR HONOR.

13 THE COURT: THOSE ARE BASICALLY THE TWO THINGS THAT
14 I TELL THEM IS THEY CAN'T LET THEIR NOTE-TAKING INTERFERE
15 WITH THEIR ABILITY TO OBSERVE WHAT'S GOING ON AND, SECONDLY,
16 THE NOTES ARE ONLY FOR THEIR OWN PERSONAL USE.

17 MR. LITTLEJOHN: THANK YOU, YOUR HONOR.

18 THE COURT: ALL RIGHT. WE'LL BE IN RECESS THEN
19 UNTIL LET'S SAY -- WE'LL GO AHEAD AND BREAK UNTIL 2:00. I
20 WILL BE BACK, SAY, AROUND 10 'TIL. IF ANYTHING COMES UP
21 DURING THE LUNCH HOUR THAT Y'ALL WANT TO ADDRESS, LET'S START
22 -- LET'S DO THAT ABOUT 10 'TIL SO THAT WE'LL HAVE IT
23 COMPLETED BY 2.

24 (WHEREUPON, A LUNCH BREAK WAS TAKEN.)

25 THE COURT: BE SEATED, PLEASE. YES, SIR?

1 MR. LITTLEJOHN: JUDGE, I HAVE JUST ONE MATTER. AS
2 I UNDERSTAND, PROBABLY THE FIRST WITNESSES TO BE CALLED ARE
3 PEOPLE WHO WERE AT THE APARTMENT COMPLEX WHERE THE SHOOTING
4 TOOK PLACE. I DO NOT SEE ANYTHING IN THE DISCOVERY WHICH
5 WOULD LEND ITSELF TO INDICATE ANY OF THESE WITNESSES WOULD
6 MAKE ANY SORT OF IDENTIFICATION OF THE PERPETRATOR. I JUST
7 WANTED TO MAKE SURE THAT THERE WASN'T ANY -- WITHOUT PRIOR
8 NOTICE THAT THERE WASN'T -- THERE WEREN'T ANY WITNESSES WHO
9 WERE GOING TO BE ASKED TO MAKE AN IN-COURT IDENTIFICATION.

10 THE COURT: IS THAT TRUE, SOLICITOR?

11 MR. HUBBARD: YES, SIR, YOUR HONOR.

12 THE COURT: OKAY. ANYTHING ELSE BEFORE WE BRING THE
13 JURY IN?

14 MR. MYERS: NOTHING FROM THE STATE.

15 MR. LITTLEJOHN: NOTHING FROM THE DEFENSE, YOUR
16 HONOR.

17 THE COURT: BRING THEM IN, PLEASE.

18 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT
19 2:02 P.M.)

20 THE COURT: HOLD ON JUST ONE SECOND. NOW, LADIES
21 AND GENTLEMEN, WE HAVE OBVIOUSLY SOME PADS AND SOME PENS FOR
22 THOSE OF YOU WHO FEEL LIKE YOU WANT TO TAKE SOME NOTES, AND
23 I'M GOING TO HAVE THE BAILIFFS HAND THOSE OUT IN JUST A
24 SECOND. IF YOU WANT ONE, WHEN WE GET TO THAT POINT JUST
25 RAISE YOUR HAND AND THEY'LL HAND YOU ONE AND ALSO A PEN.

1 THERE'S SEVERAL VERY IMPORTANT THINGS ABOUT NOTES
2 THAT I WANT YOU TO UNDERSTAND BEFORE -- BEFORE I ALLOW YOU TO
3 START TAKING NOTES. THE FIRST IS THAT IF YOU'RE GOING TO
4 TAKE NOTES, THEN YOU MUST NOT LET THE TAKING OF THE NOTES
5 INTERFERE WITH YOUR ABILITY TO SEE AND HEAR WHAT'S GOING ON
6 ON THE WITNESS STAND OR TO SEE AND HEAR WHAT THE LAWYERS MAY
7 BE SAYING AND ALSO TO EXAMINE EXHIBITS THAT THEY MAY BE
8 SHOWING YOU AT THE TIME. SO THAT'S A VERY IMPORTANT
9 CONSIDERATION. DO NOT ALLOW THE TAKING OF NOTES TO INTERFERE
10 WITH YOUR LISTENING TO AND SEEING THE EVIDENCE THAT IS BEING
11 PRESENTED TO YOU.

12 SECONDLY, NOTES ARE FOR YOUR -- FOR EACH INDIVIDUAL
13 JUROR'S PURPOSES ONLY, AND I'LL GET INTO MORE DETAIL WITH
14 THIS OR I'LL REPEAT THIS AT LEAST WHEN I GET AROUND TO
15 CHARGING YOU ON THE LAW AT THE END. IF YOU'RE GOING TO TAKE
16 NOTES, THEN THE ONLY PURPOSE FOR WHICH THOSE NOTES CAN BE
17 USED IS FOR YOU, THE INDIVIDUAL JUROR WHO TOOK THE NOTES, TO
18 REFRESH YOUR OWN RECOLLECTION.

19 EACH OF US HAS DIFFERENT WAYS THAT WE GO ABOUT
20 REMEMBERING THE THINGS THAT WE NEED TO REMEMBER AS WE GO
21 THROUGH OUR DAILY LIVES. SOME PEOPLE LIKE TO TAKE NOTES
22 ABOUT THINGS; OTHERS DON'T. IF ONE JUROR WERE TO BE TAKING
23 NOTES AND THEN THOSE NOTES ARE BACK IN THE JURY ROOM AND
24 YOU'RE DELIBERATING AND ONE JUROR WERE TO SAY, "WELL, IT SAYS
25 HERE IN MY NOTES SUCH AND SUCH," THEN THAT JUROR'S INDIVIDUAL

1 WAY OF REMEMBERING THE EVIDENCE WOULD ASSUME AN UNNATURAL
2 PROMINENCE IN YOUR -- IN THE JURY'S DELIBERATIONS.

3 SO IF YOU'RE GOING TO TAKE NOTES, YOU CAN USE THOSE
4 NOTES ONLY FOR YOUR OWN RECOLLECTION. SO YOU MIGHT GLANCE AT
5 YOUR NOTES TO REFRESH YOUR RECOLLECTION AS TO WHAT THE
6 TESTIMONY WAS AND THEN SAY WHAT YOUR REFRESHED RECOLLECTION
7 IS. DON'T SAY, "THIS IS IN MY NOTES." SO THAT'S THE ONLY
8 WAY IN WHICH YOU CAN USE NOTES.

9 NOW, I WANT TO SAY THAT IN ALL LIKELIHOOD MOST OF
10 YOU, AFTER YOU'VE BEEN SITTING HERE LISTENING FOR A COUPLE OF
11 HOURS, ARE GOING TO SAY TO YOURSELF, "I REALLY DON'T NEED TO
12 BE TAKING A WHOLE LOT OF NOTES." IT'S MUCH MORE IMPORTANT
13 THAT YOU SIT HERE AND FOCUS ON LISTENING AND OBSERVING. IF
14 YOU WANT A PAD AND PENCIL TO TAKE NOTES WITH, THEN RAISE YOUR
15 HAND NOW AND THE BAILIFFS WILL HAND THEM OUT.

16 (SOME JURORS RAISE THEIR HANDS, AND THE BAILIFFS
17 GIVE PADS AND PENS TO THOSE JURORS.)

18 THE COURT: THANK YOU. AND IF ANY OF YOU DECIDE
19 LATER IN THE TRIAL THAT YOU WANT A PAD, WE'LL BE GLAD TO
20 PROVIDE IT TO YOU. CALL YOUR FIRST WITNESS.

21 MR. GRAHAM: THE STATE CALLS JAMIE HITE ISPHORDING.

22 JAMIE HITE ISPHORDING, AFTER BEING DULY SWORN,
23 TESTIFIED AS FOLLOWS:

24 THE CLERK: STATE YOUR NAME.

25 THE WITNESS: MY NAME IS JAMIE HITE ISPHORDING.

1 J-A-M-I-E I-S-P-H-O-R-D-I-N-G.

2 DIRECT EXAMINATION

3 BY MR. GRAHAM:

4 Q. WHERE ARE YOU CURRENTLY EMPLOYED?

5 A. U.S.C. POLICE DEPARTMENT.

6 Q. WHAT DO YOU DO THERE?

7 A. I'M A DISPATCHER.

8 Q. AND HOW LONG HAVE YOU WORKED FOR THE U.S.C. POLICE
9 DEPARTMENT?

10 A. I'VE BEEN THERE SINCE DECEMBER OF '05.

11 Q. PRIOR TO WORKING AT THE U.S.C. POLICE DEPARTMENT, DO
12 YOU HAVE ANY OTHER LAW ENFORCEMENT EXPERIENCE?

13 A. YES.

14 Q. AND COULD YOU TELL THE JURY WHAT THAT IS?

15 A. I WORKED FOR THE LEXINGTON COUNTY POLICE --
16 LEXINGTON COUNTY SHERIFF'S DEPARTMENT FROM 9/11 OF '01 UNTIL
17 FEBRUARY OF '03, AND THEN I LEFT AND BECAME A POLICE OFFICER
18 FOR LAURENS CITY UNTIL AUGUST OF '04 AND I BECAME A STAY-AT-
19 HOME MOM UNTIL RECENTLY.

20 MR. LITTLEJOHN: YOUR HONOR, EXCUSE ME. COULD WE
21 APPROACH THE BENCH JUST A MOMENT?

22 THE COURT: YES.

23 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

24 BY MR. GRAHAM:

25 Q. JAMIE, YOU'VE GOT A SOFT VOICE. IF YOU COULD SPEAK

1 UP A LITTLE BIT, TOO.

2 A. OKAY.

3 Q. WERE YOU WORKING AS A DISPATCHER FOR THE LEXINGTON
4 COUNTY SHERIFF'S DEPARTMENT ON THE NIGHT OF MAY 16TH 2002?

5 A. YES.

6 Q. AND DID YOU RECEIVE A 9-1-1 CALL RELATING TO THE
7 MURDER OF TRACY DAVIS?

8 A. YES.

9 Q. I'M GOING TO SHOW YOU WHAT'S BEEN MARKED STATE'S
10 EXHIBIT NUMBER 1 FOR IDENTIFICATION AND ASK IF YOU KNOW WHAT
11 THAT IS.

12 A. YES.

13 Q. AND HAVE YOU HAD AN OPPORTUNITY TO LISTEN TO THAT
14 TAPE?

15 A. I HAVE.

16 Q. AND IS THAT TAPE A FAIR AND ACCURATE COPY OF THE
17 CONVERSATION THAT YOU HAD AS A DISPATCHER WITH THE CALLER
18 RELATING TO THAT 9-1-1 CALL REGARDING THE MURDER OF TRACY
19 DAVIS?

20 A. YES.

21 MR. GRAHAM: YOUR HONOR, WE WOULD OFFER THAT AS
22 STATE'S EXHIBIT NUMBER 1 FOR IDENTIFICATION.

23 MR. LITTLEJOHN: YOUR HONOR, WE WOULD OBJECT.

24 THE COURT: WELL, IF YOU'RE JUST MARKING IT FOR
25 IDENTIFICATION, YOU DON'T NEED MY PERMISSION. IF YOU WANT IT

1 OFFERED INTO EVIDENCE...

2 MR. GRAHAM: WE'RE NOT GOING TO OFFER IT INTO
3 EVIDENCE.

4 THE COURT: ALL RIGHT. IT'S NOT OFFERED INTO
5 EVIDENCE.

6 BY MR. GRAHAM:

7 Q. DO YOU REMEMBER RECEIVING THAT CALL?

8 A. I DO.

9 Q. DO YOU REMEMBER WHAT TIME THAT CALL CAME IN TO THE
10 9-1-1 CENTER AT THE LEXINGTON COUNTY SHERIFF'S DEPARTMENT?

11 A. 23:32 AND 55 WHICH IS 11:32 P.M.

12 Q. SO 11:32 AND 55 SECONDS P.M. ON MAY 16TH, 2002, IS
13 WHEN THAT CALL WAS RECEIVED?

14 A. YES.

15 Q. DO YOU REMEMBER THE -- NOT THE NAME OF THE CALLER
16 BUT DO YOU REMEMBER TALKING TO THE INDIVIDUAL WHO CALLED IN?

17 A. I DO.

18 Q. AND COULD YOU TELL THE JURY WHAT THAT CALLER'S
19 EMOTIONAL STATE WAS?

20 MR. LITTLEJOHN: YOUR HONOR, I OBJECT. I DON'T
21 THINK HE'S LAID A PROPER FOUNDATION FOR BRINGING IN ANYTHING
22 ABOUT AN UNIDENTIFIED CALLER.

23 THE COURT: WELL, MA'AM, YOU CAN ANSWER THE QUESTION
24 WITHOUT REVEALING THE CONTENT OF THE -- OF THE CONVERSATION
25 OR THE CONTENT OF THE TAPE.

1 THE WITNESS: OKAY.

2 THE COURT: ALL RIGHT? SO THE QUESTION IS CONFINED
3 TO THE CALLER'S -- TO HER OBSERVATION OF THE CALLER'S
4 EMOTIONAL STATE, AND AS LONG AS THE ANSWER IS CONFINED IN THE
5 SAME WAY, THE OBJECTION IS OVERRULED.

6 THE WITNESS: IT WAS VERY URGENT. HE WAS EXCITED.
7 HE WAS NOT PANICKED, BUT HE WAS VERY STRESSED AT THAT MOMENT.
8 ONCE HE GOT -- ONCE I HEARD AN ACCELERATED VOICE, HE BECAME
9 VERY URGENT AT THAT MOMENT. IT WAS LIKE EVERYTHING WANTED TO
10 BE RUSHED. WE HAD TO HURRY UP AND GET THERE AND SO FORTH.
11 BY MR. GRAHAM:

12 Q. WHO WAS YOUR SUPERVISOR THAT NIGHT?

13 A. KELLIE MATTHEWS.

14 Q. AND WAS IT JUST THE TWO OF YOU WORKING IN THE
15 DISPATCH THAT NIGHT?

16 A. YES.

17 MR. GRAHAM: NO FURTHER QUESTIONS. PLEASE ANSWER
18 ANY QUESTIONS THAT THE DEFENSE HAS.

19 MR. LITTLEJOHN: WE HAVE NO QUESTIONS, YOUR HONOR.

20 THE COURT: YOU CAN STEP DOWN, MA'AM.

21 THE WITNESS: THANK YOU.

22 MR. GRAHAM: YOUR HONOR, WE WOULD ASK THAT THE
23 WITNESS BE EXCUSED.

24 MR. LITTLEJOHN: NO OBJECTION.

25 THE COURT: SHE'S EXCUSED.

1 THE WITNESS: ALL RIGHT.

2 MR. GRAHAM: THE STATE CALLS KELLIE MATTHEWS.

3 KELLIE MATTHEWS, AFTER BEING DULY SWORN,
4 TESTIFIED AS FOLLOWS:

5 THE CLERK: PLEASE STATE YOUR NAME. SPELL YOUR
6 FIRST AND LAST NAME, PLEASE.

7 THE WITNESS: MY NAME IS KELLIE MATTHEWS.
8 K-E-L-L-I-E. MATTHEWS. M-A-T-T-H-E-W-S..

9 DIRECT EXAMINATION

10 BY MR. GRAHAM:

11 Q. MS. MATTHEWS, WHERE ARE YOU EMPLOYED?

12 A. LEXINGTON COUNTY SHERIFF'S DEPARTMENT.

13 Q. AND WHAT DO YOU DO THERE CURRENTLY?

14 A. FRONT DESK SUPERVISOR.

15 Q. AND HOW LONG HAVE YOU WORKED FOR THE LEXINGTON
16 COUNTY SHERIFF'S DEPARTMENT?

17 A. APPROXIMATELY TEN YEARS.

18 Q. AS PART OF YOUR CURRENT JOB, ARE YOU ALSO
19 RESPONSIBLE FOR MAINTAINING 9-1-1 CALLS THAT WERE RECEIVED BY
20 THE LEXINGTON COUNTY SHERIFF'S DEPARTMENT IN THE YEAR OF
21 2002?

22 A. I AM.

23 Q. SITTING IN FRONT OF YOU ON THAT TABLE IS AN
24 AUDIOTAPE. DO YOU RECOGNIZE THAT TAPE?

25 A. I DO.

1 Q. AND, IN FACT, DID YOU MAKE THAT TAPE FROM THE
2 ORIGINAL?

3 A. I DID.

4 Q. AND DO YOU REALIZE THAT THAT TAPE IS A COPY OF THE
5 9-1-1 CALL MADE ON MAY 16TH, 2002, REGARDING THE MURDER OF
6 TRACY DAVIS?

7 A. YES.

8 Q. AND IS THAT AN EXACT COPY OF THE ORIGINAL RECORD AT
9 THE SHERIFF'S DEPARTMENT?

10 A. IT IS.

11 Q. AND WOULD THAT TAPE HAVE BEEN RECORDED AT THE TIME
12 THE ACTUAL CALL CAME IN?

13 A. IT WAS.

14 Q. AND ARE 9-1-1 CALLS KEPT IN THE NORMAL COURSE OF
15 BUSINESS FOR THE LEXINGTON COUNTY SHERIFF'S DEPARTMENT?

16 A. THEY ARE.

17 Q. AND IT'S THE PRACTICE OF THE SHERIFF'S DEPARTMENT TO
18 MAKE AND KEEP THOSE RECORDS.

19 A. YES.

20 MR. GRAHAM: YOUR HONOR, THE STATE WOULD OFFER THAT
21 TAPE IN AS STATE'S EXHIBIT NUMBER 1.

22 MR. LITTLEJOHN: YOUR HONOR, WE'D OBJECT. THE
23 GROUNDS ARE HEARSAY.

24 THE COURT: ARE YOU GOING TO PUBLISH THE TAPE NOW?

25 MR. GRAHAM: NOT AT THIS TIME.

1 THE COURT: WELL, BEFORE I ADMIT THE TAPE, I'M GOING
2 TO HAVE TO LISTEN TO IT, AND IF I COULD -- IF I NEED TO DO
3 THAT NOW, I'LL SEND THE JURY OUT. IF I COULD LISTEN TO IT
4 LATER BEFORE I RULE ON YOUR MOTION TO ADMIT IT, THEN I'LL DO
5 THAT.

6 MR. GRAHAM: I THINK IT'S OUR PLAN TO INTRODUCE IT
7 THROUGH THE NEXT WITNESS.

8 THE COURT: THROUGH THE NEXT WITNESS?

9 MR. GRAHAM: YES.

10 THE COURT: ALL RIGHT. THEN, GO AHEAD. GO AHEAD
11 AND COMPLETE YOUR EXAMINATION OF THIS WITNESS AND I'LL ALLOW
12 FOR CROSS-EXAMINATION, AND THEN WE'LL TAKE A BREAK SO I CAN
13 LISTEN TO THE TAPE.
14 BY MR. GRAHAM:

15 Q. KELLIE, WERE YOU WORKING FOR THE SHERIFF'S
16 DEPARTMENT THE NIGHT OF MAY 16TH, 2002?

17 A. I WAS.

18 Q. AND WHAT WAS YOUR JOB RESPONSIBILITIES THAT NIGHT?

19 A. DISPATCH SUPERVISOR.

20 Q. AND WHO WAS YOUR SHIFT THAT NIGHT?

21 A. MYSELF AND JAMIE HITE.

22 Q. CAN YOU EXPLAIN TO THE JURY THE CONCEPT OF THE TWO
23 CHANNELS OVER DISPATCH AT THE SHERIFF'S DEPARTMENT?

24 A. SURE. ONE CHANNEL IS OUR MAIN PATROL CHANNEL. THAT
25 IS THE CHANNEL THAT HAS ALL THE DEPUTIES WHO ARE RESPONDING

1 TO CALLS FOR SERVICE. THE OTHER CHANNEL WOULD BE OUR
2 AUXILIARY CHANNEL THAT HAD OUR DETECTIVES, TRAFFIC UNITS, AND
3 ANY OTHER PEOPLE WHO WERE NOT RESPONDING TO ACTIVE CALLS AT
4 THAT TIME.

5 Q. WHICH CHANNEL WERE YOU RESPONSIBLE FOR?

6 A. CHANNEL 1, THE MAIN PATROL CHANNEL.

7 Q. AND THAT HAS THE UNITS OF PATROL DEPUTIES OUT ON
8 PATROL.

9 A. CORRECT.

10 Q. WHO HAD THE OTHER CHANNEL?

11 A. JAMIE HITE.

12 Q. AND WHAT TYPE OF TRAFFIC IS ON THAT CHANNEL?

13 A. INVESTIGATORS, TRAFFIC UNITS, WARRANT DEPUTIES.

14 Q. AND WOULD JAMIE HAVE ALSO BEEN RESPONSIBLE FOR
15 TAKING THE 9-1-1 CALLS?

16 A. YES.

17 Q. CAN YOU EXPLAIN TO THE JURY -- WHEN I SAY THE WORD
18 CAD, WHAT DOES THAT MEAN?

19 A. IT'S A COMPUTER-AIDED DISPATCH SYSTEM.

20 Q. AND CAN YOU EXPLAIN TO THE JURY WHAT THAT IS AND HOW
21 IT WORKS?

22 A. THE WAY THAT WORKS IS WHEN ANYONE CALLS IN A CALL
23 FOR SERVICE, REGARDLESS OF THE NATURE, THE PERSON WHO TAKES
24 THAT PHONE CALL TYPES INTO THIS COMPUTER THE INFORMATION
25 THAT'S GIVEN TO THEM BY THE CALLER. THE SAME TYPE OF

1 COMPUTER SYSTEM IS ON BOTH RADIO CHANNELS. THAT WAY WHOEVER
2 IS SITTING AT THE MAIN PATROL CHANNEL SEES THE INFORMATION AS
3 IT'S BEING TYPED IN. THAT WAY WE CAN INSTANTLY GET A
4 RESPONSE OUT OR AS QUICKLY AS POSSIBLE.

5 Q. AND DO YOU KNOW IF A CAD REPORT WAS STARTED ON A
6 CALL RELATING TO THIS CASE?

7 A. IT WAS.

8 Q. AND IN ADDITION TO YOUR JOB KEEPING THE TAPES FOR
9 THE YEAR 2002 FOR THE SHERIFF'S DEPARTMENT, ARE YOU ALSO
10 RESPONSIBLE FOR MAINTAINING THE CAD INFORMATION AS WELL?

11 A. YES, SIR.

12 Q. AND FROM THE WAY YOU DESCRIBED IT, IT'S MY
13 UNDERSTANDING THAT THAT INFORMATION IS ENTERED IN AT THE TIME
14 THE EVENT OCCURS BY SOMEBODY WHO KNOWS WHAT'S GOING ON.

15 A. IT IS.

16 Q. AND THAT IT'S THE PRACTICE OF THE SHERIFF'S
17 DEPARTMENT TO SAVE THAT INFORMATION.

18 A. WE DO.

19 Q. NOW, IN ADDITION IN THE CAD REPORT, THERE'S ALSO
20 AUDIO TRAFFIC GOING OUT OVER THE RADIO.

21 A. CORRECT.

22 Q. THAT WOULD BE YOU TRANSMITTING INFORMATION OUT AND
23 ALSO OTHER POLICE OFFICERS, INVESTIGATORS, AND OTHERS CALLING
24 INFORMATION IN. IS THAT TRUE?

25 A. CORRECT.

1 Q. AND IS THAT INFORMATION, THE ACTUAL RADIO TRAFFIC
2 ITSELF, ALSO RECORDED?

3 A. IT IS.

4 Q. AND AS YOUR JOB, DO YOU MAINTAIN THAT INFORMATION AS
5 WELL?

6 A. WE DO.

7 Q. AND THAT INFORMATION IS ALSO COLLECTED AT THE TIME
8 AND SAVED PURSUANT TO THE SHERIFF'S DEPARTMENT POLICIES.

9 A. IT IS.

10 Q. CAN YOU TELL THE JURY WHO RECEIVED THE 9-1-1 CALL?
11 YOU OR JAMIE?

12 A. JAMIE.

13 Q. AND ONCE SHE RECEIVED THE CALL, DID SHE START A CAD
14 REPORT?

15 A. SHE DID.

16 Q. AND HOW DO YOU KNOW THAT?

17 A. BECAUSE THAT CAD REPORT POPPED UP ON MY SCREEN AS
18 SHE WAS ENTERING IT.

19 Q. SO THE CAD REPORT WOULD BE ON HER SCREEN AND YOUR
20 SCREEN?

21 A. CORRECT.

22 Q. WHAT, IF ANY, INFORMATION WAS PULLED UP? CAN YOU
23 EXPLAIN WHAT ENHANCED 9-1-1 MEANS?

24 A. ENHANCED 9-1-1 IS A SYSTEM THAT AUTOMATICALLY
25 GATHERS INFORMATION FROM THE CALLER. IF YOU CALL 9-1-1, IT

1 WILL DISPLAY THE ADDRESS YOU'RE AT AND THE NAME OF THE OWNER
2 OF THE PHONE AS WELL AS THE PHONE NUMBER.

3 Q. DID YOU HAPPEN TO BRING A COPY OF THE CAD REPORT
4 WITH YOU?

5 A. THERE'S ONE IN THE OTHER ROOM OR WITH YOU.

6 Q. LET ME SHOW YOU THIS AND ASK YOU IF THAT IS AN
7 ACCURATE COPY OF THE CAD REPORT.

8 A. IT IS.

9 Q. LOOKING AT THAT CAD REPORT, CAN YOU TELL THE JURY
10 WHAT TIME THE CALL CAME IN AND THE CAD REPORT WAS STARTED?

11 A. 23:32 HOURS WHICH IS 11:32 P.M.

12 Q. AND WHAT, IF ANY, INFORMATION DID THE ENHANCED 9-1-1
13 SYSTEM PULL IN AS REGARDING THE IDENTIFICATION OF THE PHONE
14 THAT WAS CALLING IN?

15 A. THE PHONE BELONGS TO CLIFTON MAGWOOD AT 3500
16 FERNANDINA ROAD, AND IT GIVES THE APARTMENT NUMBER D-7.

17 Q. AND HOW WAS THE COMPLAINT TITLED AS FAR AS THE CAD
18 REPORT WHEN THE CALL CAME IN?

19 MR. LITTLEJOHN: YOUR HONOR, I'M GOING TO OBJECT TO
20 HER PUBLISHING A DOCUMENT THAT'S NOT IN EVIDENCE.

21 THE COURT: YOU CAN REPHRASE THE QUESTION UNTIL
22 YOU -- I WASN'T LISTENING TO THE QUESTION FROM THAT
23 STANDPOINT, SO I'M NOT -- I'D HAVE TO -- I'D HAVE TO HEAR THE
24 QUESTION AGAIN BUT...

25

1 BY MR. GRAHAM:

2 Q. ARE YOU AWARE OF WHAT TYPE OF CALL IT WAS?

3 A. YES.

4 Q. WHAT KIND OF A CALL WAS IT?

5 A. ARMED ROBBERY, HOLDUP.

6 Q. IF I USE THE WORD TONING OUT, WHAT DOES THAT MEAN?

7 A. THAT'S AN ALERT THAT'S BUILT INTO OUR COMPUTER-AIDED
8 DISPATCH SYSTEM THAT ALLOWS US TO PUT OUT A LOUD TONE. IT'S
9 KIND OF LIKE A BEEP-BEEP-BEEP TO ALERT EVERYBODY WHO IS OUT
10 THERE, WHETHER THEY'RE ON THE PATROL CHANNEL OR ANOTHER
11 CHANNEL, THAT WE'RE FIXING TO PUT OUT INFORMATION THAT'S OF
12 AN EMERGENCY NATURE.

13 Q. AND BASED ON THE 9-1-1 CALL THAT CAME IN, DID YOU
14 ACTUALLY TONE THAT CALL OUT?

15 A. I DID.

16 Q. AND WHAT, IF ANYTHING, DID YOU RADIO OUT AT THE TIME
17 THAT YOU TONED IT OUT REGARDING THE TYPE OF INCIDENT OR ANY
18 TYPE OF DESCRIPTIONS?

19 A. I WOULD HAVE GIVEN OUT THE ADDRESS, THE LOCATION,
20 AND THAT WE HAD INFORMATION THAT SOMEONE WAS BEING ROBBED AND
21 THAT SOMEONE HAD BEEN SHOT.

22 Q. OKAY. WHAT, IF ANY, INFORMATION DID YOU GIVE OUT
23 REGARDING THE TYPE OF VEHICLE THAT WAS INVOLVED?

24 A. THE LINCOLN NAVIGATOR.

25 Q. DID YOU GIVE OUT A COLOR?

1 A. WHITE.

2 Q. AND DID YOU GIVE OUT ANY INFORMATION REGARDING THE
3 DIRECTIONS THAT VEHICLE WENT?

4 A. THAT IT LEFT GOING TOWARDS BROAD RIVER ROAD.

5 Q. ARE YOU AWARE THAT DEPUTY DANNY LEWIS WAS ONE OF THE
6 OFFICERS WHO RESPONDED TO THAT CALL?

7 A. HE WAS.

8 Q. AND WHAT TIME DID DANNY LEWIS INFORM DISPATCH THAT
9 HE WAS RESPONDING?

10 A. 23:34 WHICH IS 11:34 P.M.

11 Q. IS THAT ACTUALLY 11:34 AND 54 SECONDS?

12 A. YES.

13 Q. AND ARE YOU AWARE THAT DEPUTY STAZER RADIOED IN THAT
14 HE WOULD BE HEADING TOWARD I-20?

15 MR. LITTLEJOHN: YOUR HONOR, I OBJECT ON THE GROUNDS
16 OF HEARSAY. THAT'S MY OBJECTION TO THIS WHOLE LINE OF
17 TESTIMONY.

