

**STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

**Appeal From Dorchester County
The Honorable Diane S. Goodstein, Circuit Court Judge**

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S.C. Supreme Court

TIMOTHY DION ROGERS,

Respondent,

vs.

STATE OF SOUTH CAROLINA,

Petitioner.

APPENDIX

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INDEX

INDEX	i
Transcript of Record - January 25 th and 27 th , 1994	1
Record on Appeal - The Honorable Luke N. Brown, Jr.	27
Notice of Intention to Appeal - March 3, 1994	1377
Final Brief of Appellant - July 26, 1995	1380
Final Brief of Respondent - July 7, 1995	1410
South Carolina Supreme Court Opinion No.: 24366 filed January 22, 1996	1478
Remittitur - February 7, 1996	1484
Record on Appeal - The Honorable Charles William Whetstone, Jr.	1485
Notice of Appeal - December 6, 1996	2625
Final Brief of Appellant - June 17, 1998	2633
Final Brief of Respondent - June 17, 1998	2649
South Carolina Supreme Court Affirmed Opinion No.: 25032 filed December 6, 1999	2668
Petition for Rehearing - December 20, 1999	2674
South Carolina Supreme Court Order granting Petition for Rehearing dated January 24, 2000	2677
South Carolina Supreme Court Affirmed Opinion No.: 25032 filed January 24, 2000	2678
Petition for Stay of Execution - February 7, 2000	2684
Remittitur - February 9, 2000	2687

Application for Post-Conviction Relief [2000-CP-18-575] - June 12, 2000	2688
Return to Application for Post-Conviction Relief [2000-CP-18-575] - July 13, 2000	2693
First Amended Application for Post-Conviction Relief - August 27, 2004	2704
Post-Conviction Relief Transcript of Record	2719
Second Amended Application for Post-Conviction Relief - March 31, 2005	3947
Post-Conviction Relief Hearing Transcript - March 25, 2005	3966
Post-Conviction Relief Hearing Transcript - Cont. - August 23, 2005	3985
Applicant's proposed Order - June 11, 2007	4068
Respondent's proposed Order - May 11, 2007	4209
Third Amended Application for Post-Conviction Relief dated May 31, 2007	4412
Motion to Strike Third Amended Application for Post-Conviction Relief - June 7, 2007 ...	4436
Order granting applicant to amend Third Application for Post-Conviction Relief dated September 22, 2008	4461
Revised Third Amended Application for Post-Conviction Relief - September 29, 2008	4464
Return to Motion to Amend Third Amended Application for Post-Conviction Relief dated October 15, 2008	4492
Order granting Applicant's Motion to Amend - June 19, 2009	4513
Respondent's proposed Order - Grounds 9 (G-H) - July 20, 2009	4523
Applicant's proposed Order - Grounds 9(G-H) - July 24, 2009	4541
South Carolina Supreme Court Order - June 17, 2010	4556
Order Granting New Sentencing, etc. - September 2, 2010	4558
Applicant's Motion to Alter or Amend - September 13, 2010	4732
Respondent's Motion to Alter or Amend - September 13, 2010	4750

Transcript of Hearing on Rule 59(e), SCRCP motions - October 8, 2010	4818
Amended Order Granting New Sentencing, etc. - December 10, 2010	4858
Notice of Appeal dated January 7, 2011	5009

1 THE COURT: You are excused. Thank you, sir. Tell me
2 your number again, please, sir.

3 JUROR: 63, sir.

4 THE COURT: 63, thank you. You're excused. Yes,
5 ma'am?

6 JUROR: Lieber Correctional Institution.

7 THE COURT: All right, tell me your name, please.

8 JUROR: Lisa Kent, 156.

9 THE COURT: And you work at Lieber? All right, you're
10 entitled to be excused if you would like to be.

11 JUROR: Okay.

12 THE COURT: You want to be excused?

13 JUROR: Yes.

14 THE COURT: You're excused, thank you, ma'am.

15 JUROR: Michael Morris, MacDougall Correctional
16 Institution.

17 THE COURT: Say again.

18 JUROR: Michael Morris, MacDougall Correctional
19 Institution.

20 THE COURT: All right, sir. Would you like to be
21 excused?

22 JUROR: Yes, sir.

23 THE COURT: You are excused. Yes, ma'am?

24 JUROR: I don't work within the walls of the
25 courthouse, we don't have an office, but I'm -- I'm the

1 criminal justice coordinator for the county.

2 THE COURT: Okay. If you don't work in the courthouse
3 it does not qualify, so you need to stay with us. Thank
4 you, ma'am.

5 Is there any member of the jury panel who has ever
6 been convicted or pled guilty in a state or a federal
7 court of a crime that carries a punishment of more than
8 one year and you've not had your civil rights restored by
9 pardon or amnesty? That doesn't mean you got a year in
10 jail, it means what you were convicted of or what you pled
11 guilty to carried a possible punishment of more than a
12 year. If that applies to you, please stand.

13 (No response.)

14 Is there any member of the jury panel who is unable to
15 read, write, speak or understand the English language? If
16 so, please stand.

17 (No response.)

18 Is there any member of the jury panel who has less
19 than a 6th grade education or its equivalent? If so,
20 please stand.

21 (No response.)

22 Is there any member of the jury panel who, by reason
23 of physical or mental infirmity, would be unable to render
24 efficient jury service? If so, please stand. Yes,
25 ma'am?

1 JUROR: I have a note from my doctor.

2 THE COURT: I can't hear you, you're going to need to
3 come up here and talk to me, I can't hear you way back
4 there.

5 JUROR: I have a letter from my doctor.

6 THE COURT: All right. Well, pass it up by the
7 bailiff, please, ma'am.

8 (Court reviewed document.)

9 THE COURT: Okay, based on a letter from
10 Dr. Linda S. Carter, Ms. Brown, Daisy Brown, is excused,
11 you're excused, Ms. Brown, thank you. Give that to the
12 clerk, please.

13 MR. BAILIFF: Yes, sir.

14 THE COURT: That's Court's Exhibit.

15 Now, ladies and gentlemen, the legislature has created
16 certain exemptions to jury service that are yours to use
17 if you want to. The first of those would be if you are
18 employed by or are an officer in the Department of
19 Corrections you don't have to serve if you don't want to.
20 Is there anybody else who has not stood for that, I've
21 already excused several jurors for that reason.

22 (No response.)

23 If you are over 65 years of age you do not have to
24 serve if you don't want to. Anyone who is over 65 and
25 does not want to serve, please stand. All right, sir,

1 tell me your name, please, sir.

2 JUROR: David Hoffman, Sr.

3 THE COURT: All right, sir. And you're 68 years old I

4 believe you said.

5 JUROR: 68 years old, be 69 next month.

6 THE COURT: Would you like to be excused?

7 JUROR: Yes, sir.

8 THE COURT: You are excused. Thank you, sir. Yes,

9 sir?

10 JUROR: James Sealy, No. 232. I'm 67 years old.

11 THE COURT: All right, sir, if you're 67 years old

12 would you like to be excused?

13 JUROR: Yes.

14 THE COURT: You're excused. Thank you, sir.

15 If you've served on a jury in this courtroom in the

16 last year you do not have to serve this week. If you've

17 served as a juror up here in the last three years it is

18 your choice as to whether or not you serve again this week

19 or not. Anybody in that category? Yes, sir?

20 JUROR: I served three years ago.

21 THE COURT: Can you tell me when that was, please,

22 sir?

23 JUROR: I can't remember.

24 THE COURT: Tell me your name, please.

25 JUROR: Henry Boyd.

1 THE COURT: All right, can you check and see when he
2 served? You need to stay with us until we take a look
3 and see when you served. If it's within three years
4 you're entitled to be excused if you want to be, so stay
5 with us for now, please. We'll have the clerk check on
6 it. Yes.

7 JUROR: Number 291, I can't believe it's been three
8 years ago, but it may have been, but I did serve. So,
9 could I have it checked, my name is Harry A. Wimpee.

10 THE COURT: Yes, sir. Check -- check Mr. Wimpee also.
11 We'll have the clerk check both of those. That is
12 criminal or civil court and you didn't have to actually
13 serve on a jury, if you came up here for jury service that
14 qualifies. Yes, sir?

15 JUROR: I came last December this time for jury
16 service, I didn't serve.

17 THE COURT: All right. Tell me your name, please.

18 JUROR: Paul Durham, 78.

19 THE COURT: And you came for what?

20 JUROR: Number 78.

21 THE COURT: And what did you come up here for?

22 JUROR: For jury panel last December.

23 THE COURT: Did you serve on the jury?

24 JUROR: No, sir.

25 THE COURT: All right, sir, we'll check on that one

1 also, please, stay with us. All right, we'll check on
2 that one also.

3 Is there any member of the jury panel who has children
4 at home under the age of seven years and you do not work
5 outside the home, you stay home and take care of that
6 child or those children? You're entitled to be excused if
7 you choose to be excused. Anybody in that category?

8 (No response.)

9 All right, ladies and gentlemen, I find that those of
10 you who are remaining with us are qualified to serve on
11 the jury panel with three possible exceptions of those who
12 may have served previously.

13 What I want to do now is tell you a little bit about
14 what to expect from jury service for this particular week.
15 This week of jury service is a little bit different from
16 other jury service, in that there will only be one case
17 tried for this particular week. And if you are not
18 selected on the jury for that one case you will be excused
19 from jury service.

20 We'll start the jury selection process in a little
21 while, but I want to tell you a little bit about what to
22 expect before we do that.

23 Your responsibility as jurors is to decide the facts
24 in the case. I'm not allowed to have an opinion about the
25 facts, the facts are entirely up to you. I will tell you

1 what the law is. You apply that law to the facts as you
2 hear them and you will serve as jurors in that capacity,
3 that is as fact finders.

4 You are -- and you alone make the decision in regard
5 to the facts, based on the testimony and the evidence
6 presented in the courtroom. Not something outside of
7 here.

8 Please don't be apprehensive about serving as jurors.
9 Sometimes people say they don't think they'll be a good
10 juror. I'll tell you, ladies and gentlemen, that all you
11 need to come in here with is your good common sense and
12 judgment. You don't need any special degree or special
13 education to be a good juror. You just need to come into
14 this process with an open mind and listen to the case as
15 it is presented. So, please don't be apprehensive about
16 that, this system has worked for a number of years and it
17 will continue to work.

18 Now there are various principles of law that I'll
19 instruct you about as we go through this process. I'm not
20 going to try to tell you about any of them now, but I will
21 tell you that under your oath you're obligated to accept
22 the law as it is given to you. So, please be mindful of
23 that also.

24 Now in this case, ladies and gentlemen, the defendant
25 has been found guilty of murder in a prior proceeding.

1 The purpose of this trial is to determine whether the
2 death penalty or life imprisonment without parole is the
3 appropriate punishment. So what you will be hearing in
4 this particular case is what is called the penalty phase
5 of a trial.

6 In this part of this trial or in this trial, each side
7 or that is the attorneys, will have the opportunity to
8 present evidence about the defendant's background,
9 character, age, family situation, intelligence and a
10 variety of other things. The purpose of this proceeding
11 is to give you, the jury, more information or as much
12 information as possible about the person you're about to
13 sentence.

14 The attorneys for the State of South Carolina, that is
15 the solicitor, will be trying to convince you to recommend
16 the death penalty. And the attorneys for the defendant
17 will be trying to convince you to recommend life
18 imprisonment.

19 Although I use the word recommend, I will tell you,
20 and I want to be sure that you understand, that whatever
21 you, the jury, recommend will be the sentence that is
22 imposed upon the defendant.

23 I instruct you, ladies and gentlemen, from this point
24 forward you are not to talk to anybody about your service
25 in this case. You can't talk among yourselves from this

1 point on. You can't go home and talk to anybody. You
2 can't go out in the community and talk to anybody.

3 That is a vital part of this process and the process
4 doesn't work unless you strictly abide by those
5 instructions. I'll remind you that you are under oath,
6 you're obligated to abide by those instructions.

7 If anybody tries to talk to you about this case after
8 you've told them that you're a juror, please find out
9 that -- find out that person's name and let me know who
10 that is because that's improper and that's something that
11 I need to deal with.

12 Also, if anybody has talked to you about this case
13 before you came here today, knowing that you were a juror,
14 please let me know who that person was so that I can deal
15 with that also.

16 From this point on you are not to read any newspaper
17 accounts of this case or listen to any radio or television
18 reports about this case.

19 Again, you are to decide this case based on what you
20 hear in the courtroom. Not something outside of here.
21 I'll remind you of that as you come and go in the
22 courtroom. But please strictly abide by those
23 instructions.

24 Now in a few minutes what we're going to do is tell
25 you a little bit about this case, I'll call out the

1 witnesses, I'll introduce the attorneys to you and some
2 various other things. And then the clerk, who has all of
3 your names up here in this barrel on her desk, will pull
4 your names out of that barrel one at a time. We'll pull
5 all of the names to establish an order that you will come
6 back up here in. You'll come back up here in groups of
7 six, six people per hour, and you'll come in here for
8 individual questioning.

9 The purpose of that questioning is not to embarrass
10 you or to humiliate you in any way, you'll be a guest of
11 the county. But you'll come in here and you'll be asked
12 individual questions on this particular case, please don't
13 be nervous about that, that is something that is provided
14 for under the statute in this case, in this state in cases
15 such as this. So that is part of the process.

16 We'll have you come back, as I said, six people per
17 hour. You'll be in a separate room, that is, all six of
18 you together, so you can't talk about the case while
19 you're in there.

20 But there will be a form that you'll need to look at
21 while you're in there. That form will have on it three
22 types of jurors. You need to look over that form and
23 decide which of those three best describes you as a
24 potential juror. And when you come out here for the
25 individual questioning you'll be asked about that form, so

1 please look at it and thoughtfully and thoroughly consider
2 it before you come out here for individual questioning.

3 We'll go through this process until we have selected
4 38 jurors. From those 38 will be selected the 14 who will
5 serve in this case. We'll have 12 jurors and two
6 alternates. If you are in that number of 14 you will stay
7 with us until we have completed the trial in this case.
8 And I'll tell you more about that as we go along.

9 So that generally is what you're looking at for
10 service on -- for this week. Please be patient with us as
11 we go through this process. We'll do everything that we
12 can to make it a comfortable procedure for you. We know
13 it's an inconvenience, jury service always is, and we're
14 mindful of that and we'll do everything that we can to
15 make it comply with all of your schedules.

16 Now I know some of you may have some problems with
17 serving on the jury this week that you haven't told me
18 about yet. We're going to deal with those when we
19 question you individually. So when you come back in here
20 you can tell me about those problems, individually when
21 you come in here and are on the stand and the attorneys
22 also have an opportunity to talk to you at that time.

23 If you have something that is an emergency, and I mean
24 an emergency, that you need to talk to me about this
25 morning, tell the clerk when we take a break, I'll be

1 happy to take that up with you. But it needs to be an
2 absolute emergency. If it's not an emergency we'll deal
3 with it on an individual questioning basis.

4 Okay, Solicitor, call your case, please.

5 MR. BAILEY: The state calls 93-GS-18-101, The State
6 versus Timothy D. Rogers, Jr.

7 THE COURT: All right. Would you pass me up -- no,
8 that's okay. Okay. Ladies and gentlemen, now I'm going
9 to ask you some more questions at this point. I will ask
10 questions and I will say something to the effect, if you
11 are connected by blood, related by marriage or acquainted
12 with someone, either the defendant, the victim or anybody
13 else who was involved in this case, if you are, or you
14 think you may be, stand up and let me question -- stand up
15 so we can take your name and question you about that
16 further in the individual questioning in the case. I need
17 for you to tell me any connection however slight. Yes,
18 ma'am?

19 JUROR: Acquaintance.

20 THE COURT: Ma'am.

21 JUROR: I was an acquaintance of the victim.

22 THE COURT: I -- I can't hear you.

23 JUROR: I was an acquaintance of the victim.

24 THE COURT: Well, I'm going to get to that in just a
25 minute, I hadn't started asking the questions yet, just be

1 seated, I'll deal with it in just a minute.

2 When I ask the questions I need to know any
3 connection, however slight. If you went to first grade
4 with somebody and you haven't seen them since then and you
5 recognize them or recognize their name in here today,
6 stand up and tell me about that. That's how detailed I
7 want it to be, please.

8 Okay, Mr. Rogers, would you stand, please? Is there
9 any member of the jury panel who is connected by blood,
10 related by marriage or acquainted with Timothy D. Rogers,
11 the defendant in this case? If so, please stand. Tell me
12 your name, please.

13 JUROR: Norma Neat Boyd.

14 THE COURT: Thank you, ma'am. You may be seated.
15 Yes, ma'am?

16 JUROR: Shirley Gilliard.

17 THE COURT: Say again.

18 JUROR: Shirley Gilliard.

19 THE COURT: Okay. Thank you, ma'am. Mr. Rogers, you
20 may be seated, thank you, sir. Okay, would you attorneys
21 approach for just a minute, please?

22 (WHEREUPON, a bench conference was held off the
23 record, in the presence of the prospective jurors, but out
24 of the hearing of the prospective jurors.)

25 Okay, ladies and gentlemen of the jury panel, the

1 indictment alleges that Timothy D. Rogers, did, in
2 Dorchester County, on or about November the 25th of 1992,
3 feloniously, willfully and with malice aforethought, kill
4 one, Stephanie B [REDACTED], B [REDACTED], by means of
5 shooting her in the back of the head with a .38-caliber
6 pistol. And that the said Stephanie B [REDACTED] did die as a
7 result thereof. Now that -- Mr. Rogers has already been
8 convicted of murder in regard to that indictment.

9 Is there any member of the jury panel who knows
10 anything about this case other than my reading that
11 indictment to you? If so, please stand. Tell me your
12 name, please.

13 JUROR: Kimberly W. Walker.

14 THE COURT: Say again.

15 JUROR: Kimberly W. Walker.

16 THE COURT: Thank you, ma'am.

17 JUROR: Jessie Goodwine. 177 -- 117.

18 THE COURT: Thank you, sir.

19 JUROR: Thomas Thrower. My jury number is 265.

20 THE COURT: Thank you.

21 JUROR: Angela Young.

22 THE COURT: Say it again, I couldn't hear it.

23 JUROR: Angela Young.

24 THE COURT: Thank you.

25 JUROR: Michael Karam.

1 THE COURT: Thank you.

2 MR. BAILEY: I'm sorry, I didn't get his name or
3 number.

4 THE COURT: Say it again, please.

5 JUROR: Michael Karam.

6 JUROR: Merle Handelsman, 124.

7 THE COURT: Is there any member of the jury panel---

8 MR. LEIENDECKER: One more, Your Honor.

9 THE COURT: Oh, excuse me. Yes, sir?

10 JUROR: Excuse me, Your Honor. Is your question are
11 we familiar with the case---

12 THE COURT: Do you know anything about the case,
13 whatever the source, yes, sir.

14 JUROR: Okay.

15 THE COURT: That means if you've read about it, heard
16 about it, seen it on TV, whatever, I don't want to know
17 how, but if you have.

18 JUROR: William Helwig, juror 128.

19 THE COURT: Thank you.

20 JUROR: Mickey Stewart, 252.

21 JUROR: Darin Newton, 191.

22 THE COURT: I need for all of you to speak as loudly
23 as you can and let's go slow, because the attorneys are
24 writing down your names as we go. Say it again, please.

25 JUROR: Darin Newton, 191.

1 THE COURT: Thank you.
2 JUROR: Angela Kraft, 160.
3 JUROR: Kathy Rogers, 221.
4 JUROR: Patty Stump, 157 -- 257.
5 JUROR: Claire Raymond.
6 JUROR: Anne Peterson, 203.
7 JUROR: Earl Shepard 235.
8 JUROR: Robert Fletcher 92.
9 JUROR: John Nolen 193.
10 JUROR: Joan Parham, 199.
11 JUROR: Walter D. Myers, Jr. 187.
12 COURT REPORTER: I can't hear.
13 THE COURT: Wait a minute, that was 187. All right.
14 Say again. All right, sir, go ahead.
15 JUROR: Walter D. Myers, Jr. 187.
16 THE COURT: 187, thank you.
17 JUROR: Eugene Barnwell, No. 13.
18 THE COURT: Number 13. Thank you.
19 JUROR: 43, Russell Carter, III.
20 THE COURT: Thank you, sir.
21 JUROR: Number 86, Penny Fender.
22 THE COURT: 86. Thank you. Couldn't hear that one,
23 say it again, please.
24 JUROR: Number 19, Darlene Bennett.
25 THE COURT: 19, thank you.

1 JUROR: Alfred Clarkson, No. 50.
2 THE COURT: 50.
3 JUROR: Number 21, Nancy Bishop.
4 THE COURT: 21. Thank you.
5 JUROR: 113, Carol Goodier.
6 THE COURT: Thank you.
7 JUROR: 185, Carrie Lou Murray.
8 THE COURT: 185. Thank you.
9 JUROR: Lasonia Williams, 289.
10 THE COURT: 289. All right. Thank you. All right.
11 Yes, sir. Sir with the green shirt, right here.
12 JUROR: Allen Marchant, 171.
13 THE COURT: 171. Thank you. Yes, ma'am?
14 JUROR: Gavett Holman.
15 THE COURT: I couldn't hear that. Say it again,
16 please, ma'am.
17 JUROR: Gavett Holman.
18 MR. BELL: 139.
19 THE COURT: 139. Thank you. Anyone else?
20 (No response.)
21 Is there any member of the jury panel who was
22 connected by blood, related by marriage or acquainted in
23 any way with the victim in the case, Stephanie B[REDACTED]?
24 If so, please stand. Tell me your name again please,
25 ma'am.

1 JUROR: Angela Young.

2 THE COURT: Thank you, ma'am. Okay, ladies and
3 gentlemen, I will now call out a list of the prospective
4 witnesses in this case, these are the witnesses who may be
5 called, they do not all have to be called. If you are
6 connected by blood, related by marriage or acquainted in
7 any way with any of these witnesses, please stand when
8 that witness's name is called.

9 Earl Asbell with the Dorchester County Sheriff's
10 Department. Tell me your name, please.

11 JUROR: Merle Handelsman, 124.

12 THE COURT: Thank you.

13 JUROR: Nancy Bishop, 21.

14 THE COURT: Thank you, ma'am.

15 JUROR: Kathy Rogers, 221.

16 THE COURT: 221.

17 Dr. Connie Best. assault victim . Patsy Bunch. Mike
18 B[REDACTED]. Tell me your name again, please.

19 JUROR: Angela Young.

20 THE COURT: Thank you, ma'am.

21 Melinda B[REDACTED]. James Carver. David Collins.

22 Dr. Richard L. Friarson. Isaiah Jennings. Herthenia
23 Lincoln. Tell me your name please, ma'am.

24 JUROR: Kimberly W. Walker.

25 THE COURT: Thank you, ma'am. Chris Mack. Dr. Clay

1 Nichols.

2 JUROR: Kathy Rogers, 221.

3 THE COURT: Thank you, ma'am. Lester C. Patrick.

4 Tommy Powell. James L. Robinson. Jeffery A. Rogers, who

5 is the coroner.

6 JUROR: Kathy Rogers, 221.

7 THE COURT: Thank you, ma'am.

8 JUROR: Michael A. Hillery.

9 THE COURT: Thank you.

10 JUROR: Merle Handelsman, 124.

11 THE COURT: Thank you, ma'am.

12 JUROR: Jessie Goodwine, 117.

13 THE COURT: Thank you.

14 JUROR: Carol Goodier, 113.

15 THE COURT: Thank you.

16 JUROR: Number 43, Russell Carter, III.

17 JUROR: Number 265, Tommy Thrower.

18 THE COURT: Thank you, sir. George Scharf,

19 S-C-H-A-R-F. Stephanie D. Simmons.

20 Dr. Curtis Worthington.

21 JUROR: Patty Stump, 257.

22 THE COURT: Anthony M. Riley. Reverend Jessie

23 Middleton. Joyce Rogers. Martin N [REDACTED] Applicant's Mother

24 [REDACTED]. Dorothy Nurse.

25 (No response.)

1 Okay, Mr. Bailey, would you stand and introduce
2 yourself to the panel and tell us about the solicitor's
3 office, please?

4 MR. BAILEY: I'm Walter Bailey, I'm first circuit
5 solicitor. This is Harrison Bell, assistant solicitor in
6 my office. Darlene Simmons who works for us. Jodi
7 Hortman.

8 We also have James Messervy, who will not be involved
9 in this case. Scott Wallinger, Meg McDonald, Virgil Deas
10 and Tom MacGregor.

11 THE COURT: Is there any member of the jury panel who
12 is connected by blood, related by marriage or acquainted
13 in any way with Mr. Bailey or any other member of the
14 solicitor's staff or if you were represented by any of
15 those attorneys when they were in private practice, please
16 stand.

17 JUROR: Kathy Rogers, 221.

18 JUROR: William Helwig, 128.

19 THE COURT: 128, thank you.

20 JUROR: Merle Handelsman, 124.

21 THE COURT: Say what number again? Thank you, ma'am.

22 JUROR: Anne Peterson, 203.

23 THE COURT: Thank you.

24 JUROR: Campbell, 142.

25 THE COURT: Say again.

1 JUROR: Or 42, Campbell, 42.

2 THE COURT: 42, thank you. The lady in the back who
3 stood up, we could not hear you, would you say your name
4 again, please, ma'am?

5 JUROR: Jane Ramsey.

6 THE COURT: Thank you, ma'am. Okay, Mr. Runyon, would
7 you stand and introduce yourself to the panel and
8 introduce Mr. Leiendecker and tell us about your law firm,
9 please.

10 MR. RUNYON: My name is William Runyon. I've
11 practiced law in Charleston since September 13th, 1967. I
12 currently practice with Dan Stewart and N. Elliott
13 Barnwell in Charleston. And I'm assisted in cocounsel
14 with Mr. Mark Leiendecker of the Dorchester County Public
15 Defender.

16 THE COURT: Is there any member of this jury panel who
17 is connected by blood, related by marriage or acquainted
18 in any way with Mr. Runyon or Mr. Leiendecker or if you
19 have been represented by either of these lawyers at
20 anytime in their private practice, if so, please stand.

21 JUROR: Kathy Rogers, 221.

22 THE COURT: Anyone else?

23 (No response.)

24 THE COURT: Is there any member of the jury panel who
25 was a member of the grand jury that found the indictment

1 in this case? If so, please stand.

2 (No response.)

3 Any further questions at this time from the state?

4 MR. BAILEY: Not from the state, Your Honor.

5 THE COURT: From the defendant?

6 MR. RUNYON: None from defense, Your Honor.

7 THE COURT: Okay. Okay, ladies and gentlemen, there
8 will be additional questions when we have you in here
9 individually.

10 What we're going to do now is pull the list of names
11 so we'll establish a list and an order for you to come
12 back in. This process will take the clerk about 15
13 minutes to pull all the names and establish an order. So
14 we will take a 15 minute break while this is being done.
15 If you need to leave the courtroom you may do that, but
16 she needs for you to be as quiet as you can while you do
17 that. So, you may get up and move around and leave the
18 courtroom if you want to, just be back in here in 15
19 minutes, please. Thank you.

20 (Brief recess was taken.)

21 THE COURT: All right, ladies and gentlemen, I will
22 now call out the groupings that you'll be coming back in.
23 So what I'll ask you to do, so there won't be any
24 confusion about this, is when your name is called, please
25 stand until I tell you to be seated, that way you'll know

1 which group you're in. And we'll know that you are here,
2 too.

3 Okay, the first group of six will need to be back
4 at -- we'll start this around twelve o'clock today. Or as
5 soon as we finish this process. Phillip O'Neal, Merle
6 Handelsman, Claude Bowen, Darlene Pigate, Claire Raymond
7 and Walter D. Myers, Jr. All right, you six are the first
8 group. When I get through calling out all the other names
9 I want the six of you to come back through here into the
10 jury room and we'll start with you at twelve o'clock or
11 around there. All right. You may be seated, thank you.

12 Okay, the second group of six to be here at two
13 o'clock this afternoon, Joan Parham, Melissa Strange,
14 Joseph J. Clayton -- remain standing, please, ma'am --
15 Phillip Bates, Arleitheia Kathy Rogers, Wanda F. Bradley.
16 There's Ms. Bradley. All right, two o'clock, please.
17 Please be in the jury room at two o'clock. What I'll ask
18 you to do is come up the back stairs and come directly to
19 the jury room. There'll be a bailiff there to instruct
20 you where you go, but all of you need to be there at two
21 o'clock this afternoon, please. You may be seated.

22 Three o'clock this afternoon, Nancy R. Bishop, Carol
23 Goodier, G-O-O-D-I-E-R, Joseph Stewart, Anthony
24 Singletary, Jessie Goodwine, Norma J. Neat. And where is
25 Anthony Singletary? All right, good. Okay, there he is,

1 yes, sir. Thank you, you may be seated. That's three
2 o'clock this afternoon.

3 Four o'clock this afternoon, Judy K. Reynolds, David
4 Hirt, Angela Kraft, Keith Fields, Cynthia Howard, Sarah
5 Smith. Okay, that's four o'clock this afternoon, please.

6 Five o'clock this afternoon. Daniel J. Aleff,
7 A-L-E-F-F, Donald M. Kizer, Joycelyn Pryor, Allen
8 Marchant, Russell Davies, Alexander Thompson. All right,
9 that's five o'clock this afternoon, please. Please be in
10 the jury room at five o'clock this afternoon.

11 Okay, nine o'clock in the morning. Nine o'clock in
12 the morning, please, Shirley Gilliard, Sallie Scarberry,
13 Larry Campbell, Sharon Davidson, Gregory Hart, Mickey
14 Stewart. Thank you, you may be seated. That's nine
15 o'clock in the morning, please.

16 Ten o'clock in the morning. Lasonia Williams,
17 Kimberly Waker -- Walker -- please remain standing --
18 Jacqueline D-I-N-G-E, Robert Fletcher, Penny Fender, Kenny
19 Snider. Okay, that's ten o'clock in the morning, please,
20 thank you.

21 And I know I'm not doing justice to some of your names
22 so I apologize, I get called all kind of things sometimes,
23 too, so please excuse me if I mispronounce your name.

24 Evelyn White -- this is eleven o'clock in the morning,
25 Evelyn White, Michael A. Hillery, William Helwig, Sandra

1 Stevenson, Gina Miller, Julia White. Okay, that's eleven
2 o'clock tomorrow morning, please.

3 Twelve o'clock tomorrow, 12 noon tomorrow. Edward L.
4 Phillips, Charles Ferrall, Kirk Williams, Deborah Owens,
5 Walter Baldwin, Ronda Rabon. That's twelve o'clock
6 tomorrow.

7 Okay, two o'clock tomorrow afternoon, John D. Nolen,
8 Sallie S. Johnson, Victoria Ellis, Evelyn Connolly, Joseph
9 Mendrzycki, M-E-N-D-R-Z-Y-C-K-I, Jolene Campbell. Okay,
10 that's two o'clock tomorrow afternoon.

11 Three o'clock tomorrow afternoon. Earl L. Shepard,
12 Scott G. Burcham, Russell E. Carter, III, Thomas M.
13 Thrower, Angela W. Young, Theresa V. Bell. Okay, four
14 o'clock tomorrow afternoon -- you may be seated, thank
15 you.

16 Four p.m. tomorrow afternoon. Edna J. Ford, juror
17 number 93, Edna J. Ford.

18 MR. LEIENDECKER: She's not here.

19 CLERK OF COURT: She's over 65.

20 THE COURT: Vernell Threat, John Ladson, Beverly
21 Howell, Eugene Barnwell, Darrell Tracy. Okay, that's four
22 o'clock tomorrow afternoon, please.

23 Harold A. Douglas, III, Roger Hinton, Deanna M.
24 Peters, Darin Newton, Gena U. C-L-A-B-A-T-T-A-R-I, Alfred
25 Clarkson, III. Okay, that's five o'clock tomorrow

1 afternoon, five o'clock tomorrow afternoon.

2 Nine o'clock Wednesday morning. Kenneth L. Mellad,
3 M-E-L-L-A-D, Mellad, Richard D-A-P-P-O-L-L-O-N-I-O, Larry
4 H. Spell, Gwendelyn Brownings, Anne D. Peterson, Gavett S.
5 Holman. That's nine o'clock Wednesday morning. Thank
6 you.

7 Shawn B. Coates, Troy A. Graham, Robert G. Antonsen,
8 Herlihy, John I. Herlihy, Robert J. Z-D-E-M-E-K, Jr. and
9 Melissa D. Allen. That's ten o'clock tomorrow morning,
10 please, ten o'clock tomorrow morning.

11 MR. LEIENDECKER: Wednesday.

12 THE COURT: Excuse me, Wednesday morning, I apologize.
13 Thank you. Wednesday morning.

14 All right, eleven o'clock Wednesday morning, Monicè C.
15 Foy -- Monroe? Okay, between some of these names and this
16 handwriting here I'm having trouble, I apologize. Monroe
17 C. Foy, Michael L. Karam, K-A-R-A-M, Donald D. Wade, Jr.,
18 Gerard J. Silvernale, Connie A. Gordon, Don L. Scoggins.
19 Eleven o'clock Wednesday morning.

20 Twelve noon on Wednesday. Phillip K. Gagnon, James
21 George, Jr., Matthew P. G-O-E-C-K-E-L, William J. Edwards,
22 Henrietta H. Goodwine, Lallah A. Clark. That's 12 noon on
23 Wednesday, please. Twelve noon on Wednesday.

24 Two o'clock on Wednesday. Patricia L. Stump,
25 Celena A. Gathers, Mark A. Westbury, Tommie J. Adams,

1 Carrie Lou Murray, Richard D. Hodges. And three o'clock
2 on Wednesday -- that's two o'clock crowd on Wednesday.
3 You may be seated.

4 And three o'clock on Wednesday, Vernon Harr, Jr., Jane
5 W. Ramsey, Darlene Bennett Russ. The three of you need to
6 be here at three o'clock on Wednesday afternoon, please.

7 Unless we call and let you know otherwise, please be
8 here at the time you are supposed to be here.

9 If you have some emergency and you cannot be here,
10 either you call the clerk's office or have someone call
11 the clerk's office on your behalf and let us know what has
12 happened. If you don't show up we'll assume something's
13 happened to you and we'll send the sheriff to look for
14 you. So, please be here when you're supposed to be here.
15 Does everybody understand?

16 Please remember to strictly abide by the instructions
17 that I gave you. That is, don't talk about the case with
18 anybody. Don't let anybody talk about the case with you.
19 Don't talk among yourselves about the case. Don't read
20 the newspaper about the case.

21 The best rule to go forward with on that from now on
22 until you know whether you're on or off this jury is just
23 don't read the newspaper until you know whether you're on
24 the jury or off the jury. Once you're clear then you can
25 read the newspaper, but for now just don't read it. Don't

1 listen to the evening news or the radio news, you may
2 inadvertently hear something about this case.

3 What we need you to be able to do is to decide this
4 case based on what you hear in the courtroom. Not
5 something outside of here. Please strictly abide by these
6 instructions. You are all under oath. Under your oath
7 you are obligated to abide by these instructions.