18 THE COURT: WELL, I'M HEARING AN OBJECTION ONLY TO
19 THIS ONE QUESTION; RIGHT? THERE WAS NO OBJECTION TO ANY
20 OTHER QUESTION.

21 MR. LITTLEJOHN: YOUR HONOR, HE'S BEEN ASKING HER
22 WHAT SHE DID AS A RESULT OF RECEIVING INFORMATION WHICH I
23 DON'T THINK FALLS UNDER THE HEARSAY EXCEPTION, BUT HERE HE'S
24 ASKED HER TO---

25 THE COURT: WELL, YOU JUST SAID YOUR OBJECTION WAS

1 TO THE WHOLE LINE OF QUESTIONING, AND ALL I HEARD WAS AN
2 OBJECTION TO THE ONE QUESTION.

3 MR. LITTLEJOHN: YOUR HONOR, PRIOR TO THAT SHE WAS
4 TELLING WHAT SHE DID WHICH I DO NOT HAVE ANY OBJECTION TO,
5 BUT HERE HE'S TRYING TO ELICIT HEARSAY FROM HER AS TO WHAT
6 SOMEBODY ELSE TOLD HER.

7 THE COURT: ALL RIGHT. REPEAT THE QUESTION,
8 PLEASE, MR. GRAHAM.

9 MR. GRAHAM: I THINK I ASKED: WHAT, IF ANY,
10 INFORMATION DO YOU HAVE REGARDING WHETHER DEPUTY STAZER
11 STATED THAT HE WAS RESPONDING TO THE AREA OF I-20
12 WESTBOUND---

13 THE COURT: OKAY.

14 MR. GRAHAM: ---IN REGARDS TO THIS CALL?

15 THE COURT: THE QUESTION IS: DID THE DEPUTY TELL
16 HER WHETHER OR NOT HE WAS RESPONDING?

17 MR. GRAHAM: YES, SIR. YOUR HONOR, IF THERE'S A
18 PROBLEM, I'LL JUST OFFER THE CAD REPORT INTO EVIDENCE. SHE'S
19 THE CUSTODIAN OF THE RECORD AND HAS VERIFIED IT. SHE CAN
20 TESTIFY TO IT AS A BUSINESS RECORD.

21 THE COURT: WELL, THAT WOULDN'T SOLVE THE HEARSAY
22 PROBLEM, BUT AS FAR AS THAT -- AS FAR AS THAT ONE OBJECTION
23 TO THAT ONE QUESTION, THE QUESTION IS: DID THE OFFICER TELL
24 HER WHETHER OR NOT HE WAS RESPONDING AND, IF SO, WHAT DID HE
25 SAY? THAT'S ESSENTIALLY YOUR QUESTION? I DON'T SEE THAT

KELLIE MATTHEWS - DIRECT EXAM BY MR. GRAHAM

1312

1 THAT'S OFFERED TO PROVE THE TRUTH OF THE MATTER ASSERTED. I
2 WANT TO MAKE SURE I UNDERSTAND IT CORRECTLY. IF YOU THINK
3 I'M MISUNDERSTANDING SOMETHING, YOU CAN COME UP HERE AND
4 EXPLAIN IT TO ME. BUT I DO NOT BELIEVE THAT WOULD BE
5 HEARSAY, AND UNLESS YOU CONVINCE ME OTHERWISE, I OVERRULE THE
6 OBJECTION. ALL RIGHT? PROCEED.

7 BY MR. GRAHAM:

8 Q. WHAT TIME -- ARE YOU AWARE OF THE TIME THAT DEPUTY
9 STAZER RADIOED IN REGARDING THAT INFORMATION?

10 A. 23:42 HOURS AND 28 SECONDS.

11 Q. AND ARE YOU AWARE THAT AT SOME POINT FROM REVIEWING
12 THE RADIO TRAFFIC THAT AN OFFICER ON THE SCENE RELAYED
13 INFORMATION TO ALL UNITS THAT A MASONIC SYMBOL WAS LOCATED ON
14 THE BACK OF THE NAVIGATOR VEHICLE?

15 A. HE DID.

16 MR. LITTLEJOHN: YOUR HONOR, I OBJECT TO THE LEADING
17 QUESTION.

18 THE COURT: I SUSTAIN THE OBJECTION AS TO THE
19 LEADING.

20 BY MR. GRAHAM:

21 Q. WHAT, IF ANY, INFORMATION ARE YOU AWARE OF REGARDING
22 A MASONIC STICKER ON THE BACK OF THE NAVIGATOR?

23 A. THAT THERE WAS ONE ON THE BACK OF THE WHITE LINCOLN
24 NAVIGATOR THAT WAS TAKEN.

25 Q. AND THROUGH YOU PARTICIPATING IN THE CALL THAT NIGHT

1 AND IN REVIEW OF THE CAD AND THE RADIO TRAFFIC, ARE YOU AWARE
2 THAT DEPUTY STAZER MADE A CAR STOP ON THE NAVIGATOR?

3 A. HE DID.

4 Q. AND WHAT TIME WAS THAT CAR STOP MADE?

5 A. 23:50 HOURS.

6 Q. AND AT SOME POINT WAS THERE A REQUEST FOR A TAG
7 NUMBER TO BE RUN?

8 A. HE GAVE US THAT AS PART OF THE INITIAL CALL FOR
9 SERVICE. WHEN HE SAID HE WAS STOPPING THE VEHICLE, HE GAVE
10 TAG INFORMATION AS PART OF THE INFORMATION RELEVANT TO THAT.

11 Q. AND BASED ON HIS REQUEST IN THAT INFORMATION, WHAT,
12 IF ANYTHING, DID YOU DO?

13 A. WE ENTERED THE INFORMATION INTO THE NATIONAL CRIME
14 INFORMATION COMPUTER WHICH IS ALSO TIED TO THE DEPARTMENT OF
15 MOTOR VEHICLES DATABASE, AND IT GIVES US BACK THE NAME OF THE
16 REGISTERED OWNER.

17 Q. AND DID YOU PASS THAT INFORMATION ON TO DEPUTY
18 STAZER?

19 A. WE DID.

20 Q. AND WHAT INFORMATION DID YOU PASS ON?

21 A. THAT THE VEHICLE WAS REGISTERED A T.L. DAVIS.

22 Q. IN ADDITION TO DOING THAT, WHAT, IF ANYTHING, DID
23 YOU DO AS FAR AS DETERMINING THE NAME OF THE VICTIM?

24 A. I CALLED OVER THE RADIO TO THE UNITS WHO WERE AT THE
25 INCIDENT LOCATION AND ASKED THEM TO PROVIDE US WITH THE NAME

1 OF THE VICTIM BECAUSE WE HAD SOMEONE OUT WITH A VEHICLE THAT
2 COULD POSSIBLY BE THAT ONE THAT WAS TAKEN.

3 Q. AND DID YOU GET AN ANSWER TO THAT REQUEST?

4 A. NOT INITIALLY.

5 Q. DID YOU EVENTUALLY GET AN ANSWER TO THAT REQUEST?

6 A. WE DID.

7 Q. BASED ON THE ANSWER THAT YOU RECEIVED, WHAT, IF ANY,
8 INFORMATION DID YOU PASS ON TO DEPUTY STAZER?

9 A. I TOLD HIM THE INFORMATION THAT I WAS GIVEN FROM THE
10 SCENE MATCHED THE INFORMATION FROM THE TAG THAT HE GAVE US.

11 Q. AND WHAT WAS THAT?

12 A. I'M SORRY? I COULDN'T HEAR.

13 Q. WHAT INFORMATION DID YOU PASS OUT REGARDING THE
14 VICTIMS'S NAME?

15 A. THE VICTIM WAS TRACY DAVIS.

16 MR. GRAHAM: PLEASE ANSWER ANY QUESTIONS THAT THE
17 DEFENSE HAS FOR YOU.

18 MR. LITTLEJOHN: WE HAVE NO QUESTIONS, YOUR HONOR.

19 THE COURT: ALL RIGHT, MA'AM. YOU CAN STEP DOWN.

20 MR. MYERS: DO YOU WANT TO LISTEN TO THAT TAPE NOW?
21 IT WILL COME IN WITH THE NEXT WITNESS.

22 THE COURT: IS THERE ANY FURTHER AUTHENTICATION
23 THAT'S GOING TO BE OFFERED FOR THE TAPE OR AM I READY TO
24 LISTEN TO IT NOW?

25 MR. MYERS: THIS WITNESS WILL TESTIFY IT'S HIS VOICE

1 MAKING THE 9-1-1 CALL.

2 THE COURT: I THINK I'LL -- I THINK I'LL KEEP
3 LISTENING.

4 MR. HUBBARD: THE STATE CALLS CLIFTON MAGWOOD.

5 CLIFTON G. MAGWOOD, AFTER BEING DULY SWORN,
6 TESTIFIED AS FOLLOWS:

7 THE CLERK: STATE YOUR NAME FOR THE RECORD, SPELLING
8 YOUR FIRST AND LAST NAME, PLEASE.

9 THE WITNESS: CLIFTON G. MAGWOOD. C-L-I-F-T-O-N.
10 LAST NAME: M-A-G-W-O-O-D.

11 DIRECT EXAMINATION

12 BY MR. HUBBARD:

13 Q. MR. MAGWOOD, HOW OLD ARE YOU?

14 A. THIRTY-EIGHT.

15 Q. AND WHAT TYPE OF WORK DO YOU DO?

16 A. I'M IN COMMUNICATIONS.

17 Q. WERE YOU EVER IN THE MILITARY?

18 A. YES.

19 Q. ARE YOU MARRIED AT THIS TIME?

20 A. AT THIS TIME, YES.

21 Q. HOW LONG HAVE YOU BEEN MARRIED?

22 A. TWO YEARS.

23 Q. AND DO YOU HAVE ANY CHILDREN?

24 A. YES.

25 Q. AND I ASKED YOU IF YOU WERE IN THE MILITARY. YOU

1 WERE IN THE MILITARY AT ONE TIME?

2 A. CORRECT.

3 Q. WHAT BRANCH OF THE MILITARY WERE YOU IN?

4 A. UNITED STATES ARMY.

5 Q. AND HOW LONG WERE YOU IN THE MILITARY?

6 A. TWENTY YEARS.

7 Q. ARE YOU RETIRED NOW FROM THE MILITARY?

8 A. YES.

9 Q. WHAT WAS YOUR RANK WHEN YOU RETIRED?

10 A. SERGEANT FIRST CLASS E-7.

11 Q. MR. MAGWOOD, DID YOU KNOW TRACY LAMAR DAVIS?

12 A. YES.

13 Q. HOW DID YOU KNOW HIM?

14 A. HE WAS A COWORKER AND A ROOMMATE OF MINE.

15 Q. SO Y'ALL SERVED IN THE ARMY TOGETHER OR WAS HE JUST

16 A ROOMMATE?

17 A. WE SERVED IN THE ARMY TOGETHER.

18 Q. WHEN DID YOU FIRST MEET?

19 A. I MET HIM IN PASSING, THE FIRST TIME ABOUT 1998

20 DURING TRAINING SEMINARS IN A NORTHEAST REGION.

21 Q. WAS HE A CAREER SOLDIER LIKE YOURSELF?

22 A. YES.

23 Q. HOW OLD WAS TRACY BACK IN 2002?

24 A. I THINK HE WAS ABOUT 35, 36. WE WERE AROUND ABOUT

25 THE SAME AGE.

1 Q. WHAT WAS HIS RANK?

2 A. SERGEANT FIRST CLASS.

3 Q. AND THAT WAS YOUR RANK AT THE TIME, TOO?

4 A. YES.

5 Q. SO YOU WERE BOTH ABOUT THE SAME AGE AND SAME RANK.

6 A. YES.

7 Q. NOW, BACK IN 2002, WERE YOU MARRIED?

8 A. NO.

9 Q. AND WHERE WERE YOU LIVING AT THE TIME?

10 A. 3500 FERNANDINA ROAD, APARTMENT D-7.

11 Q. DO YOU KNOW WHAT THE NAME OF THE APARTMENT COMPLEX
12 WAS?

13 A. RAINTREE APARTMENTS.

14 Q. I'M GOING TO SHOW YOU A DIAGRAM. DOES THIS LOOK
15 LIKE A DIAGRAM OF THE APARTMENT COMPLEX YOU LIVED IN?

16 A. YES.

17 Q. DO YOU SEE YOUR APARTMENT COMPLEX ON HERE?

18 A. YES, D-7.

19 Q. OKAY. I'M GOING TO SHOW YOU ANOTHER DIAGRAM. IS
20 THIS AN ENLARGED DRAWING OF THE SAME DIAGRAM?

21 A. YES.

22 Q. AND DO YOU SEE YOUR APARTMENT COMPLEX ON IT?

23 A. YES.

24 MR. HUBBARD: YOUR HONOR, I OFFER THESE INTO
25 EVIDENCE AT THIS TIME.

1 MR. LITTLEJOHN: NO OBJECTION, YOUR HONOR.

2 THE COURT: THEY'RE ADMITTED. THEY ARE MARKED HOW?

3 MR. HUBBARD: I GUESS THIS WOULD BE STATE'S 1 AND 2,
4 YOUR HONOR.

5 THE COURT: OH, OKAY.

6 MR. HUBBARD: 2 AND 3. EXCUSE ME.

7 THE COURT: THEY'RE ADMITTED. I THOUGHT THEY WERE
8 ALREADY MARKED, MR. HUBBARD.

9 (STATE'S EXHIBITS 2 AND 3 WERE RECEIVED IN
10 EVIDENCE.)

11 BY MR. HUBBARD:

12 Q. MR. MAGWOOD, CAN I GET YOU TO STEP DOWN FOR JUST A
13 MOMENT FROM THE STAND AND COME DOWN HERE? I WANT TO POINT
14 OUT WHERE YOU LIVED. WHAT I'M GOING TO ASK YOU TO DO IS
15 STAND OVER HERE---

16 A. OKAY.

17 Q. ---SO YOU CAN SPEAK TOWARDS THE COURT REPORTER SO
18 SHE CAN HEAR YOU.

19 A. OKAY.

20 Q. THIS IS THE APARTMENT COMPLEX?

21 A. CORRECT.

22 Q. WHAT ROAD IS THIS RIGHT HERE?

23 A. THAT'S I-26 RUNNING PARALLEL WITH FERNANDINA ROAD.

24 Q. FERNANDINA ROAD IS RIGHT HERE?

25 A. YES.

1 Q. WHAT ROAD IS THIS?

2 A. EVELYN DRIVE.

3 Q. AND WHAT -- WHAT DIRECTION DOES THAT HEAD?

4 A. THAT HEADS BACK TOWARDS BROAD RIVER ROAD GOING, I
5 BELIEVE, NORTH, NORTHEAST.

6 Q. WHAT APARTMENT NUMBER WAS YOUR APARTMENT?

7 A. D-7, LOCATED RIGHT HERE.

8 Q. THE ONE IN YELLOW.

9 A. YES.

10 Q. THE INCIDENT WE'RE GOING TO TALK ABOUT, IS THAT
11 RIGHT ACROSS?

12 A. YES, RIGHT IN THIS AREA RIGHT HERE.

13 Q. OKAY. THERE'S A LITTLE AERIAL MAP IN THE CORNER?

14 A. UH-HUH.

15 Q. IS THAT ALSO OF THIS DRAWING WHERE YOUR APARTMENT
16 COMPLEX WAS?

17 A. YES.

18 Q. DO YOU SEE ONE HIGHLIGHTED IN YELLOW?

19 A. YES.

20 Q. WHOSE APARTMENT IS THAT?

21 A. THAT'S MY APARTMENT THERE.

22 Q. SO THE ONE THAT LOOKS KIND OF ORANGE OR PINK, WHAT'S
23 SIGNIFICANT ABOUT THAT?

24 A. THAT'S WHERE THE INCIDENT TOOK PLACE IN FRONT OF
25 THAT APARTMENT.

1 Q. OKAY. I WANT YOU TO LOOK NOW AT STATE'S EXHIBIT
2 NUMBER 3. THIS IS AN ENLARGED DRAWING OF THE SAME THING;
3 CORRECT?

4 A. CORRECT.

5 Q. POINT OUT AGAIN FOR THE JURY YOUR APARTMENT COMPLEX.

6 A. RIGHT HERE.

7 Q. SO THIS ENTIRE UNIT IS YOURS RIGHT HERE?

8 A. RIGHT HERE.

9 Q. OKAY. AND THIS IS G-3 WHERE THE INCIDENT OCCURRED.

10 A. CORRECT.

11 Q. AND THIS ROAD HERE, IS THIS PART OF THE DRIVE?

12 A. PART OF THE DRIVEWAY IN THE COMPLEX LEADING BACK OUT
13 TO EVELYN.

14 Q. UP TO EVELYN AND THEN ON UP TO BROAD RIVER?

15 A. BROAD RIVER, CORRECT.

16 Q. ALL RIGHT. YOU CAN GO AHEAD AND HAVE A SEAT BACK
17 NOW. YOUR APARTMENT COMPLEX, WAS IT IN RICHLAND OR LEXINGTON
18 COUNTY?

19 A. LEXINGTON COUNTY.

20 Q. THE ENTIRE COMPLEX?

21 A. YES.

22 Q. AND, AGAIN, YOUR ROOMMATE WAS WHO?

23 A. TRACY LAMAR DAVIS.

24 Q. HOW LONG HAD TRACY LIVED WITH YOU PRIOR TO THIS
25 MURDER?

1 A. ABOUT SIX TO SEVEN MONTHS.

2 Q. WAS TRACY MARRIED AT THE TIME?

3 A. NO.

4 Q. TO YOUR KNOWLEDGE, HAD HE BEEN MARRIED?

5 A. YES.

6 Q. DO YOU REMEMBER WHAT HIS EX-WIFE'S NAME WAS?

7 A. TASHA?

8 Q. OKAY. DO YOU REMEMBER IF HE HAD A DAUGHTER FROM
9 THAT MARRIAGE?

10 A. YES.

11 Q. WHAT WAS HIS DAUGHTER'S NAME?

12 A. TAY.

13 Q. TO YOUR KNOWLEDGE, DID HE HAVE A GOOD WORKING
14 RELATIONSHIP WITH BOTH OF THEM?

15 A. YES.

16 Q. HAVE YOU EVER HEARD OF NEYSA WILLIAMS?

17 A. YES.

18 Q. IS -- WHO IS SHE?

19 A. SHE WAS SOMEBODY HE WAS DATING AT THE TIME.

20 Q. OKAY. WAS SHE IN THE ARMY, TOO?

21 A. YES.

22 Q. NOW, WHERE WERE YOU AND TRACY DAVIS STATIONED BACK
23 IN MAY OF 2002?

24 A. FORT JACKSON SERVICE SUPPORT INSTITUTE, RECRUITING
25 AND RETENTION SCHOOL.

1 Q. RECRUITING AND RETENTION SCHOOL. WHAT IS THAT?

2 A. THAT'S A SCHOOL WHERE WE WERE INSTRUCTORS FOR NEW
3 RECRUITERS AND MIDDLE MANAGEMENT RECRUITERS DOING INSTRUCTING
4 FOR THE NEW FIELD FORCE TO GO OUT AND RECRUIT NEW PEOPLE FOR
5 THE UNITED STATES ARMY.

6 Q. BASICALLY Y'ALL TAUGHT RECRUITERS HOW TO RECRUIT.

7 A. CORRECT.

8 Q. AS RECRUITERS OR RECRUIT INSTRUCTORS, WERE Y'ALL
9 VERY INVOLVED IN THE COMMUNITY?

10 A. YES.

11 Q. BETWEEN THE TWO OF YOU, TRACY DAVIS AND YOU, WHO WAS
12 THE MOST INVOLVED IN THE COMMUNITY?

13 A. TRACY BY FAR WAS MORE INVOLVED THAN I WAS DUE TO HIS
14 ATHLETIC COMMITMENTS.

15 Q. WHAT TYPE OF COMMUNITY ACTIVITIES WAS HE INVOLVED IN
16 AS PART OF HIS JOB?

17 A. AS PART OF HIS JOB: COMMUNITY RELATIONS, SCHOOL
18 EVENTS, MENTORSHIP PROGRAMS, THINGS LIKE THAT.

19 Q. DID HE ALSO -- WAS HE INVOLVED IN RUNNING EVENTS AND
20 THINGS LIKE THAT FOR CHILDREN?

21 A. WE SPONSORED STATEWIDE SPONSORED EVENTS AS FAR AS
22 CANCER FUND-RAISERS, ASTHMA FUND-RAISERS. WHEN THEY HAD
23 TYPES OF RUNS FOR THOSE, HE WOULD ALWAYS PARTICIPATE IN ALL
24 OF THEM.

25 Q. WHAT TYPE OF PHYSICAL CONDITION WAS TRACY DAVIS IN?

1 A. EXCELLENT. HE MAXED HIS PHYSICAL FITNESS
2 ASSESSMENT.

3 Q. WAS HE A GOOD ATHLETE IN ADDITION TO THAT?

4 A. YES, A VERY GOOD ATHLETE.

5 Q. THE AFTERNOON OF MAY 16TH, 2002, WAS TRACY INVOLVED
6 IN A SPORTS-RELATED EVENT?

7 A. YES. THEY HAD A SOFTBALL GAME THAT AFTERNOON.

8 Q. AND DID YOU ATTEND OR DID YOU WATCH?

9 A. YEAH, I WATCHED THE GAME.

10 Q. TO YOUR KNOWLEDGE, AFTER THAT GAME, WHAT WAS THE
11 PLAN?

12 A. USUALLY THEY GATHERED AROUND TO TALK ABOUT THE GAME,
13 THE HIGHLIGHTS FROM THE GAME, AND THEY HAD MADE PLANS TO
14 VISIT A LOCAL MERCHANT TO PICK UP SOME TEE SHIRTS FOR THE
15 NEXT DAY'S EVENT THAT WE WERE HAVING SPONSORED BY THE
16 BATTALION.

17 Q. AND WHAT WAS THAT EVENT?

18 A. IT WAS A FUN RUN THAT WAS GOING TO BE SPONSORED.

19 Q. WHAT -- WHAT IS A FUN RUN?

20 A. IT'S A RUN WHERE THE BATTALION GETS TOGETHER ALL THE
21 STUDENTS, ALL THE INSTRUCTORS, THE CADRE, AND YOU GET TO
22 DRESS IN ANY TYPE OF WILD, CRAZY OUTFIT AND JUST HAVE LIKE A
23 CAMARADERIE-TEAM-BUILDING-TYPE RUN TO, YOU KNOW, PROMOTE --
24 SPREAD THE CORPS. AND YOU BASICALLY WEAR ANY TYPE OF OUTFIT,
25 AND IN THE MILITARY WE WEAR STRUCTURED OUTFITS DURING

1 PHYSICAL FITNESS TRAINING, BUT FOR THIS FUN RUN YOU COULD
2 WEAR ANYTHING TO GET YOUR SPIRITS UPLIFTED.

3 Q. DO YOU KNOW IF TRACY HAD PLANS TO GET AN OUTFIT THAT
4 EVENING?

5 A. YES.

6 Q. NOW, THIS FUN RUN, ABOUT HOW FAR ARE WE TALKING
7 ABOUT IN MILES?

8 A. YOU'RE LOOKING AT ANYWHERE FROM FIVE TO SIX MILES
9 THROUGH SOME HILLY TERRAIN. THE RUN WAS MORE OF A CHALLENGE
10 ALSO, SO IT WOULD BE A LITTLE BIT LONGER AND A LITTLE BIT
11 MORE OF A CHALLENGE TO SEE WHO COULD LAST THE LONGEST.

12 Q. WAS TRACY PRETTY COMPETITIVE?

13 A. VERY COMPETITIVE.

14 Q. WHAT WAS HIS GOAL?

15 A. TO LEAD THE RUN ALL THE WAY WITHOUT STOPPING.

16 Q. NOW, AFTER THE GAME, YOU ENDED UP BREAKING AWAY FROM
17 THE GUYS; IS THAT RIGHT?

18 A. YES.

19 Q. AND WHERE DID YOU GO?

20 A. I WENT RIDING AROUND A LITTLE BIT ON MY MOTORCYCLE,
21 AND THEN I HEADED HOME.

22 Q. BACK TO RAINTREE APARTMENTS?

23 A. YES.

24 Q. DO YOU REMEMBER ABOUT WHAT TIME YOU GOT HOME?

25 A. ABOUT 9:30, 10:00.

1 Q. NOW, YOU MENTIONED A MOTORCYCLE. DO YOU HAVE
2 ANOTHER VEHICLE AS WELL OR DID YOU AT THAT TIME?

3 A. YES.

4 Q. WHAT WERE YOU DRIVING AT THAT TIME?

5 A. A 1998 FORD EXPEDITION.

6 Q. WHEN YOU GOT HOME, YOUR EXPEDITION WAS STILL THERE?
7 YOU HAD BEEN RIDING YOUR MOTORCYCLE?

8 A. YES.

9 Q. OKAY. WHAT DID YOU DO WHEN YOU GOT HOME?

10 A. I OPENED UP THE TRAILER, PUT MY MOTORCYCLE --
11 CLEANED IT UP, PUT IT UP IN THE TRAILER. AFTER THAT A
12 NEIGHBOR ASKED TO BORROW MY VEHICLE, SO I LENT THEM THE KEYS
13 AND THEN I WENT IN THE HOUSE.

14 Q. OKAY. NOW, WE KNOW WHAT YOU DRIVE. WHAT WAS TRACY
15 DAVIS DRIVING AT THAT TIME?

16 A. I BELIEVE IT WAS A 1998, BUT I KNOW IT'S A LINCOLN
17 NAVIGATOR, WHITE.

18 Q. I WANT TO SHOW YOU SOME PHOTOGRAPHS. LET ME SEE IF
19 YOU RECOGNIZE THESE. DO YOU RECOGNIZE THESE PHOTOS, THE
20 AUTOMOBILE IN THESE PHOTOS?

21 A. YES.

22 Q. AND WHAT AUTOMOBILE IS THIS?

23 A. TRACY DAVIS'S LINCOLN NAVIGATOR.

24 Q. HOW DO YOU RECOGNIZE IT AS HIS LINCOLN NAVIGATOR?

25 A. THROUGH THE EMBLEM ON THE BACK, THE MASONIC EMBLEM,

1 AND THE TAGS.

2 Q. OKAY. AND IT'S A WHITE VEHICLE?

3 A. YES.

4 MR. HUBBARD: YOUR HONOR, I OFFER THESE INTO
5 EVIDENCE AT THIS TIME.

6 MR. LITTLEJOHN: I WANT TO SEE THEM. (MR.
7 LITTLEJOHN LOOKS AT THE PHOTOGRAPHS.) NO OBJECTION, YOUR
8 HONOR.

9 THE COURT: THEY'RE ADMITTED.

10 (STATE'S EXHIBITS 4 AND 5 WERE RECEIVED IN
11 EVIDENCE.)

12 BY MR. HUBBARD:

13 Q. CLIFTON, I WANT TO ASK YOU: TRACY WAS OUT AT THE
14 SOFTBALL INCIDENT. DID HE DRIVE HIMSELF OR WAS HIS NAVIGATOR
15 SITTING AT THE APARTMENT COMPLEX?

16 A. HE DROVE THE NAVIGATOR; IT WAS AT THE SOFTBALL GAME.

17 Q. LET ME ASK YOU ONE OTHER THING. I'VE GOT ANOTHER
18 DOCUMENT, A CERTIFICATE OF OWNERSHIP. CAN YOU IDENTIFY THIS
19 DOCUMENT?

20 A. YES. THAT'S THE REGISTRATION CERTIFICATE REGISTERED
21 TO TRACY L. DAVIS AND ANEYSA WILLIAMS.

22 Q. ANEYSA WILLIAMS AGAIN IS WHO?

23 A. HIS GIRLFRIEND AT THE TIME.

24 Q. AND WERE YOU AWARE THEY HAD PURCHASED THIS CAR
25 TOGETHER?

1 A. YES.

2 MR. HUBBARD: YOUR HONOR, I OFFER THIS INTO
3 EVIDENCE, TOO.

4 MR. LITTLEJOHN: MAY I SEE IT? (MR. LITTLEJOHN
5 LOOKS AT THE DOCUMENT.) YOUR HONOR, I DON'T HAVE ANY
6 OBJECTION.

7 THE COURT: IT'S ADMITTED.

8 (STATE'S EXHIBIT 6 WAS RECEIVED IN EVIDENCE.)
9 BY MR. HUBBARD:

10 Q. CLIFTON, I WANT TO ASK YOU: WHAT WERE YOUR PARKING
11 ARRANGEMENTS THERE AT THE COMPLEX?

12 A. AS WE LOOK AT THE COMPLEX, THE PHOTO THERE, WE WOULD
13 PARK STRAIGHT ACROSS FROM THE APARTMENT DUE TO THE FACT I HAD
14 MY TRAILER THAT WAS IN THE CARPORT WITH THE MOTORCYCLES IN
15 IT. SO THE CAR---

16 Q. WOULD IT HELP TO EXPLAIN IF YOU'D COME TO THE BOARD?
17 YOU CAN USE THIS POINTER IF YOU'D LIKE. IF YOU -- I TELL YOU
18 WHAT: IF YOU'LL STAND OVER HERE SO YOU CAN SPEAK UP...

19 A. AS WE'RE LIVING IN THE APARTMENT HERE, THE TRAILER
20 WOULD BE PARKED IN HERE. SO IT TOOK UP ALL THE ROOM FOR THE
21 VEHICLES, SO WE NORMALLY PARKED ALONG HERE.

22 Q. THIS AREA RIGHT HERE THAT'S HIGHLIGHTED, NUMBER 7,
23 IS THAT A GARAGE OR A CARPORT OR WHAT IS THAT?

24 A. IT'S A CARPORT.

25 Q. AND WHAT WOULD STAY IN THE CARPORT?

1 A. THE MOTORCYCLE TRAILER.

2 Q. OKAY. AND ARE THERE PARKING SPACES ON THIS SIDE, ON
3 YOUR SIDE OF THE COMPLEX?

4 A. NO, EVERYBODY HAS CARPORTS. YOU HAVE TO PARK ACROSS
5 THE STREET IF YOU DON'T PARK IN THE CARPORT.

6 Q. THE PARKING SPACES ARE OVER HERE.

7 A. CORRECT.

8 Q. YOU CAN HAVE A SEAT AGAIN. NOW, I'M GOING TO GO
9 AHEAD AND ASK YOU YOUR BEDROOM ARRANGEMENT, TOO, IN THIS
10 COMPLEX.

11 A. OKAY.

12 Q. YOU'VE SEEN THIS CHART; CORRECT?

13 A. CORRECT.

14 Q. IS YOUR BEDROOM CLOSER TO THE CARPORT OR BEHIND IT?

15 A. CLOSER. IT'S RIGHT OVER THE TOP OF THE CARPORT, THE
16 FRONT ROOM OF THE APARTMENT COMPLEX.

17 Q. SO IT'S THE FIRST BOX RIGHT IN FRONT OF THE
18 HIGHLIGHTED AREA.

19 A. UH-HUH. CORRECT.

20 Q. THAT'S WHERE YOUR BEDROOM WAS.

21 A. CORRECT.

22 Q. TRACY'S IS IN THE BACK.

23 A. CORRECT.

24 Q. TRACY'S WOULD OVERLOOK THE OTHER SIDE OF THE
25 COMPLEX?

1 A. CORRECT.

2 Q. NOW, THAT EVENING, MAY 16TH, 2002, DO YOU RECALL
3 WHAT TIME YOU WENT TO BED?

4 A. I LAID DOWN ABOUT 11:00.

5 Q. AND DID YOU GO TO SLEEP AT THAT TIME OR WHAT WERE
6 YOU DOING?

7 A. NO, I WAS WATCHING T.V., WATCHING A MOVIE THAT HAD
8 CAME ON, 11:00 MOVIE. I THINK IT WAS "FULL METAL JACKET" AT
9 THE TIME.

10 Q. "FULL METAL JACKET"?

11 A. YES.

12 Q. DO YOU REMEMBER WHAT HAPPENED NEXT?

13 A. I WAS LYING THERE JUST KIND OF WATCHING T.V., AND I
14 HEARD WHAT APPEARED TO BE A COMMOTION, SOME VOICES, AND THEN
15 I HEARD SOMEONE SAY, "ALL RIGHT. I'LL GIVE IT TO YOU." AND
16 IT SOUNDED TO BE LIKE MY ROOMMATE, TRACY. SO AT THAT TIME I
17 GOT UP AND PEERED OUT THE WINDOW, YOU KNOW, JUST PEEKED
18 THROUGH THE VENETIAN BLINDS TO SEE WHAT WAS GOING ON, AND
19 WHEN I LOOKED OUT, I SEEN THAT HE WAS LOOKED LIKE TO BE -- HE
20 WAS BEING HELD UP AT GUNPOINT GOING TOWARDS THE BACK OF HIS
21 CAR.

22 AT THAT TIME NOTICING WHAT WAS TAKING PLACE, I
23 IMMEDIATELY RAN TO FIND THE CORDLESS TELEPHONE WHICH WAS IN
24 HIS ROOM, SO I HAD TO GO TO HIS ROOM. ONCE I FOUND THE
25 CORDLESS PHONE, I DIALED 9-1-1, AND AT THE SAME TIME I WAS

CLIFTON MAGWOOD - DIRECT EXAM BY MR. HUBBARD

1330

1 RAMBLING THROUGH HIS DRAWERS TRYING TO FIND HIS WEAPON THAT
2 HE HAD KEPT IN THE HOUSE. ONCE I LOCATED THE WEAPON AND WAS
3 SPEAKING WITH 9-1-1 INFORMING THEM WHAT WAS GOING DOWN --
4 WHAT WAS GOING ON, I STARTED HEADING DOWN THE STAIRS TO THE
5 FIRST FLOOR TO HEAD OUT OF THE APARTMENT.

6 ON THE WAY DOWN THE STAIRS I HEARD WHAT APPEARED TO
7 BE A GUNSHOT THAT WENT OFF, AND THAT'S WHEN I GOT REALLY,
8 REALLY EXCITED. I MEAN, I WAS EXCITED WHEN IT FIRST STARTED,
9 BUT IT REALLY INTENSIFIED AT THAT POINT. WHEN I WENT OUTSIDE
10 THE FRONT DOOR, I COULD SEE HIS LINCOLN NAVIGATOR LEAVING THE
11 PARKING AREA AND HEADING UP THE ROAD THERE TO EXIT THE
12 APARTMENT COMPLEX.

13 AS I LOOKED OUT, I DIDN'T KNOW IF TRACY WAS IN THE
14 VEHICLE OR NOT. THAT'S WHEN I SEEN ARTICLES LAYING ON THE
15 GROUND. AS I WALKED OVER TO SEE WHAT THE ARTICLES WERE ON
16 THE GROUND, I THEN PEERED UP A LITTLE FURTHER AND I COULD SEE
17 HIM LYING IN THE BRUSH THERE, APPEARED TO BE INJURED.

18 AT THAT TIME I GOT OVER TO HIM AND NOTICED THAT HE
19 WAS LAYING UNCONSCIOUS. I STARTED TO CHECK FOR WOUNDS. AT
20 THAT TIME I WAS ALSO SCREAMING FOR HELP, YOU KNOW, CALLING
21 OUT FOR HELP. I NOTICED AT THAT TIME BLOOD, AND HE SEEMED TO
22 BE INJURED FROM THE REAR OF HIS HEAD. I WENT TO KNOCK ON
23 SEVERAL DOORS TO TRY TO GET EXTRA HELP. ONE OF MY NEIGHBORS
24 CAME OUT AND ASSISTED ME WHILE I WAS DEALING WITH 9-1-1 UNTIL
25 THEY ARRIVED.

1 Q. NOW, WHEN YOU CALLED 9-1-1, WERE YOU -- YOU GOT THE
2 PHONE OUT OF TRACY'S ROOM?

3 A. RIGHT. IT WAS IN HIS ROOM AT THE TIME.

4 Q. FROM THE MOMENT YOU GOT THAT PHONE, WERE YOU ON
5 9-1-1 UNTIL THE COPS ARRIVED?

6 A. YES.

7 Q. THIS TAPE WHICH IS MARKED STATE'S I.D. NUMBER 1,
8 HAVE YOU HAD AN OPPORTUNITY TO LISTEN TO THIS TAPE?

9 A. YES, I HAVE.

10 Q. DOES IT FAIRLY AND ACCURATELY DEPICT THE
11 CONVERSATIONS AND EVENTS THAT TOOK PLACE THAT NIGHT?

12 A. YES, IT DOES.

13 Q. LET ME ASK YOU SPECIFICALLY ABOUT YOUR MENTAL AND
14 EMOTIONAL STATE WHEN YOU MADE THAT CALL. WHAT -- WHAT WAS
15 YOUR STATE?

16 A. VERY EXCITED, ADRENALINE FLOWING, VERY EMOTIONAL AS
17 THE TIME WOULD PASS, YOU KNOW, WAITING FOR THE PARAMEDICS AND
18 THE RESPONSE TEAM TO GET THERE.

19 MR. HUBBARD: YOUR HONOR, I OFFER IT INTO EVIDENCE
20 AT THIS TIME UNLESS YOUR HONOR WOULD LIKE TO LISTEN TO IT
21 NOW.

22 THE COURT: I THINK I'M GOING TO HAVE TO LISTEN TO
23 IT. I'LL LISTEN TO IT NOW OR IF YOU WANT TO FINISH YOUR
24 EXAMINATION AND LET THEM CROSS... I'LL JUST LISTEN TO IT
25 WHENEVER YOU TELL ME.

1 MR. HUBBARD: YES, SIR.

2 THE COURT: WHENEVER YOU WANT.

3 MR. HUBBARD: YOUR HONOR, IF IT SUITS YOUR HONOR, IF
4 WE COULD GO AHEAD AND DO THAT NOW AND THEN PICK UP...

5 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, THIS
6 IS GOING TO BE ONE OF THOSE TIMES WHERE I TOLD YOU... I'M
7 GOING TO HAVE TO LISTEN TO THIS TAPE BEFORE I CAN DECIDE
8 WHETHER OR NOT IT'S ADMISSIBLE. SO I'M GOING TO ALLOW -- I
9 WOULD ASK YOU ALL TO GO BACK INTO THE JURY ROOM, AND I'LL GET
10 YOU BACK OUT HERE AS SOON AS I CAN.

11 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AT
12 2:45 P.M.)

13 MR. HUBBARD: YOUR HONOR, I'M NOT SURE OF THE BEST
14 SET-UP FOR PLAYING THIS. IS THERE AN OUTLET OVER HERE?

15 THE COURT: DOES THE COURTROOM SYSTEM NOT HAVE A
16 CASSETTE PLAYER?

17 MR. HUBBARD: I DON'T KNOW.

18 THE COURT: OKAY. JUST PLAY IT WHEREVER.

19 MR. HUBBARD: I WANT TO MAKE SURE YOUR HONOR CAN
20 HEAR IT.

21 (WHEREUPON, STATE'S EXHIBIT 1 FOR IDENTIFICATION
22 ONLY WAS PLAYED FOR THE COURT.)

23 MR. HUBBARD: YOUR HONOR, THAT'S THE 9-1-1 TAPE.
24 WE'D LIKE TO OFFER IT IN EVIDENCE.

25 MR. LITTLEJOHN: YOUR HONOR, WE HAVE NO OBJECTION TO

1 SEEING HOW THE TAPE CONCERNS THIS WITNESS AND WHAT HE SAID,
2 AND IT'S NOT EXTRANEIOUS PEOPLE TALKING ON IT. SO I WITHDRAW
3 MY OBJECTION.

4 THE COURT: BRING IN THE JURY.

5 MR. HUBBARD: I'M GOING TO REWIND IT, YOUR HONOR, I
6 THINK.

7 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT
8 2:55 P.M. STATE'S EXHIBIT 1 WAS RECEIVED IN EVIDENCE.)
9 BY MR. HUBBARD:

10 Q. CLIFTON, I'M GOING TO GET YOU TO STEP DOWN JUST A
11 SECOND AGAIN, IF YOU DON'T MIND. WHAT I'D LIKE TO DO IS KIND
12 OF WALK THROUGH THIS AGAIN. CAN YOU SEE IT OKAY? OKAY.
13 NOW, AGAIN, YOUR BEDROOM IS LOCATED WHERE?

14 A. HERE.

15 Q. OVERLOOKING THIS PARKING AREA?

16 A. CORRECT. CORRECT.

17 Q. YOU WERE IN BED.

18 A. CORRECT.

19 Q. AND WHAT DID YOU HEAR?

20 A. I HEARD SOUNDS THAT SOUNDED LIKE THERE MIGHT BE A
21 DISTURBANCE OR AN ARGUMENT OR SOMETHING OF THAT NATURE, AND
22 IT SOUNDED TO BE THE VOICE OF MY ROOMMATE, TRACY. THAT'S
23 WHAT PROMPTED ME TO GET UP AND LOOK AND SEE WHAT'S GOING ON.

24 Q. WHEN YOU LOOKED OUT, YOU LOOKED OUT YOUR WINDOW IN
25 YOUR BEDROOM.

1 A. CORRECT.

2 Q. WHAT DID YOU SEE?

3 A. I SEEN A -- MY ROOMMATE AS HE LOOKED LIKE HE WAS
4 BEING TAKEN AGAINST HIS WILL TO THE BACK OF THE VEHICLE BY A
5 MALE, HEAVY SET, ANYWHERE FROM 5'11" TO 6 FEET TALL, BROAD
6 SHOULDERS, HAD ON A DARK OUTFIT, COULD BE JEAN OR DENIM OR
7 SOME TYPE OF DARK OUTFIT WITH A DARK HAT. HE HAD HIS HAND
8 UP, WHAT APPEARED TO BE A WEAPON TO HIS HAND, WALKING THE
9 ROOMMATE TO THE BACK OF THE VEHICLE AGAINST HIS WILL.

10 Q. OKAY. I'VE GOT A LITTLE SOMETHING I WANT TO SHOW
11 YOU RIGHT HERE. I'M GOING TO SHOW YOU THIS LITTLE STICK-ON.
12 WHAT DOES THAT DEPICT?

13 A. TRACY'S NAVIGATOR.

14 Q. AND WILL YOU PLACE THAT AS IT WAS PARKED?

15 A. (THE WITNESS COMPLIES.)

16 Q. NOW, AS YOU HAVE IT HERE, IT WAS BACKED INTO A SPOT?

17 A. CORRECT.

18 Q. IS THAT PRETTY TYPICAL FOR TRACY TO BACK HIS---

19 A. WE ALWAYS BACKED IN.

20 Q. ---VEHICLE IN? NOW, YOU SAY YOU SEE THE SUSPECT
21 ROBBING TRACY.

22 A. CORRECT.

23 Q. DID YOU HAVE A CLEAR VISION OF BOTH OF THEM?

24 A. I HAD A CLEAR VISION OF TRACY. I DIDN'T HAVE A
25 CLEAR VISION OF THE PERSON WHO WAS ROBBING HIM, AS HIS BACK

1 WAS TOWARDS ME.

2 Q. DID HIS BACK STAY TO YOU THE WHOLE TIME?

3 A. CORRECT.

4 Q. NOW, WAS THERE AN AUTOMOBILE ON EITHER SIDE OF THE
5 NAVIGATOR?

6 A. YES.

7 Q. AND WHAT CAN YOU TELL ME ABOUT THE NAVIGATOR? DOORS
8 OPEN? DOORS CLOSED?

9 A. AS I SEEN THE PERSON WALKING TO THE BACK, THE FRONT
10 DOOR WAS OPEN.

11 Q. WHEN YOU SAY THE FRONT DOOR, IS THAT THE DRIVER'S
12 SIDE DOOR?

13 A. DRIVER'S SIDE. CORRECT. THE FRONT DRIVER'S SIDE
14 DOOR WAS OPEN.

15 Q. NOW, WHEN IT WAS OPEN, WAS IT OPEN WIDE OR COULD IT
16 EVEN OPEN WIDE?

17 A. IT OPENED UP TO, YOU KNOW, THE FIRST NOTCH IN THE
18 DOOR WHERE IT OPENS UP WHEN YOU GET IN, NOT THE EXTREME WIDE
19 SWING-OUT, BUT JUST ENOUGH SWINGING FOR A PERSON TO GET IN.

20 Q. THE DOOR WAS OPEN THIS WAY.

21 A. CORRECT.

22 Q. WHERE WAS THIS INDIVIDUAL STANDING THEN?

23 A. SOMEWHERE AROUND ABOUT THE BACK QUARTER PANEL OF THE
24 VEHICLE.

25 Q. SO THE DOOR IS KIND OF OPEN BEHIND HIM?

1 A. UH-HUH.

2 Q. THAT'S THE DRIVER'S SIDE DOOR.

3 A. CORRECT.

4 Q. TRACY IS IN FRONT OF HIM.

5 A. CORRECT.

6 Q. WHERE WAS TRACY? WAS HE STILL IN THE PARKING LOT OR
7 WAS HE UP---

8 A. UP THE STEP-UP RIGHT THERE.

9 Q. HOW FAR APART WOULD YOU SAY THESE TWO WERE?

10 A. ABOUT AS FAR AS ME AND YOU, WITH THE ARM LIKE
11 SOMETHING LIKE THAT.

12 Q. OKAY. SO YOU SAW AN ARM OUT.

13 A. UH-HUH.

14 Q. DO YOU REMEMBER WHICH ARM?

15 A. I CAN'T RECALL; IT'S BEEN AWHILE. BUT I KNOW HE HAD
16 AN ARM OUT WITH A WEAPON IN HIS HAND, SOME TYPE OF WEAPON
17 THERE.

18 Q. HOW MANY PEOPLE DID YOU SEE THERE WITH TRACY?

19 A. JUST ONE, THE ASSAILANT, THE PERSON WHO WAS ROBBING
20 HIM. I DIDN'T SEE ANYONE ELSE.

21 Q. NOW, I WANT TO DO THIS, TOO, WHILE YOU'RE STILL
22 STANDING.

23 A. OKAY.

24 Q. I WANT TO TALK ABOUT THIS SUSPECT YOU SEE, THIS MAN.
25 WAS IT A MAN OR WAS IT A WOMAN OR COULD YOU TELL?

1 A. IT WAS A MALE.

2 Q. SO IT'S A MALE? HOW WOULD YOU DESCRIBE HIS SIZE?

3 A. PRETTY LARGE, ABOUT THE SAME SIZE AS TRACY, BROAD
4 SHOULDERS, ANYWHERE FROM 5'11" TO 6'1", 6'2", DARK
5 COMPLEXION.

6 Q. YOU'VE GOT TO SLOW DOWN JUST A MINUTE. BROAD
7 SHOULDERS?

8 A. UH-HUH.

9 Q. WHAT ELSE WOULD YOU SAY ABOUT HIS SIZE?

10 A. HEAVY BUILD, MUSCULAR.

11 Q. DO YOU HAVE AN APPROXIMATE WEIGHT?

12 A. COULD BE ANYWHERE BETWEEN 215 TO 225, GIVE OR TAKE.

13 Q. AND YOU MENTIONED DARK SKIN. COULD YOU TELL IF HE
14 WAS A BLACK MALE, A WHITE MALE, OR DID YOU KNOW?

15 A. BLACK MALE.

16 Q. OKAY. NOW, IT DEFINITELY WASN'T A WHITE MALE?

17 A. CORRECT.

18 Q. DID YOU DESCRIBE IT AS DARK SKIN?

19 A. YES.

20 Q. LET'S JUST WRITE THAT. AND CLOTHING, HOW WOULD YOU
21 DESCRIBE CLOTHING?

22 A. DARK, VERY DARK CLOTHING, LOOSE-FITTING, MAYBE A
23 DENIM, SOME TYPE OF DENIM OR JEANS.

24 Q. YOU SAY DENIM OR JEANS. IS THAT AT THE TOP OR THE
25 BOTTOM OR BOTH?

1 A. BOTH.

2 Q. DID YOU NOTICE ANYTHING ELSE AS FAR AS CLOTHING?

3 A. A BASEBALL CAP, DARK BASEBALL CAP.

4 Q. SO WE HAVE A MALE, BROAD SHOULDERS, HEAVY BUILD,
5 MUSCULAR?

6 A. RIGHT.

7 Q. 215? 225? DARK-SKINNED, DARK CLOTHING, LOOSE-
8 FITTING, DENIM OR JEAN, AND A DARK BASEBALL CAP. IS THAT
9 CORRECT?

10 A. YES.

11 Q. ALL RIGHT. YOU CAN GO AHEAD AND TAKE THE STAND.
12 NOW, WHEN YOU FIRST HEARD TRACY'S VOICE, DO YOU REMEMBER
13 WHAT, IF ANYTHING, YOU HEARD HIM SAY?

14 A. SOMETHING TO THE EFFECT OF, "ALL RIGHT. I'LL GIVE
15 IT TO YOU."

16 Q. OKAY. I TELL YOU WHAT. SO JUST STAND DOWN RIGHT
17 THERE.

18 A. OKAY.

19 Q. THIS IS WHAT YOU HEARD TRACY SAY? (MR. HUBBARD
20 WRITES ON A BOARD.) IS THAT RIGHT?

21 A. YES.

22 Q. OKAY. YOU CAN GO AHEAD AND TAKE THE STAND. NOW,
23 THE OBJECT YOU SAW IN THIS INDIVIDUAL'S HAND, WHAT DID YOU
24 BELIEVE IT TO BE?

25 A. A GUN OF SOME TYPE.

1 Q. AND, AGAIN, TELL ME: HOW WAS HE HOLDING IT?

2 A. OUT IN THE POINTING MOTION.

3 Q. HIS ARM IS OUT.

4 A. UH-HUH.

5 Q. DO YOU REMEMBER WHICH ARM?

6 A. I CAN'T RECALL EXACTLY.

7 Q. WHEN YOU WENT TO CALL 9-1-1, WHERE DID YOU GO GET
8 THAT PHONE?

9 A. FROM TRACY'S ROOM.

10 Q. AND, AGAIN, THAT WAS OVERLOOKING THE OTHER BACK
11 PARKING LOT.

12 A. CORRECT.

13 Q. OKAY. AND YOU MENTIONED SOMETHING ABOUT GETTING
14 SOMETHING ELSE?

15 A. I WAS LOOKING FOR HIS GUN.

16 Q. WHAT TYPE OF GUN DID TRACY HAVE?

17 A. A NINE MILLIMETER.

18 Q. AND DID YOU FIND IT?

19 A. YES.

20 Q. WHY WERE YOU GETTING A GUN?

21 A. FOR PROTECTION.

22 Q. DID TRACY NEED PROTECTION, TOO?

23 A. YOU KNOW, I MEAN, IN CASE, YOU KNOW, SOMEBODY BROKE
24 IN THE HOUSE OR SOMETHING BUT---

25 Q. I MEAN, THAT NIGHT AT THAT POINT---

1 A. OH, YES, HE NEEDED PROTECTION AT THAT TIME.

2 Q. WAS HIS PISTOL LOADED OR UNLOADED?

3 A. UNKNOWN TO ME IT WAS UNLOADED. HE HAD MOVED THE
4 AMMUNITION TO ANOTHER LOCATION IN THE BEDROOM.

5 Q. AT SOME POINT YOU SAID YOU HEARD WHAT YOU THOUGHT
6 WAS A GUNSHOT?

7 A. CORRECT.

8 Q. WERE YOU ON THE 9-1-1 WITH THE 9-1-1 DISPATCHER AT
9 THAT TIME?

10 A. CORRECT.

11 Q. AND WHERE WERE YOU WHEN YOU THOUGHT YOU HEARD THAT
12 SHOT?

13 A. PROCEEDING DOWN THE STAIRWAYS OF THE APARTMENT.

14 Q. OKAY. SO YOU'RE UP -- YOUR APARTMENT IN D-7, THAT'S
15 THE SECOND FLOOR?

16 A. CORRECT.

17 Q. LOOKING DOWN ON THE FIRST?

18 A. CORRECT.

19 Q. AND YOU'RE GOING DOWN THOSE STAIRS.

20 A. CORRECT.

21 Q. DO YOU REMEMBER WHAT, IF ANYTHING, YOU SAID WHEN YOU
22 HEARD WHAT YOU THOUGHT WAS A SHOT? AND YOU CAN SAY IT IN
23 COURT SINCE THAT'S WHAT YOU SAID.

24 A. I BELIEVE IT WAS TO THE EFFECTS OF, "OH, SHIT."

25 Q. OKAY. AS YOU CAME OUTSIDE, DID YOU SEE THE

1 NAVIGATOR?

2 A. YES, I SEEN THE NAVIGATOR. IT WAS LEAVING THE
3 PARKING LOT.

4 Q. WHICH WAY WAS IT HEADING?

5 A. TOWARDS BROAD RIVER ROAD.

6 Q. I'M GOING TO GET YOU TO STEP DOWN AGAIN. I'M GIVING
7 YOU A LOT OF EXERCISE, I KNOW, BUT I'D LIKE YOU TO TAKE THIS
8 RED PEN AND FOLLOW THE -- AND TRACE THE TRAIL OF THE
9 NAVIGATOR WHERE YOU SAW IT.

10 A. (THE WITNESS COMPLIES AND DRAWS ON THE BOARD.)

11 Q. OKAY. THANK YOU. NOW, WHEN YOU CAME OUTSIDE, WHAT
12 WAS THE FIRST THING YOU SAW?

13 A. THAT WAS THE NAVIGATOR THAT WAS LEAVING THE PARKING
14 LOT AS I ENTERED OUT FROM THE CARPORT.

15 Q. AT THIS POINT DID YOU KNOW WHERE TRACY WAS?

16 A. NO.

17 Q. WHAT WAS YOUR THOUGHT?

18 A. THAT HE WAS POSSIBLY IN THE TRUCK.

19 Q. WHAT DID YOU SEE NEXT?

20 A. I SEEN ARTICLES, BAGS, SOME GROCERIES OR SOMETHING
21 -- SUCH ARTICLES ON THE GROUND ALONG WITH A CELL PHONE AND A
22 TEE SHIRT.

23 Q. AND THEN WHAT DID YOU SEE?

24 A. AS I APPROACHED THE ARTICLES ON THE GROUND AND --
25 AND YOU COULD SEE THE SILHOUETTE UP IN THE GRASS WHERE HE HAD

1 BEEN LAYING -- WHERE HE WAS LAYING.

2 Q. I WANT TO SHOW YOU A PHOTOGRAPH, SEE IF YOU CAN
3 IDENTIFY THIS. IN THIS PHOTOGRAPH DO YOU SEE THE ARTICLES
4 THAT YOU DESCRIBED?

5 A. YES.

6 Q. AND IN THE DARK BACKGROUND DO YOU SEE WHERE TRACY
7 IS?

8 A. YES.

9 MR. HUBBARD: YOUR HONOR, I OFFER THIS INTO EVIDENCE
10 AT THIS TIME.

11 MR. LITTLEJOHN: NO OBJECTION.

12 THE COURT: IT'S ADMITTED.

13 (STATE'S EXHIBIT 7 WAS RECEIVED IN EVIDENCE.)

14 BY MR. HUBBARD:

15 Q. TRACY, IF YOU -- EXCUSE ME. MR. MAGWOOD, IF YOU
16 WOULD, PLEASE STEP DOWN. I'D LIKE YOU TO SHOW WHERE THESE
17 ARTICLES ARE AND WHERE TRACY IS. IF YOU CAN JUST STEP RIGHT
18 HERE AND THEN WE'RE GOING TO STEP DOWN THERE AND SHOW THEM.

19 A. THE ARTICLES ARE HERE ON THE GROUND. YOU CAN SEE A
20 SLIGHT SILHOUETTE AS YOU'RE LOOKING UP RIGHT THERE. HE'S
21 LAYING ON THE GROUND.

22 Q. OKAY. IF YOU WOULD COME ON DOWN HERE AND TELL THEM
23 AS WELL.

24 A. THE ARTICLES ARE HERE ON THE GROUND, AND YOU'VE GOT
25 THE SILHOUETTE OVER HERE.

1 Q. SPEAK UP FOR ME IF YOU WOULD.

2 A. THE ARTICLES ARE HERE ON THE GROUND AND THE
3 SILHOUETTE OF HIS BODY, AND HIS BODY IS UP HERE IN FRONT OF
4 THE BUSHES.

5 Q. AND WHILE YOU'RE STANDING HERE, CAN YOU POINT OUT
6 WHERE YOU SAW TRACY'S BODY?

7 A. RIGHT IN THIS AREA HERE.

8 Q. THE ARTICLES ON THE GROUND, WHERE ARE THOSE?

9 A. RIGHT HERE.

10 Q. OKAY. THANK YOU. WHEN YOU SAW TRACY, WHAT DID YOU
11 DO?

12 A. I PROCEEDED OVER TO HIM, FIRST TO SEE IF HE WILL
13 RESPOND, TO SEE WHAT WAS GOING ON. HE WAS LAYING ON THE
14 GROUND, SO I STARTED IMMEDIATELY CHECKING HIM FOR ANY TYPES
15 OF WOUNDS THAT MIGHT HAVE HAPPENED.

16 Q. COULD YOU TELL WHERE HE WAS SHOT?

17 A. NOT IMMEDIATELY BECAUSE THERE WAS NO EXIT -- NOTHING
18 ON THE FRONT OF HIM.

19 Q. WHERE DID YOU DISCOVER THE WOUND?

20 A. AS I KIND OF GRABBED ON HIM, IT WAS A WOUND TO THE
21 BACK OF HIS -- OF HIS HEAD. AT THAT TIME I, YOU KNOW,
22 STARTED CALLING FOR HELP. I KNOCKED ON THE HOUSE THAT HE WAS
23 LAYING IN FRONT OF. I SCREAMED OUT TO -- FOR HELP, AND MY
24 NEXT-DOOR NEIGHBOR, HE HAD CAME OUT AND I TOLD HIM, "YOU
25 KNOW, COME ON AND HELP ME." I TOLD HIM THAT TRACY HAD BEEN

1 SHOT. HE IMMEDIATELY RAN OVER AND TOOK OFF HIS TEE SHIRT,
2 AND WE STARTED TO DO AS MUCH FIRST AID AS WE COULD WHILE WE
3 WAS TRYING TO RESPOND TO THE -- WHILE I WAS TRYING TO TELL
4 9-1-1 WHERE TO COME TO.