8 All right, the first six jurors need to report to the
9 jury room. If you'll come up here the bailiff will show
10 you where to go. The remainder of you are excused until
11 the times you need to come back. Thank you.

12 (Panel out.)

13 THE COURT: Is the state ready to proceed?

14 MR. BAILEY: State's ready, Your Honor.

15 THE COURT: Defendant ready?

16 MR. RUNYON: Yes, Your Honor.

17 THE COURT: All right, the jurors probably have not
18 had time to look over the three types of juror form yet,
19 so let's take about five minutes -- the forms aren't even
20 in there yet. We'll put six of the juror forms in there.
21 Would the state like to look at the form?

22 MR. BAILEY: Yes, sir.

23 THE COURT: Let the state and defendant review the
24 form before it's gone in, please.

25 MR. RUNYON: Your Honor, that's the standard form as

1 far as defense is concerned and we have no objection.

2 MR. BAILEY: I don't think I do but if I could just --
3 give me a second.

4 (Counsel reviewed form.)

5 MR. BAILEY: It's fine, Your Honor, no objection.

6 THE COURT: All right. We'll be at ease for five
7 minutes while the jurors look over the forms. Are there
8 any other matters to be taken up by the state at this
9 time?

10 MR. BAILEY: No.

11 THE COURT: By the defendant?

12 MR. RUNYON: Your Honor, we just have one question, as
13 a housekeeping rule, frankly, as it relates to Mr. Rogers
14 whereabouts during the off hours of this trial. Our
15 understanding was that he would maintain at the Dorchester
16 County Jail at least during the week.

17 MR. BAILEY: Judge, I had talked with the Department
18 of Corrections about that, we've got one and possibly two
19 state's witnesses that need to be housed in the Dorchester
20 County Jail. And I think that might create a security
21 problem for those people.

22 THE COURT: Well, Mr. Rogers -- Mr. Rogers has to be
23 available to the defense attorneys and it's probably more
24 prudent to put the state's witnesses somewhere else and
25 let Mr. Rogers be here rather than Mr. Rogers having to be

1 somewhere else where counsel can't talk to him. Any
2 objection to that, Mr. Runyon?

3 MR. RUNYON: No objection, Your Honor, we -- as I said
4 we're -- we're willing to work, but Columbia is just a
5 little bit far to drive at night.

6 THE COURT: Yes, sir, that's -- that's not practical.
7 Mr. Bailey, do you think you can make arrangements to
8 house your prisoners somewhere else or your witnesses
9 slash prisoners somewhere else?

10 MR. BAILEY: Yes, sir.

11 THE COURT: Let's see if we can work that out so
12 Mr. Rogers can stay here. All right, we'll be at ease for
13 a few minutes. Anything else, Mr. Runyon?

14 MR. RUNYON: Nothing else, Your Honor.

15 THE COURT: All right. Thank you.

16 (Brief recess was taken.)

17 THE COURT: Okay. We may have a problem with the
18 housing that we discussed before we took the break, but
19 we'll iron that out sometime over lunch, we're waiting to
20 hear back -- a call from Columbia.

21 All right. The first juror to be questioned is
22 Phillip L. O'Neal. Bring Mr. O'Neal in, please.

23 (Juror brought into courtroom.)

24 EXAMINATION BY THE COURT:

25 Q Okay, Mr. O'Neal have a seat, please, sir. Okay,

1 Mr. O'Neal, I'll remind you that you are under oath, you
2 were sworn in earlier this morning with the rest of the
3 jurors.

4 There are no right or wrong answers to any of the
5 questions, we just want you to be completely honest with
6 us in your responses to the questions. All right, sir?
7 I'll ask you some questions and the solicitor and
8 Mr. Runyon or Mr. Leiendecker will have the same
9 opportunity.

10 Since you received your summon to come here for jury
11 service, that's when you got the first papers from the
12 clerk's office, since you received that, has anybody
13 talked to you about this case?

14 A No, sir.

15 Q Have you talked to anybody about it?

16 A No, sir.

17 Q Now we went through a list of names this morning
18 of people who were either witnesses or could somehow be
19 involved in the case. Did you know any of those people?

20 A No, sir.

21 Q Have you formed or expressed any opinion about
22 the case, that is, as to what the penalty should be, what
23 penalty should be imposed, either a life sentence or death
24 penalty?

25 A No, sir.

1 Q Do you have any bias or prejudice against the
2 prosecutors for bringing this case? Or against the
3 defendant just because he has already been convicted of
4 murder in the case?

5 A No, sir.

6 Q Do you know of any reason why you could not be
7 fair and impartial to both the state and the defendant?

8 A I don't know of any reason, no.

9 Q Can you and will you follow the law that the
10 Court tells you about?

11 A Yes, sir.

12 Q Now as I told you earlier, this defendant has
13 previously been found guilty of murder. The jury in this
14 case will simply decide the punishment, that is, life in
15 prison without parole or the death penalty.

16 Now you'll hear the mitigating and aggravating
17 circumstances that'll be presented during this phase of
18 the trial. After you have heard all of that -- as you
19 hear all of that will you keep an open mind and listen to
20 everything?

21 A Yes, sir.

22 Q All right. Now you had the opportunity to look
23 over that form that had on it the three types of jurors?

24 A Yes, sir.

25 Q Which one of those three do you think best

1 describes you?

2 A The third one.

3 Q That's a juror who'll keep an open mind and
4 listen to everything before deciding on punishment?

5 A Yes, sir.

6 Q Will you keep an open mind and listen to
7 everything that's presented before you decide between a
8 life sentence or the death penalty?

9 A Yes, sir.

10 Q Do you have any strong feelings or beliefs
11 that'll interfere with your choice between a life sentence
12 or the death penalty?

13 A No, sir.

14 Q If as part of this process I tell you that if you
15 go through that -- this phase of the trial and you listen
16 to everything and listen with an open mind and after
17 thoughtfully and thoroughly considering everything you and
18 the other jurors unanimously decide that a death penalty
19 is the appropriate punishment. If that is your choice,
20 would you be able to stand up here in open court and say
21 that was your choice, if it was?

22 A Yes, sir.

23 Q Would you be able to sign your name to a verdict
24 form that says that was your verdict, if it is?

25 A Yes, sir.

1 Q Would you be able to do that knowing that will
2 eventually result in the execution of a defendant?

3 A Yes, sir.

4 Q Do you understand, Mr. O'Neal, that part of this
5 process is -- and a vital part of it is that you keep an
6 open mind throughout the entire presentation that you're
7 going to hear before you decide on the appropriate
8 punishment?

9 A Yes, sir.

10 Q And you can do that?

11 A I can, yes, sir.

12 Q All right. Another thing that you're going to
13 need to do if you're picked on this jury is you have to
14 stay with us, that is be sequestered while the case is
15 being tried. Understanding that that is difficult for
16 anybody who might be involved in such a case, will you be
17 able to make those arrangements if you're picked on the
18 jury?

19 A Yes, sir.

20 Q And you've thought about that and you're
21 comfortable that you can make those arrangements?

22 A Yes, sir.

23 THE COURT: Answer any questions the solicitor might
24 have, please, sir.

25 DIRECT EXAMINATION BY MR. BAILEY:

1 Q Mr. O'Neal, I'm Walter Bailey, I just want to ask
2 you a few questions to follow-up on what Judge Whetstone
3 said. And you understand that nobody is going to ask you
4 to predict what you would do in this case, because you
5 haven't heard the facts, but you've indicated that you
6 could vote for life without parole or for the death
7 penalty depending on what you heard; is that correct?

8 A Yes, sir.

9 Q And if the case was bad enough could you vote for
10 the death penalty knowing that sentence would be carried
11 out?

12 A Yes, sir.

13 Q All right, sir. And is there any reason at all
14 that would prevent you from sitting as a fair and
15 impartial juror both to the defense and to the state of
16 South Carolina in this case?

17 A Not -- no.

18 MR. BAILEY: Okay. Mr. O'Neal, I believe that's all I
19 have. Thank you very much.

20 THE COURT: Mr. Runyon or Mr. Leiendecker.

21 MR. RUNYON: No questions, Your Honor.

22 THE COURT: Okay, Mr. O'Neal, I need to talk to the
23 lawyers for a minute, would you step back out here outside
24 the courtroom and I'll call you back in in just a few
25 minutes.

1 (Juror excused from courtroom.)

2 THE COURT: What says the state?

3 MR. BAILEY: Qualified, Your Honor.

4 THE COURT: Defense?

5 MR. RUNYON: Qualified, Your Honor.

6 THE COURT: All right, he's a qualified number three
7 juror. Bring him back in, please.

8 (Juror brought into courtroom.)

9 THE COURT: Okay, Mr. O'Neal, I find that you're
10 qualified to serve on this jury panel. That doesn't mean
11 you're on the jury, it means you're in the group from
12 which the final 14 jurors will be selected.

13 So what you need to do, I'm going to allow you to go
14 home at this point, you need to be back up here -- and as
15 a precaution what I'm going to do, I don't know what time
16 to tell you to come back yet, so we'll have a message on
17 the answering machine this afternoon after 6 p.m. -- Let's
18 say after seven. Call that machine after 7 p.m. and
19 follow the instructions that are on there. More than
20 likely today it's going to say call back some time
21 tomorrow. But please follow whatever the instructions
22 are. If it says come back at a certain time, come back at
23 that time.

24 When you come back up here, have your clothes packed
25 and in your car and be prepared with us -- be prepared and

1 have enough clothes to stay with us for at least a week
2 while the case is being tried. Do you understand?

3 JUROR: Yes, sir.

4 THE COURT: All right, sir. Now, between now and then
5 don't talk to anybody about the case. Don't let anybody
6 talk to you. Don't read the newspaper. Don't listen to
7 the radio or television news about the case.

8 Any questions? All right, do you have the call in
9 number, is it available? There you are, sir. All right
10 that'll tell you when to call back in -- where to call
11 back into. After seven o'clock tonight. Thank you, sir.

12 (Juror excused.)

13 THE COURT: Okay, bring in Merle H. Handelsman,
14 please.

15 (Juror brought into courtroom.)

16 EXAMINATION BY THE COURT:

17 Q Okay, Ms. Handelsman, I'll remind you that you
18 are under oath, you were sworn in this morning with the
19 rest of the panel.

20 A Yes, sir.

21 Q I'm going to be asking you some questions. There
22 are no right or wrong answers to any of the questions, we
23 just want you to be completely honest with us in your
24 responses. After I've asked you some questions the
25 solicitor and Mr. Runyon or Mr. Leiendecker will have the

1 same opportunity.

2 Since you received your summons to come here for jury
3 service, has anybody talked to you about this case?

4 A No, sir.

5 Q Have you talked to anybody about the case?

6 A No, sir.

7 Q Have you read or heard anything about the case
8 from any source?

9 A Yes, sir.

10 Q Okay. And tell me what you read, if you
11 remember.

12 A There was a little article in the paper Friday in
13 the General Scene.

14 Q Would that have any affect on your ability to be
15 fair and impartial in the case?

16 A No, sir.

17 Q This morning we read a list of names of people
18 who could be involved in the case, either as witnesses or
19 as -- or otherwise involved as attorneys or whatever their
20 role might be. Did you know any of those people?

21 A Yes, sir.

22 Q Would the fact that some of those people might
23 participate in some form or in some manner in this case
24 have any affect on your ability to be fair and impartial
25 in the case?

1 A No, sir.

2 Q Have you formed or expressed any opinion about
3 the case or about what the punishment should be, either
4 life in prison without parole or the death penalty?

5 A No, sir.

6 Q Do you have any bias or prejudice against the
7 prosecutors for bringing this case or against the
8 defendant in the case?

9 A No, sir.

10 Q Do you know of any reason why you could not be
11 fair and impartial to both the state of South Carolina and
12 the defendant?

13 A No, sir.

14 Q Would you follow the law that the court
15 instructed?

16 A Yes, sir.

17 Q Now I told you this morning that this defendant
18 has previously been found guilty of murder. So what
19 you're dealing with is a convicted murderer in the case.

20 In this case the jury has to decide the penalty that
21 should be imposed, either life in prison or the death
22 penalty. Each side will have the opportunity to put up
23 evidence and testimony about what the punishment ought to
24 be, life in prison or the death penalty. After hearing
25 all the mitigating and the aggravating circumstances the

1 jury decides on the punishment, life in prison or the
2 death penalty.

3 Now you had the opportunity back in the jury room to
4 look over the form that had on it the three types of
5 jurors. Which one of those three do you think best
6 describes you?

7 A The third type.

8 Q That's a juror who will keep an open mind and
9 listen to everything that's presented before deciding on
10 punishment?

11 A Correct.

12 Q If you sat on a jury such as this, and I'm
13 talking hypothetically now, not about this case. If you
14 sat on such a jury as this and you listened with an open
15 mind to everything that was presented. And after hearing
16 all of that you and the other jurors unanimously decided
17 that the death penalty was the appropriate punishment. If
18 that was your choice, would you be able to sign a form
19 saying that was your choice if that was required of you?

20 A Yes, sir.

21 Q Would you be able to stand up here in the
22 courtroom and say that was your choice, if it was?

23 A Yes, sir.

24 Q And you'd be able to do those things knowing that
25 will eventually result in the execution of a defendant?

1 A Yes, sir.

2 Q Do you have any strong feelings or beliefs
3 that'll interfere with your choice between a life sentence
4 or the death penalty?

5 A No, sir.

6 Q Do you understand that it is vitally important
7 for this process that you keep an open mind throughout the
8 entire proceeding before you decide on punishment?

9 A Yes, sir.

10 Q And will you be able to do that?

11 A Yes, sir.

12 Q As part of this process it is also necessary that
13 the jurors stay with us while the case is being tried.
14 That is, you are sequestered once you're selected on the
15 jury. Will you be able to make those arrangements if
16 you're picked on this jury?

17 A Yes, sir.

18 THE COURT: Answer any questions the solicitor might
19 have, please. Mr. Bailey.

20 DIRECT EXAMINATION BY MR. BAILEY:

21 Q Ms. Handelsman, you've indicated you're the third
22 type juror that could, depending on what you heard, vote
23 for either life without parole or the death penalty; is
24 that correct?

25 A That is correct.

1 Q Okay. So you'd have no preconceived notions one
2 way or the other, you'd want to hear all the facts and the
3 law from the judge first?

4 A That is true.

5 Q And if the case was bad enough you could, you've
6 indicated to the judge, vote for the death penalty, sign
7 the death verdict form and announce that in open court; is
8 that correct?

9 A Yes, sir.

10 Q Do you know of any reason we may not have
11 mentioned up 'til this point that you think could in any
12 way prevent you from serving as a fair juror to both
13 sides, the state and defense?

14 A No, sir.

15 MR. BAILEY: Thank you. That's all I have.

16 THE COURT: Mr. Runyon, Mr. Leiendecker.

17 CROSS-EXAMINATION BY MR. RUNYON:

18 Q Ms. Handelsman, earlier today you indicated --
19 pardon me, I've got what's going around, so. You
20 indicated you knew Mr. Asbell?

21 A Correct.

22 Q And, how -- how well do you know Mr. Asbell?

23 A Not real well.

24 Q Well, I mean, do you see him socially, do you
25 just know him from business or what have you?

1 A Just see him around the county.

2 Q Okay. Have you ever had an occasion to talk with
3 him about his work with the county sheriff's department?

4 A Yes, sir.

5 Q All right. Have you ever -- do you recall ever
6 having had him mention to you this case? Or have you
7 discussed this case with him, this is long prior to your
8 being selected to come up here?

9 A No, sir.

10 Q You have no recollection of that?

11 A No.

12 Q And when you -- when you did see him -- have you
13 seen him, talked with him about his work in the last two
14 years?

15 A It might -- I might have, but, I don't think so.

16 Q Okay. But, you have discussed with him his work
17 for the county and what he does for the county and --
18 police work in general?

19 A Correct.

20 MR. RUNYON: All right. Thank you, no further
21 questions.

22 THE COURT: Anything else, Solicitor?

23 MR. BAILEY: No, sir, Your Honor.

24 THE COURT: Okay, Ms. Handelsman, would you stand back
25 in the back there for just a minute, please, while I talk

1 to the attorneys?

2 (Juror excused from courtroom.)

3 THE COURT: What says the state?

4 MR. BAILEY: Qualified, Your Honor.

5 THE COURT: Defendant?

6 MR. RUNYON: Your Honor, obviously, she's qualified
7 for the pool.

8 THE COURT: All right. The juror, Ms. Handelsman, is
9 a qualified number three juror. Bring her back in.

10 (Juror brought into courtroom.)

11 THE COURT: Okay, Ms. Handelsman, I find that you're
12 qualified to serve on the jury. That doesn't mean you're
13 on the jury, it means you're in the group from which the
14 jury will be selected.

15 What I'll ask of you, please, ma'am, is to call back a
16 call in number this evening after seven o'clock. There
17 will be a message on there telling you what time you need
18 to come back up here or what time you need to call back
19 again, because I don't know right now when we will start,
20 we've got the selection process to go through. So please
21 call and follow the instructions that are on the machine.
22 I would anticipate right now we're looking at Wednesday
23 morning, but it could be earlier than that. So, please
24 call in this afternoon after 7 p.m.

25 Between now and then don't talk to anybody about the

1 case. Don't let anybody talk to you about the case. And
2 when you come back up here be prepared to stay with us for
3 at least a week, have your bags packed and in your car in
4 case you are picked on the jury. No television and no
5 newspaper or anything between now and then also. Thank
6 you, ma'am.

7 (Juror excused.)

8 THE COURT: Mr. Bowen.

9 (Juror brought into courtroom.)

10 EXAMINATION BY THE COURT:

11 Q Okay, Mr. Bowen, I'm going to ask you some
12 questions. There are no right or wrong answers to the
13 questions, we just want you to be completely honest with
14 us in your responses. After I've asked you a few
15 questions both the solicitor and Mr. Runyon or
16 Mr. Leiendecker will have the same opportunity.

17 Since you received your summons to come here for jury
18 service, has anybody talked to you about the case?

19 A No, sir.

20 Q Have you talked to anybody about the case?

21 A No, sir.

22 Q Have you read or heard anything about this case
23 at anytime?

24 A I read the newspaper but nothing seems familiar,
25 so. A lot of times I just jump over things that, you

1 know, that I -- that aren't pertinent to me.

2 Q All right. So from what you've heard today you
3 haven't recognized this case from anything you've read or
4 heard previously?

5 A No, sir.

6 Q This morning we went through a list of names of
7 people who could be involved in the case. Did you know
8 any of those people?

9 A No, sir.

10 Q Have you formed or expressed any opinion about
11 the case or what the punishment should be, either life in
12 prison or the death penalty?

13 A No, sir.

14 Q Do you have any bias or prejudice against the
15 prosecutors for bringing this case or against the
16 defendant in the case?

17 A No, sir.

18 Q Can you and will you follow the law as instructed
19 to you by the court?

20 A Yes, I will.

21 Q Do you know of any reason why you could not be
22 fair and impartial to both the state of South Carolina and
23 the defendant, Mr. Rogers?

24 A No, sir, I don't.

25 Q Now as I told you and the other jurors this

1 morning, this juror [sic] has already been convicted of
2 murder in a prior proceeding. So the question for the
3 jurors in this case is what the punishment ought to be,
4 life in prison or the death penalty.

5 Each side will have the opportunity to put up
6 additional -- or put up evidence and testimony about what
7 the punishment ought to be. You'll hear both aggravating
8 and mitigating circumstances. After hearing all of that
9 the jury decides between a life sentence and the death
10 penalty.

11 You had the opportunity back in the jury room to look
12 over the form that had on it the three types of jurors?

13 A Yes, sir.

14 Q Which one of those three do you think best
15 describes you?

16 A I think I could be number three. I wouldn't have
17 any problem listening to what was presented here and
18 making a decision.

19 Q So you can listen to everything that's presented
20 with an open mind before you decide on punishment?

21 A Yes, sir.

22 Q Do you have any strong feeling or beliefs that'll
23 interfere with your choice between a life sentence and the
24 death penalty?

25 A No, sir.

1 Q And you understand that in this case you are
2 dealing with a convicted murderer. And even given that
3 you're going to be able to set that aside and decide on
4 punishment based on what's presented in this case?

5 A Yes, sir.

6 Q If you sit through this proceeding, and I'm
7 talking in general now, not about this particular case.
8 But in general, if you sat through a case like this and
9 listened to everything with an open mind and after
10 thoughtfully and thoroughly considering everything you
11 decide, along with the other 11 jurors, that a death
12 penalty is the appropriate punishment. If that is your
13 choice will you be able to stand up in here in open court
14 and say that is your choice, if it is?

15 A Yes, sir.

16 Q Would you be able to sign your name to a form
17 that said that is your choice, if it is?

18 A Yes, sir.

19 Q Will you be able to do those things knowing
20 that'll eventually result in the execution of a defendant?

21 A Yes, sir.

22 Q Will you be able to keep an open mind and listen
23 to everything that's presented to you before you decide on
24 punishment?

25 A Yes, sir.

1 Q Now, as part of this process it is necessary that
2 the jurors who are selected on the case be sequestered.
3 That is, stay with us while the case is being tried.
4 Understanding that's difficult for everybody, will you be
5 able to make such arrangements?

6 A Yes, sir.

7 THE COURT: All right. Answer any questions Solicitor
8 Bailey might have for you. Mr. Bailey.

9 DIRECT EXAMINATION BY MR. BAILEY:

10 Q Mr. Bowen, I'm Walter Bailey, I want to ask just
11 a couple more questions to follow-up on what
12 Judge Whetstone had asked you. And again there are no
13 right or wrong answers in this case, we just want to know
14 exactly how you're feeling.

15 When Judge Whetstone asked you about the three type
16 jurors you said that, I think I could be number three.
17 Could you tell us what you meant by that? And bear in
18 mind, nobody's asking you to predict what you'd do in this
19 case, because you haven't heard the facts.

20 A I just feel like by reading the description in
21 number three that it would take somebody who could sit and
22 listen to the details and see what -- and see what was
23 presented.

24 Q All right, sir. And you would not make any
25 decision ahead of time 'til you heard all the facts?

1 A No, sir.

2 Q And the law from the judge?

3 A No, sir.

4 Q And if the case was bad enough you could vote for
5 the death penalty when faced with the opposite choice,
6 life without parole?

7 A Yes, sir.

8 Q Is that correct? Is there any -- any reason that
9 may not have been brought up so far today that you think
10 would cause you any problems at all in serving as a fair
11 juror to both sides, the state and the defense?

12 A No, sir.

13 MR. BAILEY: Thank you, sir, that's all I have.

14 THE COURT: Mr. Runyon? Mr. Leiendecker?

15 CROSS-EXAMINATION BY MR. LEIENDECKER:

16 Q Mr. Bowen, real -- real briefly. You are a
17 maintenance supervisor at Roper, could you tell me which
18 hospital that's at?

19 A It's the downtown hospital.

20 Q The downtown hospital. And, you attend
21 Bethany United Methodist Church here in Summerville; is
22 that right?

23 A Yes, sir.

24 Q Were you aware that the coroner is also a member
25 there, do you know him, Mr. Rogers?

1 A I don't know him.

2 Q How long have you attended the church?

3 A A couple of years. I've been a member there
4 longer than that, but I haven't really started going 'til
5 recently.

6 Q Okay. And you were also in the military, when
7 did you leave that service?

8 A In '82.

9 Q Okay. And what branch?

10 A Navy.

11 Q Were you in Charleston with the Navy?

12 A Yes, sir.

13 MR. LEIENDECKER: That's all. Thank you.

14 THE COURT: Anything else from the state?

15 MR. BAILEY: No, sir, Your Honor.

16 THE COURT: Okay, Mr. Bowen, would you step back into
17 the room back there just a minute while I talk to the
18 lawyers, please?

19 (Juror excused from courtroom.)

20 THE COURT: What says the state?

21 MR. BAILEY: Qualified, Your Honor.

22 THE COURT: Defendant?

23 MR. LEIENDECKER: Qualified.

24 THE COURT: Mr. Bowen is clearly a qualified number
25 three juror and he's qualified to be in the pool. Bring

1 him back in.

2 (Juror brought into courtroom.)

3 THE COURT: Mr. Bowen, I find that you are qualified
4 to serve in this jury panel. That doesn't mean you're on
5 the jury. It means you're in the group from which the
6 jury will be selected.

7 What I'll ask of you, please, sir, is to call a call
8 in number that we have set up, here's the number, after
9 7 p.m. tonight. There will be a message on there telling
10 you what time you need to come back or what time you need
11 to call back for further instructions. Please follow
12 those instructions, we're doing it this way because we
13 don't know right now what time we'll have enough jurors to
14 actually start the trial. So you may be calling back a
15 couple of times. That's easier than having you come back
16 up here unnecessarily. Please follow those instructions.

17 Don't read the newspaper or listen to any radio or
18 television reports about this case. And don't talk to
19 anybody about the case or let anybody talk to you about
20 the case. Do you understand?

21 JUROR: Yes, sir, I do.

22 THE COURT: Okay, now when you do come back up here
23 have your suitcase packed and in your car and be prepared
24 to stay with us for about seven days while the case is
25 being tried. Thank you, sir, you're excused.

1 (Juror excused.)

2 THE COURT: Okay, Darlene H. Pigate, P-I-G-A-T-E.

3 (Juror brought into courtroom.)

4 EXAMINATION BY THE COURT:

5 Q Okay, Ms. Pigate, I'm going to ask you some
6 questions. There are no right or wrong answers to any of
7 the questions, I just want you to be completely honest
8 with us in your responses. You are under oath, you were
9 sworn in this morning with the rest of the jurors.

10 Since you received your summons to come here for jury
11 service has anybody talked to you about this case?

12 A No, sir.

13 Q Have you talked with anybody about the case?

14 A No, sir.

15 Q Do you know anything about the case or have you
16 heard or read anything about the case other than what
17 you've been told today?

18 A No, sir.

19 Q We went through a list of names of people who
20 could be witnesses or otherwise participate in this case.
21 Did you know any of those people?

22 A No, sir.

23 Q Have you formed or expressed any opinion about
24 this case or about the guilt or the innocence of the
25 defendant, Mr. Rogers? Excuse me, not the guilt or the

1 innocence, he has already been convicted, I misspoke.

2 Have you formed or expressed any opinion about this case
3 or what the punishment should be, either life in prison or
4 the death penalty?

5 A No, sir.

6 Q Now you do understand, even though I just
7 misstated it, but you do understand that the only choices
8 of the jury are either a life sentence or the death
9 penalty, because he has already been convicted? Do you
10 understand?

11 A Yes.

12 Q All right. Now, do you have any bias or
13 prejudice against the prosecutors for bringing the case or
14 against the defendant just because he is accused in the
15 case?

16 A No, sir.

17 Q That is, just because he has been convicted in
18 the case.

19 A No, sir.

20 Q Okay. Do you know of any reason why you could
21 not be fair and impartial to both the state and the
22 defendant?

23 A No, sir.

24 Q Will you be able to follow the law that is
25 instructed to you by the court?

1 A Yes, sir.

2 Q Now, this defendant, as I've said, has been
3 previously convicted of murder. The choice for the jurors
4 in this case is to decide between a life sentence or the
5 death penalty.

6 You will hear testimony and evidence presented about
7 what the punishment ought to be. You'll hear mitigating
8 and aggravating circumstances and after hearing all of
9 that the jury decides on punishment, life in prison or the
10 death penalty.

11 Now you've had the opportunity, back in the jury room,
12 to look over the form that had on it the three types of
13 jurors. Which one of those three do you think best
14 describes you?

15 A The third.

16 Q That's a juror who will keep an open mind and
17 listen to everything before deciding on a punishment?

18 A Yes, sir.

19 Q If you sit through a case such as this with an
20 open mind and listen to everything; and after doing that
21 you and the other jurors unanimously decide that a death
22 penalty is the appropriate punishment, if that is your
23 choice, and the choice of the other 11 jurors, would you
24 be able to stand up here in open court and say that is
25 your verdict, if it is?

1 A Yes, sir.

2 Q Would you be able to sign your name to a form
3 that said that was your verdict, if it was?

4 A Yes, sir.

5 Q Would you be able to do that knowing that that
6 will eventually result in the execution of a defendant?

7 A Yes, sir.

8 Q Do you have any strong feelings or beliefs
9 that'll interfere with your choice between a life sentence
10 or the death penalty?

11 A No, sir.

12 Q Do you understand and will you remember that it
13 is a vital and important part of this process that you
14 keep an open mind throughout the entire proceeding before
15 you decide on punishment?

16 A Yes, sir.

17 Q And will you be able to do that?

18 A Yes, sir.

19 Q Now as part of this process the jurors who are
20 selected stay with us while the case is being tried, that
21 means you are sequestered as a juror while we try the
22 case. Understanding that that is difficult for everyone
23 involved, would you be able to make arrangements to stay
24 with us while the case is being tried if that is required?

25 A Yes, sir.

1 THE COURT: Okay. Answer any questions the solicitor
2 might have, please.

3 DIRECT EXAMINATION BY MR. BAILEY:

4 Q Ms. Pigate, I'm Walter Bailey, I want to ask just
5 a few more questions. And, you understand that in South
6 Carolina the jury decides what the punishment is in a case
7 of this type?

8 A Yes, sir.

9 Q Not the judge, it's either life without parole or
10 the death penalty?

11 A Yes, sir.

12 Q And nobody's asking you to predict what you would
13 do in this case, because you haven't heard the facts. But
14 if the facts are bad enough can you vote for the death
15 penalty knowing that the sentence will be carried out?

16 A Yes, sir.

17 Q Okay. And is there any reason that you can think
18 of, any reason at all, that may prevent you from sitting
19 in this case as a fair juror to both sides, the defense
20 and the state of South Carolina?

21 A No, sir.

22 MR. BAILEY: Thank you, that's all I have.

23 THE COURT: Mr. Runyon.

24 CROSS-EXAMINATION BY MR. RUNYON:

25 Q Ms. Pigate, good afternoon.

1 A Hello.

2 Q I notice from your -- from the juror

3 questionnaire that you returned to the clerk of court,

4 that you attend college in the evenings, I believe?

5 A Yes, sir.

6 Q And, are you currently going to classes?

7 A Yes, sir.

8 Q And, when do you attend class, is that two or

9 three times a week?

10 A Once a week.

11 Q Once a week. Is that in the evening?

12 A Yes, sir.

13 Q And what evenings are those?

14 A Tuesdays.

15 Q Okay. So, would -- and so you'd have to go to

16 class this Tuesday, in other words, tomorrow?

17 A Yes, sir.

18 Q If this trial were to start prior to tomorrow

19 would that -- missing that class, would that inconvenience

20 you or put you under any pressures with your courses?

21 A No, sir.

22 Q And, would you be able to say, for example, miss

23 next Tuesdays class, if it came to that? I'm not saying

24 it would, but if it came to that?

25 A One, yes, sir. I can miss one.

1 Q You can miss one. Certainly, there's a
2 probability or a possibility if you had to miss two you'd
3 have a problem?

4 A Yes, sir.

5 MR. RUNYON: Okay. No further questions, Your Honor.

6 THE COURT: Would you step back into the room back
7 here while I talk to the lawyers, please, ma'am?

8 (Juror excused from courtroom.)

9 THE COURT: What says the state?

10 MR. BAILEY: Qualified, Your Honor.

11 THE COURT: Defense?

12 MR. RUNYON: Obviously she's qualified at this time,
13 Your Honor.

14 THE COURT: She is a qualified number three juror.
15 Have Ms. Pigate come back in here.

16 (Juror brought into courtroom.)

17 THE COURT: Ms. Pigate, I find that you are a
18 qualified juror. That means that you are in the group
19 from which the jury will be selected. Doesn't mean you're
20 on the jury yet.

21 What I'll ask of you, please, ma'am, is to call this
22 call in number after seven o'clock tonight. There will be
23 a message on the machine that will tell you what time you
24 need to come back up here or what time you need to call
25 back. We don't know what time we'll actually be starting

1 right now, until we get a little further along in the jury
2 selection process. So call that number and follow the
3 instructions that are on the machine.

4 Between now and then don't talk to anybody about the
5 case. Don't let anybody talk to you about the case.
6 Don't read the newspaper about this case. And don't
7 listen to any radio or television reports about the case.
8 You need to be able to decide this case based on what you
9 hear in the courtroom and not something outside. Do you
10 understand?

11 JUROR: Yes, sir.

12 THE COURT: Any questions about these instructions?

13 JUROR: No, sir.

14 THE COURT: When you are instructed to come back up
15 here, have your suitcase packed and in your car and be
16 prepared to stay with us for at least seven days while
17 this case is being tried. Thank you, ma'am, you're
18 excused. Please call after 7 p.m. tonight. Thank you.

19 (Juror excused.)

20 THE COURT: Claire M. Raymond, please.

21 (Juror brought into courtroom.)

22 EXAMINATION BY THE COURT:

23 Q Ms. Raymond, I'm going to ask you some
24 questions. You are under oath, you were sworn in this
25 morning with the rest of the jury panel. There are no

1 right or wrong answers to any of the questions, we just
2 want you to be completely honest with us in your
3 responses.

4 A Uh-huh.

5 Q After I've asked you some questions the solicitor
6 and Mr. Runyon or Mr. Leiendecker will have the same
7 opportunity.

8 Since you received your summons to come here for jury
9 service has anybody talked to you about this case?

10 A Yes.

11 Q All right, tell me about that, please.

12 A Well, it was just that we -- we thought it was
13 the trial of Mr. Rogers having to come back for, you know,
14 the -- the verdict, whether the verdict was -- the judge
15 didn't give them a chance to tell them whether it was a
16 life sentence or just a murder.

17 Q So you've -- you've talked about that with
18 someone?

19 A Yes, sir.

20 Q Would you be able to -- will that have any affect
21 on your ability to be fair and impartial in this case?

22 A No, sir.

23 Q Think you can put that aside and decide this case
24 based on what you hear in the courtroom here?

25 A Yes, sir.

1 Q Okay. Well, you have heard something about this
2 case then from that discussion, so you evidently know
3 something about the case?

4 A Yes and I -- when it first happened a year ago, I
5 happened to read it in the paper also.

6 Q Okay. Well again, will that have any affect on
7 your ability to be fair and impartial in the case?

8 A No, sir.

9 Q You will decide the case based on what you hear
10 in the courtroom?

11 A Yes, sir.

12 Q Have you formed or expressed any opinion about
13 this case as to what the penalty ought to be, either life
14 in prison or the death penalty?

15 A No, sir.

16 Q You have an open mind as to what the penalty
17 ought to be?

18 A Yeah, uh-huh.

19 Q Do you have any bias or prejudice against the
20 prosecutors for bringing this case or against the
21 defendant in the case?

22 A Could you explain that?

23 Q Okay, are you biased or prejudiced against the
24 prosecutors just because they brought this case?

25 A No.

1 Q Or against the defendant just because he's been
2 convicted in the case?

3 A No.

4 Q Do you know of any reason why you could not be
5 fair and impartial to both the state and the defendant,
6 Mr. Rogers?