5 AS WE TRIED TO PERFORM FIRST AID, WE WERE WAITING ON
6 THE PARAMEDICS WHICH I HAD TO STEP AWAY FOR A MOMENT BECAUSE
7 THE PHONE STARTED TO BREAK OUT BECAUSE OF THE DISTANCE FROM
8 THE HOUSE, AND THEN I WAS TELLING THEM EXACTLY WHERE WE WERE
9 AND THEN WE CONTINUED TO WORK ON TRACY TO KEEP HIM THERE
10 UNTIL THE PARAMEDICS ARRIVED.

11 Q. COULD YOU TELL IF TRACY HAD A PULSE OR NOT?

12 A. HE HAD A WEAK, FAINT PULSE. HE HAD -- HE WAS STILL
13 BREATHING, BUT HE WAS UNCONSCIOUS.

14 Q. LATER THAT NIGHT OR ACTUALLY IN THE EARLY MORNING
15 HOURS OF MAY 17TH, 2002, DID YOU GIVE A WRITTEN STATEMENT TO
16 LAW ENFORCEMENT?

17 A. YES, I DID.

18 Q. HOW LONG DID YOU STAY ON THE PHONE WITH THE 9-1-1
19 OPERATOR OR AT WHAT POINT DID YOU TERMINATE THAT CALL?

20 A. WHEN I HEARD THE AMBULANCE, I HEARD THEM COMING UP
21 THE STREET THERE AND I COULD SEE THE LIGHTS FLASHING.

22 MR. HUBBARD: YOUR HONOR, AT THIS TIME I'D LIKE TO
23 PUBLISH THE 9-1-1 TAPE.

24 THE COURT: ALL RIGHT. THE TAPE HAS BEEN ADMITTED
25 INTO EVIDENCE, AND YOU CAN PUBLISH IT.

1 (WHEREUPON, STATE'S EXHIBIT 1 WAS PLAYED FOR THE
2 JURY.)

3 BY MR. HUBBARD:

4 Q. CLIFTON, I WANT YOU TO TAKE ANOTHER LOOK AT STATE'S
5 EXHIBIT NUMBER 5, THE NAVIGATOR.

6 A. YES.

7 Q. THE EMBLEM YOU POINTED OUT ON THE BACK, WHAT IS
8 THAT?

9 A. IT'S A MASONIC EMBLEM.

10 Q. WERE YOU AND TRACY BOTH IN THE MASONS?

11 A. YES.

12 Q. THAT INFORMATION ABOUT THAT EMBLEM, DID IT COME OUT
13 LATER FROM YOU?

14 A. YES.

15 Q. YOU GAVE THAT TO LAW ENFORCEMENT WHEN THEY GOT
16 THERE?

17 A. CORRECT.

18 MR. HUBBARD: MR. MAGWOOD, IF YOU WOULD, PLEASE
19 ANSWER ANY QUESTIONS THE DEFENSE ATTORNEYS MIGHT HAVE.

20 CROSS-EXAMINATION

21 BY MR. LITTLEJOHN:

22 Q. MR. MAGWOOD, GOOD AFTERNOON. MY NAME IS CAM
23 LITTLEJOHN. AS I UNDERSTOOD FROM YOUR EARLIER TESTIMONY, YOU
24 GOT BACK TO THE APARTMENT THAT EVENING ON MAY 16TH ABOUT
25 10:30 OR 11:00?

1 A. ABOUT 9:30 OR 10:00.

2 Q. ABOUT 9:30 OR 10:00.

3 A. CORRECT.

4 Q. OKAY. AND YOU HAD BEEN AT THE SOFTBALL GAME?

5 A. YES.

6 Q. OKAY. AND I BELIEVE YOU SAID IT WAS ABOUT 10:30 OR

7 11 WHEN YOU LAID DOWN?

8 A. ABOUT 11:00 WHEN I LAID DOWN.

9 Q. ABOUT 11:00. YOU WERE WATCHING "FULL METAL JACKET"?

10 A. YES.

11 Q. THAT'S AN ARMY MOVIE ABOUT VIETNAM?

12 A. YES.

13 Q. WERE YOU FIXING TO GO TO BED?

14 A. NO, JUST---

15 Q. YOU WERE JUST---

16 A. ---LAYING THERE WATCHING T.V.

17 Q. OKAY. HAD YOU CHANGED INTO YOUR NIGHTCLOTHES?

18 A. NO. I JUST HAD ON A PAIR OF SHORTS.

19 Q. A PAIR OF SHORTS.

20 A. UH-HUH.

21 Q. OKAY. AND YOU'RE WATCHING THIS MOVIE, AND YOU SAY

22 IT WAS ABOUT 11:30 OR SO YOU HEARD VOICES OUTSIDE?

23 A. SOMETIME AFTER 11. I'M NOT PARTICULARLY SURE WHAT

24 THE EXACT TIME WAS.

25 Q. NOW, I BELIEVE YOU TOLD US THAT YOUR BEDROOM BACKED

1 UP TO THE PARKING AREA BETWEEN THE D. BUILDING WHICH YOU
2 LIVED IN AND THE G. BUILDING.

3 A. CORRECT.

4 Q. OKAY. AND THE ELEVATIONS ARE SUCH THAT THE G.
5 BUILDING -- THE FIRST FLOOR WAS KIND OF LEVEL WITH---

6 A. THE GROUND, CORRECT.

7 Q. WITH -- WOULD IT NOT BE LEVEL -- THE GROUND FLOOR OF
8 G. WOULD BE ABOUT LEVEL WITH THE SECOND FLOOR OF D. OR CLOSE
9 TO IT?

10 A. NO. THE GROUND FLOOR OF G. WAS LEVEL WITH THE FIRST
11 FLOOR OF OURS. WE HAD A SECOND FLOOR THAT OVERLOOKED.

12 Q. SO IT OVERLOOKED.

13 A. UH-HUH.

14 Q. SO IF YOU WERE LOOKING OUT YOUR WINDOW, YOU'RE
15 LOOKING DOWN AT G.

16 A. UH-HUH.

17 Q. THE FIRST FLOOR OF G.

18 A. CORRECT.

19 Q. NOW, YOU'RE WATCHING A MOVIE; YOU'RE IN BED. YOU
20 HEAR THE VOICES.

21 A. UH-HUH.

22 Q. THAT'S WHEN YOU GET UP TO LOOK OUT THE WINDOW?

23 A. CORRECT.

24 Q. AND I BELIEVE YOU SAID YOU LOOKED OUT THROUGH THE
25 BLINDS?

1 A. CORRECT.

2 Q. WERE THE BLINDS CLOSED?

3 A. I PEERED THEM OPEN.

4 Q. YOU PEERED THEM OPEN.

5 A. UH-HUH.

6 Q. OKAY. SO THEY WERE CLOSED.

7 A. CORRECT.

8 Q. OKAY. SO YOU PEERED OUT THROUGH THE BLINDS.

9 A. UH-HUH.

10 Q. AND YOU SAW THE LINCOLN NAVIGATOR, OF COURSE.

11 A. CORRECT.

12 Q. OKAY. AND THAT'S WHEN YOU SAID YOU SAW TRACY

13 STANDING NEXT TO THE WHITE NAVIGATOR.

14 A. TOWARDS THE REAR, CORRECT.

15 Q. TOWARDS THE REAR. STANDING NEXT TO IT TOWARDS THE

16 REAR.

17 A. CORRECT.

18 Q. ALL RIGHT. AND YOU SAID THE DOOR WAS PARTIALLY

19 OPENED, THE DRIVER'S DOOR?

20 A. CORRECT.

21 Q. OKAY. MR. MAGWOOD, I BELIEVE YOU INDICATED THAT THE

22 PERSON YOU THOUGHT WAS DOING THE ROBBING OR YOU IDENTIFIED AS

23 THE ROBBER HAD HIS BACK TO YOU?

24 A. CORRECT.

25 Q. ALL RIGHT. AND YOU IDENTIFIED HIM AS A BLACK MALE?

1 A. CORRECT.

2 Q. OKAY. AND YOU COULD TELL THAT FROM THE SKIN OF HIS
3 ARMS OR?

4 A. HIS HAND.

5 Q. FROM HIS HANDS.

6 A. CORRECT.

7 Q. OKAY. AND COULD YOU TELL WHAT COLOR HAIR HE HAD?
8 DID HE HAVE BLACK HAIR?

9 A. HE HAD ON A BASEBALL CAP; I COULDN'T TELL.

10 Q. COULDN'T TELL WHETHER THERE WAS HAIR UNDER IT OR
11 NOT?

12 A. COULDN'T TELL.

13 Q. COULDN'T TELL.

14 A. I COULD SEE THE SKIN ON HIS NECK, THE HAT. HE HAD A
15 HEAVY JEAN -- SOME KIND OF OVERCOAT OR JEAN. I COULD SEE HIS
16 NECK, HANDS, EXPOSED SKIN.

17 Q. OKAY. NOW, LET ME BACK UP A SECOND. RAINTREE
18 APARTMENTS IS -- HAS BEEN IN THAT PARTICULAR LOCATION FOR
19 YEARS AND YEARS, HASN'T IT?

20 A. I GUESS. I MEAN, I WAS NEW TO THE AREA IN 2000.

21 Q. OKAY. BUT IT'S KIND OF A HEAVILY WOODED AREA, IS IT
22 NOT?

23 A. COULD YOU REPHRASE THAT? I'M NOT SURE---

24 Q. THERE ARE A LOT OF WOODS THAT ARE -- THAT ARE IN AND
25 AROUND THE VARIOUS BUILDINGS THAT ARE IN THE APARTMENT

1 COMPLEX. ISN'T THAT RIGHT?

2 A. CORRECT.

3 Q. OKAY. AND THERE ARE A LOT OF TREES IN THERE, ARE
4 THERE .NOT?

5 A. DO YOU MEAN INSIDE THE COMPLEX OR SURROUNDING THE
6 COMPLEX?

7 Q. SURROUNDING THE VARIOUS BUILDINGS THAT ARE IN THE
8 COMPLEX.

9 A. ON THE OUTER EDGES AROUND THE WHOLE COMPLEX BUT NONE
10 IN BETWEEN.

11 Q. NO, I DIDN'T -- WELL, WHAT I MEANT WAS -- REFERRING
12 TO THIS EXHIBIT---

13 A. CORRECT.

14 Q. ---WHICH IS STATE'S EXHIBIT NUMBER 3---

15 A. UH-HUH.

16 Q. ---IT SHOWS SOME TREES AROUND HERE AND AROUND HERE.

17 A. CORRECT.

18 Q. BUT IT'S KIND OF -- IT'S KIND OF A RUSTIC-LOOKING
19 PLACE, ISN'T IT?

20 A. YES.

21 Q. WOULD THAT BE A SAFE SAYING?

22 A. UH-HUH.

23 Q. AND THERE ARE A LOT OF WOODS AND A LOT OF SHRUBBERY
24 AND DIFFERENT THINGS---

25 A. CORRECT.

1 Q. ---SURROUNDING ALL THE BUILDINGS. OKAY. NOW, MR.
2 MAGWOOD, YOU SAID YOU PULLED THE BLINDS OPEN AND PEERED OUT?

3 A. UH-HUH. UH-HUH.

4 Q. AND THAT'S WHEN YOU MADE THESE OBSERVATIONS?

5 A. YES.

6 Q. OKAY. YOU SAW TRACY WAS IN TROUBLE?

7 A. YES.

8 Q. OKAY. YOU WENT TO CALL 9-1-1?

9 A. YES.

10 Q. OKAY. THE ARTICLES OF CLOTHES YOU DESCRIBED, YOU
11 SAID IT WAS DENIM?

12 A. DENIM OR SOME TYPE OF JEAN. IT WAS A HEAVY --
13 LOOKED LIKE A DARK DENIM OR JEAN OUTFIT.

14 Q. OKAY. WERE YOU BASING THAT ON THE COLOR OF THE
15 MATERIAL?

16 A. IT WAS A DARK MATERIAL.

17 Q. IT WAS A DARK MATERIAL.

18 A. UH-HUH.

19 Q. AND FROM THAT YOU ASSUMED IT WAS DENIM?

20 A. CORRECT. IT WASN'T -- IT WASN'T MADE LIKE A SUIT OR
21 ANYTHING. IT WAS MORE LIKE A JACKET---

22 Q. UH-HUH.

23 A. ---AND JEAN PANTS.

24 Q. OKAY. AND YOU'RE OBSERVING ALL THIS FROM THE BACK.

25 A. FROM THE WHERE?

1 Q. FROM THE BACK.

2 A. YES.

3 Q. YOU'RE OBSERVING THE ROBBER'S BACK.

4 A. CORRECT.

5 Q. RIGHT? YOU NEVER SAW THE FACE.

6 A. NO, SIR.

7 Q. OKAY. SO AFTER LOOKING OUT THE WINDOW FOR HOW LONG

8 -- A FEW SECONDS?

9 A. A FEW SECONDS.

10 Q. OKAY. YOU WANTED TO GET THE PHONE TO DIAL 9-1-1.

11 A. CORRECT.

12 Q. AND I BELIEVE YOU INDICATED THAT THE PHONE WAS IN

13 TRACY'S ROOM.

14 A. YES.

15 Q. AND THAT WOULD BE ON THE OTHER SIDE OF THE APARTMENT

16 THAT YOU WERE IN.

17 A. CORRECT.

18 Q. OKAY. HIS BEDROOM WOULD HAVE BACKED UP TO THE OTHER

19 SIDE OF THE BUILDING.

20 A. CORRECT.

21 Q. OKAY. NOW, YOU WENT AND GOT THE PHONE, AND I

22 BELIEVE YOU SAID YOU ALSO GOT TRACY'S GUN.

23 A. CORRECT.

24 Q. OKAY. WHERE WAS THE GUN LOCATED?

25 A. IT WAS IN HIS DRESSER. I THINK IT WAS THE SECOND

1 DRAWER DOWN.

2 Q. SECOND DRAWER DOWN.

3 A. CORRECT.

4 Q. OKAY. WHERE DID YOU LOOK BEFORE YOU FOUND IT?

5 A. I LOOKED IN THE FIRST DRESSER HE HAD OVER HERE; HE
6 HAD A SMALL LITTLE DRESSER.

7 Q. UH-HUH.

8 A. I COULDN'T FIND IT IN THERE. THEN I LOOKED ON THE
9 OTHER BIG DRESSER, LOOKED IN THE TOP DRAWERS FIRST, AND THEN
10 I FOUND IT IN THE SECOND DRAWER.

11 Q. OKAY. SO YOU FINALLY FOUND IT IN THE THIRD DRAWER
12 YOU LOOKED IN.

13 A. RIGHT.

14 Q. OKAY. I'M ASSUMING THE PHONE WAS RIGHT THERE WHERE
15 YOU FOUND---

16 A. WHEN I WENT INTO THIS ROOM, IT WAS SITTING RIGHT
17 THERE ON THE DRESSER.

18 Q. OKAY. AND YOU INDICATED WHEN YOU WERE TALKING TO
19 THE 9-1-1 OPERATOR THAT YOU COULDN'T FIND THE BULLETS.

20 A. RIGHT.

21 Q. DID YOU -- YOU LOOKED FOR THE BULLETS OBVIOUSLY.

22 A. NO, I DIDN'T SAY I COULDN'T FIND THEM. I SAID I
23 COULDN'T FIND THE BULLETS BECAUSE THERE WERE NO BULLETS IN
24 THE GUN.

25 Q. DID YOU LOOK FOR THE BULLETS?

1 A. NO, I JUST GRABBED THE GUN.

2 Q. YOU JUST GRABBED THE GUN.

3 A. UH-HUH. THINKING IT MIGHT ALREADY BE LOADED.

4 Q. OKAY. NOW, AT WHAT POINT DID YOU CALL 9-1-1?

5 A. I CALLED THEM AS I RAN INTO THE ROOM AND PICKED UP
6 THE PHONE, AND AS I WAS DIALING, I WAS LOOKING FOR THE GUN AT
7 THE SAME TIME.

8 Q. OKAY. SO YOU CALLED FROM TRACY'S BEDROOM.

9 A. CORRECT.

10 Q. ALL RIGHT. AND YOU WERE LOOKING FOR THE GUN AT THE
11 SAME TIME YOU WERE TALKING.

12 A. CORRECT.

13 Q. OKAY. AND I BELIEVE YOU INDICATED THAT AS YOU WERE
14 ON THE PHONE---

15 A. UH-HUH.

16 Q. ---WALKING DOWN THE STAIRS YOU HEARD WHAT YOU
17 BELIEVED WAS A GUNSHOT.

18 A. CORRECT.

19 Q. YOU ALSO INDICATED THAT WHEN YOU GOT TO THE DOOR,
20 THAT'S WHEN YOU SAW THE LINCOLN NAVIGATOR LEAVING?

21 A. AS I WALKED OUT BECAUSE YOU HAVE TO WALK FROM UNDER
22 THE PORCH A LITTLE BIT.

23 Q. UH-HUH.

24 A. AND AS I WALKED OUT, I COULD SEE IT GOING UP THE
25 HILL, AROUND THE CORNER AND UP THE HILL.

1 Q. OKAY. SO YOU CAME OUT THROUGH THE CARPORT.

2 A. CORRECT. THAT'S THE FRONT DOOR.

3 Q. THAT'S THE FRONT DOOR.

4 A. YES.

5 Q. ALL RIGHT. BY THE TIME YOU GOT OUT THAT DOOR, ALL
6 YOU COULD SEE WAS THE BACK OF THE LINCOLN NAVIGATOR LEAVE?

7 A. CORRECT. CORRECT.

8 Q. AND, MR. MAGWOOD, BETWEEN THE TIME YOU LEFT THE
9 WINDOW IN YOUR BEDROOM---

10 A. UH-HUH.

11 Q. ---AND WHEN YOU SAW THE LINCOLN NAVIGATOR LEAVING,
12 GOING OUT THE DRIVEWAY---

13 A. UH-HUH.

14 Q. ---YOU DIDN'T SEE ANYTHING THAT OCCURRED OUTSIDE
15 INSOFAR AS TRACY WAS CONCERNED.

16 A. NO.

17 Q. YOU DIDN'T SEE ANYBODY OR YOU DIDN'T SEE ANYBODY
18 PULL THE TRIGGER ON A GUN WHEN YOU HEARD THE GUNSHOT.

19 A. NO.

20 Q. AND, MR. MAGWOOD, YOU GAVE -- YOU LATER GAVE A
21 STATEMENT TO THE POLICE?

22 A. YES.

23 Q. AND IN THAT STATEMENT YOU DESCRIBED THE CLOTHING
24 THAT YOU'VE TOLD US ABOUT TODAY?

25 A. YES.

1 Q. OKAY. WHEN WAS THAT STATEMENT GIVEN?

2 A. SOMETIME EARLY IN THE MORNING OF THE 17TH OF MAY.

3 Q. OKAY. SOMETIME AFTER MIDNIGHT?

4 A. YES, IT WAS AFTER MIDNIGHT.

5 Q. WAS IT AFTER TRACY'S LINCOLN NAVIGATOR HAD BEEN
6 FOUND BY THE -- BY THE SHERIFF'S DEPARTMENT?

7 A. I CAN'T RECALL.

8 Q. YOU DON'T RECALL.

9 A. I DON'T KNOW WHEN EXACTLY THEY FOUND IT. I KNOW IT
10 WAS SHORTLY AFTER THAT WHEN THEY PULLED IT OVER.

11 Q. ALL RIGHT. IF YOU WOULD INDULGE ME JUST A MOMENT,
12 YOUR HONOR. JUST ONE FINAL THING. MR. MAGWOOD, THE
13 INDIVIDUAL YOU SAW DURING THE FEW SECONDS THAT YOU WERE
14 LOOKING OUT THROUGH THE BLINDS, YOU SAID HE HAD ON LOOSE-
15 FITTING CLOTHES?

16 A. YES.

17 MR. LITTLEJOHN: OKAY. ALL RIGHT, SIR. THAT'S ALL
18 I HAVE..

19 MR. HUBBARD: A FEW FOLLOW-UP, YOUR HONOR.

20 REDIRECT EXAMINATION

21 BY MR. HUBBARD:

22 Q. MR. MAGWOOD, AT ANY TIME THAT NIGHT OR THEREAFTER
23 DID ANYONE TELL YOU WHAT THE INDIVIDUAL THEY STOPPED IN THAT
24 NAVIGATOR WAS WEARING?

25 A. NO.

1 Q. DID ANYONE IN MY OFFICE TELL YOU?

2 A. NO.

3 Q. HAS ANYONE EVER SHOWN YOU ANY PHOTOGRAPHS OF THE
4 DEFENDANT, MR. MERCER---

5 A. NO.

6 Q. ---AND WHAT HE WAS WEARING THAT NIGHT?

7 A. NO.

8 Q. HAVE YOU SEEN ANY PHOTOGRAPHS OF ANY SUSPECT?

9 A. NO.

10 MR. HUBBARD: THANK YOU. NO MORE QUESTIONS, YOUR
11 HONOR.

12 MR. LITTLEJOHN: JUST ONE FINAL QUESTION.

13 RECROSS EXAMINATION

14 BY MR. LITTLEJOHN:

15 Q. MR. MAGWOOD, DID THEY SHOW YOU ANY PHOTOS OF MARCUS
16 THOMPSON?

17 A. NO.

18 MR. LITTLEJOHN: OKAY. THAT'S ALL I HAVE, YOUR
19 HONOR.

20 THE COURT: YOU CAN STEP DOWN, SIR.

21 MR. GRAHAM: THE STATE CALLS DANNY LEWIS.

22 BAILIFF: YOUR HONOR, MAY I APPROACH?

23 (AN OFF-THE-RECORD DISCUSSION TAKES PLACE BETWEEN A
24 BAILIFF AND THE COURT.)

25 THE COURT: BEFORE THIS WITNESS ACTUALLY TAKES THE

1 STAND, WE'RE GOING TO TAKE A SHORT BREAK, AND WE'LL GET THE
2 JURY BACK OUT IN HERE IN A FEW MINUTES TO RESUME THE
3 TESTIMONY. Y'ALL CAN GO BACK TO THE JURY ROOM NOW.

4 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AT
5 3:30 P.M.)

6 THE COURT: ALL RIGHT. WE'LL TAKE A SHORT BREAK.

7 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

8 THE COURT: BE SEATED, PLEASE. BRING IN THE JURY.
9 ARE YOUR GUYS CLOSE BY? ALL RIGHT. HOLD ON. WE GOT ONE OF
10 THEM. BRING IN THE JURY.

11 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT
12 3:37 P.M.)

13 DANNY L. LEWIS, JR., AFTER BEING DULY SWORN,
14 TESTIFIED AS FOLLOWS:

15 THE CLERK: PLEASE BE SEATED IN THE JURY BOX. STATE
16 YOUR FULL NAME AND SPELLING YOUR FIRST AND LAST FOR THE
17 RECORD.

18 THE WITNESS: DANNY LEE LEWIS, JR. D-A-N-N-Y
19 L-E-W-I-S.

20 DIRECT EXAMINATION

21 BY MR. GRAHAM:

22 Q. DEPUTY LEWIS, WHERE ARE YOU EMPLOYED? WHERE ARE YOU
23 EMPLOYED?

24 A. AT THE LEXINGTON COUNTY SHERIFF'S DEPARTMENT.

25 Q. AND HOW LONG HAVE YOU BEEN EMPLOYED THERE?

1 A. A LITTLE OVER FIVE YEARS.

2 Q. WHAT DO YOU DO THERE?

3 A. I'M A PATROL DEPUTY ON THE ROAD.

4 Q. WHAT IS A PATROL DEPUTY? WHAT DOES THAT MEAN?

5 A. RESPOND TO CALLS FOR SERVICE IN THE -- MOSTLY IN THE
6 IRMO/CHAPIN AREA.

7 Q. WERE YOU WORKING THE NIGHT OF MAY 16TH, 2002?

8 A. YES, SIR, I WAS.

9 Q. AND DID YOU RESPOND TO A CALL AT 3500 FERNANDINA
10 ROAD, APARTMENT D-7?

11 A. I DID.

12 Q. AND IS THAT LOCATION IN LEXINGTON COUNTY?

13 A. IT IS.

14 Q. WHAT TYPE OF A CALL WERE YOU RESPONDING TO?

15 A. RESPONDED TO A REPORT OF A CARJACKING POSSIBLY WITH
16 ONE INDIVIDUAL THAT HAD BEEN SHOT.

17 Q. AND WHAT TIME -- WHAT TIME DID YOU START HEADING
18 TOWARD THE RAINTREE APARTMENTS?

19 A. AT 11:34 P.M.

20 Q. LET ME SHOW YOU A MAP AND ASK YOU IF IT FAIRLY AND
21 ACCURATELY DEPICTS THE MAJOR ROADS SURROUNDING THE RAINTREE
22 APARTMENTS.

23 A. YES, SIR, IT DOES.

24 MR. GRAHAM: YOUR HONOR, THE STATE WOULD OFFER THIS
25 INTO EVIDENCE.

1 MR. LITTLEJOHN: NO OBJECTION, YOUR HONOR.

2 THE COURT: IT'S ADMITTED.

3 (STATE'S EXHIBIT 8 WAS RECEIVED IN EVIDENCE.)

4 BY MR. GRAHAM:

5 Q. DEPUTY LEWIS, IF YOU COULD STEP DOWN. I'M GOING TO
6 SHOW YOU A STICK-ON AND ASK IF THAT'S AN ACCURATE STATEMENT
7 OF YOUR TESTIMONY. DEPUTY LEWIS HEADS TO RAINTREE APARTMENTS
8 AT 11:34 P.M.?

9 A. YES, SIR.

10 Q. I'D ASK THAT YOU PUT THAT ON WITH THE RED ARROW
11 INDICATING THE LOCATION OF THE RAINTREE APARTMENTS.

12 A. (THE WITNESS COMPLIES.)

13 Q. THANK YOU. YOU MAY HAVE A SEAT. DEPUTY LEWIS, WERE
14 YOU ONE OF THE FIRST OFFICERS ON THE SCENE?

15 A. YES, SIR, I WAS.

16 Q. AND CAN YOU TELL THE JURY WHAT YOU SAW WHEN YOU
17 ARRIVED AT THE RAINTREE APARTMENTS?

18 A. WHEN I PULLED UP IN FRONT OF APARTMENT G-3, I SAW
19 THREE INDIVIDUALS STANDING AROUND ANOTHER INDIVIDUAL THAT WAS
20 LYING ON HIS BACK, ONE THAT WAS HOLDING A RAG TO THE BACK OF
21 THE INDIVIDUAL THAT WAS LAYING ON THE GROUND'S HEAD, AND THEN
22 WE GOT OUT AND APPROACHED.

23 Q. IF I COULD GET YOU TO STEP DOWN ONE MORE TIME; I'M
24 SORRY. LOOKING AT STATE'S EXHIBIT NUMBER 3, DO YOU RECOGNIZE
25 THAT AS A DIAGRAM OF THE APARTMENT?

1 A. YES, SIR.

2 Q. AND DO YOU SEE -- YOU TESTIFIED THAT G-3... DO YOU
3 SEE G-3 ON THAT APARTMENT?

4 A. I DO.

5 Q. TAKING THIS PEN, COULD YOU DRAW ON THE MAP IN FRONT
6 OF G-3 WHERE YOU SAW THE BODY AND HOW THE BODY WAS
7 POSITIONED?

8 A. (THE WITNESS COMPLIES.)

9 Q. AND THAT LOCATION IS WHERE YOU SAW THE BODY?

10 A. IT WAS.

11 Q. OKAY. YOU CAN HAVE A SEAT AGAIN. THANK YOU. ONCE
12 YOU ARRIVED ON THE SCENE, WHAT DID YOU DO?

13 A. ONCE WE SECURED THE AREA AS FAR AS PERCEIVING ANY
14 OTHER THREATS AS THE REASON THAT THE VICTIM WAS DOWN, I WENT
15 UP TO THE VICTIM AND FELT FOR A PULSE OR ANY SIGNS OF LIFE
16 WHICH I DID NOT.

17 Q. DO YOU HAVE ANY TRAINING AS AN E.M.T.?

18 A. I DO.

19 Q. WHAT KIND OF TRAINING DO YOU HAVE?

20 A. I'M A CERTIFIED E.M.T. FROM 1989 UP UNTIL ABOUT FOUR
21 YEARS AGO WHEN IT EXPIRED.

22 Q. AND WHEN YOU SAY CHECK FOR SIGNS, WHAT DID YOU CHECK
23 FOR?

24 A. I CHECKED FOR A CAROTID PULSE WHICH IS IN THE NECK
25 WHICH IS THE MOST PROMINENT PULSE OR WILL BE THE STRONGEST

1 PULSE THAT YOU COULD FIND ON ANY ONE PERSON, AND I FELT
2 NOTHING. AND THERE WAS NO MOVEMENT, NO RESPIRATORY EFFORTS
3 WHATSOEVER.

4 Q. AND WERE YOU ON THE SCENE WHEN THE AMBULANCE
5 ARRIVED?

6 A. I WAS.

7 Q. AND DO YOU KNOW WHAT, IF ANY, TREATMENT THEY
8 ATTEMPTED TO ADMINISTER?

9 A. THEY DIDN'T -- THEY CHECKED THE PATIENT. THEY DID
10 PUT THE PATIENT ON A MONITOR THAT I REMEMBER, BUT THERE WAS
11 NO SIGNS OF LIFE THERE.

12 Q. I'M GOING TO SHOW YOU A PHOTOGRAPH AND ASK IF YOU
13 RECOGNIZE THAT PHOTOGRAPH.

14 A. YES, SIR.

15 Q. AND IS THAT A FAIR AND ACCURATE DEPICTION OF WHAT
16 YOU SAW THAT NIGHT?

17 A. IT IS.

18 MR. GRAHAM: YOUR HONOR, THE STATE WOULD OFFER THIS
19 PHOTOGRAPH INTO EVIDENCE.

20 MR. LITTLEJOHN: NO OBJECTION.

21 THE COURT: IT'S ADMITTED.

22 (STATE'S EXHIBIT 9 WAS RECEIVED IN EVIDENCE.)

23 BY MR. GRAHAM:

24 Q. DEPUTY, IF YOU COULD STEP DOWN HERE AND DESCRIBE TO
25 THE JURY WHAT THIS PICTURE SHOWS.

1 A. IT SHOWS THE VICTIM LAYING ON THE GROUND JUST --
2 ALMOST RIGHT BESIDE THIS CONCRETE PORCH WHICH IS IN FRONT OF
3 G-3, APARTMENT G-3.

4 Q. OKAY.

5 A. THIS WOULD BE THE PARKING LOT FROM WHERE THE BOTTOM
6 OF THE PICTURE IS WHERE WE WOULD HAVE PULLED UP.

7 Q. CAN YOU ORIENT THE JURY AS FAR AS THESE TWO
8 PHOTOGRAPHS TOGETHER?

9 A. THIS IS THE -- THIS IS THE PARKING LOT. WE WOULD
10 HAVE -- WE PULLED UP IN HERE, AND HE'S LAYING UP HERE WHICH
11 IS RIGHT THERE. IT'S A LITTLE BIT BRIGHTER AT THE BOTTOM,
12 BUT THIS IS THE PARKING LOT WITH SPACES IN IT RIGHT BELOW
13 THIS PICTURE.

14 Q. AND ARE THOSE STONES THAT ARE SHOWN IN STATE'S
15 EXHIBIT 9 ALSO THE SAME STONES THAT ARE SHOWN IN STATE'S
16 EXHIBIT 7?

17 A. THEY ARE.

18 Q. IF YOU WOULD STEP DOWN THIS WAY. AGAIN, DEPUTY
19 LEWIS, LOOKING AT STATE'S EXHIBIT NUMBER 9, IF YOU WOULD
20 DESCRIBE WHAT THAT PHOTO SHOWS.

21 A. THIS IS THE VICTIM LAYING RIGHT NEXT TO THE CONCRETE
22 PORCH WHICH IS IN FRONT OF APARTMENT G-3 WHERE WE FOUND HIM.

23 Q. THEN ORIENT THAT PHOTOGRAPH WITH STATE'S EXHIBIT 7.

24 A. THIS IS THE PARKING LOT RIGHT BELOW THIS GRASSY AREA
25 THAT THE APARTMENT PEOPLE PARK AT, AND THESE ARE THE STONES.

1 MR. GRAHAM: YOU CAN HAVE A SEAT. PLEASE ANSWER ANY
2 QUESTIONS THE DEFENSE HAS.

3 CROSS-EXAMINATION

4 BY MR. LITTLEJOHN:

5 Q. GOOD AFTERNOON, DEPUTY LEWIS.

6 A. GOOD AFTERNOON.

7 Q. DEPUTY LEWIS, YOU WERE ONE OF THE FIRST OFFICERS TO
8 RESPOND?

9 A. YES, SIR.

10 Q. OKAY. AFTER CHECKING FOR SIGNS OF LIFE, DID YOU
11 STAY AT THE SCENE THERE FOR SOME PERIOD OF TIME?

12 A. YES, SIR, FOR QUITE AWHILE.

13 Q. DID YOU TALK TO SOME OF THE WITNESSES, SOME OF THE
14 PEOPLE THAT LIVE THERE AT THE APARTMENTS?

15 A. ACCORDING TO MY REPORT, IF I CAN REFER TO IT---

16 Q. YES, SIR.

17 A. ---I KNOW THAT I TALKED TO AT LEAST -- AT LEAST TWO.

18 Q. AT LEAST TWO?

19 A. YES, SIR.

20 Q. AND THESE WERE PEOPLE THAT HAD INFORMATION ABOUT
21 THIS MATTER?

22 A. YES, SIR.

23 Q. HOW LONG DID YOU STAY AT THE SCENE THERE?

24 A. GOING BY MY REPORT, I ENDED THE CALL AT 4:00 IN THE
25 MORNING. SO THAT WOULD HAVE BEEN A LITTLE OVER FOUR HOURS, I

1 GUESS .

2 Q. OKAY.

3 A. ABOUT FOUR AND A HALF HOURS.

4 Q. THAT YOU WERE THERE AT THE SCENE?

5 A. YES, SIR.

6 Q. ALL RIGHT. JUST ONE FINAL THING. DEPUTY LEWIS, THE
7 INVESTIGATION WAS THEN HANDED OVER TO SCOTTIE FRIER WHO IS AN
8 INVESTIGATOR?

9 A. YES, SIR.

10 MR. LITTLEJOHN: ALL RIGHT. THANK YOU.

11 MR. GRAHAM: NO OTHER QUESTIONS, YOUR HONOR.

12 THE COURT: YOU CAN STEP DOWN, SIR.

13 MR. HUBBARD: THE STATE CALLS DENNIS STAZER.

14 MR. LITTLEJOHN: YOUR HONOR, COULD I APPROACH THE
15 BENCH WITH MR. HUBBARD?

16 THE COURT: SURE.

17 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

18 THE COURT: GO AHEAD AND SWEAR HIM.

19 DENNIS STAZER, AFTER BEING DULY SWORN,
20 TESTIFIED AS FOLLOWS:

21 THE CLERK: IF YOU WOULD HAVE A SEAT. STATE YOUR
22 FULL NAME, SPELLING YOUR FIRST AND LAST FOR THE RECORD.

23 THE WITNESS: OKAY.

24 THE CLERK: THANKS.

25 THE WITNESS: MY NAME DENNIS STAZER. LAST NAME IS

DENNIS STAZER - (IN CAMERA) DIRECT EXAM BY MR. HUBBARD 1366

1 S-T-A-Z-E-R.

2 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, I HAVE
3 WHAT I HOPE WILL BE A BRIEF MATTER OF LAW THAT I NEED TO
4 ADDRESS BEFORE THIS WITNESS TESTIFIES. SO I'M GOING TO ASK
5 YOU TO GO BACK INTO THE JURY ROOM FOR JUST A MINUTE, PLEASE.

6 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AT
7 3:49 P.M.)

8 THE COURT: ALL RIGHT. I WAS INFORMED AT THE SIDE
9 BAR CONFERENCE THAT THIS WITNESS MIGHT BE CALLED ON TO
10 TESTIFY AS TO SOME STATEMENT THAT WAS MADE BY THE DEFENDANT
11 ALLEGEDLY.

12 MR. HUBBARD: YES, SIR, AND IF YOU WANT, I CAN GO
13 AHEAD AND ELICIT THE TESTIMONY.

14 THE COURT: GO AHEAD.

15 DIRECT EXAMINATION (IN CAMERA)

16 BY MR. HUBBARD:

17 Q. MR. STAZER, WHERE WERE YOU WORKING BACK IN MAY 2002?

18 A. SIR, I WAS WORKING WITH THE LEXINGTON COUNTY
19 SHERIFF'S DEPARTMENT AS A MASTER DEPUTY WITH THE TRAFFIC
20 DIVISION.

21 Q. THE NIGHT OF MAY 16TH, 2002, WERE YOU THE ONE THAT
22 STOPPED KEVIN MERCER IN A WHITE NAVIGATOR?

23 A. YES, SIR.

24 Q. WHEN YOU STOPPED HIM, DID YOU APPROACH THE VEHICLE?

25 A. YES, SIR, I DID.

1 Q. WHEN YOU APPROACHED, WHO WAS DRIVING THAT VEHICLE?

2 A. KEVIN MERCER WAS DRIVING, SIR.

3 Q. AND DID YOU ASK MR. MERCER -- OR WHAT DID YOU ASK
4 MR. MERCER?

5 A. I ASKED MR. MERCER FOR HIS DRIVER'S LICENSE,
6 REGISTRATION, AND PROOF OF INSURANCE.

7 Q. AT THIS POINT DID YOU KNOW WHO HE WAS?

8 A. NO, SIR.

9 Q. WHAT WAS HIS RESPONSE WHEN YOU ASKED FOR THE
10 DRIVER'S LICENSE AND REGISTRATION?

11 A. HE -- HE MANAGED TO FIND HIS DRIVER'S LICENSE, AND
12 HE WAS SEARCHING FOR -- FUMBLING AROUND AND SEARCHING FOR THE
13 REGISTRATION OR SOMETHING ALONG THOSE LINES. AND I ASKED
14 HIM, "WHO DOES THE VEHICLE BELONG TO?" AND HE STATED
15 SOMETHING ALONG THE LINES OF, "IT'S MY BROTHER'S."

16 Q. DID HE SAY SOMETHING WHEN YOU INITIALLY ASKED FOR
17 THE D. L. AND THE REGISTRATION?

18 A. HE ALSO STATED -- HE ASKED ME, "WHAT DID YOU STOP ME
19 FOR, OFFICER?" OR, "IS THERE SOMETHING WRONG, OFFICER?" OR
20 SOMETHING ALONG THOSE LINES.

21 MR. HUBBARD: THAT'S IT, YOUR HONOR.

22 CROSS-EXAMINATION (IN CAMERA)

23 BY MR. LITTLEJOHN:

24 Q. DEPUTY STAZER, LET'S GO BACK IN TIME A LITTLE BIT.
25 PRIOR TO THIS STOP, YOU HAD RECEIVED INFORMATION FROM THE

1 SHERIFF'S DEPARTMENT THAT THERE WAS A B.O.L.O. OUT FOR THIS
2 WHITE NAVIGATOR?

3 A. YES, SIR. BASED ON THE B.O.L.O. AND THE RADIO
4 TRAFFIC WHICH I WAS MONITORING, WE WERE LOOKING FOR A WHITE
5 LINCOLN NAVIGATOR.

6 Q. OKAY. AND PARTICULARLY YOU WERE LOOKING FOR SOMEONE
7 SUSPECTED OF A HOMICIDE AND A CARJACKING.

8 A. YES, SIR.

9 Q. ISN'T THAT RIGHT? YOU KNEW AN INDIVIDUAL HAD BEEN
10 SHOT?

11 A. YES, SIR.

12 Q. YOU KNEW THERE HAD BEEN A CARJACKING, ACCORDING TO
13 THE RADIO---

14 A. YES, SIR.

15 Q. ---BROADCAST?

16 A. FROM WHAT I MONITORED ON THE RADIO, YES.

17 Q. AND YOU WERE GIVEN A DESCRIPTION OF THE VEHICLE?

18 A. YES.

19 Q. WHAT WAS THAT DESCRIPTION? DO YOU RECALL?

20 A. THE DESCRIPTION WAS AN ERROR AT FIRST. IT WAS A
21 WHITE -- IT WAS ACTUALLY -- THEY CALLED IT A FORD NAVIGATOR,
22 BUT I KNEW IT TO BE -- LINCOLN MADE THE NAVIGATOR, WHITE IN
23 COLOR.

24 Q. OKAY.

25 A. '98, '99 MODEL YEAR WITH THE MASON STICKER ON THE

1 BACK.

2 Q. ALL RIGHT. IT HAD A MASON STICKER ON THE BACK.

3 A. YES, SIR.

4 Q. ALL RIGHT. NOW, WHEN DID YOU RECEIVE THAT CALL?

5 A. I DIDN'T RECEIVE THE CALL. IT'S THE COMPILATION OF
6 INFORMATION I PUT TOGETHER FROM LISTENING TO THE RADIO
7 CHATTER.

8 Q. ALL RIGHT. WHEN DID YOU HEAR THIS COMPILATION?

9 A. OVER THE SEVERAL MINUTES OVER THE WHOLE -- FROM THE
10 START OF THE INCIDENT UP UNTIL I ACTUALLY MADE A STOP.

11 Q. OKAY. NOW, AS A RESULT OF RECEIVING THAT
12 INFORMATION, YOU WENT OUT ON I-20?

13 A. YES, SIR.

14 Q. WHERE WERE YOU PRIOR TO THAT?

15 A. IN LEXINGTON.

16 Q. IN LEXINGTON? SO YOU WENT AND STATIONED YOURSELF ON
17 I-20---

18 A. YES, SIR.

19 Q. ---WESTBOUND? AND WHERE WERE YOU LOCATED?

20 A. ABOUT THE -- ABOUT THE HIGHWAY 1 EXIT FACING
21 WESTBOUND.

22 Q. ALL RIGHT. AND YOUR SUSPICION WAS THAT THE WHITE
23 LINCOLN NAVIGATOR MAY BE GOING WESTBOUND ON I-20.

24 A. YES, SIR.

25 Q. AND YOU WERE ON THE LOOKOUT FOR IT.

1 A. YES.

2 Q. AND YOU SAW IT.

3 A. YES, I DID.

4 Q. OKAY. AND AS A RESULT OF JUST SEEING THE WHITE
5 NAVIGATOR, YOU INSTITUTED A STOP.

6 A. YES, SIR.

7 Q. OKAY. NOW, HOW MUCH TIME HAD ELAPSED BETWEEN WHEN
8 YOU RECEIVED THE INITIAL INFORMATION AND WHEN YOU STOPPED THE
9 WHITE NAVIGATOR?

10 A. I BELIEVE THE -- APPROXIMATELY EIGHT MINUTES. I
11 MADE THE STOP AT 11:50.

12 Q. OKAY. SO IT WAS ABOUT EIGHT MINUTES.

13 A. AT 11:42 I STATED THAT I WAS ON I-20, AND ACCORDING
14 TO DISPATCH, AT 11:50 I MADE THE STOP.

15 Q. OKAY. NOW, AS A RESULT OF STOPPING THE WHITE
16 NAVIGATOR, YOU RADIOED BACK TO THE SHERIFF'S DEPARTMENT AND
17 TOLD THEM YOU HAD STOPPED A WHITE NAVIGATOR?

18 A. YES.

19 Q. AND THIS WAS -- THIS WHITE NAVIGATOR WAS THE SUBJECT
20 OF AN EXTREMELY BUT MAYBE SHORT-LIVED INTENSE SEARCH FOR THAT
21 CAR, WAS IT NOT?

22 A. AT THE TIME WE DID -- I DID NOT KNOW THAT FOR SURE.

23 Q. OKAY. BUT YOU KNEW THEY WERE LOOKING FOR THIS WHITE
24 NAVIGATOR.

25 A. A WHITE NAVIGATOR, YES, MATCHING IT.

1 Q. OKAY. ALL RIGHT. SO YOU STOPPED THE WHITE
2 NAVIGATOR.

3 A. YES.

4 Q. CORRECT? YOU PULLED IN BEHIND IT?

5 A. YES.

6 Q. THERE WERE TWO SUBJECTS IN THERE?

7 A. YES.

8 Q. OKAY. YOU APPROACHED THE WHITE NAVIGATOR FROM THE
9 RIGHT-HAND SIDE?

10 A. FROM THE PASSENGER'S SIDE, YES.

11 Q. OKAY. AND THIS CAR MET THE DESCRIPTION OF THE CAR
12 YOU WERE LOOKING FOR.

13 A. YES, IT DID.

14 Q. OKAY. WERE THE TWO INDIVIDUALS IN THE WHITE
15 NAVIGATOR FREE TO LEAVE AT THAT POINT?

16 A. NO, SIR.

17 Q. YOU WEREN'T GOING TO LET THEM GO ANYWHERE, WERE YOU?

18 A. NO, SIR.

19 Q. OKAY. SO WOULD YOU AGREE WITH ME THEIR MOVEMENTS
20 WERE RESTRICTED BECAUSE OF -- YOU WEREN'T GOING TO LET THEM
21 GO ANYWHERE; RIGHT?

22 A. I HAD ENOUGH REASONABLE SUSPICION THAT MATCHED UNDER
23 THE -- UNDER THE DESCRIPTIONS THAT WE RECEIVED OF THIS
24 VEHICLE AND THAT I COULD HOLD THEM AS FAR AS I NEEDED TO AS
25 FAR AS QUESTIONING.

1 Q. OKAY. SO YOU WERE GOING TO HOLD THEM THERE UNTIL---

2 A. UNTIL I DETERMINED ONE WAY OR THE OTHER THAT -- IF
3 THEY WERE THE SUSPECTS OR NOT.

4 Q. RIGHT. BUT YOU AGREE WITH ME THEY WERE NOT FREE TO
5 GO.

6 A. NO.

7 Q. YOU WOULD HAVE USED FORCE TO STOP THEM HAD THEY
8 TRIED TO GET AWAY.

9 A. THAT DEPENDS ON THE CIRCUMSTANCES.

10 Q. WOULD THAT HAVE BEEN AN ALTERNATIVE?

11 A. I CAN'T REALLY SAY IT'S AN ALTERNATIVE WITHOUT
12 GIVING ME A DEFINITE SET OF CIRCUMSTANCES.

13 Q. ALL RIGHT. IF THEY HAD TRIED TO DRIVE OFF FROM YOU
14 AFTER YOU STOPPED THEM, WOULD YOU HAVE USED FORCE TO STOP
15 THEM?

16 A. I WOULD HAVE -- A CHASE WOULD HAVE ENSUED.

17 Q. PRIOR TO ASKING THE DRIVER ANY QUESTIONS, DID YOU
18 GIVE HIM ANY TYPE OF WARNINGS, MIRANDA WARNINGS, ANYTHING
19 ELSE?

20 A. NO, SIR.

21 Q. IF YOU WOULD GIVE ME JUST A MOMENT, YOUR HONOR.
22 JUST ONE FINAL THING. YOU'RE NO LONGER A DEPUTY?

23 A. THAT IS CORRECT.

24 Q. WHAT DO YOU DO NOW, MR. STAZER?

25 A. I OWN MY OWN COMPANY.

1 Q. OKAY. WHAT KIND OF COMPANY?

2 A. IT'S A LANDSCAPING CONCRETE CONTRACTING COMPANY,
3 THAT TYPE OF THING.

4 Q. OKAY. DEPUTY STAZER, YOU PULLED THIS WHITE
5 NAVIGATOR OVER BECAUSE OF THE SUSPICION SURROUNDING IT BASED
6 ON THE MURDER AND THE CARJACKING. IS THAT NOT CORRECT?

7 A. GIVEN THE INFORMATION WE HAD AT THE TIME, I BASED
8 THE STOP ON A REASONABLE SUSPICION THAT THIS COULD BE THE
9 VEHICLE.

10 Q. AND THAT WAS THE REASON FOR THE STOP.

11 A. YES, SIR.

12 Q. THAT WAS THE ONLY REASON. THERE WAS NO TRAFFIC
13 REASON TO STOP.

14 A. NO.

15 MR. LITTLEJOHN: OKAY. THAT'S ALL I HAVE, YOUR
16 HONOR.

17 REDIRECT EXAMINATION (IN CAMERA)

18 BY MR. HUBBARD:

19 Q. MR. STAZER, AT THE TIME YOU MADE THIS STOP AND WENT
20 TO THAT -- TO THE WINDOW AND ASKED FOR THE DRIVER'S DRIVER'S
21 LICENSE AND REGISTRATION AND PROOF OF INSURANCE, WAS THAT
22 INDIVIDUAL UNDER ARREST?

23 A. NO, SIR, HE WAS NOT.

24 Q. THAT INDIVIDUAL DID GIVE YOU A DRIVER'S LICENSE.

25 A. YES, HE DID.

1 Q. THAT WAS KEVIN MERCER.

2 A. IT WAS KEVIN MERCER, YES.

3 Q. ALL RIGHT. DID HE EVER GIVE YOU A PROOF OF
4 REGISTRATION OR PROOF OF INSURANCE?

5 A. NO, SIR, HE DID NOT.

6 Q. WHAT DID HE GIVE YOU?

7 A. A RECEIPT FROM PULLIAM FORD. THAT'S THE ONLY THING
8 HE COULD FIND.

9 Q. AND DO YOU REMEMBER WHERE IN THE CAR HE FOUND THAT?

10 A. HE WAS FUMBLING AROUND OVER THE VISOR, AND I BELIEVE
11 HE RETRIEVED IT FROM THE CONSOLE.

12 Q. WAS THERE A NAME ON THE RECEIPT AS TO THE -- AS TO
13 AN OWNER?

14 A. YES, THERE WAS.

15 Q. WAS IT KEVIN MERCER?

16 A. NO, SIR.

17 Q. SO WHAT DID YOU DO?

18 A. AT THAT TIME I -- BASED ON THE INFORMATION I HAD,
19 WHAT HE GAVE ME WITH THE RECEIPT, I TOOK HIS DRIVER'S LICENSE
20 AND THE RECEIPT AND I WENT BACK TO MY VEHICLE TO TRY TO GAIN
21 SOME FURTHER INFORMATION AS TO THE NAME OF THE VICTIM.

22 Q. AND AT THAT POINT YOU DIDN'T KNOW THE NAME OF THE
23 VICTIM FOR THAT NAVIGATOR.

24 A. NO, SIR, I DID NOT.

25 Q. YOU DIDN'T KNOW IF THAT WAS THE NAVIGATOR INVOLVED;

1 CORRECT?

2 A. NOT A HUNDRED PERCENT, NO.

3 Q. DO YOU REMEMBER THE NAME ON THE RECEIPT?

4 A. IT IS TRACY DAVIS.

5 Q. DID YOU TRY TO CALL OVER THE RADIO TO FIND OUT WHO
6 THE VICTIM WAS?

7 A. YES. DUE TO THE CHAOS AT THE TIME, I WAS ATTEMPTING
8 TO GET THAT INFORMATION.

9 Q. AT SOME POINT DID YOU HEAR THAT NAME COME BACK
10 ACROSS THE RADIO?

11 A. YES, IT DID COME ACROSS THE RADIO.

12 Q. AT THAT POINT WHAT DID YOU DO?

13 A. AT THAT POINT WE WENT -- I WENT INTO A FELONY STOP
14 WHICH IS I ORDERED THE DRIVER OUT AT GUNPOINT, AND I TOOK
15 CUSTODY OF HIM FROM THERE.

16 Q. WERE ANY STATEMENTS MADE FROM THAT POINT ON?

17 A. NO.

18 Q. SO THE ONLY STATEMENTS THAT WERE MADE WERE IN
19 RESPONSE TO WHEN YOU ASKED FOR A DRIVER'S LICENSE, PROOF OF
20 INSURANCE, AND PROOF OF REGISTRATION?

21 A. THAT'S CORRECT.

22 Q. AND SOMETHING TO THE EFFECT, "IS THERE SOMETHING
23 WRONG?" AND THEN YOU ASKED HIM WHO THE VEHICLE BELONGED TO?

24 A. YES.

25 Q. AND WHO DID HE SAY?

1 A. HE SAID -- I BELIEVE HE SAID, "IT WAS MY BROTHER'S."

2 Q. ALL THAT HAPPENED WHEN YOU FIRST WENT UP TO THE
3 WINDOW.

4 A. THAT'S CORRECT.

5 Q. AND YOU WERE JUST TRYING TO IDENTIFY WHO'S BEHIND
6 THE WHEEL OF THE CAR AND THAT OTHER PERSON IN THE CAR?

7 A. THAT'S CUSTOMARILY WHAT WE DO WITH A TRAFFIC STOP
8 FOR DRIVER'S LICENSE, PROOF OF INSURANCE, AND REGISTRATION.

9 Q. AND SOMETIMES WHEN YOU DO THAT, DO YOU LET PEOPLE
10 GO?

11 A. YES, SIR.

12 MR. HUBBARD: OKAY. THAT'S ALL I'VE GOT.

13 RECROSS EXAMINATION (IN CAMERA)

14 BY MR. LITTLEJOHN:

15 Q. MR. STAZER, HOWEVER, ON THIS OCCASION YOU WEREN'T
16 GOING TO LET THESE PEOPLE GO, WERE YOU?

17 A. GIVEN THE -- THE HIGH LEVEL OF SUSPICION I HAD --
18 AND THAT'S WHY THEY WERE STILL DETAINED UNTIL I COULD GAIN
19 FURTHER INFORMATION TO DETERMINE WHETHER OR NOT THEY WERE THE
20 SUSPECTS.

21 Q. OKAY. BUT VERIFYING THE NAME AND THE CALLING BACK
22 AND FINDING OUT THE NAME OF THE VICTIM, ET CETERA, ALL OF
23 THIS HAPPENED AFTER MR. MERCER MADE THIS STATEMENT TO YOU.
24 ISN'T THAT CORRECT?

25 A. YES. YES.

1 REDIRECT EXAMINATION (IN CAMERA)

2 BY MR. HUBBARD:

3 Q. MR. STAZER, YOU WERE GOING TO CALL AND CHECK ANYWAY
4 ONCE YOU GOT THAT RECEIPT THOUGH; RIGHT?

5 A. YES. IT'S CUSTOMARY THAT I WOULD CHECK HIS DRIVER'S
6 LICENSE STATUS. AT THE TIME THE COMPUTER WAS DOWN, SO I WAS
7 ALSO WAITING ON THAT.

8 MR. HUBBARD: THANK YOU.

9 THE COURT: ALL RIGHT. IS THERE GOING TO BE ANY
10 FURTHER TESTIMONY REGARDING THIS QUESTION?

11 MR. HUBBARD: NO, SIR, YOUR HONOR.

12 THE COURT: FROM THE DEFENSE?

13 MR. LITTLEJOHN: NO, YOUR HONOR.

14 THE COURT: MR. LITTLEJOHN, ANYTHING YOU WANT TO SAY
15 ABOUT WHETHER OR NOT THE DEFENDANT WAS IN CUSTODY AT THIS
16 TIME---

17 MR. LITTLEJOHN: YOUR HONOR, I THINK IT'S CLEAR---

18 THE COURT: ---IN THE WAY OF A LEGAL ARGUMENT?

19 MR. LITTLEJOHN: I THINK FROM MR. STAZER'S TESTIMONY
20 HE WAS -- THE DEFENDANT WAS NOT FREE TO LEAVE. HE WAS, IN
21 ESSENCE, IN CUSTODY BECAUSE OF THE NATURE OF THIS
22 INVESTIGATION. THE OFFICER SAID HE WOULD HAVE TAKEN DRASTIC
23 MEASURES HAD THE DEFENDANT ATTEMPTED TO LEAVE AT THAT POINT,
24 AND IT WOULD BE OUR POSITION THAT FOR ALL INTENT AND PURPOSE
25 HE WAS IN CUSTODY AT THAT TIME AND THAT THAT BEING THE CASE,

1 BEFORE HE COULD BE INTERROGATED, HE HAD TO BE GIVEN HIS
2 MIRANDA WARNINGS.

3 THE COURT: ALL RIGHT, SIR. THANK YOU. I DON'T --
4 I BELIEVE THAT THE DEFENDANT WAS NOT IN CUSTODY AT THE TIME
5 THIS ENCOUNTER OCCURRED. THE SIMPLE FACT THAT HE WAS UNDER
6 SUSPICION, THAT HE HAD BEEN STOPPED AND THAT HE WAS DETAINED,
7 THAT HE WAS NOT FREE TO LEAVE DOES NOT RENDER HIM UNDER A
8 FORMAL ARREST NOR DOES IT RENDER THE DETENTION SIMILAR TO
9 BEING UNDER FORMAL ARREST. SO FOR PURPOSES OF WHETHER OR NOT
10 MIRANDA RIGHTS WERE REQUIRED TO BE ADMINISTERED TO HIM BEFORE
11 HE WAS ASKED ANY QUESTIONS, HE WAS NOT IN CUSTODY. I FIND
12 THE STATE HAS PROVEN BY A PREPONDERANCE OF THE EVIDENCE THAT
13 THE DEFENDANT DID MAKE THE STATEMENTS AND THAT HE MADE THEM
14 VOLUNTARILY AND, THEREFORE, I WOULD ADMIT THE STATEMENTS INTO
15 EVIDENCE. IS THERE ANYTHING FURTHER BEFORE WE BRING THE JURY
16 BACK?

17 MR. MYERS: NOT FROM THE STATE.

18 MR. LITTLEJOHN: NO, YOUR HONOR. AS I UNDERSTAND IT
19 FROM THE TESTIMONY, THAT WOULD BE THE ONLY STATEMENT THAT MR.
20 STAZER WOULD TESTIFY TO.