7 A No, I have none.

8 Q Can you and will you follow the law that is
9 instructed to you by the court?

10 A Yes, sir.

11 Q Now I told you and the other jurors this morning
12 that this defendant has already been convicted of murder?

13 A Uh-huh.

14 Q So the choice for the jury is a choice between a
15 life sentence without parole or the death penalty.

16 A Uh-huh.

17 Q You understand?

18 A Yes.

19 Q All right. Now, in this proceeding each side
20 will have the opportunity to put up evidence and testimony
21 about what the punishment ought to be, life in prison or
22 the death penalty. You'll hear the mitigating and the
23 aggravating circumstances that are presented. And then
24 the jury decides on which one of those two punishments are
25 appropriate.

1 You've had the opportunity back in the jury room to
2 look through that form that had on it the three types of
3 jurors?

4 A Uh-huh.

5 Q Which one of those three do you think best
6 describes you as a juror?

7 A The third.

8 Q That's a juror who'll keep an open mind and
9 listen to everything before deciding on punishment?

10 A Yes, sir.

11 Q So as all these factors are presented in this
12 phase you'll keep an open mind and listen to everything
13 before you decide between a life sentence or the death
14 penalty?

15 A Yes, sir.

16 Q Do you have any strong feelings or beliefs that
17 will interfere with your choice between a life sentence or
18 the death penalty?

19 A No.

20 Q Vital to this process is the fact or is the
21 premise that the jurors will keep an open mind throughout
22 everything that is presented. Will you be able to do
23 that?

24 A Yes, sir.

25 Q All right. Also as part of this process the

1 jurors who are selected stay with us while the case is
2 being tried, that means they are sequestered and stay here
3 at county expense. If you're selected on the jury, can
4 you make arrangements to be with us and stay with us while
5 the case is being tried, understanding that that is
6 difficult for everybody involved?

7 A Would that mean staying overnight also?

8 Q Yes, ma'am.

9 A That'd be very hard, because I have custody of a
10 four and a half year old. And, right now she's with a
11 baby-sitter. And, I'll have to pick her up in the
12 daytime, it would be hard on me to have somebody watch her
13 over 24 hours a day, 12 hours a day.

14 Q What I need to know from you is can you make
15 those arrangements?

16 A Yes, I probably could, yes.

17 Q So you could arrange -- if you're picked on the
18 jury you can arrange for somebody to take care of that
19 four year old while you're on the jury?

20 A Yeah, uh-huh.

21 Q And, are you going to be so worried about what's
22 going on with that four year old that you're not able to
23 pay attention to this or will you still be able to
24 participate?

25 A Well, I'll have to tell you the truth, it -- it

1 will be hard on me. Because, you know, I'll be a little
2 worried, maybe not during the course of the day, but if
3 I'm staying here, you know, like to stay in a motel or
4 something, it would bother me because I kind of miss her.
5 Yeah, it would be hard.

6 Q You tell me whether you think you can make the
7 arrangements and whether that'll have any impact on your
8 ability to deal with this trial?

9 A It would. It would.

10 Q Well, can you participate as a juror or not,
11 Ms. Raymond, I need for you to tell me what you can and
12 can't do?

13 A No. Not -- not if -- no.

14 Q That's going to weigh too heavily on your mind?

15 A Uh-huh, yeah.

16 THE COURT: Answer any questions the solicitor might
17 have.

18 MR. BAILEY: Your Honor, indulge me a second, please.

19 (Counsels consulted.)

20 MR. BAILEY: No, sir, no questions.

21 THE COURT: Mr. Runyon, any questions?

22 MR. RUNYON: No questions, Your Honor.

23 THE COURT: Okay, Ms. Raymond, would you step back
24 into the room back here while I talk to the lawyers for
25 just a second?

1 (Juror excused from courtroom.)

2 THE COURT: What says the state?

3 MR. BAILEY: Your Honor, I conferred with Mr. Runyon,
4 I think we can agree she should be excused for cause.

5 MR. RUNYON: Absolutely no question about that, Your
6 Honor.

7 THE COURT: Okay, she's excused for cause. Bring her
8 back in, please.

9 (Juror brought into courtroom.)

10 THE COURT: Okay, Ms. Raymond, based on what you have
11 told me about your situation and having to make
12 arrangements for your four year old, I'm going to excuse
13 you from service on this jury panel. All right? You are
14 excused, thank you, ma'am, I appreciate it.

15 (Juror excused.)

16 THE COURT: Bring in Walter Myers, Jr., please.

17 (Juror brought into courtroom.)

18 EXAMINATION BY THE COURT:

19 Q Mr. Myers, have a seat, please, sir. Okay,
20 Mr. Myers, I'm going to be asking you some questions.
21 I'll remind you that you are under oath, you were sworn in
22 this morning with the rest of the jurors. There are no
23 right or wrong answers to any of the questions, you just
24 need to be completely honest with us in your responses.

25 Since you received your summons to come here for jury

1 service, has anybody talked to you about the case?

2 A No, sir.

3 Q Have you talked to anybody about this case?

4 A No, sir.

5 Q Do you know anything about this case from
6 whatever the source, if you've read about it, heard about
7 it or just know something about it from talking to people?

8 A As far as -- if it's the same case that I'm
9 thinking about, the murder at Spell's grocery in
10 Summerville?

11 Q If that is the case, if that's what you've heard,
12 I -- I don't know, I'm not going to represent to you that
13 it is. If that is -- if it's the same case, would the
14 fact that you've heard something about it have any affect
15 on your ability to be fair and impartial in this case?

16 A Somewhat. Yes, sir.

17 Q Well, does that mean you can't be fair and
18 impartial?

19 A Not under the circumstances under the case that
20 I'm thinking of.

21 Q All right, explain that to me, please, sir?

22 A One of my friends is a state highway patrolman,
23 lives across from the grandparents of this young girl.
24 And, I'd seen the young girl, if it's the same one that
25 I'm thinking of, the victim, at his house playing with his

1 children. And, spoke with her grandparents after. Not
2 that I know the grandparents or anything, but I just want
3 to be honest that, you know, that this come about being
4 friends with a highway patrolman and was in contact with
5 them, not knowing the victim personally.

6 Q Do you think you can put aside that association
7 with that highway patrolman and the fact that you know
8 something about the case? Think you can put all that
9 aside and be fair and impartial?

10 A It would be hard after seeing the family and
11 their reaction.

12 Q Well, I need for you to tell me whether you think
13 you can be fair and impartial?

14 A No, sir.

15 Q Don't think you can?

16 A No, sir.

17 THE COURT: Questions, Solicitor?

18 MR. BAILEY: No questions, Judge.

19 THE COURT: Mr. Runyon?

20 MR. RUNYON: No questions, Your Honor.

21 THE COURT: Okay. Mr. Myers, I need for you to step
22 back in here for just a minute while I talk to the
23 lawyers.

24 (Juror excused from courtroom.)

25 THE COURT: What says the state?

1 MR. BAILEY: Your Honor, if Mr. Runyon objects for
2 cause I have no quarrel with him.

3 MR. RUNYON: Yes, Your Honor, I was going to say I
4 think the juror clearly has indicated his inability to
5 serve in this case, we move he be dismissed for cause.

6 THE COURT: He is dismissed for cause, he says he
7 cannot be fair and impartial because of what he had
8 previously heard about the case. Bring him back in,
9 please.

10 (Juror brought into courtroom.)

11 THE COURT: Mr. Myers, I'm going to excuse you from
12 service on this jury panel, we appreciate your honest
13 responses and coming back and participating with us
14 today. You are excused. Thank you, sir.

15 (Juror excused.)

16 THE COURT: Okay, that's all the jurors we had set for
17 twelve o'clock. Anything further from the state?

18 MR. BAILEY: Not at this time, Your Honor.

19 THE COURT: From the defendant?

20 MR. RUNYON: Nothing from the defendant at this time,
21 Your Honor.

22 THE COURT: Okay, we'll be at ease until two o'clock.
23 Thank you.

24 (Lunch recess was taken.)

25 THE COURT: Is the state ready?

1 MR. BAILEY: State's ready, Your Honor.

2 THE COURT: Defendant ready?

3 MR. RUNYON: We're usually always ready, Judge.

4 THE COURT: Please send in Joan Parham.

5 (Juror brought into courtroom.)

6 EXAMINATION BY THE COURT:

7 Q Ms. Parham, have a seat right here. How are you?

8 A Fine.

9 Q Ms. Parham, I'm going to ask you some questions,
10 there are no right or wrong answers to the questions, we
11 just want you to be completely honest with us in your
12 responses.

13 A Okay.

14 Q You are under oath, you were sworn in this
15 morning with the rest of the jurors.

16 A Right.

17 Q Since you received your summons to come here for
18 jury service, has anybody talked to you about this case?

19 A No.

20 Q Have you talked to anybody about the case?

21 A No.

22 Q Do you know anything about the case from any
23 source?

24 A Yes.

25 Q Tell me about that.

1 A The newspaper.

2 Q All right. You've read about it?

3 A Yes.

4 Q When? Or do you remember when?

5 A Was it the day before yesterday?

6 Q What newspaper was that?

7 A The News & Courier.

8 Q Would the fact that you read something about this

9 case within the last couple of days have any affect on

10 your ability to be fair and impartial in the case?

11 A No.

12 Q Will you be able to put aside what you read and

13 decide the case based on what you hear in the courtroom?

14 A Yes.

15 Q Now this morning I called out a list of names of

16 people who could be involved in the case, either as

17 witnesses or otherwise.

18 A Right.

19 Q Did you know any of those people?

20 A Jeff Rogers, the coroner.

21 Q Would the fact that you know the coroner have any

22 affect on your ability to be fair and impartial?

23 A No, this is in my business, where I work.

24 Q Okay. Have you formed or expressed any opinion

25 about the case or about which penalty should be imposed?

1 A No.

2 Q Do you have any bias or prejudice against the
3 prosecutors for bringing the case or against the defendant
4 just because he is the defendant in the case?

5 A No.

6 Q Do you know of any reason why you could not be
7 fair and impartial to both the state and the defendant?

8 A I know no reason.

9 Q Can you and will you follow the law as instructed
10 to you by the court?

11 A Yes, sir.

12 Q Now I told you and the other jurors this morning
13 that this defendant had previously been convicted of
14 murder?

15 A Yes.

16 Q So the choice for the jury in this case is a
17 choice between a life sentence or the death penalty.

18 A I understand.

19 Q What you will hear in this case is the facts as
20 presented through testimony and through exhibits about
21 what the punishment ought to be, either life in prison or
22 the death penalty. You'll hear mitigating and aggravating
23 circumstances. And after hearing all of that the jury
24 decides on the punishment.

25 You had the opportunity back in the jury room to look

1 over the form that had on it the three types of jurors.
2 Which one of those three do you think best describes you?

3 A I did, I chose number three.

4 Q That's a juror who will keep an open mind and
5 listen to everything before deciding on punishment?

6 A Yes, yes.

7 Q Will you keep an open mind throughout this entire
8 process before you decide between a life sentence and the
9 death penalty?

10 A To the best of my ability, yes.

11 Q If you sat on a case such as this, not this case
12 specifically, but a similar type case and you sat and
13 listened to everything with an open mind. And after
14 considering everything that was presented you and the
15 other 11 jurors decided unanimously that the death penalty
16 was the appropriate punishment. If that was your choice,
17 would you be able to sign your name to a form saying that
18 was your choice, if it was?

19 A If we all agreed.

20 Q If you all agreed.

21 A Including myself?

22 Q Yes, ma'am. If everybody agreed and all 12 of
23 you had to sign a form that said that was your verdict,
24 would you be able to do that?

25 A If I'm going to serve I have to be able to say

1 yes?

2 Q I just need to know what your honest response
3 is.

4 A If they did and we agreed, yes, I would.

5 Q All right. If as -- again, as part of the
6 process, if you had to come out here, all 12 of you, and
7 stand up over here and I asked each of you individually,
8 was this your verdict and is it still your verdict, would
9 you be able to stand up here in open court and say it was
10 your verdict, if it was?

11 A Yes, I would.

12 Q Would you be able to do those things knowing that
13 eventually that's going to result in the execution of a
14 defendant?

15 A Yes.

16 Q Do you have any strong feelings or beliefs
17 that'll interfere with your choice between a life sentence
18 or the death penalty?

19 A No.

20 Q Now, again, a vital part of this entire process
21 is that you keep an open mind and listen to everything
22 before you decide between a life sentence and the death
23 penalty. Will you be able to do that?

24 A Yes, sir.

25 Q Also part of this is that the jurors who are

1 selected and serve on the jury have to stay with us while
2 the case is being tried, that means you are sequestered,
3 you stay here for the duration of this trial.

4 A Okay.

5 Q If that is required of you, will you be able to
6 make arrangements to do that?

7 A Yes, sir.

8 THE COURT: Answer any questions the solicitor might
9 have, please. Mr. Bailey.

10 DIRECT EXAMINATION BY MR. BAILEY:

11 Q Ms. Parham, I'm Walter Bailey, I want to ask you
12 a few more questions.

13 A Okay.

14 Q And, first of all I want you to understand there
15 are no right or wrong answers, we just all want to know
16 exactly how you feel. And you understand that the way the
17 system works in South Carolina, the jury and not the judge
18 decides what the punishment is?

19 A Right.

20 Q And when you say life that means life without
21 parole. When you say the death sentence that means, of
22 course, the death penalty.

23 A Right.

24 Q Whatever that jury decides will be the sentence
25 of the court and it will be carried out, you understand

1 that?

2 A Yes, sir.

3 Q Okay. Now, Judge Whetstone asked you about, you
4 know, the various steps and the process that we go through
5 in a case like this. And, of course, the first thing the
6 jury would do when they got back in the jury room after
7 hearing all of the facts and the law, is they would vote.
8 And, if that vote was for the death penalty, after hearing
9 all that evidence, the second thing was the signing of the
10 death verdict form, each juror would need to sign their
11 name to a piece of paper in order for that sentence to be
12 carried out.

13 And it might be my imagination, but I thought I
14 detected some hesitation about signing the form.

15 A You did. I will tell you I thought about that
16 when I came in this morning. And y'all were calling the
17 roll, it was like we're here and this is it. And it is a
18 big choice, it is a big decision. And I'll be able to
19 make that at the right time.

20 Q Okay. And, nobody's asking you what that
21 decision would be because you haven't heard all of the
22 facts.

23 A No, but I have thought about it since this
24 morning.

25 Q Okay. And if the facts presented were bad

1 enough, could you sign that form?

2 A Yes, sir, I certainly could.

3 Q And could you announce that verdict in open
4 court--

5 A Yes, sir, I could.

6 Q --in front of the defendant and everybody else?

7 A Yes.

8 Q And, Ms. Parham, is there any reason that you can
9 think of, any reason at all, that may not have been
10 mentioned by the judge or by me so far, that would prevent
11 you in any way from being a fair juror to both sides, the
12 defense and the state?

13 A No, sir.

14 Q Is the death penalty something you've ever had
15 occasion in the past to think about, just in the abstract?

16 A Not really. It's in the paper, you know, we read
17 about it all the time for crimes and the death penalty is
18 served. And, that's what I know about it, from what I've
19 read. I've never had any firsthand information or any
20 contribution or anything to do with that.

21 Q Okay. And as I understand your testimony, you've
22 got no feelings strong enough one way or the other--

23 A No.

24 Q --that would interfere with your ability to
25 fairly choose between both options?

1 A No, sir.

2 MR. BAILEY: Ms. Parham, that's all I've got. Thank
3 you very much.

4 THE COURT: Wait a minute. Mr. Runyon gets an
5 opportunity.

6 JUROR: I'm sorry.

7 CROSS-EXAMINATION BY MR. RUNYON:

8 Q That's all right. No problem, nobody's doing
9 anything wrong here.

10 Ms. Parham, Bill Runyon, just very briefly. When you
11 were asked questions by His Honor you indicated that --
12 that you could sign your -- your name if everyone else was
13 willing to sign their name.

14 A It's unanimous.

15 Q You understand that you don't have to sign your
16 name if that's not your decision?

17 A Right.

18 Q Okay. But if that is your decision and everyone
19 else decides the same way then that -- that would be your
20 duty.

21 A Right.

22 Q And you could do that duty?

23 A Yes, sir.

24 Q And, you don't have any strong feelings -- strong
25 opinions one way or the other about the death penalty?

1 A Not about the death penalty or about life
2 either. Not either one.

3 MR. RUNYON: Okay. No further questions.

4 THE COURT: Anything further from the state?

5 MR. BAILEY: No, sir.

6 THE COURT: Okay, Ms. Parham, will you step back in
7 here, please, ma'am.

8 (Juror excused from courtroom.)

9 THE COURT: What says the state?

10 MR. BAILEY: Qualified, Your Honor.

11 THE COURT: Defense?

12 MR. RUNYON: Your Honor, obviously qualified at this
13 point in time.

14 THE COURT: Okay, the juror is a qualified number
15 three juror, she's on -- in the panel. Bring her back in,
16 please.

17 (Juror brought into courtroom.)

18 THE COURT: Ms. Parham, I find that you're qualified
19 to serve on the jury panel, that doesn't mean you're on
20 the jury, it means you're in the group from which the jury
21 will be selected.

22 So from now on please don't talk to anybody about the
23 case, don't let anybody talk to you about the case. Don't
24 listen to radio or television reports about the case and
25 don't read the newspaper about this case.

1 What I'll ask of you, please, ma'am, is to call in
2 tonight to this call in number here after 7 p.m. There
3 will be a message on there that will tell you either what
4 time to come back up here or what time to call back for
5 further instructions. I can't tell yet when we will be
6 through with the jury selection process, so it'll probably
7 say call back at another time for further instructions.
8 Follow whatever instructions are on the machine. And call
9 sometime shortly after seven o'clock. All right, you
10 understand?

11 JUROR: Yes, sir.

12 THE COURT: Now when you are required to come back up
13 here, come with your suitcase packed and have your
14 suitcase in your car and be prepared to stay with us seven
15 to ten days while the case is being tried if you're
16 selected on the jury. All right, thank you, ma'am. I
17 appreciate it.

18 (Juror excused.)

19 THE COURT: Melissa Strange, please.

20 (Juror brought into courtroom.)

21 EXAMINATION BY THE COURT:

22 Q Ms. Strange, if you'd have a seat right here,
23 please, ma'am. Ms. Strange, I'm going to ask you some
24 questions. There are no right or wrong answers to the
25 questions, we just want you to be completely honest with

1 us in your responses.

2 A Yes, sir.

3 Q You are under oath, you were sworn in this

4 morning with the rest of the panel.

5 A Yes, sir.

6 Q Since you received your summons to come here for

7 jury service, have you talked to anybody about this case?

8 A No, sir.

9 Q Has anybody talked to you about the case?

10 A No, sir.

11 Q Have you read or heard anything about this case

12 from any source?

13 A Since that summons, no, sir.

14 Q No, anytime?

15 A Yes, sir.

16 Q All right. Can you remember what you heard or

17 read about the case?

18 A Little bits. Some. Not specifics.

19 Q All right. The fact that you've read or heard

20 something about this case, will that have any affect on

21 your ability to be fair and impartial in the case?

22 A No, sir.

23 Q Have you formed or expressed any opinion about

24 this case?

25 A No, sir.

1 Q Or about what punishment should be imposed?

2 A No, sir.

3 Q Now this morning we went through a list of names
4 of people who could be involved in this case. Did you
5 know any of those people?

6 A I didn't think I did at the time, but I
7 recognized someone since.

8 Q Okay, who have you recognized?

9 A I believe it's the mother of the victim.

10 Q Okay. All right. Well, if you know the mother
11 of the victim or if you recognize that person or if they
12 testify in the trial, is that going to have any affect on
13 your ability to be fair and impartial in the case?

14 A No, sir.

15 Q Do you have any bias or prejudice against the
16 prosecutors for bringing this case or against the
17 defendant just because he's the defendant in the case?

18 A No, sir.

19 Q Do you know of any reason why you could not be
20 fair and impartial to both the state and the defendant?

21 A No, sir.

22 Q Can you and will you follow the law as instructed
23 to you by the court?

24 A Yes, sir.

25 Q Now this morning I told you and the other jurors

1 that this defendant has already been convicted of murder.
2 The question before the jury in this case is what the
3 punishment should be. Either life imprisonment without
4 parole or the death penalty.

5 So what you'll hear in this case is testimony and
6 exhibits and whatever else is presented for the purpose of
7 helping the jury decide what the punishment ought to be,
8 life in prison or the death penalty.

9 After hearing all the mitigating and the aggravating
10 circumstances, the jury decides on which punishment is
11 appropriate.

12 Now you had an opportunity back in the jury room to
13 look over the form that had on it the three types of
14 jurors. Which one of those three do you think best
15 describes you?

16 A Third.

17 Q That's a juror who'll keep an open mind and
18 listen to everything before deciding on a punishment?

19 A Yes, sir.

20 Q Will you keep an open mind and listen to
21 everything that is presented before you choose between a
22 life sentence and the death penalty?

23 A Yes, sir.

24 Q If you sat on a case such as this, I'm not
25 talking about this case now because you don't know

1 anything about this case. But if you sat on a case such
2 as this as a juror. And listened to everything with an
3 open mind. And after hearing everything that was
4 presented you and the other jurors unanimously decided
5 that the death penalty was the appropriate punishment. If
6 that is your choice, and the choice of the other jurors,
7 would you be able to sign your name to a form saying that
8 is your choice?

9 A Yes, sir.

10 Q Will you be able to stand up here in open court
11 and say that is your choice, if it is?

12 A Yes, sir.

13 Q Will you be able to do those things knowing that
14 that will result in the execution of a defendant?

15 A Yes, sir.

16 Q Part of this process is that when the jury is
17 selected, those who are selected have to stay with us.
18 That is, be sequestered while the case is being tried. If
19 you're picked on this jury can you make arrangements to
20 stay with us while the case is being tried?

21 A Yes, sir.

22 THE COURT: Answer any questions the solicitor might
23 have for you, please, ma'am. Mr. Bailey.

24 DIRECT EXAMINATION BY MR. BAILEY:

25 Q Ms. Strange, I'm Walter Bailey, I want to ask

1 just a few more questions to follow-up on what Judge
2 Whetstone asked you. You understand that in South
3 Carolina, unlike maybe some other states, the jury, and
4 not the judge, decides what the sentence would be?

5 A Yes, sir.

6 Q So out of those two choices, life without parole
7 or the death penalty, whatever the jury decides will be
8 carried out?

9 A Yes, sir.

10 Q And I'm not going to ask you and nobody's going
11 to ask you to predict what you'd do in this case, because
12 you haven't heard the facts. And you've indicated that
13 you wouldn't make up your mind 'til you've heard all those
14 facts; is that correct?

15 A Yes, sir.

16 Q But if the facts were bad enough can you vote to
17 impose the death penalty knowing it will be carried out?

18 A Yes, sir.

19 Q And is there any reason that we may not have
20 mentioned up until now that you think would prevent you
21 from being a fair juror to both sides, the state and the
22 defense?

23 A No, sir.

24 Q I notice you've got a five year old child?

25 A Yes, sir.

1 Q Would being in a motel a couple of nights create
2 any undue problems?

3 A No.

4 MR. BAILEY: That's all I've got. Thank you very
5 much.

6 THE COURT: Mr. Runyon.

7 CROSS-EXAMINATION BY MR. RUNYON:

8 Q Ms. Strange, just very briefly. You indicated
9 that you recognized or knew the -- the mother of the
10 victim in this case?

11 A I believe from grade school, I believe we went to
12 school together.

13 Q Okay. So you believe you went to grade school
14 with each other some years ago?

15 A Yes, sir.

16 Q And, have you had contact with her since that
17 time?

18 A No, sir.

19 Q Or anything of that sort? And you indicated you
20 heard something about the case, where -- where did you
21 hear from?

22 A Well upon seeing who I believe is the mother I
23 remembered four years ago when it was in the paper and on
24 the news.

25 Q Right. And, did you remember anything about the

1 case that would -- that might make you prejudge the -- the
2 disposition in this case?

3 A No, sir.

4 Q And, you understand, of course, that you'd have
5 to put aside whatever you heard and just decide on what
6 you heard in the courtroom?

7 A Yes, sir.

8 Q And, I notice that your -- your -- your husband's
9 a private investigator?

10 A Yes, he is.

11 Q Does he have law enforcement background?

12 A He's licensed through SLED, that's it.

13 Q I know. But I mean, has he ever served in law
14 enforcement?

15 A No, sir.

16 Q Okay. Does -- does he do work with Dorchester
17 County sheriff's office?

18 A (No response.)

19 Q To your knowledge, I mean, if you know, you
20 know.

21 A Mostly through Charleston County is who most of
22 the work is with.

23 Q Oh, okay. All right. So, you know of no -- you
24 don't have any -- you don't socialize with anybody who
25 might be a witness in this case through law enforcement or

1 what have you?

2 A No, sir.

3 MR. RUNYON: Thank you.

4 THE COURT: Anything further from the state?

5 MR. BAILEY: No, sir. No, sir.

6 THE COURT: Ms. Strange, would you step back here into
7 this room for just a minute, please, ma'am, while I talk
8 to the lawyers.

9 (Juror excused from courtroom.)

10 THE COURT: What says the state?

11 MR. BAILEY: Qualified, Your Honor.

12 THE COURT: Defendant?

13 MR. RUNYON: Obviously she's qualified, Your Honor.

14 THE COURT: She is a qualified number three juror.
15 Bring her back in, please.

16 (Juror brought into courtroom.)

17 THE COURT: Okay, Ms. Strange, I find that you are
18 qualified to serve on this jury panel, that doesn't mean
19 you're on the jury, it means you're in the group from
20 which the jury will be selected.

21 What I'll ask you to do, please, ma'am, is call this
22 call in number tonight after seven o'clock. There will be
23 a message on there that will tell you either what time you
24 need to call back or what time you need to come back up
25 here. I can't tell you yet what time we'll be starting.

1 So follow the instructions that are on the machine, if it
2 says call back, call back when it says to call back,
3 please, ma'am.

4 Between now and the time you come back up here don't
5 talk to anybody about the case, don't let anybody talk to
6 you about the case. Don't read the newspaper about the
7 case and don't listen to any radio or television reports
8 about the case. You have to be able to decide the case
9 based on what you hear in the courtroom, not something
10 outside of here.

11 When you are summoned to come back up here, that is,
12 when the message says come back up here, come back and
13 have your clothes packed and in your car and be prepared
14 to stay with us for at least seven days while this case is
15 being tried. Understand?

16 JUROR: Yes, sir.

17 THE COURT: All right. Thank you, ma'am, you're
18 excused.

19 (Juror excused.)

20 THE COURT: Joseph J. Clayton.

21 (Juror brought into courtroom.)

22 EXAMINATION BY THE COURT:

23 Q Mr. Clayton, have a seat right here, please, sir.
24 Mr. Clayton, I'm going to ask you some questions. You are
25 under oath, you were sworn in this morning with the rest

1 of the jurors. There are no right or wrong answers to any
2 of the questions, we just want you to be completely honest
3 with us in your responses.

4 A Yes, sir.

5 Q Since you received your summons to come here for
6 jury service, has anybody talked to you about this case?

7 A No, sir.

8 Q Have you talked to anybody about the case?

9 A No, sir.

10 Q Do you know anything about this case other than
11 what I've told you today from whatever the source?

12 A No I don't, sir.

13 Q Don't know a thing about it, haven't heard or
14 read anything about it in the last couple of years?

15 A No, sir.

16 Q This morning I called out a list of names of
17 people who could be involved in this case. Did you know
18 any of those people?

19 A Not to my knowledge.

20 Q Okay. Have you formed or expressed any opinion
21 about the case or what the punishment should be?

22 A No, sir.

23 Q Do you have any bias or prejudice against the
24 prosecutors for bringing the case or against the defendant
25 just because he is the defendant in the case?

1 A No, sir.

2 Q Do you know of any reason why you could not be
3 fair and impartial to both the state and the defendant,
4 Mr. Rogers?

5 A No, sir. No I don't.

6 Q Can you and will you follow the law as instructed
7 to you by the court?

8 A Yes, sir.

9 Q Now I told you and the other jurors this morning
10 that this defendant has already been convicted of murder?

11 A Yes, sir.

12 Q The question to be decided by the jury in this
13 case is what the punishment ought to be. Either life in
14 prison without parole or the death penalty.

15 Now the jury in this case will have the opportunity to
16 hear evidence and testimony about what the punishment
17 ought to be. You'll hear aggravating and mitigating
18 circumstances and after hearing all of that the jury
19 decides on the appropriate punishment.

20 You had the opportunity back in the jury room to look
21 over that form that had on it the three types of jurors.
22 Which one of those three do you think best describes you?

23 A The second one, sir.

24 Q That's a juror who after listening to everything
25 is always going to impose a life sentence?

1 A I wouldn't say a life sentence, but that's one of
2 my -- how I feel about it, you know?

3 Q Well, that's what I'm trying to find out is
4 exactly how you do feel about it.

5 A Right.

6 Q So, regardless of what you hear testimony-wise in
7 a case like this, you'll always vote for a life sentence?
8 There never will be circumstances where you feel like you
9 could impose the death penalty?

10 A It would be kind of hard. I'll put it that way,
11 sir.

12 Q Well, I need to know if you ever would?

13 A I doubt it, sir.

14 Q Just would always give a life sentence, in every
15 case, regardless of how bad the facts might be that were
16 presented, you're not going into this proceeding with an
17 open mind, you're just always going to give a life
18 sentence?

19 A I would go in with an open mind. But what I'm
20 saying, you know, death penalty, I don't agree with it.

21 Q You just don't agree with the death penalty?

22 A No, sir.

23 Q Sir?

24 A No, sir.

25 Q So you couldn't ever give a death penalty, you'd

1 always give a life sentence?

2 A Yes, sir.

3 Q Sir?

4 A That's how I feel.

5 Q Now I don't want to put words in your mouth, you

6 tell me what you think.

7 A That's how I feel, sir.

8 Q All right, that's how you feel. All right, sir.

9 Answer any questions Mr. Bailey might have for you.

10 MR. BAILEY: Bear with me one second, please, Your

11 Honor.

12 (Counsels consulted.)

13 CROSS-EXAMINATION BY MR. BAILEY:

14 Q Mr. Clayton, I'm Walter Bailey, I want to ask you

15 a few more questions. And like Judge Whetstone said,

16 there are no right or wrong answers, everybody respects

17 how you feel and all the other potential jurors feel. And

18 you've indicated you're the second type juror that just

19 does not believe in the death penalty; is that correct?

20 A Yes, sir.

21 Q And although you said you could sit here and

22 listen to the case, but in all cases you'd bring back a

23 sentence of life in prison if you had that option; is that

24 correct?

25 A Yes, sir.

1 Q Okay. So no matter how bad the case was you
2 would always vote for life if it was your vote?

3 A (Nods head.)

4 THE COURT: You need to say yes.

5 BY THE JUROR:

6 A Yes, sir.

7 Q Mr. Clayton, could you ever, under any
8 circumstances, sign your name to a piece of paper that
9 would result in somebody being executed?

10 A Say that again now, sir.

11 Q Could you under any circumstances sign your name
12 to a piece of paper, a death verdict form, that would
13 result in somebody being put to death by execution?

14 A No, sir.

15 Q Okay. Is that a feeling you've had for some
16 time?

17 A Yes, that's a feeling I've had for quite a while.

18 Q All right, sir, is that a religious belief that
19 you have against the death penalty or just a personal
20 belief?

21 A It's a personal belief.

22 Q Okay. And you felt that way before you even
23 found out that you might be on this case; is that correct?

24 A Yes, sir.

25 Q And you feel strongly about that?

1 A I do.

2 MR. BAILEY: Thank you, sir. That's all I have.

3 THE COURT: Questions, Mr. Runyon?

4 CROSS-EXAMINATION BY MR. RUNYON:

5 Q Mr. Clayton, your opinion as it relates to the
6 death penalty or as it relates to what you've told us,
7 that's not necessarily grounded in some firm religious
8 belief at this point in time; is that correct, sir?

9 A That's true.

10 Q And insofar as the -- the -- and I'm trying to
11 get it clear for me, so, if I plow the same ground a
12 second time, please bear with me. In -- in response to
13 His Honor's questions and Mr. Bailey's questions you
14 indicated that there was absolutely -- are you saying
15 there's absolutely no set of circumstances that you could
16 ever impose the death penalty?

17 A That's -- that's what I'm -- that's what I'm
18 trying to say, sir.

19 Q Okay. There's no way you could ever impose the
20 death penalty?

21 MR. BAILEY: Objection, asked and answered.

22 THE COURT: He can answer the question. Answer the
23 question, sir.

24 BY THE JUROR:

25 A That's -- that's how I feel, sir.

1 Q All right, sir. And, no matter what was said in
2 the court you'd -- you'd maintain that belief?

3 A Yes, sir.

4 Q Okay. And even if His Honor instructed you that
5 you had the choice between life or death -- life without
6 parole or the death penalty, you would still always vote
7 for -- for life?

8 A If he gave me a choice.

9 Q I beg your pardon.

10 A If he gave me a choice, sir.

11 Q Even if -- particularly if he gave you a choice?

12 A Uh-huh.

13 Q So as a practical matter you would always choose
14 life over death?

15 A Yes, I would.

16 MR. RUNYON: No further questions, Your Honor.

17 THE COURT: Anything further from the state?

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

19 THE COURT: Okay, Mr. Clayton, would you step back
20 here for just a minute while I talk to the lawyers?

21 (Juror excused from courtroom.)

22 THE COURT: What says the state?

23 MR. BAILEY: I move to disqualify for cause, he
24 clearly, five times in a row, told Mr. Runyon he could not
25 vote for death penalty under any circumstances.

1 THE COURT: Mr. Runyon?

2 MR. RUNYON: Your Honor, I recognize what the law is.
3 Obviously, with his position he would not be qualified as
4 a -- as a juror under the present law. And, therefore, I
5 cannot object to his being dismissed.

6 THE COURT: Okay, he is not a qualified juror, he said
7 he could not listen to the case with an open mind and he
8 could never impose the death penalty. He's a number two
9 juror and he is not qualified. Bring him back in, please.

10 (Juror brought into courtroom.)

11 THE COURT: Okay, Mr. Clayton, you're excused from
12 serving on this jury panel, we appreciate you coming back
13 today and I appreciate your honest responses. Thank you,
14 sir, you're excused.

15 (Juror excused.)

16 MR. BAILEY: Your Honor, the next juror's indicated, I
17 notice in his questionnaire, that he's had both civil and
18 criminal jury service this year.

19 MR. BELL: He wasn't one of those three.

20 MR. BAILEY: He wasn't one of them that stood up. He
21 says that on the questionnaire.

22 THE COURT: Okay. Well, we'll ask him about that. It
23 says he has served this year twice already?

24 MR. BAILEY: This year, yes, sir. '96.

25 THE COURT: Okay. Philip M. Bates, please. That's an

1 automatic disqualification if he has.

2 (Juror brought into courtroom.)

3 EXAMINATION BY THE COURT:

4 Q Mr. Bates, have a seat, please, sir. Mr. Bates,
5 I'm going to ask you some questions, if you don't
6 understand something please don't answer it, let me
7 explain it to you, all right, sir? There are no right or
8 wrong answers to any of the questions, we just want you to
9 be completely honest with us in your responses.

10 Now, I notice from reviewing your jury return form
11 that you sent back in, you said you had already served as
12 a juror in both criminal and civil court this year?

13 A I was called in Summerville. And then last
14 year---

15 Q But that was in magistrate's court?

16 A In town court, Summerville.

17 Q In town court, okay.

18 A My mother died and I was excused for the
19 funeral. And last December I was at federal court in
20 Charleston.

21 Q Okay. But you haven't served in court up here,
22 in circuit?

23 A Not for three or four years.

24 Q All right, sir. So, it's beyond three years, you
25 think?

1 A I'm quite certain.

2 Q Okay. Now, since you received your summons to
3 come here for jury service, has anybody talked to you
4 about this case?

5 A Nobody.

6 Q Have you talked to anybody about the case?

7 A Haven't even thought about it.

8 Q Do you know anything about the case, other than
9 what you were told here?

10 A Just what I heard.

11 Q You haven't read or heard about it from any other
12 source before coming here?

13 A I might've read it in the newspaper. But, I
14 never paid any attention to it.

15 Q Okay. Well if you have read something about it,
16 will you be able to decide this case based on what you
17 hear in the courtroom and not something outside of here?

18 A I believe I will.

19 Q This morning I called out a list of names of
20 people who could be involved in this case, did you know
21 any of those people?

22 A No, sir.

23 Q Have you formed or expressed any opinion about
24 this case or what the punishment should be?

25 A No, sir.

1 Q Do you have any bias or prejudice against the
2 prosecutors for bringing the case or against the defendant
3 just because he is the defendant in the case?

4 A No, sir.

5 Q Do you know of any reason why you could not be
6 fair and impartial to both the state and the defendant?

7 A No, sir.

8 Q Can you and will you follow the law as instructed
9 to you by the court?

10 A Yes, sir.

11 Q Now this morning I told you and the other jurors
12 that this defendant has previously been convicted of
13 murder. The choice for the jurors in this case is a
14 choice between a life sentence and the death penalty.

15 A Yes, sir.

16 Q So what the jurors in this case will have the
17 opportunity to hear is the facts and testimony and
18 exhibits that might be presented in this phase of the case
19 to help you decide what the punishment ought to be, either
20 life in prison or the death penalty.

21 After hearing all the mitigating and the aggravating
22 circumstances, the jury decides the appropriate
23 punishment.

24 Now you've had the opportunity back in the jury room
25 to look over this form that has on it the three types of

1 juror. Which one of those three do you think best
2 describes you as a potential juror?

3 A Probably the third.

4 Q That's a juror who'll keep an open mind
5 throughout the entire process and listen to everything
6 before deciding on the punishment?

7 A Probably. Hopefully.

8 Q Well, you say probably and then you say
9 hopefully. I need for you to be a little more definite
10 than that, if you can.

11 A I think I can.

12 Q So then will you keep an open mind and listen to
13 everything that's presented in this case before you decide
14 on punishment?

15 A Yes, sir.

16 Q If you sat as a juror in a case such as this, I'm
17 not talking about this case because you don't know
18 anything about this case. But if you sat on a similar
19 type case. And you sat over there as a juror and you and
20 the other jurors listened and thoughtfully and thoroughly
21 considered everything that was presented. And after doing
22 that you decided, and the other jurors unanimously
23 decided, that the death penalty was the appropriate
24 punishment. If that was your choice, would you be able to
25 sign a form that said that was your choice, if it was?

1 A Yes, sir.

2 Q Would you be able to come in here into open court
3 and stand up and if asked individually if that was your
4 choice, would you be able to stand up and say that was, if
5 it was?

6 A Yes, sir.

7 Q Do you have any strong feelings or beliefs
8 that'll interfere with your choice between a life sentence
9 or the death penalty?

10 A No, sir.

11 Q Part of this process requires that those who are
12 selected as jurors be sequestered. That is, stay with us
13 while the case is being tried. Understanding that's
14 difficult for everybody, if you're picked as a juror in
15 this case would you be able to stay with us while this
16 case is being tried?

17 A Yes, sir.

18 Q You've thought about that and you're sure you
19 could make those arrangements?

20 A (Nods head.)

21 Q Sir?

22 A Yes, sir.

23 THE COURT: Answer any questions Solicitor Bailey
24 might have. Solicitor.

25 DIRECT EXAMINATION BY MR. BAILEY:

1 Q Mr. Bates, just a couple more questions. You
2 understand, from what Judge Whetstone just told you and
3 what he told the entire group this morning, that in South
4 Carolina the judge doesn't decide what the penalty is in a
5 death penalty trial, the jury makes that decision?

6 A Yes, sir.

7 Q So whatever the jury's decision is, whether it's
8 life without parole or the death penalty, will be the
9 order of the court, do you understand that?

10 A Yes, sir.

11 Q And you've indicated to Judge Whetstone that if
12 the case was bad enough you could vote for the death
13 penalty. And if the other 11 jurors also voted for the
14 death penalty you could sign your name on the verdict
15 form; is that correct?

16 A Yes, sir.

17 Q Okay. And could you also come out into open
18 court and announce that verdict if it was your verdict?

19 A Yes, sir.

20 Q All right, sir. Mr. Bates, do you have any
21 religious convictions or beliefs that would affect your
22 ability to fairly consider the death penalty as well as a
23 life sentence?

24 A No, sir.

25 Q Okay. And is there any reason at all why you

1 feel like you could not sit as a fair juror both for the
2 state and for the defendant in this case?

3 A No, sir.

4 MR. BAILEY: Thank you, that's all I have.

5 THE COURT: Mr. Runyon. Mr. Leiendecker.

6 MR. LEIENDECKER: Thank you, Your Honor.

7 CROSS-EXAMINATION BY MR. LEIENDECKER:

8 Q Mr. Bates, just very briefly. I noticed in
9 reviewing your questionnaire that in response to
10 Question 15 you said that you have worked in a law
11 enforcement agency or a prison, jail or correctional
12 institute when you were in the Air Force; is that right?

13 A I worked for OSI in Florida.

14 Q Could you tell me about what your responsibility
15 was with OSI?

16 A I was a supply officer.

17 Q Supply officer?

18 A At detention headquarters, we had three states
19 covered.

20 Q So you were -- you were not responsible for
21 arrests or investigative work for OSI?

22 A No, sir.

23 Q You also indicated to us that now you've been
24 with the Summerville Post office, or at least the postal
25 service, for the last 16, 17 years; is that right?

1 A Almost 17 now.

2 Q And as I understand from reading, you work in the
3 post office now; is that right?

4 A I'm a rural carrier.

5 Q You're a rural carrier?

6 A Yes, sir.

7 Q Where is your area?

8 A Sangaree, Tramway in Summerville.

9 Q Berkeley County?

10 A All in Berkeley County.

11 MR. LEIENDECKER: Yes, sir. That's all. Thank you.

12 THE COURT: Anything further from the state?

13 MR. BAILEY: No, sir, Your Honor.

14 THE COURT: Mr. Bates, would you step back in this
15 room for just a minute while I talk to the lawyers,
16 please.

17 (Juror excused from courtroom.)

18 THE COURT: What says the state?

19 MR. BAILEY: Qualified.

20 THE COURT: Defense?

21 MR. LEIENDECKER: Qualified, Your Honor.

22 THE COURT: Okay, he's clearly a qualified number
23 three juror. Bring him back in, please.

24 (Juror brought into courtroom.)

25 THE COURT: Mr. Bates, I find that you are qualified

1 to serve on this jury panel. That doesn't mean you're on
2 the jury. It means you're in the group from which the
3 jury will be selected.

4 You need to call back this call in number tonight
5 after seven o'clock. There will be a message on there
6 that will tell you what time you need to come back up here
7 or what time you need to call back. Since we're so early
8 in this process I don't know yet what time we'll start.
9 So please follow the instructions that are on the
10 machine. Do you understand?

11 JUROR: Yes, sir.

12 THE COURT: All right, sir. When you are instructed
13 to come back up here, please come prepared to stay with us
14 for seven days or so, while this case is being tried,
15 you'll have your suitcase in the car and have it packed
16 and be ready to stay if you're picked.

17 Between now and then don't talk to anybody about the
18 case, don't let anybody talk to you about the case. Don't
19 read the newspaper about this case and don't listen to any
20 radio or television reports about this case. You need to
21 be able to decide the case based on what you hear in the
22 courtroom and not something outside of here. Do you
23 understand?

24 JUROR: Yes, sir.

25 THE COURT: All right, sir, you're excused. Please

1 remember to call after seven and follow the instructions
2 tonight. Thank you, sir.

3 (Juror excused.)

4 THE COURT: Okay, the next juror is Mrs. Rogers who
5 the parties have agreed should be excused. Do you want me
6 to question her further or just bring her out and excuse
7 her?

8 MR. BAILEY: Just bring her out and excuse her.

9 MR. RUNYON: That's correct, Your Honor.

10 THE COURT: Okay. Bring in Arleitheia K. Rogers,
11 please.

12 (Juror brought into courtroom.)

13 THE COURT: Mrs. Rogers, I'm going to go ahead and
14 excuse you from service on the panel, given your other --
15 your employment. I think that's appropriate and the
16 parties have agreed, so you're excused and we appreciate
17 you participating. Thank you, ma'am.

18 (Juror excused.)

19 THE COURT: Okay, bring in Wanda F. Bradley, please.

20 (Juror brought into courtroom.)

21 EXAMINATION BY THE COURT:

22 Q Ms. Bradley, if you would have a seat right here,
23 please. As soon as the train is a little bit further down
24 the tracks we'll get started, let it clear out so I can
25 hear you and you can hear me.

1 (Pause.)

2 Okay, Ms. Bradley, I'm going to ask you some
3 questions. There are no right or wrong answers to the
4 questions, we just want you to be completely honest with
5 us in your responses. Do you understand?

6 A Uh-huh.

7 Q You are under oath, you were sworn in this
8 morning with the rest of the jurors.

9 A Yes.

10 Q Since you received your summons to come here for
11 jury service, has anybody talked to you about this case?

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

13 Q Okay. Have you talked to anybody about this
14 case?

15 A No.

16 Q And you've never read or heard or seen anything
17 about this case other than what you heard in here this
18 morning you don't know anything about this case?

19 A No, I've been out of state a year.

20 Q Okay. I called out a list of names this morning
21 of people who could be involved in this case, did you know
22 any of those people?

23 A No.

24 Q Have you formed or expressed any opinion about
25 this case or what the punishment should be?

1 A No.

2 Q Do you have any bias or prejudice against the
3 prosecutors for bringing the case or against the defendant
4 just because he is the defendant in the case?

5 A No.

6 Q Do you know of any reason why you could not be
7 fair and impartial to both the state of South Carolina and
8 the defendant?

9 A No.

10 Q Can you and will you follow the law as instructed
11 to you by the court?

12 A Yes.

13 Q Now I told you this morning, along with the other
14 jurors, that the defendant in this case has previously
15 been found guilty of murder. The question for the jury in
16 this case is to decide on the punishment, life in prison
17 without parole or the death penalty.

18 Now you will hear, in this case, the presentation of
19 testimony and exhibits and other things to help you make
20 that decision. That is, to choose between a life sentence
21 or the death penalty. After hearing the mitigating and
22 the aggravating circumstances, the jury decides on
23 punishment, life in prison or the death penalty.

24 You had the opportunity back in the jury room to look
25 over that form that had on it the three types of juror.

1 Which one of those three do you think best describes you
2 as a potential juror?

3 A Third one.

4 Q That's a juror who will keep an open mind -- mind
5 throughout the entire process and listen to everything
6 before deciding on a punishment?

7 A Yes, sir.

8 Q Will you keep an open mind and listen to all the
9 facts and circumstances that are presented in this case
10 before you decide on the appropriate punishment?

11 A Yes, sir.

12 Q Do you have any strong feelings or beliefs that
13 will interfere with your choice between a life sentence or
14 the death penalty?

15 A No.

16 Q Now part of this process is that once you are
17 selected on the jury you have to stay with us while the
18 case is being tried, you will be sequestered along with
19 the other jurors. If that is required of you, can you
20 make arrangements to be here with us while this case is
21 being tried, for up to seven days?

22 A Up to seven days?

23 Q Yes, ma'am.

24 A Starting when?

25 Q That I don't know yet, probably tomorrow or

1 Wednesday.

2 A Yeah.

3 Q I'm probably overestimating the time, but I'm
4 trying to give you a fair range, a high end range. So you
5 think you can make arrangements to stay with us, if that's
6 required of you?

7 A If it's required, I'll have to rearrange a lot of
8 stuff, but it's no problem.

9 Q You can do it?

10 A Yes.

11 THE COURT: All right. Answer any questions Solicitor
12 Bailey might have for you. Solicitor.

13 DIRECT EXAMINATION BY MR. BAILEY:

14 Q Ms. Bradley, I just want to ask a few more
15 questions, and like the judge said, there are no right or
16 wrong answers. Do you understand that in South Carolina
17 whatever the jury decides the punishment ought to be,
18 whether it's life without parole or the death penalty,
19 will be the order of the court. In other words, the jury
20 makes that decision not the judge?

21 A Yes.

22 Q Okay. And, you've indicated that -- and by the
23 way nobody's going to ask you to predict what you would do
24 in this case because you haven't heard any of the facts.

25 A Right.

1 Q And you said you'd wait 'til you heard all of the
2 testimony and the law before you made up your mind.

3 A Say that again, I didn't hear.

4 Q You've indicated that you would want to hear all
5 of the testimony and hear what the judge tells you about
6 the law before you made up your mind; is that correct?

7 A Yes.

8 Q Okay. Now, the procedure, in a case of this
9 type, is when the jury deliberates, if they vote on the
10 death penalty, all 12 vote for the death penalty, the next
11 thing that happens is that each juror has to sign their
12 name to a verdict form that will result in that execution
13 taking place. Now, if you had voted for the death
14 penalty, could you then sign your name to that verdict
15 form?

16 A If I voted, yes.

17 Q Okay. And could you stand up in open court and
18 announce that decision, if that was your decision?

19 A Yeah.

20 Q Okay. Let me explain that a little bit. There's
21 a process called polling the jury. Where when the jury
22 comes out with a verdict each jurors' name is called one
23 at a time, they're asked to stand up and affirm that out
24 loud. Could you do that if that was your verdict?

25 A Yes.

1 Q Okay. And, I notice that you're an
2 administrative assistant and involved in security at work?

3 A Uh-huh.

4 Q Okay.

5 THE COURT: Ms. Bradley, would you say yes or no?
6 She's taking down what you're saying and when she types
7 uh-huh and huh-uh it looks like the same thing. So just
8 say yes or no.

9 BY THE JUROR:

10 A Yes, sir, I am.

11 Q Are you involved with law enforcement officials?

12 A No, I do security work as far as getting
13 employees government security clearance to work on
14 government facilities, that's it, just giving them the
15 paperwork -- fill out the necessary paperwork for their
16 background clearance.

17 Q Okay. All right. And finally, Ms. Bradley, and
18 again no one's asking you for a prediction, you haven't
19 heard the facts yet. But if the case was bad enough,
20 could you vote for the death penalty, knowing that the
21 sentence will be carried out?

22 A If I heard the facts, yes. I mean, yeah. If I
23 heard the facts and I had to make a decision and I felt
24 like it warranted the death penalty, yes.

25 MR. BAILEY: All right. Thank you very much, that's

1 all I have.

2 THE COURT: Questions, Mr. Runyon?

3 CROSS-EXAMINATION BY RUNYON:

4 Q Very briefly. Ms. Bradley, what was -- I notice
5 on your questionnaire you indicated that you were in the
6 military at one point in time?

7 A Yes.

8 Q What was your MOS in the military?

9 A Supply.

10 Q Supply?

11 A Uh-huh. Yes.

12 Q How long did you serve in the military?

13 A I was in there -- I got out about four months
14 before my regular enlistment date due to pregnancy, so
15 that's three years and I think seven, eight months.

16 Q Well it certainly seemed like four years then?

17 A Yes. Seemed like four years.

18 MR. RUNYON: No -- no further questions, Your Honor.

19 THE COURT: Anything further from the state?

20 MR. BAILEY: No, sir.

21 THE COURT: Okay, Ms. Bradley, would you step back in
22 here, please, while I talk to the lawyers for just a
23 minute.

24 (Juror excused from courtroom.)

25 THE COURT: What says the state?

1 MR. BAILEY: Qualified, Your Honor.

2 THE COURT: Defendant?

3 MR. RUNYON: Obviously qualified, Your Honor.

4 THE COURT: Okay, Ms. Bradley is a qualified number
5 three juror. Bring her back in, please.

6 (Juror brought into courtroom.)

7 THE COURT: Okay, Ms. Bradley, have a seat one more
8 time. Ms. Bradley, I find that you are qualified to serve
9 on this jury panel, that doesn't mean you're on the jury
10 yet, it means you're in the group from which the jury will
11 be selected.

12 You need to call this call in number tonight after
13 seven o'clock. There will be a message on there that will
14 tell you what time you need to come back up here or what
15 time you need to call back for further instructions.
16 Whatever the message is, please follow those instructions
17 on the machine.

18 When the machine does tell you to come back up here,
19 when you come back up here, have your bags packed and in
20 your car and be prepared to stay with us for up to seven
21 days while this case is being tried. Understand?

22 JUROR: Understand.

23 THE COURT: Between now and then don't talk to anybody
24 about the case. Don't let anybody talk to you about the
25 case. Don't read the newspaper about this case and don't

1 listen to any radio or television reports that might be of
2 this case. You need to be able to decide this case based
3 on what you hear in the courtroom and not something
4 outside of here. Do you understand?

5 JUROR: Yes.

6 THE COURT: Any questions about these instructions?

7 JUROR: No.

8 THE COURT: Okay. Thank you, ma'am. You're excused.
9 Please follow the message on the machine.

10 (Juror excused.)

11 THE COURT: Now do we have anybody from the three
12 o'clock group, particularly Nancy Bishop?

13 BAILIFF: Yes, sir, she says she has one.

14 THE COURT: Is it Ms. Bishop?

15 BAILIFF: Ms. Goodier is here not Bishop.

16 THE COURT: Want to go ahead and start, Solicitor, and
17 take them out of order or we're not going to change the
18 order, we can just take them out of order, I'd prefer to
19 wait.

20 MR. BAILEY: I'd prefer to wait, too.

21 MR. RUNYON: Likewise, Your Honor.

22 THE COURT: All right. We'll wait 'til Ms. Bishop is
23 here and read the form, let me know when she's here and
24 she's read the form and we'll start back. We'll be at
25 ease for about five minutes, thank you.

1 (Brief recess was taken.)

2 THE COURT: State ready?

3 MR. BAILEY: State's ready, Your Honor.

4 THE COURT: Defendant ready?

5 MR. RUNYON: Yes, Your Honor.

6 THE COURT: Bring in Nancy Bishop, please.

7 (Juror brought into courtroom.)

8 EXAMINATION BY THE COURT:

9 Q Ms. Bishop, have a seat right here, please,
10 ma'am. Ms. Bishop, I'm going to ask you some questions.
11 I'll remind you that you are under oath, you were sworn in
12 this morning with the rest of the jurors. There are no
13 right or wrong answers to any of the questions, we just
14 want you to be completely honest with us in your
15 responses.

16 Since you received your summons to come here for jury
17 duty, has anybody talked to you about this case?

18 A No.

19 Q Have you talked to anybody about the case?

20 A No.

21 Q Do you know anything about this case other than
22 what you were told this morning?

23 A What I'd read in the papers previously.

24 Q Would the fact that you had previously read about
25 this case have any affect on your ability to be fair and

1 impartial in the case?

2 A I think so.

3 Q You think it will have an affect?

4 A Yes, sir.

5 Q You don't think you can put aside what you heard
6 about the case previously and decide it based on what you
7 hear in here in the courtroom?

8 A No, sir.

9 Q And you've thought about that and you're sure
10 that you can't put that aside and you're sure you can't be
11 fair and impartial?

12 A I feel pretty sure that I couldn't be fair and
13 impartial.

14 THE COURT: Solicitor, do you have any questions?

15 MR. BAILEY: Very briefly, Your Honor.

16 DIRECT EXAMINATION BY MR. BAILEY:

17 Q Ms. Bishop, what is it specifically that you've
18 read that you think would keep you from being fair and
19 impartial if you were picked on this jury?

20 A I don't know that it's anything specific. Just
21 the circumstances.

22 Q All right. As Judge Whetstone said this morning,
23 Mr. Rogers has been convicted of murder, that's the
24 starting point, where we're at now.

25 A Right.

1 Q Is there anything that you've read that would
2 cause you to disregard testimony or go outside of the
3 testimony to make a decision if you got picked on this
4 jury?

5 A I don't know. I can't answer that.

6 Q All right. You feel, honestly, under oath, that
7 what you've heard outside, what you've read in the paper,
8 would keep you from being a fair and impartial juror in
9 this case?

10 A Yes.

11 Q And would prevent you from being able to make a
12 decision based strictly on the evidence that you heard
13 here in court?

14 A Yes.

15 MR. BAILEY: Thank you. That's all I have.

16 THE COURT: Mr. Runyon, any questions?

17 MR. RUNYON: No questions, Your Honor.

18 EXAMINATION BY THE COURT:

19 Q Ms. Bishop, you understand there are only two
20 choices that you have in this case, either a life sentence
21 or the death penalty. Have you already decided on one of
22 those two?

23 A I think so.

24 Q You've already got your mind made up?

25 A (Nods head.)

1 THE COURT: Please step back here in the back while I
2 talk to the lawyers, please, ma'am.

3 (Juror excused from courtroom.)

4 THE COURT: What says the state?

5 MR. BAILEY: Not qualified.

6 THE COURT: Defense.

7 MR. RUNYON: Obviously not qualified.

8 THE COURT: Bring Ms. Bishop back in, please.

9 (Juror brought into courtroom.)

10 THE COURT: Ms. Bishop, thank you for your honest
11 responses, you are excused from service on this jury
12 panel. Thank you, ma'am.

13 (Juror excused.)

14 THE COURT: Okay, bring in Carol A. Goodier.

15 (Juror brought into courtroom.)

16 EXAMINATION BY THE COURT:

17 Q Have a seat, please, ma'am. First of all, tell
18 me the correct pronunciation of your name.

19 A Carol A. Goodier.

20 Q Goodier. Ms. Goodier, I'm going to ask you some
21 questions. There are no right or wrong answers to the
22 questions, we just want you to be completely honest with
23 us in your responses. You are under oath, you were sworn
24 in this morning with the rest of the jurors.

25 Since you received your summons to come here for jury

1 service, has anybody talked to you about this case?

2 A We discussed it at work.

3 Q All right. Well, would the fact that you have
4 discussed this case with other people at work have any
5 affect on your ability to be fair and impartial in the
6 case?

7 A No. No it hasn't, sir.

8 Q Can you keep an open mind as you listen to what
9 might be presented in this case in the courtroom here and
10 decide the case based on what you hear in the courtroom?

11 A No.

12 Q You can't, you've already got your mind made up?

13 A The case was widely publicized in '95. And, I
14 think anyone who followed the case has their mind made up.

15 Q Well, do you have your mind made up?

16 A Yes, I do.

17 Q And you can't set that aside and decide the case
18 based on what you hear in here?

19 A I don't feel that I can.

20 Q You've thought about that, obviously.

21 A Yes.

22 Q And you just can't be fair and impartial?

23 A To be perfectly honest, Judge, I don't think
24 there's a fair or impartial choice.

25 Q Okay. So even though you've got a choice between

1 a life sentence and the death penalty you already have
2 your mind made up and nothing's going to change it?

3 A That's right, I don't believe in life
4 imprisonment.

5 THE COURT: Answer any questions Solicitor Bailey
6 might have for you, please. Mr. Bailey.

7 DIRECT EXAMINATION BY MR. BAILEY:

8 Q Just to make it real clear, and I think I am
9 clear, Ms. Goodier, no matter what you heard you'd always
10 vote for the death penalty?

11 A I feel that when a defendant has been found
12 guilty of murder they deserve the death penalty. And I
13 don't believe they need 16 or 20 years before it's carried
14 out.

15 MR. BAILEY: Okay. Thank you. That's all I have.

16 THE COURT: Mr. Runyon, any questions?

17 MR. RUNYON: No questions, Your Honor.

18 THE COURT: Okay, Ms. Goodier, would you step back in
19 the back while I talk to the lawyers, please, ma'am.

20 (Juror excused from courtroom.)

21 THE COURT: What says the state?

22 MR. BAILEY: Not qualified.

23 THE COURT: Defense?

24 MR. RUNYON: Your Honor, obviously, she's not
25 qualified. In addition, Your Honor, this was one of the

1 jurors who had sought to be excused for job duties, too,
2 so we -- obviously she's not qualified.

3 THE COURT: Okay. She's clearly not qualified. Bring
4 her back in.

5 (Juror brought into courtroom.)

6 THE COURT: Okay, Ms. Goodier, you're excused from
7 service on this jury panel. We appreciate you coming back
8 up and participating. Thank you, ma'am.

9 (Juror excused.)

10 MR. BAILEY: Your Honor, before the next one comes in,
11 I think it's Joseph Stewart, he didn't stand up when you
12 asked the questions about 6th grade education, being able
13 to read or write. But I notice on the form that he's got
14 a first grade education. And did not really sign his last
15 name. And I don't want to embarrass him by getting into
16 that, I just wanted the Court to explore that.

17 MR. RUNYON: Your Honor, obviously the Court can make
18 some inquiry. But, you know, the question is 6th grade
19 education or its equivalent, which means -- and I know the
20 Court's familiar with that -- if he's able to function in
21 real life and -- and has been for a number of years.

22 THE COURT: What type of work does it say that he
23 does, Solicitor?

24 MR. BAILEY: Just says retired, it doesn't say what
25 from.

1 THE COURT: Okay.

2 MR. RUNYON: I mean he's -- he's obviously raised a
3 family and what have you, so I think that---

4 MR. BAILEY: He's got no children.

5 MR. RUNYON: Well, he's -- he's got to be retired,
6 Judge, he's made his way in life. So I think 6th grade
7 equivalent or -- 6th grade education or its equivalent has
8 probably been satisfied, but, obviously, we'd likewise ask
9 the Court to make inquiry rather than place the illness on
10 the state or defense.

11 THE COURT: Okay. Bring the juror in, Joseph Stewart,
12 please.

13 (Juror brought into courtroom.)

14 EXAMINATION BY THE COURT:

15 Q Mr. Stewart, have a seat, please, sir.

16 Mr. Stewart, I want to ask you some questions. There are
17 no right or wrong answers to any of these questions, we
18 just want you to be completely honest with us in your
19 responses to the questions. All right, sir?

20 A All right.

21 Q You are under oath, you were sworn in this
22 morning with the rest of the jurors.

23 A Right.

24 Q On your jury return form that you sent back in,
25 you said you were retired. Can you tell me what you're

1 retired from?
2 A Sick.
3 Q Sir?
4 A Sick.
5 Q You retired because you were sick?
6 A Yeah.
7 Q All right. Before you got sick what kind of work
8 did you do?
9 A Delcon [phonetic].
10 Q Sir?
11 A Delcon [phonetic].
12 Q And what kind of work did you do there?
13 A Clean up work, garbage.
14 Q Did what?
15 A Garbage. Clean up.
16 Q Garbage clean up work, okay. And how far did you
17 go in school?
18 A Summerville.
19 Q Sir?
20 A Summerville.
21 Q No, when you went to school how far did you go in
22 school? Did you graduate from high school?
23 A No.
24 Q How far did you go in school?
25 A I ain't---

1 Q How far did you go?
2 A Second grade.
3 Q Second grade. Can you read and write?
4 A Not too good.
5 Q How far did you -- how many years did you work at
6 that job doing garbage clean up?
7 A Six years.
8 Q Six years?
9 A Right.
10 Q All right. And then you had to retire because of
11 sickness?
12 A Right.
13 Q All right, are you married?
14 A Right.
15 Q Do you have children?
16 A No.
17 Q All right. Did you have another job before you
18 had that job doing garbage clean up?
19 A Right.
20 Q What kind of job did you do before that?
21 A Construction.
22 Q What?
23 A Construction work.
24 Q Construction work? How long did you work at that
25 job?

1 A About three years.

2 Q About three years doing that. And what did you
3 do with that -- in construction?

4 A Clean up the road.

5 Q Okay. Since you got your summons to come here
6 for jury service, has anybody talked to you about this
7 case?

8 A No.

9 Q Have you talked to anybody about this case?

10 A No.

11 Q Do you know anything about this case?

12 A No.

13 Q Has anybody talked to you about it?

14 A No.

15 Q You haven't heard about it or read about it in
16 the newspaper or seen it on TV?

17 A No.

18 Q You sure now? You kind of hesitated, I didn't
19 know whether you might be thinking you might've seen it on
20 TV?

21 A No I didn't see it.

22 Q Didn't see it on TV, okay. I called out a list
23 of names this morning of people who could be witnesses in
24 the case, did you know anybody who I called out this
25 morning?

1 A No.

2 Q Have you formed or expressed any opinion about
3 this case or about what the punishment ought to be? That
4 is, have you already made up your mind in the case?

5 A Yes.

6 Q You've already made up your mind?

7 A (No response.)

8 Q Tell me why you've already made up your mind.

9 A (No response.)

10 Q Do you understand that if you serve as a juror on
11 this case you've got to choose between a life sentence and
12 the death penalty?

13 A Right.

14 Q You think you can listen to everything that's
15 presented in here and make up your mind about either a
16 life sentence or the death penalty?

17 A (No response.)

18 Q Do you think you can do that?

19 A (No response.)

20 Q Sir?

21 A Asking me?

22 Q Yes, sir, I'm asking you if you had to could you
23 make up your mind?

24 A If I have to.

25 Q Well let me ask you this, if you retired because

1 of sickness, is your health good enough for you to serve
2 on a jury right now?

3 A I don't know.

4 Q Well you tell me, you're the only one who'd know,
5 you'd know a lot better than me, do you think you can
6 serve all right or do you want to be excused?

7 A I'll be excused.

8 Q You think you'd rather be excused, you don't
9 think that'd be too good for you to serve on something
10 like this? You think you'd have a hard time doing that
11 because of your health problem?

12 A Yeah.

13 Q Are you asking me to excuse you?

14 A (No response.)

15 Q Or you want to serve? If you want to serve and
16 you think you can do it then I want you to serve. If you
17 don't think you can do it, tell me.

18 A I don't think.

19 THE COURT: Don't think you can do it? All right.
20 Answer any question either of the lawyers might have.
21 Mr. Bailey.

22 MR. BAILEY: No questions, Your Honor.

23 MR. RUNYON: No questions, Your Honor.

24 THE COURT: All right. Mr. Stewart, would you step
25 back here for just a minute while I talk to the lawyers.

1 (Juror excused from courtroom.)

2 THE COURT: What says the state?

3 MR. BAILEY: Your Honor, I don't think he's qualified
4 mentally. And I think Mr. Runyon and I agree.

5 MR. RUNYON: Your Honor, I -- I likewise would agree.
6 I'd like to just state for the record, since we're making
7 the record. We have been able to observe the juror. And
8 we think that probably because of his health, probably
9 because of lack of education and probably because of a lot
10 of reasons that we are not aware of, but by being able to
11 observe his demeanor on the stand and what have you, it's
12 obvious that he would not qualify to serve on this -- in
13 this jury pool.

14 THE COURT: I find, also after observing the potential
15 juror, Mr. Stewart, that he would not be capable of
16 serving on this jury, he has a second grade education and
17 he has a hard time responding to the most basic of
18 questions about service in this case.

19 And further he has personally requested that he be
20 excused because of his medical condition. And he says
21 that he doesn't think it would be beneficial for him to be
22 serving in such a capacity. So he is excused. Bring him
23 back in, please.

24 (Juror brought into courtroom.)

25 THE COURT: Okay, Mr. Stewart, I'm going to excuse you

1 from serving on the jury panel. Thank you for being here.
2 I appreciate it, you're excused.

3 (Juror excused.)

4 THE COURT: Anthony Singletary.

5 (Juror brought into courtroom.)

6 EXAMINATION BY THE COURT:

7 Q Mr. Singletary, have a seat, please, sir. Okay,
8 Mr. Singletary, I'm going to ask you some questions.
9 There are no right or wrong answers to any of the
10 questions, we just want you to be completely honest with
11 us in your responses.

12 Since you received your summons to come here for jury
13 service, has anybody talked to you about this case?

14 A No, sir.

15 Q Have you talked to anybody about the case?

16 A No, sir.

17 Q Do you know anything about this case from any
18 source?

19 A No, sir.

20 Q You hadn't heard or read anything about this case
21 in the last couple of years?

22 A No, sir.

23 Q This morning I called out a list of names of
24 people who could be witnesses in the case, did you know
25 any of those people?

1 A Witnesses? No, sir.

2 Q Have you formed or expressed any opinion about
3 this case or about what the punishment should be?

4 A No, sir.

5 Q Do you have any bias or prejudice against the
6 prosecutors for bringing the case or against the defendant
7 just because he is the defendant in the case?

8 A No, sir.

9 Q Do you know of any reason why you could not be
10 fair and impartial to both the state and the defendant,
11 Mr. Rogers?

12 A No, sir.

13 Q Can you and will you follow the law as instructed
14 to you by the court?

15 A Yes, sir.

16 Q I told you and the other jurors this morning,
17 that this defendant has previously been convicted of
18 murder. The question before the jury is to decide the
19 punishment. That is, life in prison without parole or the
20 death penalty.

21 The jury will hear testimony and see exhibits
22 presented, and whatever might be presented in this part of
23 the trial, to help the jury decide what the punishment
24 ought to be. The jury will hear mitigating and
25 aggravating circumstances. And the jury decides on the

1 appropriate punishment, life in prison or the death
2 penalty.

3 Now you've had the opportunity back in the jury room
4 to look over this form that has on it the three types of
5 jurors. Which one of those three do you think best
6 describes you as a juror?

7 A (No response.)

8 Q Do you need the form again? Sir? You got it?

9 A Yes.

10 (Witness reviewed form.)

11 BY THE JUROR:

12 A The first one.

13 Q The first one? That's a juror who will always
14 give a death penalty regardless of the circumstances?

15 A Regardless? No, sir.

16 Q The first one says, in all instances where
17 somebody's convicted of murder you would give a death
18 penalty. Well this defendant's already been convicted of
19 murder.

20 The second one says, someone's convicted of murder,
21 doesn't matter what the circumstances are, they'll always
22 give a life sentence.

23 And the third one says you'll keep an open mind and
24 listen to everything before deciding on the punishment.

25 A The third one.

1 Q Third one?

2 A Yes, sir.

3 Q Okay. And again that's the one that says you'll
4 keep an open mind and listen to everything before deciding
5 on punishment?

6 A (Nods head.)

7 Q Now again, you understand you're dealing in this
8 case with someone who's already been convicted of murder?

9 A Yes, sir.

10 Q So what you're telling me now, now that you
11 understand the three, is that you'll listen to everything
12 that you hear in this case before you decide between a
13 life sentence and the death penalty?