21 MR. MYERS: THAT'S CORRECT.

22 THE COURT: BRING THEM IN, PLEASE.

23 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT
24 4:01 P.M.)

25

DIRECT EXAMINATION

1
2 BY MR. HUBBARD:

3 Q. MR. STAZER, I'M GOING TO TRY TO JUST JUMP BACK WHERE
4 WE LEFT OFF. AGAIN, WHERE DO YOU WORK TODAY?

5 A. CURRENTLY I OWN MY OWN CONTRACTING COMPANY.

6 Q. BACK IN MAY OF 2002, WHERE WERE YOU WORKING?

7 A. I WAS EMPLOYED AS A MASTER DEPUTY WITH THE LEXINGTON
8 COUNTY SHERIFF'S DEPARTMENT TRAFFIC DIVISION.

9 Q. WERE YOU WORKING THE NIGHT OF MAY 16TH AND THE EARLY
10 MORNING HOURS OF MAY 17TH, 2002?

11 A. YES, SIR, I WAS.

12 Q. NOW, AS A MEMBER OF THE TRAFFIC DIVISION, WAS THE
13 TRAFFIC DIVISION ON A PARTICULAR RADIO CHANNEL?

14 A. YES, SIR. WE OPERATED ON CHANNEL 2.

15 Q. NOW, WHAT IS ON CHANNEL 1?

16 A. CHANNEL 1 IS PRIMARILY FOR THE ROAD PATROL AS FOR
17 RESPONDING TO CALLS FOR SERVICE AND COMMUNICATING WITH
18 DISPATCH.

19 Q. NOW, WHILE YOU'RE ON CHANNEL 2, CAN YOU LISTEN AND
20 MONITOR CHANNEL 1?

21 A. YES, SIR, WE HAD THAT AVAILABILITY.

22 Q. AS YOU LISTENED TO THE RADIO TRAFFIC ON CHANNEL 1,
23 DID YOU HEAR ANYTHING CONCERNING RAINTREE APARTMENTS?

24 A. YES. SINCE I WAS MONITORING CHANNEL 1, I --
25 THROUGHOUT THIS SEQUENCE, THE WHOLE SEQUENCE OF EVENTS

1 CONCERNING THE SHOOTING AND CARJACKING, I FOLLOWED THEM BASED
2 ON THE COMMUNICATIONS WITH DISPATCH WITH THE VARIOUS OFFICERS
3 ON CHANNEL 1.

4 Q. WHEN YOU HEARD WHAT WAS GOING ON, AT SOME POINT DID
5 YOU CALL IN AND TELL DISPATCH WHAT YOU WERE GOING TO DO?

6 A. YES. I -- BY LISTENING TO CHANNEL 1, I HEARD THE
7 VEHICLE THEY WERE LOOKING FOR AND I ADVISED DISPATCH THAT I'D
8 BE SITTING ON I-20, AS WE CALL 1088, WHICH MEANS IN THE AREA
9 LOOKING IN CASE THE VEHICLE PASSED.

10 Q. ABOUT WHAT TIME DID YOU CALL DISPATCH?

11 A. THAT WAS AT 11:42.

12 Q. ALL RIGHT. I'M GOING TO ASK YOU TO DO A COUPLE OF
13 THINGS, IF YOU WILL. AND IF YOU DON'T MIND, STEP DOWN. DO
14 YOU RECOGNIZE THIS MAP? AND I TELL YOU IT MIGHT BE BETTER IF
15 YOU STAND OVER ON THIS SIDE, AND I'M GOING TO HAND YOU A
16 LITTLE POINTER. WILL YOU TELL THE JURY -- FIRST OF ALL,
17 ORIENT THE JURY AS TO I-20.

18 A. I-20 WOULD BE AS WE SEE MARKED ON THE MAP.

19 Q. SPEAK UP FOR ME, IF YOU WILL, FOR THE COURT
20 REPORTER.

21 A. SURE. I-20, AS WE SEE, IS MARKED ON THE MAP. RIGHT
22 IN THIS PARTICULAR AREA IS WHERE I WAS.

23 Q. OKAY. WHEN YOU STOPPED, WHERE WERE YOU?

24 A. THIS IS THE HIGHWAY 1 WHICH RUNS DOWN AND INTERSECTS
25 WITH I-20. I WAS RIGHT IN THIS GENERAL AREA.

1 Q. WERE YOU FACING -- WERE YOU HEADING TOWARDS
2 WESTBOUND OR EASTBOUND?

3 A. I WAS HEADING WESTBOUND TOWARDS AUGUSTA.

4 Q. TOWARDS AUGUSTA. AT WHAT POINT DID YOU SEE A
5 VEHICLE THAT YOU HAD BEEN HEARING ABOUT?

6 A. AFTER SEVERAL MINUTES SITTING STATIONARY WATCHING
7 TRAFFIC, I OBSERVED A WHITE LINCOLN NAVIGATOR PASS BY MY
8 LOCATION.

9 Q. NOW, PRIOR TO THAT HAPPENING, YOU SAID YOU CALLED
10 DISPATCH ABOUT 11:42?

11 A. YES, AND ADVISED THEM I WAS ON I-20.

12 Q. WHEN YOU STOPPED AROUND -- WHERE DID YOU SAY YOU
13 STOPPED? UP IN THIS AREA?

14 A. IN THIS PARTICULAR AREA RIGHT HERE.

15 Q. DID A B.O.L.O. COME OUT ACROSS YOUR RADIO?

16 A. YES, IT DID.

17 Q. AND ABOUT WHAT TIME WAS THAT?

18 A. THAT WAS APPROXIMATELY 11:46.

19 Q. WAS IT BEFORE OR AFTER THAT B.O.L.O. THAT YOU SAW
20 THIS NAVIGATOR?

21 A. IT WAS -- I SAW THE NAVIGATOR AFTER THE B.O.L.O.

22 Q. AS A RESULT OF SEEING THAT NAVIGATOR AND HEARING
23 THAT B.O.L.O., WHAT DID YOU DO?

24 A. I PULLED IN -- I PULLED OUT INTO TRAFFIC, AND
25 TRAFFIC WAS -- WELL, IT WAS ON I-20. IT WAS FAIRLY HEAVY. I

1 PULLED INTO TRAFFIC. I HAD TO CATCH UP WITH THE VEHICLE, AND
2 AS I CAUGHT UP -- AS I CAUGHT UP AND I GOT BEHIND THE VEHICLE
3 TRAVELING WESTBOUND ON I-20, THE WHITE LINCOLN NAVIGATOR, I
4 NOTICED THAT THERE WERE TWO OCCUPANTS AND IT HAD A MASON
5 STICKER IN THE REAR WINDOW, CONSISTENT WITH WHAT -- THE
6 INFORMATION WE WERE GETTING THAT THE VICTIM'S VEHICLE WAS.

7 Q. DO YOU REMEMBER WHERE YOU STOPPED THAT VEHICLE?

8 A. APPROXIMATELY---

9 Q. IS THIS I-20?

10 A. YES.

11 Q. PAST THIS?

12 A. IT'S PAST THIS. IT'S APPROXIMATELY RIGHT IN THIS
13 AREA---

14 Q. OKAY.

15 A. ---IS WHEN WE ACTUALLY GOT THE VEHICLE STOPPED.

16 Q. AND WHAT TIME WAS THAT?

17 A. ABOUT 11:50.

18 Q. WILL YOU PLEASE PLACE THIS STICKY ON WHERE YOU -- TO
19 SHOW THE JURY WHERE YOU STOPPED THAT VEHICLE?

20 A. CERTAINLY. (THE WITNESS COMPLIES.)

21 Q. ALL RIGHT, SIR. YOU CAN RETURN TO YOUR SEAT. NOW,
22 LET'S -- LET'S GO BACK BEFORE THAT STOP. WHEN YOU SEE A
23 WHITE NAVIGATOR PASS YOU, YOU PULL IN BEHIND IT?

24 A. YES.

25 Q. SO IT'S HEADING IN THE SAME DIRECTION TOWARDS

1 AUGUSTA?

2 A. THAT'S CORRECT, WESTBOUND.

3 Q. WHAT IDENTIFYING CHARACTERISTICS DID YOU NOTICE ON
4 THAT NAVIGATOR AS YOU PULLED IN BEHIND IT THAT MATCHED WHAT
5 YOU WERE HEARING ON THE RADIO?

6 A. THE OCCUPANTS -- THERE ARE TWO OCCUPANTS, ALSO THE
7 MASON STICKER, AND IT IS FITTING THE WHITE LINCOLN NAVIGATOR
8 WHICH WAS PUT OUT AND APPROXIMATE MODEL YEAR WHICH WE HAD.

9 Q. I WANT TO SHOW YOU WHAT'S ALREADY BEEN MARKED INTO
10 EVIDENCE, STATE'S 4 AND 5, WHITE LINCOLN NAVIGATOR. IS THIS
11 THE CAR YOU STOPPED?

12 A. YES, IT IS.

13 Q. DO YOU SEE THE MASON STICKER ON THE BACK CORNER?

14 A. YES, ON THE REAR -- I'M SORRY. ON THE LEFT BOTTOM
15 CORNER.

16 Q. AND THE TIME YOU STOPPED IT WAS WHAT TIME?

17 A. APPROXIMATELY 11:50 P.M.

18 Q. AND WHAT MILE MARKER DID YOU MENTION?

19 A. IT WAS ABOUT THE -- I'LL HAVE TO CONSULT MY NOTES.

20 Q. I'LL JUST ASK YOU---

21 A. I BELIEVE IT WAS ABOUT THE 54 MILE MARKER
22 APPROXIMATELY.

23 Q. OKAY. WAS THAT AT 11:50?

24 A. YES.

25 Q. 11:50 P.M.?

1 A. YES.

2 Q. NOW, ONCE YOU MADE THE STOP, ONCE YOU PULLED THE
3 NAVIGATOR OVER, WHAT DID YOU DO?

4 A. I RADIOED DISPATCH, AS WE NORMALLY DO, SAYING I WAS
5 MAKING A TRAFFIC STOP AT THE LOCATION WE JUST SPOKE ABOUT.
6 AT THAT POINT I EXITED MY VEHICLE. I APPROACHED THE
7 NAVIGATOR ON THE PASSENGER'S SIDE, BEING CAUTIOUS BECAUSE I
8 THOUGHT THIS WAS THE POSSIBLE SUSPECTS WE WERE LOOKING FOR,
9 AND AS I APPROACHED THE VEHICLE, I NOTICED THERE WERE TWO
10 BLACK MALES OCCUPYING THE VEHICLE. BOTH OF THEM WERE LOOKING
11 TOWARD THE DRIVER'S SIDE FOR ME. I HAD TO LITERALLY KIND OF
12 KNOCK ON THE WINDOW TO GET THEIR ATTENTION. AT THIS POINT
13 THE PASSENGER ROLLED DOWN THE WINDOW, AND THAT'S WHEN I ASKED
14 FOR THE DRIVER'S LICENSE, REGISTRATION, AND PROOF OF
15 INSURANCE ON THE DRIVER, MR. MERCER.

16 Q. OKAY. WHEN YOU ASKED FOR THE DRIVER'S LICENSE,
17 PROOF OF INSURANCE, AND PROOF OF REGISTRATION, WHAT, IF
18 ANYTHING, DID THE DRIVER SAY?

19 A. THE DRIVER SAID TO ME SOMETHING ALONG THE LINES OF,
20 "WHAT DID I DO WRONG, OFFICER?" OR, "DID I DO SOMETHING
21 WRONG?"

22 Q. OKAY. AND WHAT DID YOU SAY?

23 A. I SAID I WOULD TELL HIM ABOUT IT LATER AFTER HE GAVE
24 ME HIS DOCUMENTS.

25 Q. DID YOU ASK HIM WHO THE VEHICLE BELONGED TO?

1 A. YES. I ASKED -- AS PART OF THAT, I ASKED WHO THE
2 VEHICLE BELONGED TO AND HE SAID -- I BELIEVE HE SAID, "MY
3 BROTHER'S. IT'S MY BROTHER'S VEHICLE."

4 Q. THIS WAS THE DRIVER YOU WERE TALKING TO.

5 A. YES, IT WAS THE DRIVER, MERCER.

6 Q. DID AT ANY TIME DURING THIS STOP YOU TALK TO THE
7 PASSENGER?

8 A. NO.

9 Q. DID THE PASSENGER SAY ANYTHING TO YOU?

10 A. NO, HE DID NOT.

11 Q. AND THERE WERE TWO BLACK MALES IN THAT CAR AT THAT
12 TIME.

13 A. THAT'S CORRECT.

14 Q. NOW, WHEN YOU ASKED FOR THE DRIVER'S LICENSE, WAS HE
15 ABLE TO PRODUCE A DRIVER'S LICENSE?

16 A. YES, HE PRODUCED HIS DRIVER'S LICENSE.

17 Q. I WANT TO SHOW YOU DRIVER'S LICENSE AND SEE IF YOU
18 CAN RECOGNIZE THAT.

19 A. YES. THAT IS THE DRIVER'S LICENSE HE PRODUCED TO
20 ME.

21 MR. HUBBARD: YOUR HONOR, I OFFER THIS DRIVER'S
22 LICENSE IN EVIDENCE AT THIS TIME.

23 MR. LITTLEJOHN: NO OBJECTION, YOUR HONOR.

24 THE COURT: IT'S ADMITTED.

25 (STATE'S EXHIBIT 10 WAS RECEIVED IN EVIDENCE.)

1 BY MR. HUBBARD:

2 Q. NOW, YOU ASKED FOR THE LICENSE, BUT YOU ALSO ASKED
3 FOR PROOF OF REGISTRATION AND PROOF OF INSURANCE? IS THAT
4 RIGHT?

5 A. THAT IS CORRECT.

6 Q. DID HE EVER PROVIDE YOU PROOF OF INSURANCE OR PROOF
7 OF REGISTRATION?

8 A. NO, SIR, HE COULD NOT LOCATE THEM.

9 Q. DID NOT LOCATE. WHAT WAS HE DOING?

10 A. AFTER PRODUCING HIS DRIVER'S LICENSE, HE WAS
11 FUMBLING AROUND THE VEHICLE LOOKING ABOVE THE VISOR AND I
12 THINK IN THE MIDDLE -- THE CONSOLE. HE WAS LOOKING IN THE
13 CONSOLE, AND HE EVENTUALLY TOOK OUT THE FIRST THING HE COULD
14 GET HIS HANDS ON WHICH WAS A YELLOW PIECE OF PAPER FROM
15 PULLIAM FORD, LIKE A RECEIPT, AND HE HANDED THAT TO ME.

16 Q. LET ME SHOW YOU THIS. DO YOU RECOGNIZE THIS?

17 A. YES. THIS IS THE ONE HE PRODUCED TO ME.

18 MR. HUBBARD: YOUR HONOR, I OFFER THIS INTO EVIDENCE
19 AT THIS TIME.

20 MR. LITTLEJOHN: NO OBJECTION.

21 THE COURT: IT'S ADMITTED.

22 (STATE'S EXHIBIT 11 WAS RECEIVED IN EVIDENCE.)

23 BY MR. HUBBARD:

24 Q. NOW, WHILE HE WAS -- I THINK YOUR WORDS WERE
25 FUMBLING AROUND?

1 A. YES. HE WAS HAVING TROUBLE LOCATING ANYTHING FROM
2 THE VEHICLE.

3 Q. CAN YOU DESCRIBE HIS DEMEANOR AT THAT POINT?

4 A. HE BECAME NERVOUS WHEN HE COULDN'T LOCATE ANY
5 REGISTRATION OR INSURANCE.

6 Q. HE BECAME NERVOUS OR YOU DID?

7 A. WELL, A LITTLE OF BOTH.

8 Q. OKAY. WHAT WAS THE PASSENGER DOING WHILE ALL THIS
9 WAS GOING ON?

10 A. JUST SITTING THERE TRYING TO AVOID EYE CONTACT WITH
11 ME.

12 Q. TRYING TO AVOID EYE CONTACT?

13 A. YES.

14 Q. THE DRIVER'S LICENSE THAT YOU HAVE BESIDE YOU, WHOSE
15 NAME IS ON THAT?

16 A. IT'S KEVIN JERMAINE MERCER.

17 Q. WILL YOU ALSO TELL THE JURY THE WEIGHT AND THE
18 HEIGHT THAT IS ON THAT DRIVER'S LICENSE?

19 A. MR. MERCER - 5'10", ABOUT 220 POUNDS.

20 Q. OKAY. DO YOU SEE MR. MERCER IN THE COURTROOM TODAY?

21 A. YES, I DO.

22 Q. PLEASE POINT HIM OUT.

23 A. IN THE BLUE SHIRT.

24 Q. YOUR HONOR, FOR THE RECORD, HE'S POINTING TO THE
25 DEFENDANT. NOW, DID YOU ASK HIM WHOSE CAR THIS WAS?

1 A. I'M SORRY?

2 Q. DID YOU ASK HIM WHO THE NAVIGATOR BELONGED TO?

3 A. YES, AND THAT'S WHEN HE SAID I BELIEVE IT IS -- I
4 BELIEVE HE SAID IT WAS MY BROTHER'S - I'M SORRY - HIS
5 BROTHER'S.

6 Q. AT THIS POINT DID YOU KNOW THE VICTIM'S NAME?

7 A. NO, I DID NOT.

8 Q. SO WHAT DID YOU DO?

9 A. AFTER HE GAVE ME THE RECEIPT THAT WE HAVE LISTED
10 HERE IN EVIDENCE AND HIS DRIVER'S LICENSE, I WENT BACK TO THE
11 VEHICLE AND I WAS ATTEMPTING TO CONTACT DISPATCH TO GET
12 FURTHER INFORMATION AS TO THE NAME OF THE VICTIM OR THE
13 LICENSE PLATE NUMBER OF THE VICTIM'S VEHICLE.

14 Q. DID YOU TRY TO RUN THE LICENSE PLATE ON YOUR
15 COMPUTER?

16 A. YES, I DID. HOWEVER, IT WAS NOT -- THE COMPUTER WAS
17 DOWN.

18 Q. IF YOU WOULD, I WANT YOU TO LOOK AT THAT YELLOW
19 RECEIPT WHICH IS STATE'S 11. DO YOU SEE A NAME ON THAT
20 RECEIPT SHOWING OWNERSHIP OF THE VEHICLE?

21 A. YES. ACCORDING TO THIS, IT'S TRACY DAVIS.

22 Q. TRACY DAVIS?

23 A. YES, SIR.

24 Q. DID YOU INFORM DISPATCH THAT YOU WERE LOOKING FOR
25 THAT NAME?

1 A. NO. I CALLED IT ON THE RADIO TRAFFIC ON CHANNEL 1
2 THAT SOME OTHER PEOPLE WERE INQUIRING ABOUT THE VICTIM'S NAME
3 AS WELL AS DISPATCH WAS, AND FINALLY SOMEBODY ON THE SCENE
4 ADVISED THAT IT WAS -- THE VICTIM'S NAME WAS TRACY DAVIS.

5 Q. YOU HEARD THAT OVER RADIO TRAFFIC?

6 A. YES, SIR.

7 Q. SO AT THIS POINT YOU HAD KEVIN MERCER'S DRIVER'S
8 LICENSE AND A RECEIPT WITH TRACY DAVIS'S NAME.

9 A. YES.

10 Q. AND OVER RADIO TRAFFIC YOU HEAR TRACY DAVIS IS THE
11 VICTIM.

12 A. THAT IS CORRECT.

13 Q. WHAT DID YOU DO AT THAT POINT?

14 A. AT THIS POINT I REALIZED THAT THIS WAS THE VICTIM'S
15 VEHICLE AND THESE WERE THE TWO SUSPECTS WE WERE LOOKING FOR,
16 AND I IMMEDIATELY ORDERED THE DRIVER OUT AT GUNPOINT AND DID
17 A FELONY, AS WE CALL IT, A FELONY STOP ON HIM AND WALKED HIM
18 BACK TO ME AND I HANDCUFFED HIM.

19 Q. WHEN YOU SAY A FELONY STOP, DID YOU GO BACK UP TO
20 THE CAR?

21 A. NO. I STOOD IN THE -- BASICALLY AT THE OPEN DOOR.
22 I STOOD IN THE FRAME FOR PROTECTION, AND AT GUNPOINT I
23 ORDERED HIM WITH VERBAL COMMANDS TO EXIT THE VEHICLE.

24 Q. IF THIS IS THE SIDE OF YOUR CAR AND YOU'RE GETTING
25 OUT, IS YOUR CAR DOOR OPEN LIKE THIS?

1 A. YES. YOU STAND IN THE -- IN THE APEX.

2 Q. SO YOU'RE STANDING HERE FOR PROTECTION. YOU GOT
3 YOUR CAR AND YOUR DOOR?

4 A. YES.

5 Q. GUN DRAWN.

6 A. YES.

7 Q. WHEN YOU DO THAT, WHO DO YOU ORDER OUT FIRST?
8 DRIVER, KEVIN MERCER, OR PASSENGER?

9 A. IT WOULD BE THE DRIVER, KEVIN MERCER.

10 Q. HOW DID YOU GET HIM OUT OF THE VEHICLE?

11 A. WITH VERBAL COMMANDS. I TOLD HIM TO PUT BOTH HANDS
12 OUT THE WINDOW. OPEN THE DRIVER'S DOOR WITH HIS LEFT HAND.
13 I HAD TO HAVE HIM BACK UP TO ME WITH HIS HANDS IN THE AIR AND
14 GET DOWN ON HIS KNEES, AND THAT'S WHEN I HANDCUFFED HIM AS HE
15 WALKED BACK TO MY -- AS HE WALKED BACK TO MY CAR.

16 Q. AS YOU WERE CUFFING HIM, DID BACK-UP ARRIVE?

17 A. YES. AS SOON AS I CUFFED HIM -- AS SOON AS I PLACED
18 THE HANDCUFFS ON HIM, CORPORAL MARS WITH THE HIGHWAY PATROL
19 WHO WAS PASSING BY IN THE OPPOSITE DIRECTION SAW WHAT WAS
20 GOING ON AND SO HE STOPPED.

21 Q. NOW, WHILE YOU WERE GETTING KEVIN MERCER OUT OF THE
22 CAR AND HE'S BACKING UP AND YOU'RE STANDING IN THE APEX OF
23 YOUR DOOR, YOU COME AROUND YOUR DOOR AND DEAL WITH MR.
24 MERCER?

25 A. YES.

1 Q. DO YOU LAY HIM DOWN? DO YOU JUST LET HIM STAND
2 THERE? WHAT DO YOU DO WITH HIM?

3 A. HE WAS ON HIS KNEES FACING TOWARDS THE NAVIGATOR
4 FACING AWAY FROM ME.

5 Q. OKAY. AND THE NAVIGATOR IS STILL IN FRONT OF YOU?

6 A. YES, IT IS.

7 Q. CAN YOU SEE THE PASSENGER AT THIS TIME?

8 A. VERY WELL. I HAD MY -- I HAD TO KEEP EYES ON BOTH
9 OF THEM.

10 Q. WHILE YOU'RE HANDLING KEVIN MERCER AND BEFORE
11 TROOPER MARS GETS THERE, ARE YOU HAVING TO WATCH TWO PEOPLE?

12 A. YES. GIVEN THE CIRCUMSTANCES, I HAD TO WATCH THEM
13 BOTH VERY CLOSELY.

14 Q. IS THAT ONE REASON WHY KEVIN MERCER WAS NOT LAID
15 DOWN ON THE GROUND BUT ON HIS KNEES?

16 A. EXACTLY.

17 Q. DID YOU SEE ANY MOVEMENT IN THE CAR BY THAT OTHER
18 INDIVIDUAL?

19 A. NO. IF ANY MOVEMENT WAS MADE, IT WOULD HAVE BEEN A
20 MUCH DIFFERENT CIRCUMSTANCE AT THAT POINT.

21 Q. WOULD YOU HAVE CONSIDERED ANY MOVEMENT IN THAT
22 VEHICLE A THREAT TO YOUR LIFE?

23 A. WITHOUT A DOUBT, YES.

24 Q. WOULD YOU HAVE RESPONDED?

25 A. WITH LETHAL FORCE, YES.

1 Q. BUT TROOPER MARS CAME RIGHT ON THE SCENE?

2 A. AS SOON AS I WAS PUTTING HANDCUFFS ON MERCER.

3 Q. AND THEN WHAT DID YOU DO AS TO THE PASSENGER?

4 A. WHEN -- WHEN CORPORAL MARS PULLED UP, HE TOOK CHARGE
5 OF MERCER, AND I CAME ALONG -- UP ALONG THE PASSENGER'S SIDE
6 WHERE THE PASSENGER WAS SITTING, AND THE WINDOW WAS STILL
7 DOWN FROM OUR EARLIER -- WHEN -- IN THE EARLIER CONVERSATION.
8 AND I BASICALLY PLACED THE GUN AT HIS TEMPLE LEVEL AND TOLD
9 HIM NOT TO MOVE A MUSCLE.

10 Q. AS YOU APPROACHED THE CAR AND YOU LEFT KEVIN MERCER
11 GOING TOWARDS THE CAR, DID YOU SEE ANY MOVEMENT IN THE CAR?

12 A. NO. OTHERWISE, I WOULD HAVE RESPONDED WITH LETHAL
13 FORCE.

14 Q. WHEN YOU GOT THE INDIVIDUAL OUT OF THE PASSENGER'S
15 SEAT, WHAT WAS HIS NAME?

16 A. HIS NAME WAS MARCUS THOMPSON.

17 Q. WHAT, IF ANYTHING, DID YOU NOTICE UPON HIM?

18 A. I'M SORRY?

19 Q. DID YOU NOTICE ANYTHING ABOUT HIS PERSON OR ON HIS
20 PERSON WHEN YOU WERE PULLING HIM OUT OF THE VEHICLE?

21 A. NO, I CAN'T SAY THAT I DID.

22 Q. DO YOU REMEMBER ANYTHING FALLING OUT OF HIS POCKET?

23 A. YES, WHEN -- AS SOON AS WE PULLED -- I PULLED HIM
24 OUT OF THE VEHICLE, THAT'S WHEN THE GLOVES AND THE SHELLS
25 FELL OUT OF HIS PANT LEG.

1 Q. YOU SAY SHELLS. ARE WE TALKING UNSPENT BULLETS OR
2 ARE WE TALKING ABOUT CASINGS OR WHAT ARE WE TALKING ABOUT?

3 A. THERE WERE FOURTEEN 357 MAGNUM CARTRIDGES.

4 Q. WERE THEY IN A BAG OR LOOSE?

5 A. IN A PLASTIC BAG.

6 Q. AS YOU WERE PULLING HIM OUT, DID YOU NOTICE
7 SOMETHING ELSE INSIDE THAT CAR?

8 A. YES. THAT'S WHEN I SAW THE WOODEN HANDLE OF THE
9 HANDGUN UNDERNEATH THE DRIVER'S SEAT.

10 Q. UNDERNEATH THE DRIVER'S SEAT.

11 A. YES.

12 Q. WHERE KEVIN MERCER WAS SEATED?

13 A. YES.

14 Q. I'M GOING TO SHOW YOU A PHOTOGRAPH. DO YOU
15 RECOGNIZE WHAT'S IN THAT PHOTOGRAPH?

16 A. YES, I DO.

17 Q. IS THIS THE PISTOL YOU SAW UNDER THE SEAT?

18 A. YES, IT IS.

19 Q. IS THAT IN THE POSITION IT WAS IN WHEN YOU WERE
20 GETTING MR. THOMPSON OUT?

21 A. YES. I REMEMBER THE HANDLE -- THE POSITION OF IT
22 VERY CLEARLY.

23 MR. HUBBARD: YOUR HONOR, I OFFER IT INTO EVIDENCE
24 AT THIS TIME.

25 MR. LITTLEJOHN: LET ME SEE. NO OBJECTION.

1 THE COURT: IT'S ADMITTED.

2 (STATE'S EXHIBIT 12 WAS RECEIVED IN EVIDENCE.)

3 BY MR. HUBBARD:

4 Q. NOW, MR. STAZER, LOOKING AT THIS, IS THIS A REVOLVER
5 OR A SEMI-AUTO?

6 A. THAT WOULD BE A REVOLVER.

7 Q. WOODEN STOCK?

8 A. YES, A WOODEN STOCK.

9 Q. AND WHICH WAY IS THE BARREL POINTING?

10 A. TOWARDS THE DRIVER'S DOOR.

11 Q. OKAY. SO IF HE'S SITTING LIKE ME FACING THIS WAY---

12 A. UH-HUH.

13 Q. ---THE BARREL IS FACING THE DRIVER'S DOOR.

14 A. YES.

15 Q. AND WHAT TYPE OF WEAPON WAS THAT OR COULD YOU TELL?

16 A. INITIALLY I COULDN'T TELL, BUT LOOKING AT THE GRIP
17 IT WAS CONSISTENT WITH EITHER A 38 OR 357.

18 Q. OKAY. DID YOU TOUCH OR MOVE THAT PISTOL AT ALL?

19 A. NO, SIR, I DID NOT.

20 Q. ONCE YOU GOT MR. THOMPSON OUT, DID YOU EVER GO BACK
21 INTO THE NAVIGATOR?

22 A. NO, I DID NOT.

23 Q. AND YOU SAID YOU IDENTIFIED THE PASSENGER AS MARCUS
24 THOMPSON?

25 A. THAT IS CORRECT.

1 Q. CAN YOU TELL US WHAT -- TO THE BEST OF YOUR MEMORY,
2 IF YOU CAN REMEMBER, WHAT WAS MARCUS THOMPSON WEARING?

3 A. I CAN'T RECALL WITH ANY CERTAINTY REALLY WHAT HE WAS
4 WEARING.

5 Q. THAT'S FINE. IF YOU CAN'T RECALL---

6 A. I JUST---

7 Q. ---THAT'S FINE.

8 A. I JUST -- NO, I DON'T RECALL.

9 Q. LET ME ASK YOU THIS ABOUT HIS SIZE. IS HE BIGGER OR
10 SMALLER THAN KEVIN MERCER?

11 A. HE WAS SKINNY. HE WAS A FAIRLY SMALL GUY.

12 Q. AND KEVIN MERCER - DO YOU REMEMBER WHAT HE WAS
13 WEARING THAT NIGHT?

14 A. YES, IT WAS KIND OF A -- LIKE A DENIM, ALMOST LIKE A
15 JEAN JACKET OUTFIT, ALMOST DOWN TO HIS KNEES, AND IT ALSO
16 LOOKED LIKE IT WAS ONE PIECE. IT WAS ALL THE SAME COLOR.