14 A (Nods head.)

15 Q Is that right?

16 A Yes, sir.

17 Q Will you keep an open mind throughout the entire
18 trial before you decide on punishment?

19 A Yes, sir.

20 Q Do you have any strong feelings or beliefs
21 that'll interfere with your choice between a life sentence
22 or the death penalty?

23 A No, sir.

24 Q If you sat on a case like this, and I'm not
25 talking about this case, because you don't know anything

1 about this case yet. But if you sat on a case like this
2 as a juror, and you sat through the entire trial with an
3 open mind and you listened. And after listening to
4 everything you and the other jurors unanimously decided
5 that the death penalty was the appropriate punishment. If
6 that was your choice, would you be able to sign your name
7 to a form saying that was your choice?

8 A Yes, sir.

9 Q Would you be able to stand up here in open
10 court -- you'd be sitting right over here and if I pointed
11 to you and said, was that your verdict and is it still
12 your verdict? Would you be able to stand up here in court
13 and say it was, if it was.

14 A Yes, sir.

15 Q Would you be able to do that knowing that would
16 eventually result in the execution of a defendant?

17 A Yes, sir.

18 Q Part of this process is that when the jury, that
19 is the actual 12 jurors and two alternates who are picked
20 to serve on the jury, when they're selected they have to
21 stay with us while the case is being tried. If you're
22 picked on this jury, will you be able to stay with us for
23 the duration of this trial? That is, the whole time while
24 the case is being tried?

25 A No, sir.

1 Q Why not?
2 A I'm a student.
3 Q Sir?
4 A I'm a student.
5 Q Where are you a student?
6 A Summerville.
7 Q Where?
8 A Summerville.
9 Q Are you a full-time student?
10 A Yes, sir.
11 Q And do you have classes now?
12 A From eight 'til eleven.
13 Q Eight to eleven?
14 A Yes, sir.
15 Q And do you work other than go to school?
16 A Yes, sir.
17 Q Where do you work?
18 A Carolina Landscaping.
19 Q But you can't arrange your school schedule so
20 that you can serve on this jury?
21 A I guess I could.
22 Q You could?
23 A (Nods head.)
24 Q So if you're picked on the jury you can make
25 arrangements to be here or you can't?

1 A I guess I could.

2 Q You can miss -- if you had to be here for five to
3 seven days while this case is being tried, you could make
4 arrangements to miss that much class?

5 A I'd fall behind because I plan on getting out in
6 January---

7 COURT REPORTER: I cannot hear.

8 MR. BAILEY: I'm sorry, I can't hear him.

9 BY THE COURT:

10 Q You need to speak up a little bit, please.

11 A I'm supposed to graduate, get my diploma, in
12 January. And that would make me fall behind. After
13 January then it'll probably make me graduate in April.

14 Q I need to know whether you can make arrangements
15 with school to be here or not.

16 A (Nods head.)

17 Q You can make arrangements?

18 A If it's necessary, yes, sir.

19 Q All right. I need to know whether you can or
20 not. Again, it's up to you, I'm giving you the choice.
21 Can you make arrangements?

22 A Oh, no, sir.

23 Q You absolutely can't?

24 A (Nods head.)

25 Q You can't be here, you don't want to miss that

1 much school?

2 A No, sir, I've already missed a lot now.

3 THE COURT: Answer any questions Solicitor Bailey
4 might have.

5 MR. BAILEY: No questions, Your Honor.

6 MR. RUNYON: No questions, Your Honor.

7 THE COURT: Mr. Singletary, would you step back here
8 in the back while I talk to the lawyers.

9 (Juror excused from courtroom.)

10 THE COURT: What says the state?

11 MR. BAILEY: Your Honor, I think he's entitled to be
12 postponed, he's a full-time student.

13 THE COURT: Mr. Runyon?

14 MR. RUNYON: Likewise, Your Honor, I think he's
15 entitled to be postponed and we'd ask---

16 THE COURT: We'll transfer him to another term. Thank
17 you. Bring him back in.

18 (Juror brought into courtroom.)

19 THE COURT: Mr. Singletary, given the fact that you
20 are a full-time student, I will transfer you to another
21 term and carry you over this term, you'll get another
22 summons from the clerk's office as to when you need to
23 come back for a regular term of court. All right, sir?
24 Thank you, sir. You're excused from service on this jury.

25 (Juror excused.)

1 MR. BAILEY: Your Honor?

2 THE COURT: Yes, sir.

3 MR. BAILEY: The next one, Jessie Goodwine, we have an
4 outstanding bench warrant for a general sessions offense,
5 a pistol violation. I think that would disqualify him.
6 But we would have the right, at this point, I assume, even
7 though he's here for jury service, to serve that bench
8 warrant on him and lock him up. He couldn't help but have
9 a problem with our office.

10 THE COURT: What say, Mr. Runyon?

11 MR. RUNYON: Well, Your Honor, that -- that pistol
12 charge doesn't constitute conviction at this point in
13 time. And, obviously the -- the solicitor is -- is -- has
14 all sorts of latitude in this matter and -- and that's his
15 choice, what he does with that case. But, I don't think
16 that automatically disqualifies him from being considered
17 for this jury pool.

18 THE COURT: Does he have any other record?

19 MR. BAILEY: Your Honor, he doesn't have a conviction
20 record that I can find, he's got a 1992 unlawful pistol
21 arrest, that was the bench warrant. We've had that
22 outstanding since '92. He's got illegal possession of
23 liquor---

24 THE COURT: Wait a minute, let's let the train go by.

25 (Pause.)

1 MR. BAILEY: He's basically been a fugitive since 1992
2 with the pistol charge. He also has an arrest for illegal
3 possession of liquor, possession of drug paraphernalia and
4 simple possession of marijuana, no convictions.

5 THE COURT: He has no convictions?

6 MR. BAILEY: No convictions.

7 THE COURT: Okay, he would not be disqualified. He
8 is -- he's qualified to serve on the jury unless in
9 questioning him there's something else that comes up.

10 MR. BAILEY: Your Honor, what if -- what if I also
11 have the bench warrant served at this point and he's in
12 jail instead of being in the Holiday Inn?

13 THE COURT: Well, we'll have to make arrangements to
14 get him to the Holiday Inn if he's picked on the jury.
15 This assumes a lot until we question him. But, you know,
16 I think this is within your discretion as the solicitor to
17 serve or not serve the bench warrant.

18 MR. BAILEY: Judge, I obviously don't want to serve
19 that if he's going to sit anyway, if you're going to take
20 him out of jail. Could you inquire -- I don't want to
21 alienate this man in case I -- I don't have enough strikes
22 to strike him. Could you ask whether or not he has a
23 pending bench warrant?

24 THE COURT: Yes, sir.

25 MR. BAILEY: Thank you.

1 MR. LEIENDECKER: Your Honor, just for Mr. Bailey and
2 the Court's information, this is strikingly similar to
3 several cases we've seen in the last several years.
4 1992, '93 was a transition year in the Public Defender's
5 Office and we -- I think Mr. Bell can attest, we've run
6 across several defendants, at the time when Mr. Loy was
7 leaving, that had these kind of charges that were one year
8 charges or something along that level that thought their
9 cases were disposed of and were not really fugitives, but
10 just honestly thought they didn't even need to be here
11 anymore.

12 And I don't know why that was, but it's not the
13 first -- I'm not saying this is one of those cases, but in
14 inquiry that, you know, I would want you to be aware of
15 that fact, that we've seen that several times in the last
16 several years. From 1992, '93, specifically.

17 THE COURT: Well, I think that's something -- I'll
18 question him about it and see if he's aware that he had
19 that charge pending back in '92. But I think it's
20 certainly a matter, Solicitor, that you can defer the
21 arrest until such time that if he's not picked on the jury
22 then you're free to do what you want to do. But given the
23 fact that it's not a very serious charge and it's so old,
24 I think it's more appropriate to defer it and talk to him
25 about it at such time as he's free from jury service

1 rather than take him out of the jury room back here and
2 arrest him.

3 MR. BAILEY: Well, I don't -- I don't plan on
4 arresting him, especially if he's going to be on the jury.

5 THE COURT: Yes, sir. All right. Thank you, sir.
6 Bring him in, please. Jessie Goodwine.

7 (Juror brought into courtroom.)

8 EXAMINATION BY THE COURT:

9 Q Have a seat, please, sir. Mr. Goodwine, how are
10 you?

11 A Pretty good, sir.

12 Q Mr. Goodwine, I'm going to ask you some
13 questions. If you don't understand something, don't
14 answer it, ask me to explain it before you try to answer
15 it. There are no right or wrong answers to any of the
16 questions, so please be completely honest with us in your
17 responses.

18 A All right, sir.

19 Q Now, this morning I asked you and the other
20 jurors whether any juror had any type criminal record. Do
21 you have any type criminal record or charges pending or
22 anything like that?

23 A No, sir.

24 Q Have you ever had any such charges against you?

25 A Yes, sir.

1 Q When was that?
2 A '92.
3 Q Do you know what that was?
4 A I got locked up in Summerville one night for 12
5 hours.
6 Q What was that charge, do you remember?
7 A It was simple possession of marijuana, possession
8 of illegal -- illegal possession of a legal weapon.
9 Q What happened to the charge?
10 A PTI.
11 Q You went through PTI?
12 A Everything was dropped.
13 Q So you have no -- you have no record?
14 A No criminal record, sir.
15 Q Okay. And you haven't -- since '92 you haven't
16 had any other brushes with the law?
17 A No, sir. No, sir.
18 Q All right, sir. Since you received your summons
19 to come here for jury duty, has anybody talked to you
20 about this case?
21 A No, sir.
22 Q Have you talked to anybody about the case?
23 A No, sir.
24 Q Do you know anything about this case?
25 A What went on in '92? I didn't hear anything

1 about it until I got in here this morning and I found out
2 what we were here for.

3 Q Would the fact that you had some prior knowledge
4 about this case have any affect on your ability to be a
5 fair and impartial juror?

6 A Maybe not the case but the death penalty.

7 Q All right. Tell me what you mean by that.

8 A I don't think I have the right to sit in the
9 courtroom with my peers and say a person deserves to die
10 for what he did.

11 Q So you realize the defendant in this case,
12 Mr. Rogers, has already been convicted of murder?

13 A Yes, sir.

14 Q So the choice the jury has in this case is to
15 decide between a life sentence and the death penalty?

16 A That's correct, sir.

17 Q And you're telling me there are no circumstances
18 under which you could ever impose a death penalty?

19 A I couldn't do it.

20 Q Doesn't matter how bad a case might be, you could
21 never give a death penalty?

22 A Not a death penalty. Not and feel good about
23 myself.

24 Q So this form here that had on it the three types
25 of jurors---

1 A I would consider myself number two.

2 Q Number two. You'd always give a life sentence?

3 A A life sentence. A person should be punished for
4 a crime, but I don't think I have the right to say that a
5 person should die just because he killed somebody.

6 Q Okay. And that's a belief you've had for some
7 time?

8 A That's a belief I've had all my life.

9 THE COURT: Answer any questions the solicitor might
10 have, please. Mr. Bailey.

11 MR. BAILEY: Indulge me one second, Judge.

12 (Counsels consulted.)

13 MR. BAILEY: Thank you.

14 DIRECT EXAMINATION BY MR. BAILEY:

15 Q Mr. Goodwine, I'm Walter Bailey, I want to ask
16 you a few more questions. And, there are no right or
17 wrong answers, we're not testing you or anything, we just
18 want to find out what you honestly believe. And we all
19 respect your opinion, whatever that is.

20 A Okay.

21 Q And, Mr. Goodwine, you've indicated you're the
22 number two type juror that does not believe in the death
23 penalty. And no matter how bad the case was you could
24 never vote for the death penalty; is that correct?

25 A No, I couldn't.

1 Q Okay. So, right now as you sit here, having
2 heard none of the facts, you've got your mind made up?
3 A It's already made up.
4 Q No matter what you hear you'd sentence this man--
5 A It's already made up.
6 Q --to life in prison?
7 A It's already made up.
8 Q Okay. And it's made up and there's no
9 possibility of changing that?
10 A No.
11 Q Okay. And have you felt that way before today?
12 A Long time.
13 Q As far back as you can remember?
14 A As far back as I can remember.
15 Q Okay. And do those beliefs have a religious
16 basis, do you think it's morally wrong to take someone's
17 life?
18 A I don't know if it's religious, it's just a part
19 of me.
20 Q Okay. And you -- you feel that deeply?
21 A I feel that deeply.
22 MR. BAILEY: Thank you, that's all I have.
23 THE COURT: Mr. Leiendecker.
24 MR. LEIENDECKER: Thank you, Your Honor.
25 CROSS-EXAMINATION BY MR. LEIENDECKER:

1 Q Mr. Goodwine, just a very few questions. In
2 response to His Honor's question about the issue of -- of
3 signing or deciding on a death verdict, you said that, if
4 I remember, to paraphrase, you said I couldn't do it and
5 feel good about myself. You said that; right?

6 A Correct.

7 Q But do you feel, under no circumstances, if the
8 judge instructs you that the law of South Carolina says
9 the death penalty is legal in this state and someone has
10 to make a decision, life or death, it doesn't say you have
11 to feel good about it, it says a decision has to be made,
12 life or death, that under no circumstances, under no fact
13 situation, under no case, that you could ever find the
14 death penalty?

15 A Under those circumstances -- I wouldn't want to
16 be put in that situation.

17 Q It would be uncomfortable for anyone to be in
18 that situation. What I'm asking is, do you -- can you
19 envision a case that you could find the death penalty
20 since the law says that that's permissible in our state,
21 and if 12 people decided it, that it should be imposed?

22 A No, sir.

23 Q So it's not just that you don't feel good about
24 it, you just don't feel that you could do it, even though
25 you didn't feel good?

1 A I couldn't do it.

2 MR. LEIENDECKER: Nothing further. Thank you.

3 THE COURT: Mr. Goodwine, would you step back into
4 this room while I talk to the lawyers for a moment.

5 (Juror excused from courtroom.)

6 THE COURT: What says the state?

7 MR. BAILEY: Not qualified.

8 THE COURT: Defense?

9 MR. LEIENDECKER: We wouldn't object to that decision,
10 Your Honor.

11 THE COURT: He's clearly not qualified, says he could
12 never even consider the death penalty. Bring him back
13 in.

14 (Juror brought into courtroom.)

15 THE COURT: Mr. Goodwine, you're excused from serving
16 on this jury panel, we appreciate you being here and
17 participating. Thank you, sir, I appreciate it.

18 (Juror excused.)

19 THE COURT: Norma J. Neat.

20 (Juror brought into courtroom.)

21 EXAMINATION BY THE COURT:

22 Q Have a seat right here, please, ma'am.

23 Ms. Neat, I'm going to ask you some questions, there are
24 no right or wrong answers to any of the questions, we just
25 want you to be completely honest with us in your

1 responses. You were sworn in this morning with the rest
2 of the jurors, so you are under oath.

3 Since you received your summons to come here for jury
4 service, has anybody talked to you about this case?

5 A No.

6 Q Have you talked to anybody about the case?

7 A Well, me and my sister was talking about it.

8 Q Okay.

9 A After I read it in the paper, retrial. And I
10 know I was on jury duty [sic].

11 Q Yes, ma'am. Would the fact that you and your
12 sister had discussed the case at some point have any
13 affect on your ability to be fair and impartial in the
14 case?

15 A No.

16 Q Have you heard anything about the case from any
17 other source even before you got your summons?

18 A Well, I had heard when it first happened, you
19 know, reading from the paper and news and all.

20 Q Will you be able to set that aside and decide
21 this case based on what you hear in here?

22 A I can't really say.

23 Q Well, what I need to know is whether you can be
24 fair and impartial to both the state and the defendant and
25 decide this case based on the evidence that's presented

1 here in the court?

2 A Yeah.

3 Q Okay. So whatever you heard before isn't going
4 to matter to you, you can decide the case based on what
5 you hear in here?

6 A Yes.

7 Q Okay. This morning I called out a list of names
8 of people who could be witnesses in this case, did you
9 know any of those people?

10 A On the end when you called Joyce Rogers, I know
11 her.

12 Q Okay. Would the fact that you know Joyce Rogers
13 have any affect on your ability to be fair and impartial
14 in this case?

15 A No.

16 Q Have you formed or expressed any opinion about
17 the case or about what the punishment ought to be in this
18 case?

19 A Repeat that again now.

20 Q Have you formed or expressed any opinion about
21 this case or have you already decided what the punishment
22 ought to be?

23 A I haven't decided, but I don't believe in the
24 death penalty.

25 Q Okay. Well, if you don't believe in the death

1 penalty, does that mean that you can't consider both
2 possible punishments? That is -- now you only have two
3 choices as a juror, either a life sentence or the death
4 penalty. Can you consider both before deciding on one you
5 think's appropriate?

6 A Yes.

7 Q Okay. You told me just a minute ago you didn't
8 believe in the death penalty, but now you tell me you can
9 consider both before deciding on one. Does that mean that
10 in some cases, given whatever the facts might be, you can
11 give a death penalty? And in other cases, depending on
12 what the facts might be, you might give a life sentence?
13 But you'll consider both, depending on what the
14 circumstances of a given case, before you decide on one?

15 A Well, I guess I'm nervous, that's probably why I
16 say it, but I don't believe in the death penalty.

17 Q Well, by telling me you don't believe in the
18 death penalty, does that mean you could never give a death
19 penalty?

20 A No.

21 Q What does it mean then?

22 A Repeat that, I'm sorry, I'm nervous.

23 Q If you don't believe in the death penalty, does
24 that mean you can never give a death penalty?

25 A No, because I don't -- that's not my -- my

1 belief.

2 Q What is your belief? You put it in your own
3 words.

4 A Well, I don't believe in the death penalty, like
5 life sentence, I believe in that. But the death penalty I
6 don't believe in.

7 Q Okay. So if you sat, and I'm not talking about
8 this case now, because you don't know anything about this
9 case. If you sat on a case like this and you listened to
10 everything that was presented. And after listening to all
11 of that and considering everything that's presented,
12 you're always going to give a life sentence?

13 A Yes.

14 Q Never give a death penalty?

15 A No, because I don't believe in it.

16 Q It doesn't matter what the circumstances are?

17 A No.

18 Q You'll always give a life sentence?

19 A True.

20 Q Is that right?

21 A (Nods head.)

22 THE COURT: Answer any questions the solicitor might
23 have, please, ma'am. Mr. Bailey.

24 MR. BAILEY: Thank you, Your Honor.

25 DIRECT EXAMINATION BY MR. BAILEY:

1 Q Ms. Boyd, let me just ask you a couple of
2 questions to follow-up on what the judge asked you. You
3 said you knew Joyce Rogers?

4 A Yes.

5 Q Okay. And what relation is she to
6 Timothy Rogers?

7 A She is my sister niece in law [sic].

8 Q Okay. And what relation is she to
9 Timothy Rogers?

10 A I guess that's her husband, I think.

11 Q Okay. So, are you related to him by -- by blood
12 or marriage?

13 A No. I wouldn't be. I don't think I'm related to
14 him. My sister probably is.

15 Q Okay. So your sister's related to Joyce Rogers,
16 who's a relative of Timothy Rogers? I'm just trying to
17 get the relationship.

18 A My sister is her -- she -- my sister is married
19 to her uncle.

20 Q Okay. Your sister's married to Joyce Rogers'
21 uncle?

22 A Uh-huh.

23 Q Okay. All right. And do you know what
24 relationship Joyce Rogers is to Timothy Rogers?

25 A That's her husband.

1 Q Okay. And do you know Timothy Rogers?

2 A No.

3 Q Okay, have you seen him around town or anything?

4 A I may have, but I can't say.

5 Q Okay. Did -- did you go to their wedding?

6 A No.

7 Q Okay. All right. And, Ms. Boyd, Judge Whetstone

8 may have told you this, but there are no right or wrong

9 answers, we just all want to know what you think about the

10 death penalty and everyone here respects your opinion,

11 whatever that is. But you indicated to Judge Whetstone, I

12 think three times at least, that you did not believe in

13 the death penalty; is that correct?

14 A Correct.

15 Q And is this something that you've felt for some

16 period of time or is that something---

17 A Yes.

18 Q Okay. Do your beliefs against the death penalty

19 have a religious basis?

20 A Yes.

21 Q Okay. And, would it go against your religion to

22 vote for the death penalty?

23 A Yes, it would.

24 Q Okay. And for that reason could you ever, under

25 any circumstances, vote for the death penalty, knowing

1 that sentence would be carried out based on that vote?

2 A Say -- could I be---

3 Q Could you ever, under any circumstances, vote for
4 the death penalty, knowing that vote would result in that
5 person being executed?

6 A No.

7 MR. BAILEY: Thank you, Ms. Boyd, that's all I have.

8 THE COURT: Questions, Mr. Runyon?

9 CROSS-EXAMINATION BY MR. RUNYON:

10 Q I believe -- I believe it was Ms. Boyd and now
11 it's Neat?

12 A No, it was Neat, it's Boyd now.

13 Q All right, so I've got it reversed. Mrs. Boyd,
14 there is actually -- and I know this has been asked of you
15 before, but there's no way you could -- if you were
16 selected to serve on this jury, that you could consider
17 both verdicts, life in prison without parole or the death
18 penalty? You just couldn't consider both of those, could
19 you?

20 A No.

21 Q Could you even try to consider both of those?

22 A (No response.)

23 Q Or would you always vote for life?

24 A Life.

25 MR. RUNYON: No further questions, Your Honor.

1 THE COURT: Okay, Ms. Neat, would you step back in the
2 back room here while I talk to the lawyers, please, ma'am.

3 (Juror excused from courtroom.)

4 THE COURT: What says the state?

5 MR. BAILEY: Move to disqualify for cause, Your Honor.

6 THE COURT: Defense?

7 MR. RUNYON: Obviously I can't object under the
8 current law, Judge.

9 THE COURT: She is clearly not qualified, says she
10 could never impose a death penalty regardless of the
11 circumstances. Bring her back in.

12 (Juror brought into courtroom.)

13 THE COURT: Mrs. Boyd, you are excused from serving on
14 this jury panel, we appreciate you being here and I
15 appreciate your responses. Thank you, ma'am. You're
16 excused.

17 (Juror excused.)

18 THE COURT: Is Judy K. Reynolds back there? And if
19 she is, has she had time to look over the form?

20 (Juror brought into courtroom.)

21 EXAMINATION BY THE COURT:

22 Q Ms. Reynolds, I'm going to ask you some
23 questions. You are under oath, you were sworn in this
24 morning with the rest of the panel. There are no right or
25 wrong answers to any of the questions, we just want you to

1 be completely honest with us in your responses.

2 A Okay.

3 Q Since you received your summons to come here for
4 jury service, has anybody talked to you about this case?

5 A No.

6 Q Have you talked to anybody about the case?

7 A No.

8 Q Do you know anything about this case or have you
9 learned anything about this case over the last several
10 years?

11 A I've never heard of the case.

12 Q Never heard of it at all?

13 A No.

14 Q This morning I called out a list of people who
15 could be witnesses in the case, did you know any of those
16 people?

17 A No, sir.

18 Q Have you formed or expressed any opinion about
19 this case or have you decided on the punishment that
20 should be given in the case?

21 A No, sir.

22 Q Do you have any bias or prejudice against the
23 prosecutors for bringing the case or against the defendant
24 just because he is the defendant in the case?

25 A No.

1 Q Do you know of any reason why you could not be
2 fair and impartial to both the state and the defendant?

3 A I think the only problem I might have is, even
4 though I'm in favor of the death penalty, I don't know
5 that I would personally make that judgment. I think I
6 would -- I don't know if I could live with my conscience.
7 And, you know, you said be honest.

8 Q That's what I want you to do. But can you and
9 will you follow the law as instructed to you by the court?

10 A Yes, sir.

11 Q That means, if I tell you what the law is will
12 you follow those instructions?

13 A Yes.

14 Q Now I told you this morning, you and the other
15 jurors, that the defendant in this case has already been
16 convicted of murder in a prior proceeding. The choice for
17 the jury in this case is a choice between life without
18 parole or the death penalty.

19 And in this type of case what you'll hear is testimony
20 and exhibits that'll be presented to help the jury decide
21 what the punishment ought to be. You'll hear aggravating
22 and mitigating circumstances and after hearing all of that
23 the jury decides on the punishment.

24 Now, you had with you, back in the jury room, the form
25 that had on it the three types of jurors?

1 A Yes.

2 Q Which one of those three do you think best
3 describes you as a juror?

4 A Probably the second one.

5 Q That's the juror who will always give a life
6 sentence?

7 A I think so.

8 Q Okay. Well---

9 A Like I said, I don't -- I don't -- I -- I do
10 favor the death penalty, but I personally don't like being
11 put in the position of making that decision.

12 Q So, if you were put in that position, to have to
13 make that decision, what you're telling me is in every
14 instance, regardless of the circumstances that were
15 presented, you'd always give a life sentence?

16 A Probably. You want me to be more specific; don't
17 you?

18 Q I need for you to be as specific as you can be
19 comfortable with.

20 A I -- I would say that it would be a hard choice
21 for me to make, that -- that decision.

22 Q All right. Could you consider both possible
23 punishments--

24 A I would certainly---

25 Q --before deciding on one?

1 A Yes, I would certainly consider---

2 Q Can you envision a case where if you sat on a
3 jury and listened to everything -- and not talking about
4 this one now, in general. If you sat on a case and
5 listened, and after listening with an open mind you and
6 the other jurors considered everything and decided a death
7 penalty was the appropriate punishment, you think there
8 are facts out there bad enough that would make you decide
9 that?

10 A Yes, I suppose.

11 Q All right. So you do envision then that there
12 are some circumstances out there where you might give a
13 death penalty and some where you might give a life
14 sentence?

15 A I would have to be absolutely a hundred percent
16 sure it was the right thing to do or I couldn't live with
17 myself.

18 Q Okay. Well, let me ask it this way then. If you
19 sat on a case such as this, and again, I'm not talking
20 about this one because you haven't heard this case yet.
21 If you sat on a case with an open mind and you and the
22 other jurors thoughtfully and thoroughly considered
23 everything. And after doing that all of you by unanimous
24 decision decided a death penalty was the appropriate
25 punishment. If that was your choice, would you be able to

1 sign your name to a form saying that was your choice?

2 That is to impose the death penalty?

3 A Yes.

4 Q Would you be able to stand up here in open court
5 and say that was your choice, if it was?

6 A Yes.

7 Q Would you be able to do those things knowing that
8 eventually that's going to result in the execution of a
9 defendant?

10 A Like I said, if I was a hundred percent sure. If
11 I had any doubts, I -- I'd feel bad about it.

12 Q Okay. But you can consider both before deciding
13 on one?

14 A Yes, yes, I can. But I'd have to be a hundred
15 percent sure.

16 Q Part of this process is that if you are selected
17 on the jury that you have to stay with us while the case
18 is being tried, that means you are sequestered with the
19 other jurors. If that is required of you and you're
20 picked on this jury, can you make arrangements to stay
21 with us while the case is being tried?

22 A I -- yes, I could do that.

23 THE COURT: Okay. Answer any questions the solicitor
24 might have, please, ma'am. Solicitor.

25 MR. BAILEY: Thank you, Your Honor.

1 DIRECT EXAMINATION BY MR. BAILEY:

2 Q Ms. Reynolds, I noticed on your -- your
3 questionnaire, the little card you sent back, you asked to
4 be excused from jury service because of night vision?

5 A I -- I've been waiting for my chance to ask about
6 that.

7 Q This is your chance.

8 A I absolutely cannot drive after dark. I'm
9 willing to do this, but if we get out of here at five
10 o'clock and it was dusk, I couldn't drive home.

11 THE COURT: If we provide transportation for you if
12 it's after dark would that solve the problem?

13 JUROR: Certainly, that would solve the problem. Yes.

14 THE COURT: So you will know, if you are picked on the
15 jury and if you are sequestered with the other jurors, you
16 don't drive during the course of the trial because we have
17 SLED agents who will transport you to and from the
18 courthouse and to all your meals and to the motel and
19 everything, you won't get back in your car until we
20 release you. And if that's after dark we'll see that you
21 get home.

22 JUROR: That -- that'll be fine.

23 BY MR. BAILEY:

24 Q Ms. Reynolds, is there any other problem that
25 hasn't come up yet that you think might cause you to maybe

1 not be a fair juror to both sides?

2 A No.

3 Q Okay. All right. I want to ask you a few more
4 questions about your feelings on the death penalty. And
5 there are no right or wrong answers. And no matter what
6 your answer is, we all respect your opinion. But, you've
7 said you're probably the number two juror. Okay? Would
8 you still put yourself in that category? After you've had
9 a chance to talk to the judge about the three type
10 jurors? And if you need to look at that form again,
11 please do, if you have it with you.

12 A I don't -- I don't -- like I said, I -- I don't
13 have anything against the death penalty. It's just that I
14 feel very uncomfortable making a decision like that, for
15 someone else's life.

16 Q Okay. All right. And, do you feel like that
17 belief that you wouldn't want to personally get involved
18 in that process, would that substantially impair your
19 ability to fairly consider both options, life without
20 parole and the death penalty?

21 A I -- I know you want a yes or a no and I -- I
22 don't---

23 Q I -- I want whatever you feel. I'm not looking
24 for a specific answer, nobody here is, we just want to
25 know truthfully, from your heart, how you feel.

1 A As I said before, I would have to be absolutely a
2 hundred percent certain in my own mind that it was -- that
3 the man was guilty and it was proper punishment.

4 Q You understand, though, the guilt and innocence,
5 unlike maybe 99 percent of other trials we go through, is
6 not an issue in this case, he's already been found guilty
7 of murder?

8 A Right. Right. I understand.

9 Q So that's our starting point.

10 A Right.

11 Q And the jury -- you understand further, the jury
12 in South Carolina, not the judge, decides what that
13 punishment's going to be. And whatever that jury decides
14 is going to be carried out.

15 A Right.

16 Q If the jury votes for life without parole,
17 that'll be what the judge orders. If the jury votes for
18 the death penalty he's going to be executed.

19 A Right.

20 Q And no one's going to ask your prediction of what
21 you would do in this case, because you haven't heard any
22 of the facts.

23 A Right.

24 Q But, what we want to know is, can you fairly
25 consider both -- both options?

1 A Yes.

2 Q And if the case is bad enough, can you vote for
3 the death penalty, knowing that sentence is going to be
4 carried out?

5 A Yes.

6 Q Okay. And if the other 11 jurors voted for the
7 death penalty, could you then sign your name to a death
8 verdict form that would eventually result in that
9 defendant being executed?

10 A Yes.

11 Q Okay. And could you stand up here in open court
12 and announce that when your name was called?

13 A Yes.

14 MR. BAILEY: Okay. Ms. Reynolds, I think that's all
15 I've got. Thank you very much.

16 MR. RUNYON: No questions, Your Honor.

17 THE COURT: Ms. Reynolds, I have a matter I need to
18 take up with the attorneys, would you step back into the
19 room back here?

20 (Juror excused from courtroom.)

21 THE COURT: What says the state?

22 MR. BAILEY: Your Honor, I think she is qualified. I
23 would note for the record, in the event I do strike her,
24 that there was substantial equivocation. And -- and
25 apparent inability to personally vote for the death

1 penalty, even though she felt like, in the abstract, she
2 was for the death penalty. But in summary I -- I -- I
3 think she is qualified.

4 MR. RUNYON: Obviously qualified, Your Honor.

5 THE COURT: All right. She is a qualified number
6 three juror. Bring her back in.

7 (Juror brought into courtroom.)

8 THE COURT: Ms. Reynolds, I find that you are
9 qualified to serve on the jury panel. That doesn't mean
10 you're on the jury yet, it means you're in the group from
11 which the jury will be selected.

12 What I'll ask you to do, please, ma'am, is call this
13 call in number tonight after seven o'clock. There will be
14 a message on there that will tell you what time you need
15 to come back up here. It also may say what time you need
16 to call back, because I don't know what time now we'll be
17 starting the trial. So please follow the instructions
18 that are on the answering machine and call tonight after
19 seven o'clock.

20 When you are instructed to come back up here, please
21 come with your suitcase packed and in your car and be
22 prepared to stay with us for up to seven days in case you
23 are selected on the jury.

24 Between now and then don't talk to anybody about the
25 case. Don't let anybody talk to you about the case.

1 Don't listen to the radio or television reports about the
2 case. And don't listen -- and don't read the newspaper
3 rather. Because you might have -- might find something in
4 there about the case. What you need to be able to do is
5 to decide this case based on what you hear in the
6 courtroom and not something outside of here. Do you
7 understand?

8 JUROR: Yes, sir.

9 THE COURT: All right, any questions about these
10 instructions?

11 JUROR: So I'm coming back regardless of the message I
12 get here.

13 THE COURT: You're coming back up here sometime, yes,
14 ma'am, I just don't know when to tell you, so we're going
15 to use the call in number so we won't bring you back up
16 here unnecessarily. I would anticipate right now that
17 what it's going to say tonight is to call back sometime
18 tomorrow.

19 JUROR: Oh, okay.

20 THE COURT: And then follow whatever -- call back the
21 next time it says to call back and follow the
22 instructions.

23 JUROR: Okay.

24 THE COURT: All right. Thank you, ma'am. You're
25 excused for now and call after seven o'clock tonight.

1 (Juror excused.)

2 THE COURT: Okay, David L. Hirt.

3 (Juror brought into courtroom.)

4 EXAMINATION BY THE COURT:

5 Q Mr. Hirt, if you'll have a seat here in the
6 witness chair, please, sir. Okay, Mr. Hirt, I'm going to
7 ask you some questions. There are no right or wrong
8 answers to any of the questions, we just want you to be
9 completely honest with us in your responses.

10 A Okay.

11 Q Don't try to answer something that you don't
12 understand. You are under oath, you were sworn in this
13 morning with the rest of the jury panel.

14 Since you received your summons to come here for jury
15 service, has anybody talked to you about this case?

16 A No they have not.

17 Q Have you talked to anybody about the case?

18 A I have not.

19 Q Do you know anything about this case from any
20 source?

21 A Not that I'm aware of.

22 Q Okay, you haven't read about it in the newspaper,
23 seen it on TV or anything in the last couple years?

24 A I might have, but it -- nothing comes to mind.

25 Q This morning I read a list of names of people who

1 could be witnesses in the case, did you know any of those
2 people?

3 A I did not.

4 Q Have you formed or expressed any opinion about
5 this case or about what the punishment ought to be?

6 A I have not.

7 Q Do you have any bias or prejudice against the
8 prosecutors for bringing the case or against the defendant
9 just because he is the defendant in the case?

10 A No.

11 Q Do you know of any reason why you could not be
12 fair and impartial to both the state and the defendant?

13 A No.

14 Q Can you and will you follow the law as instructed
15 to you by the court?

16 A Yes.

17 Q Now this morning I told you, and the rest of the
18 jury panel, that this defendant has already been convicted
19 of murder in a previous proceeding. So the choice for the
20 jury in this proceeding is to decide on the punishment.
21 Either life in prison or the death penalty.

22 The jury in this case will hear the testimony and
23 consider the exhibits that are presented. And all of that
24 will be presented to assist the jury in making its
25 decision. That is, choosing between life and death.

1 You'll have the opportunity to hear mitigating and
2 aggravating circumstances. And after hearing and
3 considering all of that the jury decides on punishment.
4 Either life in prison without parole or the death penalty.

5 You have had the opportunity, back in the jury room,
6 to read over a form that had on it the three types of
7 jurors, which one of those three do you think best
8 describes you as a potential juror?

9 A The third.

10 Q That's a juror who will keep an open mind and
11 listen to everything before deciding on punishment?

12 A Uh-huh.

13 Q If you sat on a case such as this, and I'm not
14 talking about this case now because you haven't heard the
15 testimony in this case yet. But if you sat on a case like
16 this as a juror and thoughtfully and thoroughly considered
17 everything that was presented. And after doing all of
18 that you and all the other jurors unanimously decided that
19 the death penalty was the appropriate punishment. If that
20 was your choice, would you be able to stand up here in
21 court and say that was your choice, if it was?

22 A Absolutely.

23 Q Would you be able to sign a form that said that
24 was your choice, if it was? Along with the other jurors.

25 A If I need to.

1 Q Would you be able to do that knowing that
2 eventually that's going to result in the execution of a
3 defendant?

4 A Absolutely.

5 Q Now part of this process is that the jurors who
6 are selected stay with us while we try the case, that
7 means you're sequestered and you can't go home until you
8 finish the case. If that is required of you, can you make
9 arrangements to stay with us while the case is being
10 tried?

11 A I don't know the answer to that right now.

12 Q Okay. Well, have you thought about it, do you
13 think you can?

14 A I have thought about it a little bit, it's -- it
15 may be a little bit difficult, it's possible.

16 Q Well probably what we're talking about is five to
17 seven days at the outside, once we get you together. Now
18 we aren't going to keep you today or anything like that,
19 we're probably talking about you coming back -- and I'm
20 not going to tie myself down to a date yet -- but right
21 now possibly by Wednesday. If we start on Wednesday and
22 finish sometime before or just after the weekend, sometime
23 right in there, you think you can make arrangements to do
24 that?

25 A Yes, sir.

1 THE COURT: All right. Answer any questions the
2 solicitor might have. Solicitor.

3 MR. BAILEY: Thank you, Your Honor.

4 DIRECT EXAMINATION BY MR. BAILEY:

5 Q Mr. Hirt, I'm Walter Bailey, just a few more
6 questions to follow-up on what the judge asked you. You
7 understand that in South Carolina the way the process
8 works is that the jury and not the judge decides what the
9 penalty is? We use the word recommendation, it's not
10 really a recommendation, because if the jury decides on
11 life without parole that will be the order of the court
12 and that's what he'll get. On the other hand, if they
13 decided the death penalty that will be the order of the
14 court also.

15 A Yes.

16 Q All right, sir. And you've indicated that if the
17 case was bad enough you could vote for the death penalty.
18 And if the other 11 jurors voted the same way that you
19 could then sign your name to the verdict form; is that
20 correct?

21 A Considering the circumstances.

22 Q And, again, we're not asking you what you'd do in
23 this case because you haven't heard any facts, but just in
24 the abstract. And you've also indicated if the case is
25 bad enough and you and the other 11 jurors voted for the

1 death penalty, signed the form, you could get up here and
2 announce that verdict in open court; is that also correct?

3 A That's correct.

4 MR. BAILEY: Sir, that's all I've got. Thank you very
5 much.

6 THE COURT: Mr. Runyon or Mr. Leiendecker.

7 CROSS-EXAMINATION BY MR. RUNYON:

8 Q Mr. Hirt, just very briefly. I notice your
9 address is on [REDACTED] Drive in North Charleston?

10 A Right.

11 Q Where is that located?

12 A It's behind the [REDACTED]. Right on -- right
13 off of Dorchester. Ashley Phosphate and Dorchester
14 basically.

15 Q Okay. And so as -- where do you pay your car
16 taxes?

17 A Right here in St. George. Summerville.

18 Q So you send them up here, you go over to
19 Summerville?

20 A Uh-huh.

21 Q And you attended Purdue University?

22 A Right.

23 Q And you graduated in what year?

24 A '84.

25 Q All right, sir. And, you indicated it would --

1 you could find out between now and whenever you had to
2 come back whether or not service would work any hardship
3 or inconvenience to you?

4 A That's correct.

5 MR. RUNYON: All right. Excuse me one moment, Your
6 Honor.

7 (Counsel consulted cocounsel.)

8 BY MR. RUNYON:

9 Q I noticed in -- in your -- in your job title
10 description that you described on your -- on your
11 questionnaire that part of your duties deal with lawsuits
12 and things of that sort; is that correct?

13 A That's correct.

14 Q I assume that's from a technical, mechanical
15 engineering legal perspective?

16 A To some extent, that's correct, yes.

17 Q Okay. And, does that -- did you have any formal
18 training in the law?

19 A No.

20 Q Okay. Basically you're into it from the
21 viewpoint of representing your company in -- in whatever
22 the litigation happens to be?

23 A Right.

24 MR. RUNYON: No further questions, Your Honor.

25 BY THE COURT:

1 Q Mr. Hirt, the problem you might have with
2 serving, is that a work related problem?

3 A If -- if it is it would be work related. I also
4 have a new baby boy, he's just three weeks old, so there
5 is a wife factor to be involved there. But, yeah,
6 probably work would be the most important of the two.

7 Q But you think you can make arrangements?

8 A Uh-huh.

9 THE COURT: All right, sir. I need to talk with the
10 lawyers, would you step back here for just a minute?

11 (Juror excused from courtroom.)

12 THE COURT: What says the state?

13 MR. BAILEY: Qualified, Your Honor.

14 THE COURT: Defense?

15 MR. RUNYON: Obviously he's qualified, Your Honor.

16 THE COURT: He's clearly a qualified number three
17 juror. Bring him back in, please.

18 (Juror brought into courtroom.)

19 THE COURT: Okay, Mr. Hirt, I find that you're
20 qualified to serve on this jury panel, that doesn't mean
21 you're on the panel yet, it means you're in the group from
22 which the jury will be selected.

23 So between now and the time you come back up here
24 don't talk to anybody about the case, don't let anybody
25 talk to you about the case. Don't listen to radio or

1 television reports about the case. And don't read the
2 newspaper about this case.

3 What I'll ask you to do, please, sir, is to call this
4 call in number tonight after 7 p.m. There will be a
5 message on there that will tell you what time to come back
6 up here, but it will more likely say what time to call
7 back, we'll have you call back tomorrow and let you know
8 more definitely when you need to come back up here.
9 Tentatively I'd say Wednesday. But that right now is a
10 guess, we're not far enough along to be able to narrow
11 that down at this point. So call at seven or after seven
12 tonight, follow the instructions that are on the machine,
13 please, sir.

14 JUROR: Okay. I have a question for you, if I might.

15 THE COURT: Yes, sir.

16 JUROR: Does that mean that potentially you may not
17 have to go through all of Wednesday to get the jury
18 selection done?

19 THE COURT: Yes, sir. It means that jury selection,
20 if it goes smoothly and quickly, we could start on
21 Wednesday morning. But I can't tell you that right now, I
22 don't know yet, we're not far enough along, I'll have a
23 better idea of that tomorrow.

24 And when you come back up here now, when it -- when
25 the message says come back up here, be here when it says

1 to be here, but have your suitcase packed and in your car
2 and be prepared to stay with us in case you are selected
3 on the jury.

4 JUROR: Okay.

5 THE COURT: All right, sir.

6 JUROR: Thank you, sir.

7 THE COURT: Thank you, sir. You're excused.

8 (Juror excused.)

9 THE COURT: Angela N. Kraft.

10 (Juror brought into courtroom.)

11 EXAMINATION BY THE COURT:

12 Q Ms. Kraft, how are you?

13 A Fine, how are you?

14 Q Ms. Kraft, I'm going to ask you some questions.

15 There are no right or wrong answers to any of the
16 questions, we just want you to be completely honest with
17 us in your responses. You are under oath, you were sworn
18 in this morning with the rest of the panel.

19 A Yes, sir.

20 Q Since you received your summons to come here for
21 jury service, has anybody talked to you about this case?

22 A No, sir.

23 Q Have you talked to anybody about the case?

24 A No, sir.

25 Q Do you know anything about this case or have you

1 heard about it, read about it or talked to anybody about
2 it at any time, even before receiving your summons?

3 A In the newspaper and on TV.

4 Q Would that have any affect on your ability to be
5 fair and impartial in this case?

6 A No, sir.

7 Q Do you think you can set that aside and decide
8 this case based on what you hear in the courtroom?

9 A Yes, sir.

10 Q This morning I called out a list of names of
11 people who could be involved in this case, did you know
12 any of those people?

13 A No, sir.

14 Q Have you formed or expressed any opinion about
15 this case or about the -- what the punishment ought to be?

16 A No, sir.

17 Q Do you have any bias or prejudice against the
18 prosecutors for bringing the case or against the defendant
19 just because he is the defendant in the case?

20 A No, sir.

21 Q Do you know of any reason why you could not be
22 fair and impartial to both the state and the defendant?

23 A No, sir.

24 Q Now in this case I told you and the other jurors
25 this morning that the defendant, Mr. Rogers, has already

1 been convicted of murder in a previous proceeding. The
2 decision for the jury in this case is to decide on
3 punishment, either life in prison without parole or the
4 death penalty.

5 A Yes, sir.

6 Q The jury will hear aggravating and mitigating
7 circumstances, testimony will be presented, exhibits will
8 be presented, all of that will be given to the jury to
9 assist the jury in deciding on the proper punishment,
10 either life in prison or the death penalty.

11 A Yes, sir.

12 Q Now you've had the opportunity back in the jury
13 room to look over the form that had on it the three types
14 of jurors. Which one of those three do you think best
15 describes you as a potential juror?

16 A The third one.

17 Q That's a juror who'll keep an open mind and
18 listen to everything before deciding on punishment?

19 A Yes, sir.

20 Q Okay. Will you do that? Will you keep an open
21 mind and listen to everything that is presented in this
22 case before you decide between a life sentence and the
23 death penalty?

24 A Yes, sir.

25 Q If you sat on a case such as this, and I'm

1 speaking generally now and not about this case, because
2 you don't know about this case. If you sat as a juror in
3 a case such as this. And listened to everything with an
4 open mind and thoughtfully and thoroughly considered it.
5 And after doing that you and the other jurors unanimously
6 decided that the death penalty was the appropriate
7 punishment. If that was your choice, would you be able to
8 sign your name to a form saying that was your choice, if
9 it was?

10 A No, sir.

11 Q You couldn't ever sign such a form?

12 A I don't think so.

13 Q All right. Can you explain that to me, please,
14 ma'am?

15 A No, not really.

16 Q Okay. Well as part of the process, if a
17 defendant is found guilty -- not found guilty, but if it
18 is unanimously found that the death penalty is the
19 appropriate punishment, all the jurors agree, part of the
20 process is for the -- all the jurors to sign their name
21 saying that is their verdict. If you decide that the
22 death penalty is the appropriate verdict, will you be able
23 to sign your name to that verdict form?

24 A If I decide, yes.

25 Q Okay. Now that I've explained it to you, you

1 understand?

2 A Yes.

3 Q If you decide that's the way it ought to be you'd
4 sign your name?

5 A Yes, sir.

6 Q Would you come in here with the other jurors, and
7 if I asked each of you individually to stand up and said,
8 is that your verdict and is it still your verdict? Would
9 you be able to stand up here in open court and say it was,
10 if it was?

11 A Yes, sir.

12 Q Now you understand that you'd be doing those two
13 things, if that's your finding, if you do that that'll
14 eventually result in the execution of a defendant?

15 A Yes, sir.

16 Q All right. Even given that, if that's your
17 choice, and the unanimous choice of the rest of the jury,
18 you could sign that form and you could come in here into
19 court and stand up and say that's your verdict?

20 A Yes, sir.

21 Q Okay. So what you're telling me then is, since
22 you are a number three type juror, you think that there's
23 some circumstances out there somewhere that sometime might
24 justify a life sentence and sometimes might justify a
25 death penalty, given the facts of a particular case?

1 A Yes, sir.

2 Q All right. Do you have any strong feelings or
3 beliefs that will interfere with your choice between a
4 life sentence or the death penalty?

5 A No, sir.

6 Q Part of this process, Ms. Kraft, is that when the
7 jury is selected, that is the 12 who'll actually serve and
8 two alternates, you have to stay with us while the case is
9 being tried. If you are selected on this jury, will you
10 be able to make arrangements to be sequestered with the
11 other jury panel members while the case is being tried?
12 Understanding it's a hardship on everybody. But can you
13 make those arrangements?

14 A Yes, sir.

15 THE COURT: Answer any questions the solicitor might
16 have, please, ma'am. Mr. Bailey.

17 DIRECT EXAMINATION BY MR. BAILEY:

18 Q Ms. Kraft, I'm Walter Bailey, I'll be prosecuting
19 this case, I need to ask you a few more questions. And,
20 most people never really think about the death penalty
21 until they get in a situation like you're in, where you
22 might be on a death penalty jury. Would that kind of suit
23 your case?

24 A Yes, sir.

25 Q You've never thought about it before?

1 A No, sir.

2 Q You think you've had enough time to look over
3 those three type jurors to really decide what kind of
4 juror you are?

5 A Yes, sir.

6 Q Okay. And I want you to understand there are no
7 right or wrong answers, we're not looking for a particular
8 answer from you and we're not testing you, we just want to
9 know how you feel, okay?

10 A Yes, sir.

11 Q Now, when the judge first asked you about signing
12 that death verdict form, you said you didn't think you
13 could sign that paper?

14 A Yes, sir.

15 Q And then later on you said you thought you
16 probably could sign it, under certain circumstances?

17 A Yes, sir.

18 Q Could you -- I hate to put you on the spot, but
19 could you tell us why you started off saying you couldn't
20 sign it then said maybe you could later?

21 A I've just never really been put in this
22 situation. And, it's just something I've never really
23 thought about.

24 Q Okay. And that's why I asked if you had enough
25 time to think about it now, do you think you've had enough

1 time? Because this is the only chance any of us have to
2 find out what your beliefs are before we pick a jury?

3 A Yes, sir, I understand that. I don't know that
4 I've had enough time.

5 Q Okay. Would it help to look over that form
6 again?

7 A No, sir.

8 Q The three type jurors. Okay. Let me -- let me
9 just ask you a few more questions. Do you understand that
10 the way it works here in South Carolina, the judge doesn't
11 make up -- doesn't decide what the sentence is going to
12 be. The jury, after hearing all the facts and the law
13 from the judge, would decide among those two choices, life
14 without parole or the death penalty. Whatever that jury
15 decides is what's going to happen. The jury hears all
16 those facts and the judge tells them what the law is. If
17 they vote for life without parole, he'll get life without
18 parole. And on the other hand, if they hear all of the
19 same facts and circumstances, vote for the death penalty,
20 that person is going to be executed, based on that jury's
21 vote.

22 And what we all want to know is whether or not, under
23 any circumstances, you could vote to send someone to their
24 death?

25 A No, sir.

1 Q You could not do it?

2 A No, sir.

3 Q Okay. And, if you couldn't vote for the death
4 penalty then, could you sign your name on that form that
5 would result in an execution?

6 A No.

7 Q Okay. And again, there are no right or wrong
8 answers. Unless you're to tell us something just because
9 you think we want to hear it, we want to know exactly how
10 you're thinking.

11 So now that you've had a chance to think about it,
12 talk about it a little bit more, would you be the number
13 two kind of juror--

14 A I think so.

15 Q --that does not believe in the death penalty?

16 A Yes, sir; yes, sir.

17 MR. BAILEY: Thank you. That's all I have.

18 THE COURT: Mr. Runyon or Mr. Leiendecker.

19 MR. RUNYON: Just very briefly.

20 CROSS-EXAMINATION BY MR. RUNYON:

21 Q Ms. Kraft, in other words you're saying that you
22 don't believe in the death penalty?

23 A I don't know that I -- it's not that I don't
24 believe in it, I'm just not real certain.

25 Q You're not real certain?

1 A Yes, sir.

2 Q But certainly that doesn't mean that you
3 couldn't -- you'd never vote to impose death in a -- in a
4 case that you thought was appropriate?

5 A I believe so.

6 Q And -- and, if you thought it was appropriate to
7 impose the death penalty, you certainly could sign
8 whatever documents you needed to sign?

9 A If I thought it was appropriate.

10 MR. RUNYON: If you thought it was appropriate. No
11 further questions.

12 THE COURT: Anything further, Solicitor?

13 MR. BAILEY: Yes, sir.

14 REDIRECT EXAMINATION BY MR. BAILEY:

15 Q Ms. Kraft, I apologize in advance to get up here
16 and kind of put you through this, because you've talked to
17 the judge and me and Mr. Runyon. What I'm trying to do is
18 put all your answers together. And again I want to stress
19 that there are no right or wrong answers. Okay? Do you
20 have that paper with you?

21 A Yes, I do.

22 Q Okay. Can you just look at it again? And tell
23 us, you know, don't -- don't give me an answer because you
24 think I want to hear it or the judge wants to hear it or
25 Mr. Runyon wants to hear it. But tell us what kind of

1 juror you think you are.

2 (Juror reviewed document.)

3 BY THE JUROR:

4 A I would probably be more of a second type juror.

5 Q Second?

6 A Probably.

7 Q Okay. And that second type juror does not
8 believe in the death penalty and would always vote for
9 life in prison?

10 A I would think so.

11 Q Okay. And that's you?

12 A I think so.

13 MR. BAILEY: Thank you, that's all I have.

14 THE COURT: Mr. Runyon?

15 RECROSS-EXAMINATION BY MR. RUNYON:

16 Q I'm not trying to put you on the spot. But are
17 you saying you don't think---

18 A I think I'm the second type juror.

19 Q That you never would impose the death penalty?

20 A No, sir.

21 Q And there are no circumstance that you might feel
22 that it was appropriate?

23 A No, sir.

24 MR. RUNYON: No further questions.

25 THE COURT: Ms. Kraft, if you would, please, step back

1 into this back room here while I talk to the lawyers for
2 just a minute, please, ma'am.

3 (Juror excused from courtroom.)

4 THE COURT: What says the state?

5 MR. BAILEY: Your Honor, this young woman's only 19
6 years old and it's obvious that she's never thought about
7 this before, but after having the opportunity to talk to
8 all three of us, on at least two occasions for me, two
9 occasions for Mr. Runyon, she's clearly settling on a
10 number two type juror. And has said clearly, both in
11 response to me and to Mr. Runyon, that she's the number
12 two type juror, could never vote for the death penalty, I
13 believe she's disqualified for cause.

14 MR. RUNYON: Your Honor, I realize that she -- this --
15 this juror has equivocated. She's young. Until she got
16 on the stand today she probably hasn't thought about the
17 death penalty as she said. But I would suggest that her
18 answers did not reflect any deeply held beliefs against
19 the death penalty.

20 On one hand, in response to the court and in responses
21 to Mr. Bailey, she had initially indicated she could vote
22 for the death penalty if she thought it was appropriate.
23 Then she equivocated. Then she once again told me that
24 she could, if she thought it was appropriate, impose the
25 death penalty and sign the documents. Then, of course,

1 under Mr. Bailey's recross she equivocated again.

2 I -- I think that what we've got here is a juror who
3 has -- has said on numerous occasions that -- that she
4 both could and couldn't. And I think under those
5 circumstances she should stay in the pool, I think she
6 doesn't have a deeply held belief against the death
7 penalty. And the sum total of her answers is that if she
8 thought it was appropriate she could -- she could sign a
9 document. A death -- a verdict of death -- imposing death
10 penalty.

11 THE COURT: She's clearly not a qualified juror, she
12 equivocated to begin with. But after further questioning
13 she consistently told both the state and the defendant
14 that she could never impose a death penalty. She says she
15 is a firm number two juror and she is, therefore, not
16 qualified to serve on the panel. She's excused. Bring
17 her in.

18 (Juror brought into courtroom.)

19 THE COURT: Ms. Kraft, I'm going to excuse you from
20 serving on this jury panel, we appreciate you coming back
21 this afternoon and I appreciate your responses. Thank
22 you, ma'am, you're excused.

23 (Juror excused.)

24 THE COURT: Keith J. Fields.

25 (Juror brought into courtroom.)

1 EXAMINATION BY THE COURT:

2 Q Mr. Fields, have a seat. How are you, sir?

3 A All right.

4 Q Mr. Fields, I'm going to ask you some questions.
5 If you don't understand something stop me, let me explain
6 it to you. There are no right or wrong answers to any of
7 the questions, we just want you to be completely honest
8 with us in your responses.

9 Since you received your summons to come here for jury
10 service, has anybody talked to you about this case?

11 A No, Your Honor.

12 Q Have you talked to anybody about the case?

13 A No, Your Honor.

14 Q Do you know anything about this case other than
15 what you were told this morning?

16 A No, sir.

17 Q Haven't heard about it on the TV, read about it
18 in the newspaper or anything, at anytime?

19 COURT REPORTER: I can't hear, judge.

20 MR. BAILEY: Judge, I'm sorry, could we cut the air
21 conditioner off?

22 BY THE COURT:

23 Q Just speak up a little bit, please. Because
24 they've got to hear you, too, because they're going to
25 have the opportunity to ask you some questions in just a

1 minute.

2 This morning I went through a list of names of people
3 who could be witnesses in the case. Did you know any of
4 those people?

5 A No, Your Honor, I did not know any of the
6 witnesses.

7 Q Have you formed or expressed any opinion about
8 the case or have you decided already in your mind what the
9 punishment ought to be?

10 A No, I haven't.

11 Q Do you have any bias or prejudice against the
12 prosecutors for bringing this case or against the
13 defendant just because he is the defendant in the case?

14 A No.

15 Q Do you know of any reason why you could not be
16 fair and impartial to both the state and the defendant?

17 A No.

18 Q Can you and will you follow the law that is
19 instructed to you by the court?

20 A Yes, Your Honor.

21 Q Now I told you and the other jurors this morning
22 that the defendant in this case, Mr. Rogers, has already
23 been convicted, in another proceeding, of murder. So
24 you're dealing with a convicted murderer in this case.
25 The question for the jury to decide is what the punishment

1 should be. Either life in prison without parole or the
2 death penalty.

3 The jury will hear mitigating and aggravating
4 circumstances. The jury will hear all the testimony, see
5 all the exhibits, all of that's being submitted to the
6 jury so they can decide on the appropriate punishment,
7 either life in prison or the death penalty.

8 You've had the opportunity back in the jury room to
9 look over the form that had on it the three types of
10 jurors. Which one of those three do you think best
11 describes you as a potential juror?

12 A Number three.

13 Q That's a juror who'll keep an open mind
14 throughout the entire process and listen to everything
15 before deciding on a punishment?

16 A (Nods head.)

17 Q Sir?

18 A Yes.

19 Q All right. So what you're telling me then is
20 that in this case you'll keep an open mind and listen to
21 all the evidence and testimony, all the mitigating and
22 aggravating circumstances, before you decide between life
23 without parole and the death penalty?

24 A Yes, Your Honor.

25 Q Is that right? Okay. Now, if you sit on a jury

1 or sat on a jury such as this, and I'm not asking you
2 about this case, because you haven't heard the facts in
3 this case. But if you sat on a similar type case. And
4 you listened to everything, you and the other jurors, with
5 an open mind. And after considering everything all of you
6 unanimously decided that the death penalty was the
7 appropriate punishment, if that was your choice and the
8 choice of the -- all the other jurors, would you be able
9 to sign your name to a form that said that was your
10 verdict, if it was?

11 A Yes.

12 Q Would you be able to come in here into open court
13 and stand up and say that was your verdict, if it was?

14 A Yes.

15 Q Would you be able to do those things knowing that
16 eventually that will result in the execution of a
17 defendant?

18 A Yes.

19 Q Do you have any strong feelings or beliefs that
20 will interfere with your choice between a life sentence
21 and the death penalty?

22 A No, Your Honor.

23 Q Now in this case one thing that is required of
24 the jurors who are selected is that they be sequestered.
25 That is, stay with us while the case is being tried. If

1 you are picked on this jury will you be able to stay with
2 us for -- for all of the trial? That is, make
3 arrangements with work to be sequestered with the other
4 jurors while the case is being tried?

5 A Yes, Your Honor.

6 Q And you've thought about that and you're -- you
7 are comfortable you can make those arrangements?

8 A Yes, Your Honor.

9 THE COURT: Answer any questions that Solicitor Bailey
10 might have, please. Mr. Bailey.

11 MR. BAILEY: Thank you, Your Honor.

12 DIRECT EXAMINATION BY MR. BAILEY:

13 Q Mr. Fields, I notice on your questionnaire that
14 you attend the Seventh Day Adventist Church?

15 A Yes, sir.

16 Q Does that church have any teachings on the death
17 penalty that you're aware of?

18 A No. I don't believe so.

19 Q Okay. And do you have any personal religious
20 beliefs about the death penalty one way or the other?

21 A No.

22 Q Is it something you've thought about before today
23 or is it just something that you've had a chance to -- to
24 think about now that you know you may be on this jury?

25 A Yes.

1 Q You just thought about it today?

2 A Yes.

3 Q Okay. All right. And you work as a stocker at
4 Food Lion?

5 A Yes, sir.

6 Q How long have you worked there?

7 A Going on about a year.

8 Q Okay. All right. Now you understand from what
9 Judge Whetstone told you earlier that in South Carolina
10 the judge does not decide on the penalty in a death
11 penalty trial, it's the jury?

12 A Yes.

13 Q And we talked about a recommendation, but it's
14 really not a recommendation, because whatever the jury
15 decides the punishment ought to be will be the order of
16 the court and that order will be carried out. So if the
17 jury votes for life without parole that's what the person
18 gets. On the other hand, if they vote for the death
19 penalty that person's going to be executed. Do you
20 understand--

21 A I understand.

22 Q --how that works. Now nobody's going to ask you
23 to predict what you'd do in this case, if you were on this
24 jury, because you haven't heard any of the facts. And you
25 told the judge you wouldn't make up your mind until you

1 heard all those facts. But if the case is bad enough, the
2 facts are bad enough, can you vote for the death penalty?

3 A Yes.

4 Q Knowing that sentence will be carried out?

5 A Yes, I could.

6 Q And if the other 11 jurors feel the same way that
7 you did, could you sign your name to a death verdict form,
8 along with those other jurors, that would result
9 eventually in that execution taking place?

10 A Yes.

11 Q Could you stand up, and when your name was
12 called, out here in open court, announce that decision?

13 A Yes.

14 Q If that was your decision? Can you think of any
15 reason at all that would prevent you from sitting on a
16 case like this and being fair to both sides, the defense
17 as well as the state?

18 A No.

19 MR. BAILEY: Mr. Fields, that's all I've got. Thank
20 you very much.

21 MR. RUNYON: No questions, Your Honor.

22 THE COURT: All right. Mr. Fields, I have a matter I
23 need to take up with the attorneys, would you please step
24 back into this room back here and I'll be back with you in
25 just a minute.

1 (Juror excused from courtroom.)

2 THE COURT: What says the state?

3 MR. BAILEY: Qualified.

4 THE COURT: Defense?

5 MR. RUNYON: No objection, Your Honor, he's clearly
6 qualified.

7 THE COURT: He is clearly a qualified number three
8 juror and he is in the pool. Bring him back in, please.

9 (Juror brought into courtroom.)

10 THE COURT: Mr. Fields, I find that you're qualified
11 to serve on this jury panel, that doesn't mean you're on
12 the jury, it means you're in the group from which the
13 jurors will be selected.

14 I'm going to give you a call in number here. You need
15 to call that number after seven o'clock tonight and follow
16 the instructions that are on the machine. Tonight it will
17 probably say to call back sometime tomorrow. Eventually
18 it's going to say come back up here at a certain time and
19 on a certain day. When it says that, please be up here at
20 that time, have your suitcase packed and in your car and
21 be prepared to stay with us for seven days or so while
22 this case is being tried. Can you make those
23 arrangements?

24 JUROR: Yes, I could.

25 THE COURT: You don't have to drag your suitcase all

1 the way up here to the courtroom, just leave it in the
2 car, and if you're picked you'll be transported over to
3 the motel to stay with us while the case is being tried,
4 okay?

5 Between now and then don't talk to anybody about the
6 case. Don't let anybody talk to you about the case.
7 Don't read the newspaper and don't listen to any radio or
8 television reports that might be in this case. You need
9 to be able to decide this case based on what you hear in
10 the courtroom and not something outside of here. Do you
11 understand?

12 JUROR: I understand.

13 THE COURT: All right, sir, you are excused for the
14 day today. Please be sure and call shortly after seven
15 o'clock tonight and follow the instruction that is on the
16 machine. All right. Thank you, sir, you're excused.

17 (Juror excused.)

18 THE COURT: Okay, No. 23 is Cynthia Howard, please.

19 (Juror brought into courtroom.)

20 EXAMINATION BY THE COURT:

21 Q Ms. Howard, have a seat right here, please,
22 ma'am. Okay, Ms. Howard, I'm going to ask you some
23 questions. If you don't understand something please don't
24 try to answer it, let me explain it to you. Okay? There
25 are no right or wrong answers to any of the questions, we

1 just want your honest responses. You are under oath, you
2 were sworn in this morning with the rest of the panel.

3 Since you received your summons to come here for jury
4 service, has anybody talked to you about the case?

5 A No.

6 Q Have you talked to anybody about this case?

7 A No.

8 Q Do you know anything or have you heard anything
9 about this case other than what you were told this
10 morning?

11 A No, just what I was told this morning.

12 Q Okay, you hadn't read about it prior to that in
13 the newspaper or---

14 A If I had I don't remember.

15 Q So you don't know anything about it at all?

16 A Huh-uh.

17 Q I called out a list of names this morning of
18 people who could be witnesses in the case, did you know
19 any of those people?

20 A No I didn't.

21 Q Have you formed or expressed any opinion about
22 this case? Or have you already decided what the
23 punishment ought to be?

24 A No.

25 Q Do you have any bias or prejudice against the

1 prosecutors for bringing this case? Or against the
2 defendant just because he is the defendant in the case?

3 A No.

4 Q Do you know of any reason why you could not be
5 fair and impartial to both the state and the defendant?

6 A No.

7 Q Can you and will you follow the law that is
8 instructed to you by the court?

9 A Yes, I will.

10 Q Now I told you this morning, and the other
11 jurors, that the defendant in this case, Mr. Rogers, has
12 already been convicted, in a prior proceeding, of murder.
13 So you're dealing with a convicted murderer in this case.
14 And the choice for the jury is to decide on punishment.
15 Life in prison without parole or the death penalty.

16 The jury will hear aggravating and mitigating
17 circumstances. The jury will hear testimony and evidence
18 and see exhibits, and all of that will be presented so the
19 jury can decide on punishment, life in prison or the death
20 penalty.

21 Now you've had the opportunity, back in the jury room,
22 to look over this form that has on it the three types of
23 jurors. Which one of those three do you think best
24 describes you as a potential juror?

25 A Number three.

1 Q That's a juror who'll keep an open mind and
2 listen to everything before deciding on punishment?

3 A Yes, sir.

4 Q Speaking in general now and not about this case,
5 because you haven't heard anything in the case. But if
6 you sat on a case such as this and you listened with an
7 open mind to everything that was presented. And after
8 doing that you and all the other jurors unanimously
9 decided that a death penalty was the appropriate
10 punishment. If that was your choice, and the choice of
11 the other jurors, would you be able to sign your name to a
12 form saying that was your choice, if it was?

13 A Yes.

14 Q Would you be able to come in here in open court
15 with the other jurors, if I asked each of you
16 individually, had you stand up and said, Ms. Howard, is
17 this your verdict and is it still your verdict? Would you
18 be able to stand up here in open court and say it was?

19 A Yes.

20 Q Would you be able to do those things knowing that
21 eventually that's going to result in the execution of a
22 defendant?

23 A Yes.

24 Q Do you have any strong feelings or beliefs that
25 will interfere with your choice between a life sentence or

1 the death penalty?

2 A No.

3 Q Part of the process in cases like this is that
4 the jurors who are selected, along with the two alternates
5 who are selected, have to stay with us while the case is
6 being tried. If that is part of the process, and
7 understanding that's difficult for everybody to be able to
8 do, could you make arrangements to stay with us if you're
9 picked on this jury?

10 A I could possibly make arrangements.

11 Q Possibly or probably? Do you think if you've got
12 a day or so lead time to make arrangements, do you think
13 you can make arrangements?

14 A Yes.

15 THE COURT: All right. Answer any questions Solicitor
16 Bailey might have. Solicitor.

17 DIRECT EXAMINATION BY MR. BAILEY:

18 Q Ms. Howard, I'm Walter Bailey, and I think
19 Judge Whetstone asked most of the questions that I was
20 going to ask you, but I want to just follow-up a little
21 bit on what he said. No right or wrong answers, we just
22 want to know how you feel, okay? Is the death penalty
23 something you've had occasion to think about before today,
24 in general terms?

25 A Not really.

1 Q Okay. And, do you think you've had enough time
2 to look over that form the judge gave all -- all the
3 potential jurors of the three type jurors?

4 A Yes.

5 Q And -- and are you pretty well a number three
6 group, you think?

7 A Yes.

8 Q Okay. And that third type juror is not sold on
9 life in prison or not sold on the death penalty, they'd
10 want to hear all the facts and law from the judge, then
11 they could make up their mind for either -- either
12 punishment, that describes you?

13 A Yes.

14 Q Okay. And, since you haven't heard the facts in
15 this case nobody's going to ask you to predict what you
16 would do in this case. But if the facts were bad enough,
17 could you vote for the death penalty?

18 A If the facts were bad enough, yes, I could.

19 Q Okay. And if you and the other 11 jurors felt
20 the same way, after hearing those facts, and all 12 jurors
21 voted for the death penalty. The next thing, and I think
22 the judge mentioned this, there's a death verdict form
23 that each juror would have to sign, which would result in
24 that person eventually being executed. Could you sign
25 that paper if you'd already voted for the death penalty?

1 A Yes.

2 Q And could you announce that verdict in court if
3 that was your verdict?

4 A Yes.

5 MR. BAILEY: Thank you, that's all I have.

6 THE COURT: Mr. Runyon.

7 CROSS-EXAMINATION BY MR. RUNYON:

8 Q Yes, ma'am, Ms. Howard, just very briefly. I
9 believe when you sent -- returned your questionnaire you
10 indicated that jury service would be problematical for
11 you?

12 A It could be. But I have had things taken care
13 of.

14 Q And, in fact, it -- did you not ask to be
15 excused?

16 A I did at one point, yes.

17 Q And your -- your husband's at sea and you have
18 two small children at home?

19 A Right.

20 Q And, even though those are the facts, if you were
21 chosen, realizing that you're not -- you haven't been
22 chosen on the jury. But if you were chosen and were
23 sequestered, you'd be away from your family. Would that
24 interfere or be difficult for you to work out?

25 A At this time no it's not difficult, but if it

1 continued like into Christmas, yes, it would be difficult.

2 Q Well, to be quite blunt about it, let's assume
3 for the sake that you're selected for the jury, could you
4 set aside and be away from your family and your duties of
5 caring for your children and your job for the next five to
6 seven days, let's say?