17 Q. WAS IT DARK OR LIGHT?

18 A. IT WAS DARKER.

19 Q. DID OTHER OFFICERS AND INVESTIGATORS ARRIVE ON THE
20 SCENE?

21 A. YES, SEVERAL.

22 Q. AT SOME POINT LATER THAT NIGHT DID YOU TRANSPORT
23 EITHER MERCER OR MR. THOMPSON TO JAIL?

24 A. I TRANSPORTED MR. MERCER TO THE LEXINGTON COUNTY
25 DETENTION CENTER.

1 Q. THE CLOTHING HE HAD ON AT THE TIME, WAS THAT THE
2 CLOTHING HE WORE IN YOUR CAR TO THE SHERIFF'S DEPARTMENT?

3 A. YES.

4 Q. YOU DIDN'T GO BACK IN THE VEHICLE FOR ANY CLOTHING
5 ITEMS.

6 A. NO, SIR, I DID NOT.

7 Q. DID DETECTIVE SCOTTIE FRIER COME ON THE SCENE?

8 A. YES, HE DID.

9 Q. DO YOU KNOW IF HE TRANSPORTED THE OTHER INDIVIDUAL?

10 A. YES, HE TRANSPORTED MR. THOMPSON.

11 MR. HUBBARD: NO FURTHER QUESTIONS.

12 CROSS-EXAMINATION

13 BY MR. LITTLEJOHN:

14 Q. MR. STAZER, LET ME MAKE SURE I'VE GOT YOUR TIME LINE
15 RIGHT. AT ABOUT 11:42 P.M. IS WHEN YOU STATIONED YOURSELF ON
16 I-20?

17 A. THAT IS CORRECT.

18 Q. OKAY. AND THIS WAS APPROXIMATELY 10 MINUTES AFTER
19 THE INCIDENT WAS FIRST CALLED IN?

20 A. I BELIEVE SO; YES, SIR.

21 Q. OKAY. AND YOU STATIONED YOURSELF AT HIGHWAY 1?

22 A. YEAH, THE HIGHWAY 1 EXIT FACING WESTBOUND.

23 Q. OKAY. AND THAT WOULD BE EXIT NUMBER 54?

24 A. NO. I BELIEVE -- I DON'T KNOW OFFHAND. I BELIEVE
25 IT'S -- I BELIEVE IT'S 58. I CAN'T -- I CAN'T CONFIRM THAT

1 THOUGH.

2 Q. FIFTY-EIGHT. OKAY. AND IT WAS AT THAT EXIT WHEN
3 YOU FIRST SAW THE WHITE LINCOLN NAVIGATOR.

4 A. YES. I WAS SITTING STATIONARY.

5 Q. I SAID EXIT. I MEANT THE MILE MARKER.

6 A. I WAS AT THE EXIT.

7 Q. YOU WERE RIGHT THERE AT THE EXIT.

8 A. YES.

9 Q. AND THAT'S 58?

10 A. I BELIEVE SO.

11 Q. OKAY. NOW, YOU INDICATED ON THE MAP HERE WHERE YOU
12 STOPPED IT... NOW, UP HERE AT BROAD RIVER ROAD AND I-20, DO
13 YOU KNOW WHAT MILE MARKER THAT IS OR WHAT EXIT THAT IS?

14 A. NO, I DO NOT.

15 Q. WOULD IT BE ABOUT 62?

16 A. I CAN'T CONFIRM OR DENY THAT BECAUSE I JUST DON'T
17 KNOW.

18 Q. OKAY. WOULD IT BE -- HOW FAR WOULD IT BE FROM WHERE
19 YOU STOPPED THE WHITE LINCOLN NAVIGATOR TO THE EXIT AT THE
20 BROAD RIVER ROAD?

21 A. I DO NOT KNOW.

22 Q. EIGHT MILES?

23 A. I CAN'T CONFIRM THAT.

24 Q. ALL RIGHT. NOW, MR. STAZER, WHEN YOU PULLED OVER
25 THE -- WHEN YOU CUT ON YOUR BLUE LIGHTS AND GOT BEHIND THE

1 LINCOLN NAVIGATOR, DID THE LINCOLN NAVIGATOR PULL OVER?

2 A. INITIALLY I DID NOT USE THE BLUE LIGHTS. I CAUGHT
3 UP TO THEM.

4 Q. RIGHT.

5 A. WHEN I INITIATED THE TRAFFIC STOP USING THE BLUE
6 LIGHTS, YES, THEY DID PULL OVER.

7 Q. HE PULLED OVER. DIDN'T TRY AND RUN FROM YOU.

8 A. NO, SIR.

9 Q. OKAY. AND I BELIEVE YOU SAID YOU GOT OUT OF YOUR
10 CAR, WALKED UP TO THE LINCOLN NAVIGATOR, ASKED THE DRIVER WHO
11 YOU'VE IDENTIFIED AS MR. MERCER FOR HIS DRIVER'S LICENSE,
12 REGISTRATION, AND INSURANCE.

13 A. YES.

14 Q. OKAY. HE PRODUCED HIS DRIVER'S LICENSE.

15 A. YES.

16 Q. WHICH YOU'VE ALREADY IDENTIFIED.

17 A. YES.

18 Q. OKAY. HE ASKED YOU WHY HE WAS BEING PULLED OVER.

19 A. YES, HE DID.

20 Q. YOU TOLD HIM YOU WOULD TELL HIM LATER.

21 A. YES.

22 Q. OKAY. DID HE GIVE YOU ANY PROBLEMS AT THAT TIME?

23 A. NO.

24 Q. OKAY. NOW, DEPUTY STAZER, DID THE LINCOLN NAVIGATOR
25 HAVE ANY FLAT TIRES?

1 A. NOT THAT I CAN RECALL, NO.

2 Q. OKAY. I BELIEVE YOU INDICATED TO US THAT YOU WENT
3 BACK AFTER GETTING THE PULLIAM FORD DOCUMENT, WENT BACK, GOT
4 ON THE RADIO, AND AT THAT POINT IS WHEN YOU INITIATED THE
5 FELONY STOP OR THIS FELONY ARREST.

6 A. I INITIATED THE FELONY ARREST AT THE POINT WHEN I
7 HEARD ON THE RADIO THAT THE VICTIM'S NAME WAS TRACY DAVIS AND
8 THAT MATCHED THE RECEIPT.

9 Q. OKAY. AND YOU SAID AT THAT POINT YOU GOT OUT OF
10 YOUR VEHICLE, DREW YOUR WEAPON.

11 A. YES.

12 Q. IS THAT RIGHT? AND YOU POINTED THE WEAPON AT THE
13 WHITE LINCOLN NAVIGATOR.

14 A. YES.

15 Q. RIGHT? HAD THE WEAPON IN YOUR RIGHT HAND?

16 A. YES, IN MY RIGHT HAND.

17 Q. OR BOTH HANDS.

18 A. I'M RIGHT HANDED.

19 Q. OKAY. JUST HOLDING IT WITH ONE HAND?

20 A. YES, SIR.

21 Q. OKAY. YOU DEMANDED THAT THE DRIVER GET OUT OF HIS
22 VEHICLE, WHICH MR. MERCER DID. IS THAT RIGHT?

23 A. CORRECT.

24 Q. AND YOU TOLD HIM TO TAKE BOTH HIS HANDS AND PUT THEM
25 OUTSIDE THE WINDOW AND OPEN THE DOOR WITH HIS LEFT HAND.

1 A. THAT IS CORRECT.

2 Q. OKAY. AND, MR. STAZER, WAS ALL THIS -- THIS WAS
3 VIDEOD, WASN'T IT? WASN'T THERE A VIDEOTAPE OF ALL THIS?

4 A. YES, BUT THE VIDEO AT THAT -- AT THAT -- THAT
5 EVENING THE VIDEO WAS NOT FUNCTIONING CORRECTLY.

6 Q. IT WAS NOT FUNCTIONING CORRECTLY.

7 A. YES, SIR.

8 Q. THE VIDEO WAS ALL BLURRY.

9 A. YES, SIR.

10 Q. ALL RIGHT. SO MR. MERCER FOLLOWED YOUR
11 INSTRUCTIONS, BACKED UP TO YOU.

12 A. YES, HE DID.

13 Q. CAME BACK TO YOUR VEHICLE.

14 A. YES.

15 Q. YOU INSTRUCTED HIM TO GET DOWN ON HIS KNEES WITH HIS
16 HANDS UP? IS THAT RIGHT?

17 A. DOWN ON HIS KNEES WITH THE HANDS BEHIND THE BACK.

18 Q. NOW, YOU TOLD HIM TO PUT HIS HANDS BEHIND HIS BACK,
19 WHICH HE DID.

20 A. YES.

21 Q. OKAY. NOW, AT THAT POINT YOU'RE STILL HOLDING YOUR
22 WEAPON.

23 A. YES.

24 Q. OKAY. YOU PULLED OUT YOUR HANDCUFFS. CORRECT?

25 A. YES.

1 Q. OKAY. AND YOU TOOK YOUR HANDCUFFS AND HANDCUFFED
2 MR. MERCER.

3 A. YES, I DID.

4 Q. OKAY. AND YOU -- YOU WERE DOING THAT BY THE SIDE OF
5 THE ROAD WITH MR. MERCER KNEELED DOWN IN FRONT OF YOU. IS
6 THAT RIGHT?

7 A. YES.

8 Q. NOW, MR. THOMPSON IS STILL IN THE WHITE LINCOLN
9 NAVIGATOR; CORRECT?

10 A. THAT IS CORRECT.

11 Q. OKAY. AND I BELIEVE YOU INDICATED TO MR. HUBBARD
12 THAT YOU WERE -- YOU KEPT YOUR EYES ON BOTH OF THEM?

13 A. YES, SIR, I DID.

14 Q. YOU COULD -- YOU WERE WATCHING MR. THOMPSON AS YOU
15 WERE LEANING DOWN HANDCUFFING MR. MERCER?

16 A. IT WASN'T NECESSARY TO LEAN TOO FAR. HE'S A FAIRLY
17 LARGE INDIVIDUAL.

18 Q. OKAY. WERE YOU CONCENTRATING ON HANDCUFFING MR.
19 MERCER?

20 A. NO.

21 Q. YOU WEREN'T?

22 A. I DIDN'T NEED TO CONCENTRATE.

23 Q. YOU DIDN'T NEED TO CONCENTRATE.

24 A. AFTER BEING IN LAW ENFORCEMENT FOR SEVERAL YEARS,
25 HANDCUFFING BECOMES A SECOND NATURE.

1 Q. OKAY. SO YOU DIDN'T HAVE TO WATCH WHAT YOU WERE
2 DOING. YOU JUST KEPT YOUR EYES ON THOMPSON AND HANDCUFFED
3 HIM BLINDLY.

4 A. YES, SIR.

5 Q. OKAY. YOU ALSO INDICATED THAT IF MR. THOMPSON MADE
6 ANY MOVEMENT IT WOULD HAVE BEEN MET WITH LETHAL FORCE?

7 A. THAT IS CORRECT.

8 Q. ANY MOVEMENT?

9 A. YES.

10 Q. YOU WOULD HAVE SHOT HIM DEAD?

11 A. YES.

12 Q. OKAY. HOW LONG DID IT TAKE YOU TO HANDCUFF MR.
13 MERCER? TWO OR THREE MINUTES?

14 A. NO.

15 Q. A MINUTE?

16 A. PROBABLY LESS.

17 Q. LESS THAN A MINUTE? SOMETIME LESS THAN A MINUTE?

18 OKAY. AND AT THE TIME MR. THOMPSON IS SITTING IN THE
19 PASSENGER FRONT SEAT OF THIS LINCOLN NAVIGATOR. IS THAT
20 RIGHT?

21 A. THAT'S CORRECT.

22 Q. OKAY. AND WERE THE WINDOWS SMOKED IN THAT LINCOLN
23 NAVIGATOR?

24 A. NO.

25 Q. NOT AT ALL.

1 A. THE BACK WINDOW WAS NOT; I CAN'T SAY FOR THE SIDES.

2 Q. OKAY. NOW, I BELIEVE YOU INDICATED A TROOPER CAME
3 UP AS YOU WERE IN THE PROCESS OF DOING THIS, AND THAT'S WHEN
4 YOU APPROACHED THE LINCOLN NAVIGATOR FROM THE PASSENGER'S
5 SIDE.

6 A. THAT IS CORRECT.

7 Q. OKAY. AND YOU INDICATED TO US THAT AS YOU WERE
8 GETTING MR. THOMPSON OUT OF THE VEHICLE THAT TWO ITEMS FELL
9 OUT OF HIS POCKETS OR OUT OF HIS PANTS.

10 A. YES.

11 Q. OR OFF OF HIS CLOTHING. ONE WAS A KNIT GLOVE. IS
12 THAT RIGHT?

13 A. I BELIEVE SO; YES, SIR.

14 Q. WHAT COLOR WAS THE KNIT GLOVE?

15 A. BLACK, IN COLOR.

16 Q. A BLACK-IN-COLOR KNIT GLOVE.

17 A. UH-HUH.

18 Q. OKAY. YOU SEIZED THAT?

19 A. YES, I DID.

20 Q. YOU TOOK IT IN AS -- YOU TOOK POSSESSION OF IT AS
21 EVIDENCE IN THIS CASE, DID YOU NOT?

22 A. YES, I DID.

23 Q. OKAY. AND ALSO YOU SAID A BAG OF BULLETS FELL OUT
24 OF HIS PANTS LEG.

25 A. THAT IS CORRECT.

1 Q. NOW, LET ME JUST MAKE SURE SO I UNDERSTAND. IT
2 WASN'T IN HIS POCKET UNLESS HE HAD A HOLE IN HIS POCKET, BUT
3 IT FELL DOWN THROUGH HIS PANTS LEG AND TO THE GROUND.

4 A. YES, IT DID.

5 Q. THAT'S WHAT YOU'RE TELLING US.

6 A. YES.

7 Q. AND THERE WERE FOURTEEN 357 BULLETS.

8 A. YES.

9 Q. IN A PLASTIC BAG.

10 A. YES, SIR.

11 Q. YOU SEIZED THOSE ITEMS.

12 A. YES, I DID.

13 Q. SEIZED THEM FOR EVIDENCE.

14 A. YES.

15 Q. OKAY. NOW, MR. STAZER, AFTER SEIZING THESE TWO
16 ITEMS FROM MR. THOMPSON, YOU OBVIOUSLY PLACED HIM IN CUSTODY.

17 A. THAT IS CORRECT.

18 Q. OKAY. AND HE WAS HANDCUFFED ALONG WITH MR. MERCER.

19 A. I DON'T UNDERSTAND.

20 Q. HE WAS HANDCUFFED IN ADDITION TO MR. MERCER.

21 A. YES.

22 Q. BOTH OF THEM ARE LATER TRANSPORTED TO THE SHERIFF'S
23 DEPARTMENT.

24 A. THAT IS CORRECT.

25 Q. OKAY. NOW, YOU INDICATED WHEN YOU GOT MR. -- WHEN

1 YOU WERE GETTING MR. THOMPSON OUT OF THE CAR THAT YOU SAW THE
2 WOODEN HANDLE OF A PISTOL.

3 A. THAT'S CORRECT.

4 Q. OKAY. AND I BELIEVE THAT WAS DEPICTED IN ONE OF THE
5 PHOTOGRAPHS WHICH I BELIEVE IS -- HAS BEEN MARKED STATE'S
6 EXHIBIT NUMBER 12. IS THAT RIGHT?

7 A. YES.

8 Q. OKAY. AND BASED ON THAT PHOTOGRAPH, IT APPEARS THAT
9 THAT LINCOLN NAVIGATOR HAS KIND OF A CARPETED SHELF UNDER THE
10 -- UNDER THE SEAT?

11 A. I WOULDN'T SAY -- I DON'T KNOW WHAT YOU'RE REFERRING
12 TO.

13 Q. RIGHT HERE, THE HORIZONTAL AREA THAT THIS GUN IS
14 LAYING ON.

15 A. OH, IT APPEARS TO BE A LITTLE BIT ELEVATED.

16 Q. OKAY. LOOKS LIKE A FLAT SURFACE UNDER THE SEAT,
17 CARPETED?

18 A. I DON'T KNOW. I DON'T KNOW WHERE YOU'RE GOING WITH
19 THIS.

20 Q. WELL...

21 A. CAN YOU REPEAT THE QUESTION? I'M SORRY.

22 Q. MR. STAZER, DOES THIS APPEAR TO BE A CARPETED AREA
23 THAT THE GUN IS SITTING ON?

24 A. YES, IT IS CARPETED.

25 Q. AND THIS -- WHERE THE GUN IS IS UNDER THE SEAT.

1 A. YES.

2 Q. AND THIS APPEARS TO BE A HORIZONTAL SURFACE, DOES IT
3 NOT, THAT THE GUN IS LAYING ON?

4 A. IT APPEARS TO BE.

5 Q. OKAY. SO THAT WOULD BE A HORIZONTAL CARPETED
6 SURFACE UNDER THE SEAT, WOULD IT NOT?

7 A. YES, IT WOULD.

8 Q. OKAY. AND I NOTICE THE GUN IS LAYING ON THAT
9 SURFACE; CORRECT?

10 A. YES, IT IS.

11 Q. IT'S NOT CRAMMED UP UNDER THE SEAT SOMEWHERE.

12 A. NO.

13 Q. ALL RIGHT. NOW, YOU INDICATED YOU LEFT FROM THE
14 SCENE OF THE STOP WITH MR. MERCER.

15 A. YES, I TRANSPORTED MR. MERCER.

16 Q. OKAY. ANYBODY ELSE IN THE CAR WITH YOU?

17 A. NO.

18 Q. OKAY. MR. MERCER WAS IN THE BACK SEAT?

19 A. YES.

20 Q. HANDCUFFED?

21 A. YES.

22 Q. DID HE MAKE ANY ATTEMPT TO LEAVE, ESCAPE, OR
23 ANYTHING OF THAT NATURE?

24 A. NO.

25 Q. OKAY. ANY FUNNY MOVES, ANYTHING OF THAT NATURE?

1 A. NO.

2 Q. OKAY. WHAT DID YOU DO WITH THE GLOVE?

3 A. IT WAS TURNED IN TO EVIDENCE.

4 Q. OKAY. AND THE BULLETS?

5 A. YES.

6 Q. THEY WERE TURNED IN TO EVIDENCE?

7 A. YES.

8 Q. AND THOSE WERE THE BULLETS YOU SEIZED FROM MARCUS

9 THOMPSON'S PANT LEG.

10 A. THAT IS CORRECT.

11 Q. HOW ABOUT THE GUN? DID YOU SEIZE THE GUN?

12 A. NO, I DID NOT.

13 Q. YOU LEFT IT THERE IN THE POSITION YOU FOUND IT.

14 A. YES.

15 Q. OKAY. AND IT WAS IN THE SAME POSITION AS DEPICTED

16 IN THAT PHOTOGRAPH WHERE YOU FOUND IT.

17 A. YES.

18 Q. IF YOU WOULD INDULGE ME JUST A MOMENT, YOUR HONOR.

19 JUST ONE FINAL THING, MR. STAZER. IN ADDITION TO THE GLOVE

20 THAT FELL OUT OF MARCUS THOMPSON'S POCKET, DID YOU FIND OTHER

21 GLOVES ON HIM?

22 A. NOT THAT I CAN RECALL, NO.

23 Q. DID YOU SEARCH HIM?

24 A. HE WAS JUST PATTED DOWN BRIEFLY.

25 Q. HE WAS JUST PATTED DOWN?

1 A. UH-HUH.

2 Q. OKAY. SO YOU DON'T KNOW WHETHER HE HAD THREE OTHER
3 GLOVES IN HIS POCKETS.

4 A. NO. HE WAS BASICALLY PATTED DOWN JUST FOR WEAPONS
5 FOR OUR SAFETY.

6 Q. OKAY.

7 A. I DID NOT GET INTO SEARCHING HIM.

8 Q. ALL RIGHT. SO THE ONE GLOVE THAT FELL OUT OF HIS
9 POCKET, YOU SEIZED THAT THOUGH.

10 A. YES, BECAUSE IT WAS IN PLAIN VIEW.

11 MR. LITTLEJOHN: ALL RIGHT. THAT'S ALL I HAVE, YOUR
12 HONOR.

13 MR. HUBBARD: QUICK FOLLOW-UP.

14 REDIRECT EXAMINATION

15 BY MR. HUBBARD:

16 Q. MR. STAZER, LOOKING AT THIS PHOTOGRAPH OF THE GUN,
17 THERE IS AN OBJECT BEHIND THAT GUN. DO YOU SEE THAT? DO YOU
18 SEE WHAT I'M SAYING?

19 A. YEAH. IT APPEARS TO BE THE SEAT -- THE ELECTRONIC
20 SEAT CONTROLS FOR THE POWER SEATS BEHIND THE GUN.

21 Q. SO THIS IS A LINCOLN NAVIGATOR AND IT'S GOT POWER
22 SEATS.

23 A. YES.

24 Q. AND THE MOTOR FOR THAT POWER SEAT IS RIGHT UNDER THE
25 SEAT.

1 A. THAT'S WHAT IT APPEARS TO BE.

2 Q. IS THIS GUN RIGHT UP NEXT TO IT?

3 A. YES.

4 Q. NOW, AS FAR AS YOU BEING ABLE TO SEE INTO THAT
5 NAVIGATOR, WAS YOUR CAR BEHIND THE NAVIGATOR?

6 A. YES, IT WAS.

7 Q. YOUR LIGHTS ARE ON.

8 A. YES.

9 Q. INCLUDING YOUR BLUE LIGHTS.

10 A. YES.

11 Q. DID YOUR CAR LIGHT UP THAT NAVIGATOR?

12 A. YES. PART OF THE LIGHT BAR THAT WE HAD SPECIFICALLY
13 FOR TRAFFIC DIVISION -- WE HAD TWO OVERHEAD LIGHTS THAT WERE
14 VERY, VERY -- EXTREMELY BRIGHT AND THEY WERE INTENDED JUST
15 FOR THAT PURPOSE - TO LIGHT UP THE INTERIOR OF THE VEHICLE
16 WHILE WE'RE DOING A TRAFFIC STOP.

17 Q. AND LOOKING AT STATE'S EXHIBIT NUMBER 5, THE BACK
18 END OF THE NAVIGATOR.

19 A. YES.

20 Q. HOW WOULD YOU DESCRIBE THAT WINDOW?

21 A. IT'S VERY CLEAR.

22 Q. AND---

23 A. AND LARGE.

24 Q. AND LARGE. THAT'S ALL I HAVE, YOUR HONOR.

25

RECROSS EXAMINATION

1
2 BY MR. LITTLEJOHN:

3 Q. ONE FINAL THING. MR. STAZER, OF COURSE, IT WAS DARK
4 THAT NIGHT BECAUSE IT WAS 11:50 SOME-ODD IN THE EVENING;
5 RIGHT?

6 A. YES.

7 Q. AND YOU WERE LOOKING THROUGH THAT LINCOLN NAVIGATOR
8 INTO THE DARK, WERE YOU NOT?

9 A. NO.

10 Q. YOU WEREN'T?

11 A. NO.

12 Q. THERE WAS LIGHT -- YOU HAD SOME LIGHTS IN FRONT OF
13 THE LINCOLN NAVIGATOR?

14 A. NO, IT WAS ILLUMINATED FROM BEHIND. HE ALSO TURNED
15 THE INTERIOR LIGHT ON WHEN I WAS TALKING TO HIM.

16 Q. WERE THERE ANY LIGHTS IN FRONT OF THE LINCOLN
17 NAVIGATOR?

18 A. NO.

19 Q. JUST A MOMENT, IF YOUR HONOR PLEASE. OF COURSE, MR.
20 STAZER, WE DON'T HAVE A CLEAR VIDEO OF WHAT HAPPENED OUT
21 THERE, DO WE?

22 A. NO, WE DO NOT.

23 MR. LITTLEJOHN: THAT'S ALL I HAVE, YOUR HONOR.

24 MR. HUBBARD: NOTHING ELSE, YOUR HONOR.

25 THE COURT: YOU CAN STEP DOWN, SIR.

1 MR. HUBBARD: THE STATE CALLS SCOTTIE FRIER.

2 SCOTTIE FRIER, AFTER BEING DULY SWORN,
3 TESTIFIED AS FOLLOWS:

4 THE CLERK: HAVE A SEAT. STATE YOUR FULL NAME FOR
5 THE RECORD, SPELLING YOUR FIRST AND LAST NAME, PLEASE.

6 MR. LITTLEJOHN: YOUR HONOR, EXCUSE ME. COULD WE
7 ASK THE STATE TO REMOVE THE DIAGRAMS THERE IF THEY'RE NOT
8 GOING TO USE THEM? WE'D LIKE TO BE ABLE TO SEE THROUGH THE
9 COURTROOM.

10 MR. HUBBARD: I'LL MOVE THEM. IF I NEED THEM, YOUR
11 HONOR, I'LL PUT THEM BACK UP.

12 THE WITNESS: MY NAME IS LIEUTENANT SCOTTIE FRIER.
13 SCOTTIE IS S-C-O-T-T-I-E. LAST NAME IS FRIER, F-R-I-E-R.

14 DIRECT EXAMINATION

15 BY MR. HUBBARD:

16 Q. LIEUTENANT FRIER, HOW LONG HAVE YOU BEEN WITH THE
17 SHERIFF'S DEPARTMENT?

18 A. I BEGAN MY LAW ENFORCEMENT CAREER WITH THE SHERIFF'S
19 DEPARTMENT IN 1987.

20 Q. AND WHAT ARE YOUR DUTIES NOW?

21 A. I CURRENTLY SERVE AS A LIEUTENANT OVER THE MAJOR
22 CRIMES UNIT.

23 Q. AND MAJOR CRIMES OBVIOUSLY ARE HOMICIDES BUT OTHER
24 CRIMES AS WELL?

25 A. THAT'S CORRECT, SIR.

1 Q. BACK IN MAY OF 2002, WHAT WERE YOUR
2 RESPONSIBILITIES?

3 A. I SERVED AT THAT TIME AS A DETECTIVE IN THAT UNIT.

4 Q. DO YOU RECALL GETTING A CALL CONCERNING THIS CASE ON
5 MAY 16TH, 2002?

6 A. YES, SIR. I WAS CONTACTED AT MY HOME BY THE
7 DISPATCH PERSONNEL JUST BEFORE MIDNIGHT OF THAT EVENING
8 INFORMING ME THAT WE HAD HAD A -- THEY DESCRIBED IT TO ME AS
9 A ROBBERY/SHOOTING INCIDENT.

10 Q. OKAY. AND WHERE WERE YOU HEADING AT THAT POINT?

11 A. I WAS INSTRUCTED THAT THE INCIDENT HAD TAKEN PLACE
12 AT THE RAINTREE APARTMENTS, SO I INITIALLY HEADED TO THAT
13 LOCATION OFF OF FERNANDINA ROAD.

14 Q. DID YOU EVER MAKE IT THERE?

15 A. NO, SIR. I DID EVENTUALLY. IMMEDIATELY, I ENDED UP
16 GOING SOMEWHERE ELSE.

17 Q. SO YOU GOT DIVERTED FROM RAINTREE APARTMENTS?

18 A. YES, SIR, WHILE I WAS EN ROUTE.

19 Q. AND WHERE DID YOU GET DIVERTED TO?

20 A. SOME INFORMATION WAS COMING OVER THE RADIO THAT
21 DEPUTY STAZER HAD OBSERVED A VEHICLE. I CAN'T REMEMBER IF IT
22 WAS CONFIRMED TO BE THE VEHICLE OR A VERY CONSISTENT VEHICLE.
23 HE HAD IT STOPPED. IT HAD TWO SUBJECTS IN IT, AND THERE WAS
24 A GREAT CONCERN THAT THAT MAY, IN FACT, BE THE VICTIM'S
25 VEHICLE. SO I BEGAN TO HEAD THAT WAY INSTEAD OF GOING TO THE

1 INCIDENT LOCATION.

2 Q. THAT'S -- AND THE VEHICLE WAS LOCATED AT MILE MARKER
3 51?

4 A. THAT'S CORRECT, ON I-20 WESTBOUND. I WASN'T EXACTLY
5 SURE WHAT MILE MARKER, BUT I KNEW IT WAS I-20 WESTBOUND FROM
6 THE FIRST INFORMATION I GOT.

7 Q. WHEN YOU GOT TO THAT SITE WHERE THE NAVIGATOR WAS
8 STOPPED---

9 A. YES, SIR.

10 Q. ---DID YOU SEE KEVIN MERCER?

11 A. YES, SIR. I SAW BOTH OCCUPANTS THAT HAD BEEN TAKEN
12 OUT OF THE VEHICLE AT SOME POINT; YES, SIR.

13 Q. WHERE WAS KEVIN MERCER AT THAT TIME?

14 A. I DON'T REMEMBER HIS EXACT PHYSICAL LOCATION. I
15 JUST KNOW THAT HE HAD BEEN SEPARATED FROM THE OTHER PERSON
16 WHO WAS IDENTIFIED AS MARCUS THOMPSON. THEY WERE BOTH -- I
17 WANT TO SAY THAT THEY WERE OFF THE -- ON TO THE SHOULDER OF
18 THE ROAD BUT AT OPPOSITE ENDS OF THE VEHICLE.

19 Q. DO YOU RECALL WHAT KEVIN MERCER WAS WEARING THAT
20 NIGHT?

21 A. KEVIN MERCER HAD ON AN ALL-DENIM OUTFIT. IT LOOKED
22 AT FIRST LIKE A ONE-PIECE OUTFIT. THERE WERE DENIM PANTS
23 THAT WENT DOWN MID CALF ALMOST TO THE ANKLES, BUT THEY
24 WEREN'T QUITE COMPLETE-LENGTH PANTS. AND THERE WAS A BLUE
25 JEAN TOP THAT WAS ON TOP OF THAT THAT ALMOST LOOKED LIKE AN

1 OVERSIZED SHIRT OR A JACKET. AND WHEN YOU FIRST SAW IT, IT
2 LOOKED LIKE A ONE-PIECE DENIM OUTFIT, BUT THEN YOU REALIZED
3 IT WAS TWO PIECES BUT BOTH PIECES WERE DENIM. IT WAS AN
4 ALL-DENIM OUTFIT. HE HAD A BLACK BALL CAP ON.

5 Q. THE DENIM CLOTHING THAT YOU DESCRIBED, WAS IT LIGHT
6 DENIM LIKE FADED BLUE JEANS OR WAS IT SOMETHING ELSE?

7 A. IT WAS WHAT YOU WOULD RECOGNIZE AS DARK BLUE JEAN
8 MATERIAL.

9 Q. AND YOU MENTIONED A HAT?

10 A. YES, SIR. HE HAD ON A BLACK BALL CAP, BASEBALL CAP,
11 BASEBALL STYLE CAP.

12 Q. DO YOU RECALL WHAT MR. THOMPSON WAS WEARING?

13 A. MR. THOMPSON HAD ON TWO TEE SHIRTS. HE HAD ON A
14 WHITE TEE SHIRT UNDER A BLACK TEE SHIRT. THE INTERESTING
15 THING I REMEMBER ABOUT THAT: YOU COULD SEE A WHITE RING
16 AROUND THE COLLAR OF HIS SHIRT WHERE THE WHITE TEE SHIRT WAS
17 SOMEWHAT STICKING UP OVER THE BLACK TEE SHIRT. THEY WERE
18 UNTUCKED. AND HE HAD ON SOME BLUE PANTS. IF MY MEMORY
19 SERVES ME RIGHT, THEY WERE -- LOOKED LIKE THE COTTON DICKIE
20 WORK PANTS. THEY WERE DARK BLUE IN COLOR.

21 Q. DID HE HAVE ANY DENIM ARTICLES ON AT ALL?

22 A. I REMEMBER THOSE PANTS BEING DICKIE WORK PANTS.
23 NOW, THEY HAVE AN APPEARANCE OF LIKE DENIM, BUT THEY -- I
24 REMEMBER THOSE BEING DICKIE WORK PANTS, IF I REMEMBER
25 CORRECTLY.

1 Q. WAS HE WEARING A HAT?

2 A. HE DID NOT HAVE A HAT ON. MR. THOMPSON HAD, FOR
3 LACK OF A BETTER DESCRIPTION, SOMEWHAT NAPPY, UNKEPT HAIR,
4 AND HE HAD SOME PORTIONS OF THAT HAIR THAT WERE STICKING UP.
5 THE BEST WAY I CAN DESCRIBE IS MAYBE LIKE CORN ROWS THAT HAD
6 BEEN SOMEWHAT UNDONE BUT WEREN'T COMPLETELY MADE BACK OUT.

7 Q. OKAY.

8 A. IF THAT MAKES SENSE.

9 Q. IF I CAN, I WANT TO MAYBE PUT IT OVER HERE. IF YOU
10 WOULD, CAN YOU DESCRIBE MARCUS THOMPSON?

11 A. MARCUS THOMPSON WAS A VERY SLENDER BLACK MALE. HE
12 LOOKED YOUNG, 18, 19, 20 YEARS OLD. AS I STATED, HE HAD ON A
13 BLACK TEE SHIRT WITH A WHITE TEE SHIRT UNDERNEATH IT, BUT YOU
14 COULD SEE A WHITE RING AROUND THE TEE SHIRT WHERE THE WHITE
15 TEE SHIRT WAS STICKING UP OVER THE BLACK SHIRT. HE'S VERY
16 SLENDER. HE WAS 150, 155 POUNDS.

17 Q. SO LET ME -- LET'S START WITH HIS PHYSICAL SIZE.

18 A. OKAY.

19 Q. YOU SAY VERY SLENDER?

20 A. HE'S SLENDER, VERY SLENDER.

21 Q. HOW MUCH DID YOU ESTIMATE HE WEIGHS?

22 A. HE WAS 150, 155 POUNDS. HE WASN'T VERY BIG.

23 Q. WHAT ELSE CAN YOU SAY ABOUT HIS PHYSICAL
24 DESCRIPTION?

25 A. JUST NARROW-SHOULDERED, NOT A VERY BIG KID, JUST A

1 SLIM, 155-POUND YOUNGER BLACK MALE.

2 Q. AND HIS HAIR? HOW WOULD YOU DESCRIBE THAT? YOU
3 MENTIONED NAPPY?

4 A. I JUST -- I DON'T KNOW ANOTHER WORD---

5 Q. UNKEPT?

6 A. ---TO DESCRIBE IT. IT WAS NAPPY AND UNKEPT, ALMOST
7 LIKE IT WAS THE BEGINNING OF TRYING TO MAKE SOME KIND OF AN
8 AFRO AS IF THEY WERE -- AS IF HE HAD BEEN PULLING CORN ROWS
9 OUT, BUT THERE WERE SEVERAL -- THERE WERE PARTS OF THAT JUST
10 KIND OF STILL INDIVIDUALLY STICKING UP. IT WAS UNKEPT IS A
11 PRETTY SAFE WAY TO SAY THAT OR UNKEPT APPEARANCE.

12 Q. HIS SHIRT -- WHAT WAS HE WEARING?

13 A. HAD ON A BLACK TEE SHIRT THAT WAS OVER A WHITE TEE
14 SHIRT, AND YOU KNOW THAT BECAUSE YOU COULD SEE THE COLLAR
15 RING OF THE WHITE TEE SHIRT JUST STICKING UP OVER THE WHITE
16 I'M SORRY - OVER THE BLACK ONE.

17 Q. AND HIS PANTS, AGAIN, YOU SAY DICKIES?

18 A. IF I REMEMBER CORRECTLY, THEY WERE LIKE DICKIE WORK
19 PANTS, COTTON DICKIE WORK PANTS.

20 Q. OKAY. NOW, I HAVE UP HERE STATE'S EXHIBIT NUMBER
21 10, THE DRIVER'S LICENSE, OF MARCUS -- KEVIN MERCER.

22 A. UH-HUH.

23 Q. WHAT IS THE HEIGHT AND WEIGHT ON THAT?

24 A. ON HIS DRIVER'S LICENSE IT INDICATES 5'10" ON THE
25 HEIGHT. WEIGHT, 220 POUNDS.

1 Q. DOES THAT HEIGHT AND WEIGHT CORRESPOND WITH THE MAN
2 YOU SAW AS KEVIN MERCER THAT NIGHT?

3 A. AS KEVIN MERCER, YES, SIR.

4 Q. HE WAS THAT BIG.

5 A. KEVIN MERCER WAS A MUCH MORE STOCKY BUILD THAN
6 MARCUS THOMPSON, MUCH BROADER SHOULDER AND MUCH MORE
7 MUSCULAR, MORE ATHLETIC LOOKING. MERCER WAS A HEALTHY BIG
8 GUY.

9 Q. NOTHING ELSE AT THIS TIME. LIEUTENANT, IF YOU WOULD
10 ANSWER ANY QUESTIONS FROM THE DEFENSE.

11 A. YES, SIR.

12 CROSS-EXAMINATION

13 BY MS. KIMBROUGH:

14 Q. GOOD AFTERNOON. HOW ARE YOU DOING?

15 A. FINE, MA'AM. HOW ARE YOU?

16 Q. GOOD. SO YOU'VE BEEN IN LAW ENFORCEMENT A PRETTY
17 LONG TIME?

18 A. YES, MA'AM.

19 Q. DID YOU SAY 19 YEARS?

20 A. YES. I STARTED MY CAREER IN 1985.

21 Q. OKAY. AND YOU'RE NOW WORKING FOR THE MAJOR CRIMES
22 DIVISION? IS THAT RIGHT?

23 A. YES, MA'AM.

24 Q. OKAY. IN '02 YOU WERE A DETECTIVE?

25 A. YES, MA'AM.

1 Q. OKAY. AS A DETECTIVE, DOES YOUR DUTIES VARY FROM
2 WHAT THEY WOULD BE TODAY IN MAJOR CRIMES OR WERE THEY VERY
3 SIMILAR?

4 A. IT'S THE SAME TYPE INCIDENTS THAT WE INVESTIGATE. I
5 NOW SERVE AS THE SUPERVISOR IN THAT UNIT.

6 Q. OKAY. ALL RIGHT. SO YOU'VE BEEN PROMOTED SINCE
7 '02?

8 A. YES, MA'AM.

9 Q. AND OBVIOUSLY IF YOU'RE IN CHARGE OF THAT DIVISION,
10 YOU'VE BEEN INVOLVED IN NUMEROUS INVESTIGATIONS?

11 A. YES, MA'AM.

12 Q. OKAY. SORT OF A BALL-PARK ESTIMATE ABOUT THE NUMBER
13 OF MURDERS...

14 A. IT WOULD BE DIFFICULT FOR ME TO SAY. WE AVERAGE
15 ANYWHERE FROM EIGHT TO TEN A YEAR, AND I'VE BEEN IN THAT UNIT
16 NOW FOR 15 YEARS OR SO, 15 OR 16 YEARS OR SO.

17 Q. OKAY. AND YOU ALSO INVESTIGATE OTHER MAJOR CRIMES
18 LIKE ARMED ROBBERY, BURGLARY, KIDNAPPING, THAT SORT OF THING?

19 A. YES, MA'AM.

20 Q. OKAY. NOW -- AND YOU WERE LEAD INVESTIGATOR ON THIS
21 CASE; IS THAT CORRECT?

22 A. YES, MA'AM.

23 Q. THAT'S WHY THEY CALLED YOU AT HOME AT MIDNIGHT AND
24 TOLD YOU TO COME?

25 A. I WAS ONE OF A NUMBER OF DETECTIVES ON CALL THAT

1 NIGHT.

2 Q. OKAY.

3 A. WE JUST -- WE HAVE AN ON-CALL STATUS. MOST TIMES
4 THEY ATTEMPT TO CALL THE DETECTIVE THAT'S CLOSEST LIVING TO
5 THE LOCATION WHICH I WAS PRETTY APPROXIMATE TO THAT AT THAT
6 TIME.

7 Q. OKAY. SO YOU LEFT YOUR HOME AND YOU WERE HEADED
8 TOWARDS RAINTREE APARTMENTS?

9 A. THAT'S CORRECT.

10 Q. THEN YOU FOUND OUT THAT A VEHICLE HAD BEEN STOPPED
11 THAT WAS SUSPECTED TO BE THE VICTIM'S VEHICLE?

12 A. THAT'S CORRECT, MA'AM.

13 Q. OKAY. SO YOU GOT ON THE SCENE, AND AT SOME POINT
14 YOU LEARNED THAT SOME PHYSICAL EVIDENCE HAD BEEN RECOVERED
15 FROM THOMPSON, MARCUS THOMPSON, IN THE FORM OF GLOVES?

16 A. YES, MA'AM.

17 Q. OKAY.

18 A. THERE WERE -- THERE WERE SOME GLOVES. THERE WAS A
19 GLOVE, I BELIEVE, THAT MR. STAZER HAD FOUND THAT NIGHT AND
20 SOME BULLETS THAT HAD BEEN FOUND ON MARCUS THOMPSON'S PERSON.

21 Q. OKAY. AND AT SOME POINT DID YOU TAKE POSSESSION OF
22 THOSE?

23 A. I DID NOT; NO, MA'AM.

24 Q. OKAY. BUT YOU WERE AWARE THAT THEY EXISTED.

25 A. YES, MA'AM.

1 Q. OKAY. AND NOW WERE YOU THERE WHEN THE GUNSHOT
2 RESIDUE TESTS WERE PERFORMED? OR LET ME ASK YOU THIS: WERE
3 YOU AWARE THAT GUNSHOT RESIDUE TESTS WERE BEING PERFORMED ON
4 BOTH OF THE SUSPECTS?

5 A. I WAS AWARE THAT GUNSHOT RESIDUE TESTS WERE
6 CONDUCTED ON BOTH THE HANDS OF THE TWO SUSPECTS; YES, MA'AM.

7 Q. OKAY. AND ONCE THIS EVIDENCE WAS COLLECTED, WERE
8 YOU RESPONSIBLE FOR HAVING THIS EVIDENCE TESTED OR SENT OFF
9 TO S.L.E.D. OR WHO TAKES OVER THE EVIDENCE AT THAT POINT?

10 A. THE EVIDENCE STAYS IN OUR EVIDENCE CUSTODIAN'S
11 POSSESSION UNTIL CERTAIN ITEMS ARE SENT TO OR FROM S.L.E.D.
12 MYSELF AND MY SUPERVISORS COULD DIRECT FOR ANYTHING TO BE
13 SENT TO S.L.E.D. TO BE TESTED AS IS NECESSARY.

14 Q. OKAY. SO, IN OTHER WORDS, YOU AND ANOTHER PERSON
15 WOULD BE RESPONSIBLE FOR SENDING EVIDENCE OFF FOR TESTING.

16 A. I DON'T -- I DON'T UNDERSTAND WHAT YOU'RE ASKING ME
17 EXACTLY. UNDERSTAND I WORK FOR SUPERVISORS AS WELL. THERE'S
18 A NUMBER OF PEOPLE IN THAT UNIT THAT COULD HAVE REQUESTED FOR
19 THINGS TO BE SENT OUT.

20 Q. WERE YOU ONE OF THE PEOPLE THAT COULD HAVE REQUESTED
21 IT?

22 A. ABSOLUTELY, YES, MA'AM.

23 Q. OKAY.

24 A. YES, MA'AM.

25 Q. AND YOU WERE LEAD INVESTIGATOR.

1 A. YES, MA'AM.

2 Q. OKAY. OTHER THAN YOU, IS THERE ANYONE ELSE WHO --
3 WHO WOULD HAVE ASKED FOR EVIDENCE TO BE TESTED? I MEAN, AS
4 LEAD INVESTIGATOR, DO YOU NOT LEAD THE INVESTIGATION?

5 A. WELL, UNDERSTAND AT THAT TIME I WORKED FOR A
6 SERGEANT, A LIEUTENANT, AND A CAPTAIN. SO ANYONE IN THAT
7 HIERARCHY THAT I WORKED FOR -- I'M NOT THE SOLE PERSON WHO
8 HAS THE DIRECTION FOR EVIDENCE TO LEAVE OUR BUILDING TO BE
9 TESTED. I AM ONE OF THOSE PEOPLE.

10 Q. OKAY. AS LEAD INVESTIGATOR, WHAT IS THE SCOPE OF
11 YOUR ROLE? I MEAN, DO YOU DIVIDE IT UP WITH THE OTHER THREE
12 PEOPLE THAT YOU JUST NAMED OR WHO IS IN CHARGE OF GETTING
13 EVIDENCE TESTED?

14 A. AGAIN, ANY -- I'M THE---

15 Q. IN THIS CASE WHO WAS IN CHARGE OF GETTING EVIDENCE
16 TESTED?

17 A. ANY OF THOSE PEOPLE CAN, BUT FOR THE SAKE OF YOUR
18 QUESTION, I'M THE LEAD INVESTIGATOR. I COULD MAKE ANYTHING
19 GO TO S.L.E.D. THAT NEEDED TO GO.

20 Q. OKAY. AT ANY POINT IN TIME DID YOU SEND THE KNIT
21 GLOVES THAT WERE RECOVERED TO S.L.E.D. TO BE TESTED FOR
22 GUNSHOT RESIDUE?

23 A. NO, MA'AM, I DID NOT.

24 Q. OKAY. AT ANY POINT IN TIME DID YOU SEND THE BULLETS
25 THAT WERE RECOVERED FROM MARCUS THOMPSON'S PLASTIC BAGGY TO

1 BE TESTED FOR EITHER PRINTS ON THE SHELL CASINGS OR AT THE
2 TOP OF THE BULLET? I'M NOT REAL GOOD WITH TERMINOLOGY HERE,
3 BUT DID YOU HAVE THE BULLETS TESTED AT ALL FOR PRINTS?

4 A. I DON'T REMEMBER IF THE BULLETS WERE TESTED FOR
5 PRINTS. THEY VERY WELL MAY HAVE, AND IF I -- IF I RECALL
6 CORRECTLY, THE BULLETS WOULD HAVE BEEN SENT OUT TO S.L.E.D.
7 WITH THE WEAPON FOR THE BALLISTIC TESTING TO CONFIRM OR TO
8 COMPARE AGAINST ANY PROJECTILES THAT WERE RECOVERED AT
9 AUTOPSY OR TIMES LIKE THAT.

10 Q. OKAY. BUT TO YOUR KNOWLEDGE, YOU'RE NOT SURE
11 WHETHER OR NOT THE BULLETS WERE EVER SENT AND TESTED.

12 A. THE EVIDENCE CUSTODIANS -- OFTENTIMES THE CRIME
13 SCENE INVESTIGATORS WHO ARE ALSO EVIDENCE CUSTODIANS, IF YOU
14 WILL, THEY ALSO DO A NUMBER OF TESTINGS ON THEIR OWN THAT
15 THEY'RE NOT INSTRUCTED TO DO. THEY JUST UNDERSTAND THAT
16 CERTAIN THINGS HAVE TO BE TESTED. THE GUNSHOT RESIDUE
17 TESTING OF THE HANDS, FOR EXAMPLE, THEY DO THAT AND THEN THEY
18 MAKE SURE THOSE GET TO S.L.E.D. THEY DON'T HAVE TO BE
19 DIRECTED TO DO THAT.

20 Q. OKAY. BUT TO YOUR -- MAYBE I'M NOT STATING THIS
21 CLEARLY, BUT YOU PERSONALLY DIDN'T SEND THE BULLETS OUT TO BE
22 TESTED OR YOU DON'T RECALL DOING THAT.

23 A. I DON'T -- THE BULLETS WOULD HAVE GONE TO S.L.E.D.
24 WITH THE WEAPON, BUT I'M NOT EXACTLY SURE WHAT TESTING WOULD
25 HAVE BEEN REQUESTED WHEN THEY WENT OUT. THAT QUESTION MAY BE

1 BETTER RESERVED FOR ONE OF THE I.D. TECHNICIANS.

2 Q. OKAY. AS LEAD INVESTIGATOR, DO YOU HAVE AN
3 OPPORTUNITY TO ASK FOR A SPECIFIC TEST TO BE RUN?

4 A. I DID NOT SPECIFICALLY ASK FOR WHAT YOU'RE ASKING TO
5 BE DONE TO BE DONE; NO, MA'AM.

6 Q. OKAY. YOU ANSWERED MY QUESTION.

7 A. OKAY.

8 Q. MAY HAVE BEEN POORLY WORDED.

9 A. AND I'M SORRY. I JUST...

10 Q. THAT'S OKAY.

11 A. IT'S SOMEWHAT OF AN OPEN-ENDED QUESTION WHEN YOU
12 UNDERSTAND ALL THE PEOPLE THAT ARE INVOLVED IN THE PROCESS.

13 Q. I'LL TRY TO KEEP IT NARROW.

14 A. THANK YOU.

15 Q. ALL RIGHT. SO YOU WENT TO THE SCENE. YOU LEARNED
16 ABOUT THE CHRONOLOGY OF EVENTS, WHAT HAPPENED, WHEN THE
17 SUSPECTS WERE STOPPED.

18 A. YES, MA'AM.

19 Q. AND AT SOME POINT DECIDED -- YOU WENT TO OBTAIN
20 WARRANTS. IS THAT CORRECT? ARREST WARRANTS FOR THE TWO
21 SUSPECTS?

22 A. YES, MA'AM. AT SOME POINT IN TIME ARREST WARRANTS
23 WOULD HAVE BEEN OBTAINED.

24 Q. OKAY. AND DO YOU RECALL OBTAINING ARREST WARRANTS
25 FOR BOTH MARCUS THOMPSON AND KEVIN MERCER FOR THE CRIMES OF

1 MURDER, ARMED ROBBERY, CRIMINAL CONSPIRACY, AND POSSESSION OF
2 A FIREARM?

3 A. YES. I BELIEVE AT THE TIME I OBTAINED ARREST
4 WARRANTS BOTH WERE CHARGED WITH THE SAME OFFENSES; YES,
5 MA'AM.

6 Q. OKAY. AND THOSE -- AND THOSE WARRANTS WERE SWORN
7 OUT BASED ON YOUR ASSESSMENT OF THE EVIDENCE THAT HAD BEEN
8 PRESENTED TO YOU AT THAT TIME.

9 A. YES, MA'AM, BASED ON THE PRINCIPLE OF THE HAND OF
10 ONE IS THE HAND OF ALL, BOTH PERSONS PROXIMATE TO THE EVENT.

11 Q. OKAY. SO IN YOUR JUDGMENT, HAVING NUMEROUS YEARS OF
12 EXPERIENCE, AT THAT TIME BASED ON THE EVIDENCE THAT YOU
13 FOUND, YOU BELIEVED IT WAS APPROPRIATE TO GO TO A MAGISTRATE,
14 SIGN AN AFFIDAVIT HAVING BOTH OF THESE MEN CHARGED EQUALLY IN
15 THIS CRIME.

16 A. YES, MA'AM, BASED ON SOME ASPECTS OF LAW. YES,
17 MA'AM. THAT'S CORRECT.

18 Q. OKAY. AND YOU DESCRIBED THE PHYSICAL APPEARANCE OF
19 MARCUS THOMPSON AND KEVIN MERCER?

20 A. YES, MA'AM.

21 Q. I'D LIKE TO SHOW YOU A COUPLE OF PHOTOGRAPHS. YOUR
22 HONOR, MAY I APPROACH THE WITNESS?

23 THE COURT: YOU NEED NOT ASK FOR PERMISSION TO
24 APPROACH THE WITNESS.

25 MS. KIMBROUGH: THANK YOU.

1 BY MS. KIMBROUGH:

2 Q. DO THESE PHOTOGRAPHS COMPORT WITH YOUR MEMORY OF
3 WHAT BOTH OF THE SUSPECTS LOOKED LIKE ON THAT EVENING?

4 A. YES, MA'AM, EXCEPT MY FIRST RECOLLECTION OF MY
5 CONTACT WITH MR. MERCER IS HE HAD A BLACK BASEBALL CAP ON,
6 BUT THAT'S -- THAT'S THE WAY I REMEMBER MARCUS THOMPSON BEING
7 DRESSED AND HIS Demeanor, AND THAT'S THE WAY I REMEMBER KEVIN
8 MERCER'S DRESS AND STATURE. YES, MA'AM.

9 Q. OKAY. WERE YOU PRESENT WHEN THESE PHOTOGRAPHS WERE
10 TAKEN?

11 A. IF I WAS NOT IMMEDIATELY IN THAT ROOM WITH THEM, I
12 WAS IN AN ADJOINING ROOM BECAUSE WE HAD ATTEMPTED TO SPEAK
13 WITH BOTH OF THEM BACK AT THE OFFICE. SO I WAS VERY
14 PROXIMATE TO THOSE PICTURES BEING TAKEN.

15 Q. AND YOU CAN IDENTIFY THESE AS BEING THE PHOTOGRAPHS
16 TAKEN THE NIGHT OF THEIR ARREST.

17 A. THAT IS CORRECT. YES, MA'AM.

18 MS. KIMBROUGH: YOUR HONOR, WE MOVE TO HAVE THESE
19 MARKED AS DEFENSE EXHIBITS 1 AND 2.

20 MR. HUBBARD: NO OBJECTION, YOUR HONOR. NO
21 OBJECTION.

22 THE COURT: YOU'RE MOVING THEM INTO EVIDENCE?

23 MS. KIMBROUGH: YES, YOUR HONOR.

24 THE COURT: THEY'RE ADMITTED.

25 MS. KIMBROUGH: THANK YOU.

1 (DEFENDANT'S EXHIBITS 1 AND 2 WERE RECEIVED IN
2 EVIDENCE.)

3 BY MS. KIMBROUGH:

4 Q. JUST ONE -- JUST A COUPLE OF FINAL QUESTIONS. WERE
5 YOU PRESENT WHEN THE GLOVES ASSOCIATED WITH MARCUS THOMPSON
6 WERE RECOVERED OR DID YOU JUST HEAR ABOUT THAT AFTER THE
7 FACT?

8 A. I WAS JUST INFORMED OF THAT; I WAS NOT PRESENT.
9 MARCUS THOMPSON AND KEVIN MERCER WERE BOTH ALREADY KIND OF
10 SOMEWHAT IN CUSTODY BEFORE I GOT THERE.

11 Q. OKAY. SO YOU ARRIVED ON THE SCENE AND WERE UPDATED
12 ABOUT WHAT THE FINDINGS WERE.

13 A. THAT'S VERY CORRECT. YES, MA'AM.

14 Q. OKAY. AND I NOTICED YOUR REPORT. I DON'T KNOW IF
15 YOU CAN RECALL THIS, BUT IT WAS DATED JUNE 20TH OF 2002?

16 A. YES, MA'AM.

17 Q. OKAY. AND IT LOOKS LIKE YOU DID ONE FOLLOW-UP
18 REPORT MARCH 23RD OF 2006?

19 A. YES, MA'AM.

20 Q. AND THAT WAS SIMPLY TO SUPPLEMENT THAT AN I.D. CARD
21 HAD BEEN FOUND?

22 A. YES, MA'AM.

23 Q. IS THAT CORRECT?

24 A. YES, MA'AM. THEY WERE LOCATED IN A CASE FILE. THEY
25 WERE PAPER-CLIPPED BEHIND TWO PICTURES.

1 Q. OKAY. AND SO THAT WOULD BE THE EXTENT OF THE -- OF
2 YOUR INVOLVEMENT IN THIS CASE INSOFAR AS WRITTEN REPORTS ARE
3 CONCERNED?

4 A. YES, MA'AM.

5 Q... OKAY. BEG THE COURT'S INDULGENCE. JUST A COUPLE OF
6 QUICK QUESTIONS. DO YOU RECALL HOW MANY GLOVES WERE
7 RECOVERED FROM MARCUS THOMPSON? DO YOU RECALL IF IT WAS TWO
8 PAIRS BALLED UP INTO ONE?

9 A. I BELIEVE I WAS INFORMED OF THAT AT SOME POINT IN
10 TIME.

11 Q. OKAY.

12 A. BUT, AGAIN, I WAS NOT PRESENT WHEN THOSE WERE TAKEN
13 INTO CUSTODY, AND I BELIEVE THE OTHER GLOVES WERE FOUND AT
14 ANOTHER TIME WITH THE CLOTHING.

15 Q. YOU MEAN INSIDE THE PANTS POCKET?

16 A. THAT WAS MY UNDERSTANDING; YES, MA'AM.

17 Q. OKAY. ALL RIGHT. SO THE BAGGING OF THIS EVIDENCE,
18 THE GLOVES, THAT'S NOT SOMETHING YOU WOULD HAVE DONE. THE
19 PROCESSING TECHNICIANS AT THE SCENE WOULD HAVE DONE THAT?

20 A. THAT'S CORRECT. YES, MA'AM.

21 Q. OKAY. ONE FINAL QUESTION. I NOTICED IN THE
22 PHOTOGRAPH THAT WAS TAKEN HERE THAT YOU -- I'LL LET YOU REFER
23 TO IT AND I MAY BE ASKING YOU A QUESTION THAT'S BETTER
24 RESERVED FOR SOMEONE ELSE.

25 A. THAT'S FINE.