7 A Yes, I could.

8 Q Okay. And so, therefore, that would not work a
9 hardship or be impossible for you to arrange?

10 A No.

11 MR. RUNYON: No further questions, Your Honor.

12 MR. BAILEY: No further questions.

13 THE COURT: Anything further? Okay, Ms. Howard, I
14 need to talk to the lawyers for a minute, would you step
15 back in here, please, and don't talk with anybody about
16 the case.

17 (Juror excused from courtroom.)

18 THE COURT: What says the state?

19 MR. BAILEY: Qualified, Your Honor.

20 THE COURT: Defense?

21 MR. RUNYON: Obviously she's qualified, Your Honor.

22 THE COURT: She is clearly a qualified number three
23 juror. Bring her back in, please.

24 (Juror brought into courtroom.)

25 THE COURT: Okay, Ms. Howard, I find that you are

1 qualified to serve on this jury. That doesn't mean you're
2 on the jury yet, it means you're in the group from which
3 the jury will be selected.

4 I'm going to give you a call in number here. You need
5 to call that tonight after seven o'clock. Follow the
6 instructions that are on the machine. Tonight it will
7 probably say to call back some time tomorrow, because I
8 don't know yet when we will start the trial of the case.
9 So follow whatever instructions are on there, if it says
10 call back tomorrow, call back tomorrow and it will
11 probably narrow it down a little bit and you'll know when
12 you need to come back.

13 Between now and then don't talk to anybody about the
14 case. Don't let anybody talk to you about the case.
15 Don't read the newspaper. And don't listen to any radio
16 or television reports about the case. You need to be able
17 to decide this case based on what you hear in the
18 courtroom and not something outside of here. Do you
19 understand?

20 JUROR: Yes.

21 THE COURT: Now when it does instruct you to come back
22 up here, please be here when you're supposed to be here,
23 have your suitcase packed and in your car. And be
24 prepared to stay with us for five to seven days while the
25 case is being tried. Okay? Thank you, ma'am, you're

1 excused until then. Thank you.

2 (Juror excused.)

3 THE COURT: Sarah Smith.

4 (Juror brought into courtroom.)

5 EXAMINATION BY THE COURT:

6 Q Hello, Ms. Smith, how are you?

7 A Fine, sir.

8 Q Ms. Smith, I'm going to ask you some questions.

9 There are no right or wrong answers to any of these
10 questions. We just want you to be completely honest with
11 us in your responses.

12 A Yes, sir.

13 Q You are under oath, you were sworn in this
14 morning with the rest of the panel.

15 A Yes, sir.

16 Q Since you received your summons to come here for
17 jury service, has anybody talked to you about this case?

18 A No, sir.

19 Q Have you talked to anybody about the case?

20 A No, sir.

21 Q Do you know anything about this case other than
22 what you were told this morning?

23 A No, sir.

24 Q You haven't previously read about it or heard
25 about it anywhere?

1 A If I did I don't remember it.

2 Q This morning I called out a list of names of
3 people who could be witness in the case. Did you know any
4 of those people?

5 A No, sir.

6 Q Have you formed or expressed any opinion about
7 this case? Or have you decided what the punishment ought
8 to be?

9 A No, sir.

10 Q Do you have any bias or prejudice against the
11 prosecutors for bringing this case or against the
12 defendant just because he is the defendant in the case?

13 A No, sir.

14 Q Do you know of any reason why you couldn't be
15 fair and impartial to both the state and the defendant,
16 Mr. Rogers?

17 A No, sir.

18 Q Can you and will you follow the law as instructed
19 to you by the court?

20 A Yes, sir.

21 Q Now this morning I told you and the other jurors
22 that the defendant, Mr. Rogers, has already been convicted
23 of murder in a previous proceeding. So the question for
24 the jury in this case is what the punishment ought to be,
25 either life in prison without parole or the death

1 penalty.

2 A Yes, sir.

3 Q Now the jury will decide on the appropriate
4 punishment. The jury will hear aggravating and mitigating
5 circumstances. The jury'll hear all the testimony, the
6 evidence, the exhibits and everything that comes in during
7 this trial. And then the jury decides on punishment, life
8 in prison or the death penalty.

9 You've had the opportunity back in the jury room to
10 look over this form that has on it the three types of
11 jurors. Which one of those three do you think best
12 describes you as a potential juror?

13 A The third one.

14 Q That is a juror who'll keep an open mind and
15 listen to everything before deciding on the appropriate
16 punishment?

17 A Yes, sir.

18 Q If you sat on a case such as this, and I'm not
19 talking about this case because you haven't heard the
20 facts in this case. But if you sat on a similar type
21 case. And you listened with an open mind to everything
22 that was presented. And after listening to everything you
23 and all the other jurors unanimously decided that the
24 death penalty was the appropriate punishment. If that was
25 your choice, would you be able to sign your name to a

1 verdict form, with all the other jurors, saying that was
2 your verdict, if it was?

3 A Yes, sir.

4 Q Would you also be able to come in here into open
5 court and stand up and say, if I addressed you and said,
6 Ms. Smith, is this your verdict and is it still your
7 verdict? Would you be able to stand up in court and say
8 it was, if it was?

9 A Yes, sir.

10 Q Do you have any strong feelings or beliefs that
11 would interfere with your choice between a life sentence
12 or the death penalty?

13 A No, sir.

14 Q Now understanding that part of this process is
15 that if you are selected on the jury you have to stay with
16 us while the case is being tried. Now also understanding
17 that's difficult for everybody. But if you're selected on
18 the jury, can you make arrangements to be with us while we
19 try this case?

20 A Yes, sir.

21 Q Okay. And you've thought about that--

22 A Yes, sir.

23 Q --and you're satisfied you could do that?

24 A Uh-huh.

25 THE COURT: Answer any questions the solicitor might

1 have, please. Mr. Bailey.

2 MR. BAILEY: Thank you, Your Honor.

3 DIRECT EXAMINATION BY MR. BAILEY:

4 Q Ms. Smith, I'm Walter Bailey, just a few more
5 questions.

6 A Yes, sir.

7 Q And do you understand, from what Judge Whetstone
8 told y'all this morning, that in a case of this type in
9 South Carolina the jury and not the judge decides what the
10 penalty will be?

11 A Yes, sir.

12 Q So whatever the jury's vote is is going to be the
13 sentence of the court. If the jury decides on life
14 without parole the judge would sentence him to life
15 without parole. On the other hand, if the jury decides,
16 after hearing all of the evidence, the death penalty is a
17 more appropriate sentence and they vote for the death
18 penalty, that sentence will be carried out?

19 A Yes, sir.

20 Q And, we're not asking you to predict what you
21 would do if you were picked on this case, because you
22 haven't heard the facts. But just in general terms, in
23 the abstract, if the case was bad enough could you vote
24 for the death penalty?

25 A Yes, sir.

1 Q And could you -- if the other 11 jurors felt the
2 same way, could you sign your name to that death verdict
3 form?

4 A Yes, sir.

5 Q Okay. And you've also indicated you could
6 announce that decision in open court if that was your
7 decision?

8 A Yes, sir.

9 MR. BAILEY: Thank you, that's all I have.

10 THE COURT: Questions, Mr. Runyon.

11 MR. RUNYON: Yes, Your Honor.

12 CROSS-EXAMINATION BY MR. RUNYON:

13 Q Ma'am, nothing would prevent you from being
14 involved with -- being away from your home for a period of
15 five to seven days?

16 A No, sir.

17 Q Okay. And, insofar as that's concerned, do you
18 have any particular health needs or anything of that sort
19 which would interfere with you serving on the jury?

20 A No, sir.

21 Q And, do you have any compelling -- any compelling
22 business interests at this time that would keep you from
23 serving on a jury?

24 A No, sir.

25 MR. RUNYON: Excuse me one moment, Your Honor.

1 (Counsel consulted cocounsel.)

2 BY MR. RUNYON:

3 Q Do you have a child at home?

4 A No, sir, I do not, he's with his father.

5 MR. RUNYON: Okay. No further questions, Your Honor.

6 THE COURT: Anything further from the state?

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

8 THE COURT: Ms. Smith, would you step back into the
9 room right here while I talk to the lawyers for just a
10 minute, please, ma'am. Thank you.

11 (Juror excused from courtroom.)

12 THE COURT: What says the state?

13 MR. BAILEY: Qualified, Your Honor.

14 THE COURT: Defense?

15 MR. RUNYON: Obviously she's qualified, Your Honor.

16 THE COURT: She's clearly a qualified number three
17 juror.

18 (Bailiff approached bench.)

19 THE COURT: The bailiff has told me that Ms. Smith had
20 some question, but she didn't let her ask the question,
21 she sent her out here and she still evidently hasn't asked
22 the question, so I'll ask her if she has any other
23 concerns. But, at this point she appears to be a
24 qualified juror. Bring her back in, please.

25 (Juror brought into courtroom.)

1 THE COURT: Okay, Ms. Smith, the bailiff has told me
2 you were -- as you were coming in the door trying to ask
3 her a question about serving and if you've got some
4 question about something now's the time to ask it.

5 JUROR: Yes, sir, it's just -- it's very, very
6 simple. Because at this time I'm am unemployed. And I've
7 got unemployment insurance. And I also got this to be at
8 their office on Friday, I didn't know what to do.

9 (Court reviewed document.)

10 THE COURT: Okay, why don't you call them between now
11 and the time you're supposed to come back up here and tell
12 them that you may be on a death penalty type jury. That
13 would mean you would not be available to come to this
14 meeting on the 6th. And see if they can't rearrange it
15 for you. If you can make those arrangements. Other than
16 that you should be qualified to serve on the jury.

17 I do find that you're qualified to serve on the panel,
18 that doesn't mean you're on the jury. It means you're in
19 the pool from which the jury will be selected.

20 You need to be back up here probably on Wednesday, but
21 I haven't decided whether that is the day or at what time
22 it will be yet. So I need for you to call -- you got it?

23 JUROR: Yes, sir.

24 THE COURT: Call that call in number tonight after
25 seven o'clock. There will be a message on the machine

1 that'll tell you what time to come back up here or what
2 time to call back for further instructions. I think right
3 now it'll tell you to call back at another time. So
4 follow those instructions. And come back up here when the
5 machine eventually tells you what time to be here.

6 When you come back up here have your bags packed and
7 in your car and be prepared to stay with us for five to
8 seven days while this case is being tried.

9 Between now and then don't talk to anybody about the
10 case. Don't let anybody talk to you about the case.
11 Don't read the newspaper and don't listen to any radio or
12 television reports that might be about the case. You have
13 to decide the case based on what you hear in the courtroom
14 and not something outside of here.

15 That doesn't mean you can't talk to the employment
16 security commission and explain to them what your dilemma
17 is. If they need confirmation have them call me and I'll
18 confirm that that's what is going on. All right? Thank
19 you, ma'am, you're excused. Please call in after seven
20 o'clock.

21 JUROR: Yes, sir, I will. Thank you.

22 (Juror excused.)

23 THE COURT: The juror's problem deals with her
24 unemployment situation and she needed to be available to
25 go to some meeting they had on the 6th. She's going to

1 try to get that moved. If she can't, she may be excused.
2 But right now she is a qualified juror and she is in the
3 pool. Any objection from the state?

4 MR. BAILEY: No.

5 THE COURT: From the defendant.

6 MR. RUNYON: None from the defense, Your Honor.

7 THE COURT: Okay, we'll be at ease for about five or
8 ten minutes, we'll check on these other jurors, the last
9 six that we have, but we're going to take a ten minute
10 break. Thank you.

11 (Brief recess was taken.)

12 THE COURT: State ready?

13 MR. BAILEY: State's ready, Your Honor.

14 THE COURT: Defendant ready?

15 MR. RUNYON: Yes, Your Honor.

16 THE COURT: For purposes of deciding what we're going
17 to put on the machine tonight, I would suggest, based on
18 what I've seen so far, that we have the message tonight
19 read, call back between one and two tomorrow afternoon.

20 And I'm basing that on -- I anticipate, if we keep
21 going at the rate we're going now, we'll start -- should
22 be able to start Wednesday morning. What say, Solicitor?

23 MR. BAILEY: That sounds like an accurate estimate.

24 MR. RUNYON: Your Honor, that sounds like an accurate
25 estimate. We would have a couple -- maybe one

1 housekeeping chore to take care of once we got a jury
2 selected, to take up sometime tomorrow afternoon. So I
3 think Wednesday morning would be very realistic.

4 THE COURT: Well, I think it's a little ambitious to
5 think we can start some time tomorrow afternoon, because
6 we're not far along -- far enough along yet to be able to
7 tell whether we'll have a jury by then. I'd like to
8 qualify at least 35 so we -- because we always lose
9 several who come up with things they didn't realize they
10 had hanging over them until they come back to be
11 selected. Any objection from the state?

12 MR. BAILEY: None from the state, Your Honor.

13 THE COURT: From the defendant?

14 MR. RUNYON: None from the defense, Your Honor.

15 THE COURT: The message will be, call back between one
16 and two tomorrow for further instructions. And then
17 remind them please to put a message on there between one
18 and two. Thank you, ma'am.

19 Okay, the next juror is Daniel Aleff, A-L-E-F-F.

20 (Juror brought into courtroom.)

21 EXAMINATION BY THE COURT:

22 Q Tell me your name, please, sir.

23 A Daniel John Aleff.

24 Q Aleff. Thank you, sir. Be seated. I just
25 wanted to be sure I was going to pronounce it correctly

1 this time. Mr. Aleff, I'm going to ask you some
2 questions. There are no right or wrong answers to any of
3 the questions, we just want you to be completely honest
4 with us in your responses. You were sworn in this morning
5 with the rest of the panel, so you are under oath.

6 A Yes, sir.

7 Q Since you received your summons to come here for
8 jury service, has anybody talked to you about this case?

9 A No, sir.

10 Q Have you talked to anybody about the case?

11 A No.

12 Q Do you know anything about the case other than
13 what I told you this morning?

14 A Nothing.

15 Q You hadn't heard or read about it?

16 A No.

17 Q From any source? I went through a list of names
18 this morning of people who could be witnesses in the case,
19 did you know any of those people?

20 A No I did not.

21 Q Have you formed or expressed any opinion about
22 this case? Or have you decided what the punishment should
23 be?

24 A In reference to the paper that was given to us on
25 which type of juror we are?

1 Q No, I'm not there yet, I just want to know if
2 you've got your mind made up about what the result ought
3 to be. At this point. Without having heard anything.

4 A Yes.

5 Q All right. If you haven't heard anything about
6 this case and don't know anything about it, how have you
7 already got your mind made up?

8 A Just from what you had said this morning in
9 court.

10 Q All right. Well let me ask you this then, will
11 you listen to everything that's presented in this case
12 before you decide between a life sentence without parole
13 or the death penalty?

14 A I don't -- I don't know how to answer that.

15 Q All right. Well let me explain a little further.
16 Mr. Rogers has already been convicted of murder in a prior
17 proceeding, so you're dealing with someone who's already
18 convicted of murder.

19 A Correct.

20 Q The choice for the jury in this proceeding is to
21 decide the punishment, life in prison without parole or
22 the death penalty, those are the only two choices the jury
23 has. So what I want to know from you is whether you will
24 listen to everything that's presented in this case before
25 you decide between those two possible punishments?

1 A From the description that you gave of the case
2 this morning I've pretty much decided in my mind the way
3 I've always felt about the outcome.

4 Q Okay. Well, let me then get to the three types
5 of jurors. Which one of those three type jurors do you
6 think best describes you?

7 A The first type.

8 Q That's a juror who will always give a death
9 penalty where someone's been convicted of murder?

10 A With the description that you gave this morning,
11 yes.

12 Q All right. Well, are there circumstances where
13 you might give a life sentence? Because you haven't heard
14 about this case yet other than that general description
15 this morning. You haven't heard all the facts yet.

16 A Correct.

17 Q What I -- what I need to know is in general,
18 because we can't talk about this case because you don't
19 know enough about this case yet.

20 A Right.

21 Q In general, speaking in general only, are there
22 circumstances where sometimes you might give a life
23 sentence and sometimes you might give a death penalty?

24 A Yes.

25 Q All right. Can you thoughtfully and thoroughly

1 consider both before deciding on one?

2 A (No response.)

3 Q Not talking about this case now, I'm speaking in
4 general.

5 A In general? Yes.

6 Q All right. Can you be fair and impartial in this
7 case and decide this case based on what you hear from the
8 witness stand, from the evidence that's presented, from
9 the exhibits that are presented and from the testimony
10 that's given? Can you weigh all that before deciding on
11 punishment? Or, because of what I told you this morning,
12 in reading the indictment to you, has that so influenced
13 you that you can't be fair and impartial?

14 A I just -- when I heard it this morning I
15 immediately had made up my mind. So, to give you an
16 honest answer, I don't know that I could be absolutely
17 fair.

18 Q So you're telling me that based on the fact that
19 I read you the indictment this morning, which is not
20 evidence.

21 A Correct.

22 Q Based on that you can't be fair and impartial?

23 A I can't absolutely swear to it, no.

24 THE COURT: Answer any questions the solicitor might
25 have, please. Mr. Bailey.

1 DIRECT EXAMINATION BY MR. BAILEY:

2 Q Mr. Aleff, let me ask you just a couple of
3 questions to make sure I understand what you're saying.
4 As I understand it, and correct me if I'm wrong, in the
5 abstract you could vote for life in prison or the death
6 penalty, but there's something about what you heard about
7 this case that's caused you to make your mind up?

8 A That's correct.

9 Q Could you tell me, first of all, what you've
10 heard about the case and -- and how your mind is made up?

11 A That this lady was shot in the back of the head
12 with a .38-caliber revolver.

13 Q Okay. And -- and how is your mind made up as far
14 as the penalty?

15 A That the crime in itself was, to me, very
16 ruthless and execution type, that was the first thing that
17 popped into my head. And -- that -- that -- that's my
18 answer. That was the first thing that popped in my head.

19 Q But you've read no newspaper accounts, seen
20 nothing on television or talked to anybody about the case;
21 am I correct?

22 A That's correct.

23 Q So what you know about the case is based strictly
24 on the indictment that the judge read this morning?

25 A That's correct.

1 Q Okay. And do you feel like you've gathered
2 enough information from that indictment to where you've
3 got your mind made up that you would vote for the death
4 penalty in this case regardless of what evidence came out
5 in the trial?

6 A Asking for an absolute answer?

7 Q I'm not -- let me try to do it again. I'm not
8 asking you to predict what you'd do in this case, because
9 you hadn't -- hadn't heard the facts.

10 A I had a very strong feeling this morning when I
11 heard the indictment.

12 Q Okay. Do you think that what you -- your
13 feelings about that case would impair your ability to
14 fairly consider life in prison as well as the death
15 penalty?

16 A I think so because I just don't see the -- the
17 need for what happened.

18 MR. BAILEY: Okay. That's all I have, thank you very
19 much.

20 THE COURT: Mr. Runyon, any questions?

21 MR. RUNYON: No questions, Your Honor.

22 BY THE COURT:

23 Q Mr. Aleff, if the facts that come out in the
24 actual trial of the case are different or add to or take
25 away from what you think really happened from my reading

1 the indictment, are you going to fairly and thoughtfully
2 and thoroughly consider both possible punishments before
3 deciding on one?

4 A Yes.

5 THE COURT: Anything further from the state?

6 MR. BAILEY: Yes, sir. Bear with me one second I'm
7 just trying to gather my thoughts.

8 (Pause.)

9 REDIRECT EXAMINATION BY MR. BAILEY:

10 Q Mr. Aleff, no -- no right or wrong answers and
11 we're not testing you, we're just trying to find out what
12 your thoughts are. But I guess the simplest way I can put
13 it, is your mind made up now that you're going to give the
14 defendant the death penalty no matter what you hear? Or
15 would you, instead, reserve judgment, listen to all the
16 testimony, listen to Judge Whetstone tell you what the law
17 is and then make up your mind?

18 A As I sit here right now my mind is made up. But,
19 I'm not so hardheaded, I guess, to say that I cannot
20 change my mind, based on what has been presented.

21 Q Okay.

22 A Does that answer your question?

23 Q Yeah. Yeah, I -- I -- I believe so. What you're
24 saying is your mind is made up and something would have
25 to -- you'd have to hear something to cause you to change

1 your mind?

2 A Correct.

3 MR. BAILEY: Is that it? Thank you.

4 THE COURT: Anything further, Mr. Runyon?

5 MR. RUNYON: Very briefly.

6 CROSS-EXAMINATION BY MR. RUNYON:

7 Q Mr. Aleff, in other words, to be -- to be fair,
8 because all we're looking for is you giving us your honest
9 answers.

10 A Yes, sir.

11 Q In other words, if, for example, the defendant
12 were able to convince you that he should get life without
13 parole, then you might vote for life without parole?
14 Would that be a fair statement of your position?

15 A Yes, I think so.

16 MR. RUNYON: No further questions.

17 THE COURT: All right, sir. I need to talk to the
18 lawyers, please, sir, would you step back into this room
19 again and don't talk to anybody.

20 (Juror excused from courtroom.)

21 THE COURT: What says the state?

22 MR. BAILEY: Your Honor, in all honesty I think it's a
23 close question, but I -- I -- I don't think that he's
24 qualified, I think he put a burden on the defendant to
25 prove -- to overcome his -- his initial inclination. So,

1 I would concede he isn't qualified, assuming Mr. Runyon---

2 MR. RUNYON: I -- I'm not going to argue with that,
3 obviously I don't think it's a close question at all, he's
4 made up his mind in this case. And I think he's
5 disqualified, Your Honor.

6 THE COURT: He's not qualified. He clearly says he's
7 made up his mind in this case based on the reading of the
8 indictment. And that he'd have to be persuaded
9 otherwise. So that's an improper burden on the
10 defendant. And he is not a qualified juror. Bring him
11 back in, please, ma'am.

12 (Juror brought into courtroom.)

13 THE COURT: Mr. Aleff, I find that you are excused
14 from service in this case. I appreciate you coming back
15 and we appreciate your honest responses. Thank you for
16 participating, you are excused. Thank you, sir.

17 (Juror excused.)

18 THE COURT: Bring in Donald Kizer.

19 (Juror brought into courtroom.)

20 EXAMINATION BY THE COURT:

21 Q Mr. Kizer, have a seat right here, please, sir.

22 Mr. Kizer, I'm going to ask you some questions. There are
23 no right or wrong answers to any of the questions, we just
24 want you to be completely honest with us in your
25 responses. You are under oath, you were sworn in this

1 morning with the rest of the panel.

2 Since you received your summons to come here for jury
3 service, has anybody talked to you about this case?

4 A No.

5 Q Have you talked to anybody about this case?

6 A No.

7 Q Do you know anything about this case from any
8 source?

9 A I think I do.

10 Q All right, sir. You think you've heard or read
11 about it before?

12 A Yeah.

13 Q Would that have any affect on your ability to be
14 fair and impartial in this case?

15 A I don't know, it's hard to say. I -- I really
16 wouldn't know. I -- I think I'd be fair. But I mean---

17 Q Well, what I need to know is will you decide this
18 case based on what you hear in the courtroom and not
19 something you might've heard before coming here?

20 A Yeah, I probably would, I think.

21 Q All right, sir. This morning I called out a list
22 of names of people who could be witnesses in the case, did
23 you know any of those people?

24 A Know them personally? I know of them.

25 Q Know of them, yes?

1 A I know of them.

2 Q Who were some of those people?

3 A Marie Boyd, the coroner, Rogers.

4 Q Well if you know some of the people who might be
5 witnesses, is that going to have an affect on your ability
6 to be fair and impartial in the case?

7 A No, I doubt it.

8 Q All right. Have you formed or expressed any
9 opinion in this case? Or have you decided what the
10 punishment should be?

11 A Well, you know, I generally always think of the
12 victims in the case and not the defendant. And the fact
13 that the victim didn't get a trial, I guess. Done away
14 with.

15 Q Have you already got your mind made up in this
16 case, before hearing anything in the case?

17 A I'd probably be inclined to go more with the
18 victim.

19 Q All right, sir. What I need to know, though,
20 Mr. Kizer, is whether you will fairly and thoughtfully and
21 thoroughly consider everything before you make up your
22 mind or do you already have your mind made up?

23 A No, I couldn't say my mind is made up, no.

24 Q All right, sir. You've had the opportunity back
25 in the jury room to look at this form that had on it the

1 three types of jurors. Which one of these three do you
2 think best describes you as a potential juror?

3 A The first one.

4 Q That's the juror who, where someone has been
5 convicted of murder, will always give a death penalty?

6 A Pretty much.

7 Q Pretty much or always? Because what you're
8 dealing with here---

9 A You'd have to really---

10 Q Mr. Rogers has already been convicted of murder.

11 A I know. You'd have to really convince me that,
12 you know, it was some circumstance that wouldn't warrant
13 that.

14 Q And who's going to have to convince you of that?

15 A I guess the defense.

16 THE COURT: Okay. Answer any questions the solicitor
17 might have, please.

18 DIRECT EXAMINATION BY MR. BAILEY:

19 Q Mr. Kizer, I notice you -- you've got a son
20 that's 26. Does he have the same name that you do?

21 A No, not -- his middle name is Miles and mine is
22 Manning.

23 Q Okay. Do you have a son that was born
24 August the 28th, 1970?

25 A Yeah.

1 MR. BAILEY: Okay. Your Honor, I think -- Mr. Kizer,
2 obviously, wasn't born in 1970. I think your birthday's
3 1943?

4 JUROR: That's correct.

5 MR. BAILEY: So I think his son was subpoenaed and
6 there was confusion.

7 THE COURT: What say, Mr. Runyon?

8 MR. RUNYON: I -- I agree, Your Honor, I think that
9 Mr. Kizer, on his honesty, came to court because he
10 thought he was under subpoena, but he's not qualified
11 under both the direction of the -- of the summons and --
12 and for other matters.

13 THE COURT: Is your son here and available to come in
14 to serve on a jury?

15 JUROR: No, he's in Georgia.

16 THE COURT: He's in Georgia, is that where he lives?

17 JUROR: Yeah.

18 THE COURT: All right. Thank you, sir. You are
19 excused from service on the jury, the summons was intended
20 for your son and not for you. Thank you, sir. Tell
21 him -- tell him what he missed.

22 MR. RUNYON: Your Honor, does he get to cash the
23 check? If they'll send it.

24 THE COURT: That's a matter for the clerk to decide.
25 (Juror excused.)

1 THE COURT: Mr. Kizer was clearly a number one juror
2 who would not be -- he would not be qualified, but he is
3 not the one who should have been summoned, so he will be
4 excused.

5 Number 27, Joycelyn Pryor.

6 (Juror brought into courtroom.)

7 EXAMINATION BY THE COURT:

8 Q Ms. Pryor, if you'll have a seat right here,
9 please, ma'am. Ms. Pryor, I'm going to ask you some
10 questions, there are no right or wrong answers to the
11 questions, I just want you to be completely honest in your
12 responses. You are under oath, you were sworn in this
13 morning with the rest of the panel.

14 Since you received your summons to come here for jury
15 service, has anybody talked to you about this case?

16 A No, sir.

17 Q Have you talked to anybody about the case?

18 A No, sir.

19 Q Do you know anything about this case from any
20 source? Other than what I told you this morning?

21 A No, sir.

22 Q You haven't read or heard about it or seen it on
23 TV or anything like that?

24 A No, sir.

25 Q This morning I called out a list of names of

1 people who could be witnesses in this case, did you know
2 any of those people?

3 A No I did not.

4 Q Have you formed or expressed any opinion about
5 this case?

6 A No, sir.

7 Q Okay. Do you have any bias or prejudice against
8 the prosecutors for bringing this case or against the
9 defendant just because he is the defendant in the case?

10 A No, sir.

11 Q Do you know of any reason why you could not be
12 fair and impartial to both the state and the defendant?

13 A I do not believe in capital punishment.

14 Q Okay. And that is under any circumstances?

15 A Yes, sir, I do not believe in it.

16 Q So if you sat on a jury in a case like this there
17 would never be any circumstances under which you'd give a
18 death penalty, you'd always give a life sentence?

19 A Sir, I -- I just don't believe that taking
20 another's life is going to solve it.

21 Q So your answer is, you couldn't give anything but
22 a life sentence?

23 A That's correct.

24 THE COURT: Questions, Solicitor?

25 MR. BAILEY: Bear with me one second, please, Your

1 Honor.

2 (Counsels consulted.)

3 DIRECT EXAMINATION BY MR. BAILEY:

4 Q Ms. Pryor, I'm Walter Bailey, I want to ask just
5 a couple of questions.

6 A Yes.

7 Q You've already told Judge Whetstone that you do
8 not believe in the death penalty?

9 A That's correct.

10 Q And there are three type jurors on that form that
11 y'all were asked to look over in the jury room. Would you
12 put yourself in that second category?

13 A The second category.

14 Q Okay. And that second type juror would never
15 vote to impose the death penalty no matter how bad the
16 case was, does that describe you?

17 A That's correct.

18 Q Okay. And, would I be correct that you could
19 never, no matter how bad the case was, sign your name to a
20 death verdict form that would result in someone being
21 executed?

22 A I could not do that.

23 Q Okay. Is that a religious belief that you have,
24 Ms. Pryor?

25 A It's a religious belief, I'm taught that by

1 taking someone's life that's not going to -- to me it
2 appears like it's my blood stain on their -- taking their
3 life. And personally I -- I would rather see a person
4 just suffer and have to deal with -- not suffer, but have
5 to live with that on their conscience. And I think that
6 would put them through enough suffering, but I -- I do not
7 believe in death penalty.

8 Q Okay. And would never vote for it under any
9 circumstances?

10 A No, sir, I wouldn't.

11 MR. BAILEY: Thank you, Ms. Pryor, that's all I have.

12 THE COURT: Mr. Leiendecker.

13 CROSS-EXAMINATION BY MR. LEIENDECKER:

14 Q Ms. Pryor, you describe yourself as a number two
15 juror, and I'm -- and I'm not trying to go over this
16 again. But there's -- there's just, in your mind,
17 absolutely no situation, even though the law of our state
18 sanctions the death penalty, that you could vote for a
19 death penalty?

20 A I would not vote for the death penalty.

21 Q You don't believe you could apply the law as
22 instructed by the judge if he gave you those two choices
23 fairly?

24 A If I had to vote for the death penalty I would
25 not, under any circumstances.

1 Q Even if -- even after consultation with other
2 jurors, the 11 other jurors, you couldn't vote for it?

3 A No, sir, that's my personal belief and my
4 religious belief. That's the way I was brought up and I
5 was taught. And, I feel strongly against the death
6 penalty.

7 Q This is a -- a long held belief not a recently
8 acquired belief?

9 A No, sir, this is not recently.

10 MR. LEIENDECKER: Thank you, Ms. Pryor.

11 THE COURT: Ms. Pryor, I have a matter I need to take
12 up with the lawyers, would you step back here into this
13 back room here, please, ma'am.

14 (Juror excused from courtroom.)

15 THE COURT: What says the state?

16 MR. BAILEY: Move to disqualify for cause, Your Honor.

17 THE COURT: Defense?

18 MR. LEIENDECKER: We'd interpose no objection, Your
19 Honor, obviously she's disqualified.

20 THE COURT: She is not a qualified juror, she says she
21 could never impose the death penalty under any
22 circumstances. Bring her back in.

23 (Juror brought into courtroom.)

24 THE COURT: Mr. Pryor, you're excused from serving on
25 the jury panel, we appreciate you participating. Thank

1 you, ma'am.

2 (Juror excused.)

3 THE COURT: Okay, bring in Allen W. Marchant, please.

4 (Juror brought into courtroom.)

5 EXAMINATION BY THE COURT:

6 Q Mr. Marchant, have a seat, please, sir. Okay,
7 Mr. Marchant, I'm going to ask you some questions. There
8 are no right or wrong answers to any of the questions, we
9 just want you to be completely honest with us in your
10 responses. You are under oath, you were sworn in this
11 morning with the rest of the panel.

12 Since you received your summons to come here for jury
13 service, has anybody talked to you about this case?

14 A No, sir.

15 Q Have you talked to anybody about the case?

16 A No, sir.

17 Q Do you know anything about this case from any
18 source?

19 A Not other -- I heard about it once when it
20 happened, that was it.

21 Q Okay. Well, would the fact that you heard about
22 it when it happened have any affect on your ability to be
23 fair and impartial in the case?

24 A No, sir.

25 Q So you can decide the case based on what you hear

1 in the courtroom?

2 A Yes, sir.

3 Q This morning I called out a list of people who
4 could be witnesses in the case, did you know any of those
5 people?

6 A No, sir.

7 Q Have you formed or expressed any opinion about
8 this case?

9 A No, sir.

10 Q Do you have any bias or prejudice against the
11 prosecutors for bringing the case or against the defendant
12 just because he is the defendant in a case?

13 A No, sir.

14 Q Do you know of any reason why you could not be
15 fair and impartial to both the state and the defendant?

16 A No, sir.

17 Q Can you and will you follow the law as instructed
18 to you by the court?

19 A Yes, sir.

20 Q Now this morning I told you and the other jurors
21 that the defendant in this case, Mr. Rogers, has already
22 been convicted of murder in a previous proceeding. So the
23 choice for the jury in this case is one of punishment.
24 That is, the jury decides between a life sentence without
25 parole or the death penalty.

1 The jury will hear mitigating and aggravating
2 circumstances. The jury will consider the testimony and
3 the evidence that's been presented. And the jury will
4 decide on the appropriate punishment, either life in
5 prison or the death penalty.

6 Now you had the opportunity back in the jury room to
7 look over that form that had on it the three types of
8 jurors. Which one of those three do you think best
9 describes you?

10 A The third one.

11 Q That's the juror who will keep an open mind and
12 listen to everything that's presented before deciding on a
13 punishment?

14 A Yes, sir.

15 Q Will you keep an open mind throughout this entire
16 process before you decide between life without parole and
17 the death penalty?

18 A Yes, sir.

19 Q If you sat on a case such as this, and I'm not
20 talking about this case, because you don't know about this
21 case. But speaking in general. If you sat on a case such
22 as this. And you and the other jurors thoughtfully and
23 thoroughly considered everything that was presented. And
24 after doing that you unanimously decided that the death
25 penalty was the appropriate punishment in the case. If

1 that was your choice, would you, as a member of that jury,
2 be able to sign your name to a verdict form that said that
3 was your choice?

4 A Yes, sir.

5 Q Would you be able to come in here into open court
6 and stand up and say that was your verdict, if it was?

7 A Yes.

8 Q Would you be able to do those things knowing that
9 eventually that is going to result in the execution of a
10 defendant?

11 A Yes, sir.

12 Q Now part of the -- part of a case like this is
13 that a juror, when chosen, has to stay with us while the
14 case is being tried, that means you will be sequestered
15 with the other jury members who are picked. If that is
16 part of the process, will you be able to make arrangements
17 to stay with us while the case is being tried, if it's
18 going to take about five to seven days?

19 A Yes, as long as work and everything, yeah.

20 Q Sir?

21 A Yes, as long as I've got an understanding with my
22 work, I could, yes.

23 Q And you've already got an understanding with your
24 work?

25 A Yes.

1 Q All right. So you've already thought about it
2 and you've done that and you understand that if you're
3 picked you're going to have to stay with us?

4 A Yes.

5 THE COURT: Answer any questions the solicitor might
6 have, please, sir. Thank you.

7 DIRECT EXAMINATION BY MR. BAILEY:

8 Q Mr. Marchant, I'm Walter Bailey, I've just got a
9 couple more questions to follow-up on what the judge asked
10 you, there are no right or wrong answers, we just want to
11 know what you think. And nobody's going to ask you to
12 predict what you'd do in this case because you haven't
13 heard the facts. Okay? But if the facts were bad enough
14 could you vote for the death penalty?

15 A If the facts were bad enough?

16 Q Yes, sir.

17 A Yes, sir.

18 Q Okay. And if you and the other jurors felt the
19 same way, could you sign your name to a verdict form that
20 would at some point result in that person being executed?

21 A Yes, sir.

22 Q And could you stand up here in open court when
23 your name was called out and announce that as being your
24 verdict, if it was your verdict?

25 A Yes, sir, if it were my verdict.

1 MR. BAILEY: That's all I have, thank you very much.

2 THE COURT: Mr. Runyon.

3 MR. RUNYON: Just very briefly.

4 CROSS-EXAMINATION BY MR. RUNYON:

5 Q Mr. Marchant, do you have any relatives in law
6 enforcement?

7 A No, sir.

8 Q Okay. Do you have any relatives who work for the
9 solicitor's office for this -- in this county, for this
10 county? That you're aware of.

11 A Not as I know of, no.

12 Q And, what church do you attend, sir?

13 A Indian View United Methodist.

14 Q And do you know if -- if anybody related to the
15 victim's family goes to church with you?

16 A No, sir, I don't think so.

17 Q Do you know if they ever went to church there?
18 Do you have any knowledge of the victim's family?

19 A No, no, sir.

20 MR. RUNYON: No further questions, Your Honor.

21 THE COURT: Anything further from the state?

22 MR. BAILEY: No, sir.

23 THE COURT: Okay, Mr. Marchant, I have a matter I need
24 to take up with the lawyers, would you step back into the
25 back room there again, please, sir?

1 (Juror excused from courtroom.)

2 THE COURT: What says the state?

3 MR. BAILEY: Your Honor, I think -- I think he is
4 qualified. I would like to point out, for the record, he
5 was -- this juror was asked whether or not he was kin to
6 anybody in the solicitor's office. We have a secretary
7 Kim, she's married now, but her maiden name was Kim
8 Marchant. And, it's my understanding there was some
9 distant relationship.

10 MR. BELL: I think Mr. Leiendecker was present, I was
11 present when he asked her about that, so they're aware of
12 that.

13 MR. BAILEY: I just wanted to put that on the record.
14 But I think it's probably so far away they don't even know
15 that there's some relationship.

16 MR. RUNYON: That -- that -- that's correct, Your
17 Honor. This was called to our attention and we -- we --
18 we asked the question just to see if -- obviously if he
19 doesn't even -- if he's so distantly related he's not even
20 aware of where she works then -- then that's the fact,
21 that's his answer. And the solicitor's office called this
22 to our attention so we just made routine inquiry.

23 THE COURT: Any objection from the defendant?

24 MR. RUNYON: No, Your Honor, obviously---

25 THE COURT: He's clearly a qualified number three

1 juror. Bring him back in.

2 (Juror brought into courtroom.)

3 THE COURT: Mr. Marchant, I find that you're qualified
4 to serve on the jury panel, that doesn't mean you're on
5 the panel yet, it means you're in the group from which the
6 final 14 will be selected.

7 You need to call this call in number -- well I can
8 tell you what the message is going to be, so you won't
9 have to worry about calling tonight. Call this call in
10 number between one and two o'clock tomorrow. There will
11 be a message on there that will tell you what time you
12 need to come back up here. I can't tell you right now,
13 it's probably going to be sometime Wednesday, but follow
14 the instructions on the machine, it may say to call back
15 at another time, it might say call back tomorrow night for
16 further instructions. Whatever the instructions are on
17 there, follow those instructions.

18 When you are asked to come back up here, have your
19 bags packed and in your car and be prepared to stay with
20 us for seven to ten days -- excuse me, five to seven days
21 while the case is being tried.

22 Between now and then don't talk to anybody about the
23 case. Don't let anybody talk to you about the case.
24 Don't read the newspaper about this case and don't listen
25 to any radio or television reports that might be about

1 this case. You need to be able to decide this case based
2 on what you hear in the courtroom and not something
3 outside of here. Do you understand?

4 JUROR: Yes, sir.

5 THE COURT: All right, sir. Thank you, sir, you're
6 excused. Follow the instructions on the machine, please.
7 Call between one and two tomorrow. Thank you.

8 (Juror excused.)

9 THE COURT: Russell Davies.

10 (Juror brought into courtroom.)

11 EXAMINATION BY THE COURT:

12 Q Mr. Davies, sit right here, please, sir.

13 Mr. Davies, I'm going to ask you some questions. There
14 are no right or wrong answers to any of the questions, we
15 just want you to be completely honest with us in your
16 responses. You are under oath, you were sworn in this
17 morning with the rest of the panel.

18 Since you received your summons to come here for jury
19 service, has anybody talked to you about this case?

20 A No.

21 Q Have you talked to anybody about the case?

22 A No.

23 Q Do you know anything about this case other than
24 what I told you this morning?

25 A No.

1 Q You haven't read or heard about it or seen it on
2 television in the last couple of years?

3 A No.

4 Q Don't know anything about it?

5 A No.

6 Q This morning I called out a list of names of
7 people who could be witnesses in the case, did you know
8 any of those people?

9 A No.

10 Q Have you formed or expressed any opinion about
11 this case?

12 A No.

13 Q Do you have any bias or prejudice against the
14 prosecutors for bringing this case or against the
15 defendant just because he is the defendant in the case?

16 A No.

17 Q Do you know of any reason why you could not be
18 fair and impartial to both the state and the defendant?

19 A No.

20 Q Can you and will you apply the law that is given
21 to you by the court?

22 A Yes. It'd be nice to know a little bit more
23 about what the law is.

24 Q Well, what -- the reason I asked you that
25 question, so you'll know what I'm asking is, you're

1 obligated under your oath as a juror to apply the law that
2 is given to you by the court. You aren't here as a juror
3 to change it or modify it, you're here to apply it as
4 given to you.

5 So without getting into what the charge is going to be
6 right now, the charge on the law, what I need to know is
7 will you follow the court's instructions?

8 A Yes.

9 Q Follow the law that is given to you?

10 A Yes.

11 Q All right, sir. Now I told you and the other
12 jurors this morning that the defendant in this case,
13 Mr. Rogers, has already been convicted of murder in a
14 prior proceeding. So the question in this trial is what
15 the punishment should be, either life in prison without
16 parole or the death penalty, that's the decision the
17 jury's got to make, choosing between those two.

18 So the jury will hear mitigating and aggravating
19 circumstances. The jury will hear testimony and evidence
20 and see exhibits, all of that intended to help the jury
21 decide what the punishment should be. The choice between
22 a life sentence or the death penalty.

23 Now you had the opportunity back in the jury room to
24 go through that form that had on it the three types of
25 jurors. Which one of those three do you think best

1 describes you as a potential juror?

2 A I think number two.

3 Q That's a juror who will always give a life
4 sentence regardless of the facts that might be presented
5 in this trial?

6 A That's a very difficult question, but I -- it
7 would take very, very, very strong mitigating
8 circumstances, I guess, for me to -- to give a death
9 penalty.

10 Q All right. Well, what I need to know is, can you
11 consider both possible punishments before deciding on one?

12 A I think so, yes.

13 Q Okay. So you can -- we can't talk about this
14 case because you don't know the facts of this case yet.
15 But conceivably there is a fact situation out there
16 somewhere where the facts are so bad that you'd probably
17 give a death penalty?

18 A Yes, probably.

19 Q And there are other circumstances where you might
20 think a life sentence, particularly a life sentence
21 without parole, might be the most appropriate?

22 A Yes.

23 Q All right. So, can you then in this proceeding
24 here keep an open mind and listen to everything that's
25 presented in this trial before you decide on a punishment?

1 A Yes.

2 Q If you sat on a case like this, and I'm not
3 talking about this case now, because you don't know
4 anything about this case yet. But in general, if you sat
5 on a case such as this as a juror, you and the other
6 jurors kept open minds and listened to everything that was
7 presented. And after doing that and thoughtfully and
8 thoroughly considering everything you and the other jurors
9 unanimously decided that the death penalty was the
10 appropriate punishment. And that the facts in that
11 particular case justified it. If that was your choice,
12 along with the other jurors, would you be able to sign
13 your name to a verdict form that said that was your
14 choice, if it was?

15 A Yes.

16 Q Would you be able to come in here into open court
17 and if I asked each of you individually, said, was that
18 your verdict and is it still your verdict? Would you be
19 able to stand up in court and say it was your verdict?

20 A Yes.

21 Q Do you have any strong feelings or beliefs that
22 will interfere with your choice between a life sentence
23 and the death penalty?

24 A I think I do. I think I do.

25 Q Well, if you have such beliefs, is it going to

1 interfere to the point where you can't consider both
2 possible punishments before deciding on one?

3 A Well I would certainly try. You know, without
4 actually being faced with it, I have a concern about it, I
5 guess, best I can say.

6 Q Well, do you think you can fairly and impartially
7 consider both before deciding on one?

8 A I would do my best.

9 Q All right. Now, Mr. Davies, part of this process
10 is that if you are selected on the jury you have to stay
11 with us while the case is being tried. Be sequestered
12 with the other jury members. If that is part of the
13 process, and understanding it's difficult for anybody to
14 participate like that, if you're selected on this jury
15 would you be able to stay with us while the case is being
16 tried?

17 A That would also be very difficult. With my job
18 such as it is, it would be very difficult.

19 Q Do you think you could make those arrangements if
20 we're talking about a five to seven day trial possibly
21 starting on Wednesday? And that's -- I'm -- I'm
22 estimating on the outside, not trying to cut it too close
23 but to give you some idea.

24 A I know everybody has problems. The only thing I
25 can say is that right now with my job we are in the

1 process of preparation for next year's plan. And -- and
2 it's almost impossible to redo those things if I'm not
3 there to participate, because I've been such a primary
4 participant up 'til now. So from a job standpoint it
5 would be very difficult to be -- I mean, I was up all last
6 night working on work so that I could be here today. And
7 there's -- it'd be very difficult to be gone from it
8 totally for five days.

9 THE COURT: Answer any questions the solicitor might
10 have, please, sir. Mr. Bailey.

11 DIRECT EXAMINATION BY MR. BAILEY:

12 Q Mr. Davies, let me ask you a few questions about
13 your job problem then I want to ask about the death
14 penalty a little bit. And I apologize if I pry into your
15 personal business, but this is the only chance we get to
16 find out these -- these type questions of potential
17 jurors.

18 I noticed in your questionnaire you're general manager
19 at Cummins Engine?

20 A Yes.

21 Q Okay. And, I'm not familiar with that kind of
22 facility, but is this a worse time than other times for
23 you if you get sequestered?

24 A Yes.

25 Q Okay. And, of course, in a case of this

1 magnitude it would require, you know, your total full
2 attention to the facts and the law the judge would give
3 you. Do you think if you were picked on a jury in this
4 case that you could fully concentrate on what was
5 happening here without your mind being back at work
6 wondering what was going on without you being there?

7 A Honestly, no.

8 Q Okay. So your -- your mind kind of would wander
9 out to -- to work; is that correct?

10 A Yes.

11 Q All right. Let me ask you about the death
12 penalty. And, there are no right or wrong answers, we're
13 not trying to test you or quiz you, we just need to find
14 out what you honestly think about it. You initially
15 indicated you were the number two type juror that did not
16 believe in the death penalty. And when given the choice
17 would always vote for life imprisonment? And then when
18 Judge Whetstone asked you about it you kind of -- I
19 understood you to kind of back off from that a little
20 bit. Could -- could you just tell me in your own words
21 what your thoughts are about the death penalty?

22 A I think under normal circumstances if a person
23 has already been convicted, is confined, I don't really
24 see a lot of -- a lot to be gained by taking that person's
25 life.

1 Now when you say could they do anything that -- that
2 could make me change my mind, I mean, if somebody was in
3 here and they had absolutely no remorse and they were
4 being abusive and obscene and telling people that they'd
5 do it again and, I mean, those to me are the kinds of
6 mitigating circumstances that would make me maybe think
7 differently in a particular case, but.

8 Q Okay. But we're not going to get into specifics,
9 because you haven't heard the facts in this case.

10 A That's right.

11 Q But would your thoughts, your -- your beliefs in
12 regard to the death penalty substantially impair your
13 ability to both consider and impose one sentence or the
14 other, life without parole or the death penalty?

15 A I -- I think it could but I -- I really don't
16 know, I mean, I'd do my best if I -- I'd try to be open.

17 Q I notice in your questionnaire that you attend
18 the Catholic Church?

19 A Yes.

20 Q Do your beliefs in regard to the death penalty
21 come from that religious background?

22 A I don't think so, really.

23 Q Okay. Are the thoughts that you've expressed on
24 the death penalty here today, are those thoughts you've
25 had for a period of time or is that just something that

1 you've arrived at now?

2 A No.

3 Q Are there any other -- any other factors, any
4 other problems that you might have in sitting as a juror
5 in this case that we haven't already talked about? We
6 talked about your feelings on the death penalty and your
7 work problems.

8 A That's it.

9 Q Okay. If -- if I was to ask you now and I -- and
10 I will ask you after you've had a chance to talk to the
11 judge and to talk to me about it, whether you were the
12 one, two or three type juror, would you still say you're
13 number two?

14 A Yes.

15 MR. BAILEY: Thank you, sir, that's all I have.

16 THE COURT: Mr. Runyon.

17 CROSS-EXAMINATION BY MR. RUNYON:

18 Q Mr. Davies, I realize this is somewhat of a
19 struggle for you, I mean, when people are asking you
20 questions that you don't know.

21 A That's all right.

22 Q But, obviously, you have some sincere --
23 sincerely held beliefs that you would bring to jury
24 service if you were selected; isn't that correct, sir?

25 A Yes.

1 Q But certainly if the court instructed to you that
2 you were to consider both life in prison without parole or
3 the death penalty, you could fairly consider both under
4 the circumstances that would be presented to you, couldn't
5 you, sir?

6 A I think I could.

7 Q I mean, as a practical matter your -- your mind's
8 not closed to either of those possibilities, as you sit
9 here, is it?

10 A It's sort of a matter of degree I think. I mean,
11 if I read those three, I mean, it's not as black and white
12 as it may appear, but -- but I still think I would call
13 myself a -- the second type.

14 Q Okay. In other words, if you were in your
15 business you -- I take it you do a lot of planning and --
16 and have a lot of decision making responsibilities--

17 A Yes, sir.

18 Q --on your shoulder. And that if -- if you were
19 called to taking that over into what we're involved in
20 today, if someone came to you and said, Mr. Davies, you
21 decide whether or not we're going to have a death penalty
22 or not, you'd probably decide not to have a death penalty?

23 A That's true.

24 Q Okay. But, since you're not making the law you
25 could, in fact, honestly follow the law as His Honor would

1 give it to you, couldn't you?

2 A Well, like I said, I -- I think I could. I -- I

3 think I could.

4 Q All the law requires you to do is consider

5 both -- both -- both -- both options. And you could give

6 that a fair consideration, couldn't you?

7 A I would certainly try, yes.

8 Q Okay. And, do you and Mr. Hirt work together?

9 A Who.

10 Q Mr. Hirt?

11 A (No response.)

12 Q Cummins is a big place.

13 A I know someone by the name of Hirt, but they

14 don't -- there's no one in my division by that name.

15 MR. RUNYON: All right. No further questions, Your

16 Honor.

17 THE COURT: Anything further, Solicitor?

18 MR. BAILEY: Not at this time, Your Honor.

19 THE COURT: Mr. Davies, I need to talk to the lawyers,

20 would you step back in the back again, please, sir.

21 (Juror excused from courtroom.)

22 THE COURT: What says the state?

23 MR. BAILEY: Your Honor, the state would contend that

24 for two -- two separate reasons, Mr. Davies is not

25 qualified. The first being his situation as general

1 manager at Cummins Engine Company, he clearly said, it was
2 uncontradicted, that if he was picked on this jury he
3 could not fully concentrate on what was being said here,
4 his mind would be back there at work because this is a
5 critical time and he's general manager of the entire
6 plant.

7 Your Honor, second, independent ground, I think, is
8 his apparent inability to vote for the death penalty.
9 Except possibly in some unique circumstance that might
10 involve some member of his family or some personal
11 involvement. And I think that might have qualified him
12 under the Witherspoon standard, it would not qualify him
13 under Adams versus Texas and Wainwright versus Witt.

14 I think, taking into consideration the totality of his
15 responses, even though he could possibly, conceivably
16 impose the death penalty in some remote circumstance, that
17 his ability to fairly consider and impose both penalties
18 is substantially impaired.

19 He never, despite repeated opportunities to clarify,
20 said that he could fairly consider both -- both
21 alternatives. He qualified it by saying, I think I can
22 and I'll try, I'll do my best, but he never fairly -- he
23 never said he could fairly consider both without some kind
24 of qualification to it. He said he was a number two at
25 the beginning, he still contends he's a number two juror.

1 And, Your Honor, just in summary, for both of those
2 reasons his inability to concentrate and his inability to
3 consider the totality of the responses, I think his
4 beliefs against the death penalty would substantially
5 impair his ability to fairly consider and impose both
6 alternatives, sir.

7 THE COURT: Thank you, sir.

8 MR. RUNYON: Your Honor, just for the record, I
9 respectfully disagree with the -- the state, Your Honor.
10 You know, Mr. Davies is obviously the kind of juror who --
11 the kind of citizen who comes in here and who's maybe not
12 been faced with this question before, he's got some --
13 he's thought about a lot of the issues in our society, and
14 this is one he's thought about.

15 But when it comes right down to it he says, listen, if
16 the court gives me the law, you know, I'm going to try to
17 follow the law. And that's all you can ask of the jurors,
18 that they -- that they make a good faith effort to follow
19 the law and consider both alternatives.

20 Now he did say that, you know, he had some idea about,
21 well, if things are bad enough he could consider the death
22 penalty and whatnot. But, in the final analysis his --
23 his rumination come out to -- to a very -- a few basic
24 things.

25 Number one, he said, I've got problems at work. But

1 he never asked to be excused for that. He said yeah,
2 that'll probably create a real problem for me, it might
3 distract me a little bit, but I'm here to do my duty.

4 And number two, he said, I'm going to follow the
5 instruction of the court, I'll consider both life
6 imprisonment and the death penalty. While he likes to
7 think of himself as a number two. And, like while, he
8 said, if I had to choose I'd -- I'd just direct we don't
9 have a death penalty, that doesn't mean that he cannot
10 follow the law, which is what he said he would do.

11 And I think under those circumstances he -- maybe it's
12 a marginal qualification, but I think he's marginally
13 qualified.

14 THE COURT: Okay, thank you. The juror, Mr. Davies,
15 is not a qualified juror, he is consistently a number two
16 juror, he has work problems that he says are substantial
17 and cannot be overcome, he's excused for that reason. He
18 says consistently that he will try to apply the law, not
19 that he could apply it or would apply it but he'd try, he
20 never said he could. He may not follow the law. He
21 hesitated substantially every time he was asked, will you
22 follow the law. Like, I will if I like it, but if I don't
23 like it I won't. At least that's the conclusion it led me
24 to draw. And he's just not a qualified juror, he's a
25 number two juror who'd never give the death penalty.

1 Bring him back in here.

2 (Juror brought into courtroom.)

3 THE COURT: Okay, Mr. Davies, you are excused from
4 serving on the jury panel, we appreciate your being here
5 and taking the time and we appreciate your honest
6 responses. Thank you, sir, you are excused.

7 (Juror excused.)

8 THE COURT: Bring in Alexander Thompson, please.

9 (Juror brought into courtroom.)

10 EXAMINATION BY THE COURT:

11 Q Mr. Thompson, have a seat, please, sir.

12 Mr. Thompson, I'm going to ask you some questions. There
13 are no right or wrong answers to any of the questions, you
14 just need to be completely honest with us in your
15 responses. You are under oath, you were sworn in this
16 morning with the rest of the panel.

17 A Yes, sir.

18 Q Since you received your summons to come here for
19 jury service, has anybody talked to you about this case?

20 A Yes.

21 Q All right, tell me about that, please, sir.

22 A Well, I talked to his brother.

23 Q Whose brother?

24 A Rob.

25 Q Mr. Rogers' brother?

1 A Yeah.

2 Q When'd you talk to him?

3 A Saturday.

4 Q Okay. You think that's going to have any affect
5 on your ability to be fair and impartial in the case?

6 A Yes.

7 Q You just don't think you can be fair?

8 A No.

9 Q Do you know the family?

10 A I know Rob.

11 Q You know his brother?

12 A Yeah.

13 Q And because of that association you just don't
14 think you could be fair and impartial in this case?

15 A No, sir.

16 THE COURT: Questions, Solicitor?

17 MR. BAILEY: Indulge me a second, please, Your Honor.

18 (Pause.)

19 MR. BAILEY: No questions, Your Honor.

20 THE COURT: Question, Mr. Runyon?

21 MR. RUNYON: No questions, Your Honor.

22 THE COURT: Okay, Mr. Thompson, based on the fact that
23 you know the family and know Mr. Rogers' brother I'm going
24 to excuse you from serving on the panel. I appreciate
25 your honest responses and thank you for being here.

1 You're excused. Thank you, sir.

2 (Juror excused.)

3 THE COURT: Okay, that takes care of our jurors we had
4 summoned in for today, we'll start at nine o'clock in the
5 morning with Shirley M. Gilliard.

6 For purposes of checking up as to how far we have come
7 with this, how many do you show as qualified, Solicitor?

8 MR. BAILEY: Fourteen, Your Honor.

9 THE COURT: Mr. Runyon?

10 MR. LEIENDECKER: Yes, sir, Your Honor, 14.

11 MR. RUNYON: Fourteen.

12 THE COURT: Fourteen, all right. All right, sir,
13 we'll start in the morning at nine o'clock. Thank you.

14 ***END OF VOLUME I OF REQUESTED TRANSCRIPT OF RECORD***

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF BERKELEY)

CERTIFICATE OF REPORTER

3
4 I, the undersigned, Karen Mullins, Official Court
5 Reporter for the Ninth Judicial Circuit of the State of
6 South Carolina, do hereby certify that the foregoing is a
7 true, accurate and complete Transcript of Record of all
8 the proceedings had an evidence introduced in the trial of
9 the captioned case, relative to appeal, in the General
10 Sessions Court for Dorchester County, South Carolina, on
11 the 2nd day of December, 1996.

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

14

15

16

17

June 20, 1997

18

Karen Mullins

19

Circuit Court Reporter

20

21

22

23

24

25

STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM DORCHESTER COUNTY

Judge Charles William Whetstone, Jr.

THE STATE,

RESPONDENT,

V.

TIMOTHY D. ROGERS,

APPELLANT.

RECORD ON APPEAL

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INDEX

1.	TRANSCRIPT OF TRIAL: DECEMBER 2-5, 1996.....	
	A. VOIR DIRE.....	2
	B. RESENTENCING.....	
	WITNESSES:	
	MICHAEL GEORGE B [REDACTED].....	601
	assault victim.....	646
	ISAIAH JENNINGS.....	662
	HERTHENIA LINCOLN.....	665
	JAMES ROBINSON.....	669
	GEORGE SCHARFF.....	672
	DR. CLAY NICHOLS.....	680
	JEFF ROGERS.....	692
	EARL VINCENT ASBELL.....	693
	DAVID J. COLLINS.....	707
	LESTER PATRICK.....	713
	JAMES CARVER.....	719
	PRISCILLA MACK.....	755
	MELINDA B [REDACTED].....	810
	MIKE B [REDACTED].....	818
	PALACE BUNCH.....	826
	TIMOTHY D. ROGERS.....	846
	JESSIE MIDDLETON.....	914
	ELAINE WILLIAMS.....	917
	Applicant's Mother.....	920
	CHARGE OF THE COURT.....	998
	SENTENCE.....	1021
2.	PRETRIAL HEARING: FEBRUARY 8, 1996.....	1031
3.	PRETRIAL HEARING: NOVEMBER 20, 1996.....	1037
4.	CRIMINAL SEXUAL CONDUCT INDICTMENT: JANUARY 24, 1994.....	1100
5.	TRIAL JUDGE'S REPORT.....	1104

6.	APPELLANT'S REQUEST-TO-CHARGE ON STATUTORY MITIGATING CIRCUMSTANCES.....	1115
7.	CERTIFICATE OF APPELLANT.....	1117

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF DORCHESTER) IN THE COURT OF
3) GENERAL SESSIONS
4 STATE OF SOUTH CAROLINA,)
5 Plaintiff)
6 -vs-) TRANSCRIPT OF RECORD
7) VOLUME II
8) No. 93-GS-18-101
9 TIMOTHY D. ROGERS,)
10 Defendant)

11 December 3, 1996
12 St. George, South Carolina

13 B E F O R E:

14 HONORABLE CHARLES W. WHETSTONE, JR., Judge; and a jury.

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24 Attorneys for the Defendant.

25 KAREN MULLINS
Circuit Court Reporter

1	<u>I N D E X</u>	
2		
3	<u>WITNESS</u>	<u>PAGES</u>
4		
5	Voir Dire	281 - 548
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

276A

<u>E X H I B I T</u>				
	<u>No.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
1				
2				
3	S-1	Photo of truck.	551	553
4				
5	S-2	Photo of truck.	551	553
6				
7	S-3	Photo of Spell's grocery.	551	553
8				
9	S-4	Diagram of head.	551	553
10				
11	S-5	Photo of bullet hole, entry.	551	553
12				
13	S-6	Photo of bullet hole, exit.	551	553
14				
15	S-7	Photo of bullet hole and truck dash.	551	553
16				
17	S-8	Photo of shell casing.	551	553
18				
19	S-9	Photo of shell casing.	551	553
20				
21	S-10	Photo of bullet hole in rim.	551	553
22				
23	S-11	Photo of Spell's grocery.	551	553
24				
25	S-12	Photo of scene.	551	553
26				
27	S-13	Two spent casings.	551	553
28				
29	S-14A	Piece of lead.	551	553
30				
31	S-14B	Copper jacket.	551	553
32				
33	S-15	Diagram of Spell's.	551	553

1	<u>E X H I B I T</u>			
2	<u>No.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
3	S-16	Diagram of Spell's	551	553
4	S-17	Diagram of Spell's	551	---
5				
6	S-18	Defendant's statement.	551	553
7	S-19	Waiver form.	551	---
8				
9	S-20	Videotape of defendant.	551	553
10	S-21	Defendant's criminal record.	551	---
11				
12	S-22	Defendant's criminal record.	551	553
13	S-23	Photo of victim.	551	553
14				
15	S-24	Victim's birth certificate.	551	553
16	S-25	Photo of victim with family.	551	553
17				
18	S-26	Victim's report card.	551	553
19	S-27	Victim's autopsy photo.	551	553
20				
21	S-28	Photo of victim.	551	556
22	S-29	Photo of victim.	551	556
23				
24	S-30	Photo of victim with family.	551	556
25				

1	<u>E X H I B I T</u>			
2	<u>No.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
3	S-31	Photo of victim.	551	556
4	S-32	Photo of victim.	551	556
5				
6	S-33	Photo of victim.	551	556
7	S-34	Photo of victim.	551	556
8				
9	S-35	Photo of victim.	551	556
10	S-36	Photo of victim.	551	556
11				
12	S-37	Photo of victim's head stone.	551	---
13	S-38	Sketch of scene.	551	556
14				
15	S-39	SCDC rules violation report.	759	759
16				
17				
18	D-1	Photo of defendant's child.	862	875
19	D-2	Photo of defendant's child.	862	876
20				
21	D-3	Photo of defendant's child.	862	876
22	D-4	Photo of defendant's child.	862	876
23				
24				
25				

1

E X H I B I T

2

No.DESCRIPTIONID.

3

C-1

Report of finding of mental capacity.

550

4

C-2

Letter re: Juror from Dr. Baggett.

575

5

6

C-3

Note from jury re: TV and examples.

1018

7

C-4

Note from jury re: Death penalty.

1020

8

9

C-5

Letter given to jurors.

1025

10

11

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1 THE COURT: State ready?

2 MR. BAILEY: State's ready, Your Honor.

3 THE COURT: Defendant ready?

4 MR. RUNYON: I'm always ready, Judge.

5 THE COURT: Bring in Shirley Gilliard, please.

6 (Juror brought into courtroom.)

7 EXAMINATION BY THE COURT:

8 Q Good morning, Ms. Gilliard.

9 A Good morning.

10 Q Ms. Gilliard, I'm going to be asking you some
11 questions, there are no right or wrong answers to any of
12 the questions, we just want you to be completely honest
13 with us in your responses. You are under oath, you were
14 sworn in yesterday with the other jurors.

15 Since you received your summons to come here for jury
16 service, has anybody talked to you about the case?

17 A No.

18 Q Have you talked to anybody about this case?

19 A No.

20 Q Do you know anything about this case from any
21 source?

22 A Well, the newspaper and I do know -- I do know
23 the young man---

24 COURT REPORTER: I can't hear.

25 BY THE COURT:

1 Q Speak up a little bit, please.

2 A I do know the young man because he used to live
3 across the street from me.

4 Q Well, given the fact that you know the family and
5 know the defendant, would that have any affect on your
6 ability to be fair and impartial in the case?

7 A No, not really.

8 Q Okay. So you can still be fair and impartial
9 even though you know him and know the family?

10 A Yes.

11 Q Okay. And how about the articles that you've
12 read in the newspaper and what you've seen on television,
13 are you going to be able to put all that aside and decide
14 this case based on what you hear in the courtroom?

15 A I'm pretty sure I can.

16 Q You need to speak up, ma'am.

17 A I'm pretty sure I can.

18 Q Pretty sure you can. Okay. Yesterday I called
19 out a list of names of people who could be witnesses in
20 this case, did you know any of those people? Other than
21 the defendant?

22 A No, not that I know of.

23 Q Have you formed or expressed any opinion about
24 this case?

25 A No, not really.

1 Q Do you have any bias or prejudice against the
2 prosecutors for bringing the case or against the defendant
3 just because he is the defendant in the case?

4 A No.

5 Q Do you know of any reason why you could not be
6 fair and impartial to both the state and the defendant,
7 Mr. Rogers?

8 A No.

9 Q Can you and will you follow the law that is given
10 to you by the court? That means, if I tell you what the
11 law is, will you follow those instructions?

12 A Yes.

13 Q Now yesterday I told you that this defendant,
14 Mr. Rogers, had already been convicted of murder. So the
15 decision for the jury in this case is to decide between a
16 life sentence without parole or the death penalty. Do you
17 understand?

18 A Yes.

19 Q In this trial what you will hear as a juror is
20 testimony. You'll see exhibits, you'll see or hear --
21 hear and see evidence and you'll also hear mitigating and
22 aggravating circumstances. All of that will be presented
23 to help the jury make a decision as to what the sentence
24 ought to be, either a life sentence or the death penalty.

25 Now you've had the opportunity back in the jury room

1 to look over this form that has on it the three types of
2 jurors. Which one of those three do you think best
3 describes you as a potential juror?

4 A Number two.

5 Q Number two? That's a juror who when somebody has
6 been convicted of murder will always give a life sentence?

7 A Well I, you know, I can be---

8 Q Ma'am? You can be what?

9 A I can be number two.

10 Q Number two, that is if you sit through a case
11 such as this, not talking about this case now. But if you
12 sat through a case like this and you listened to
13 everything, regardless of what you heard testimony-wise,
14 you'd always give a life sentence and never give a death
15 penalty, is that what you're telling me?

16 A Yes, I can't do it.

17 Q And you've been opposed to the death penalty for
18 some time, is that a belief that you've held for a while?

19 A Yes.

20 Q You just would never give a death penalty?

21 A No.

22 Q No matter how bad the facts might be you'd always
23 give a life sentence?

24 A Yes, I can't -- I won't be able to.

25 Q Couldn't ever give the death penalty?

1 A No.

2 THE COURT: Answer any questions Solicitor Bailey
3 might have, please, ma'am.

4 MR. BAILEY: Thank you, Your Honor.

5 (Counsels consulted.)

6 DIRECT EXAMINATION BY MR. BAILEY:

7 Q Ms. Gilliard, I'm Walter Bailey, I'll be
8 prosecuting Mr. Rogers here, and I want to ask you a few
9 more questions, and I think I understand your position.
10 And first of all I want to tell you that everybody in this
11 courtroom respects your opinion. We're not trying to get
12 you to say something you don't feel. And we're not
13 testing you, we're just trying to find out how you truly
14 feel.

15 Now, as I understand what you told Judge Whetstone,
16 you're the number two type juror that does not believe in
17 the death penalty; is that correct?

18 A Yes.

19 Q And for that reason you could never vote for the
20 death penalty under any circumstances?

21 A True.

22 Q Okay. And, just to kind of follow-up on that a
23 little bit. Could you ever, under any circumstances, sign
24 your name to a piece of paper, the death verdict form,
25 that would result in somebody being executed?

1 A Have I ever?

2 Q No, could you ever?

3 A No.

4 Q Okay. You had mentioned earlier that you knew

5 Mr. Rogers, that he lived next door to you at one time?

6 A Yes.

7 Q Okay. And where were you living at that time?

8 A On -- on -- on [REDACTED] Street in Summerville.

9 Q Okay. And did Mr. Rogers live beside you for a

10 period of time?

11 A Across the street.

12 Q Okay. How long was he a next-door neighbor or

13 across the street neighbor?

14 A I can -- I know -- I don't know whether it was a

15 year or a year and a half, but he went to school with my

16 kids.

17 Q Okay. So, did you see him on a daily basis with

18 your children and all?

19 A Not saying a daily basis, but I've seen him

20 around.

21 Q Was he in your house and, you know, to visit with

22 your children at times?

23 A Oh, out in front.

24 Q Okay. Did you know other members of his family,

25 his stepfather and his mother and his brother?

1 A His mother I know. I'm pretty sure that was his
2 father, yes.

3 Q Okay. Were you friends with the Rogers family?

4 A Not really.

5 Q Okay. Just neighbors?

6 A Uh-huh.

7 Q Okay. All right. And, Ms. Gilliard, do you
8 think that -- that since you were next-door neighbors to
9 the Rogers family for a period of a year or so that you're
10 kind of too close to this case to sit as a juror?

11 A Yes.

12 MR. BAILEY: Ms. Gilliard, that's all I've got, thank
13 you very much.

14 THE COURT: Mr. Runyon.

15 CROSS-EXAMINATION BY MR. RUNYON:

16 Q Ms. Gilliard, is it your position that because
17 you knew the family you can't be fair to both the state
18 and the defendant? Is that what you're telling us? I
19 mean I'm not trying to---

20 A Not really, but I -- I feel that I -- I just
21 can't, you know, have a -- I just can't judge the young
22 fellow because, you know, he, I guess, because he up and
23 down with my -- my kids and -- I don't know, I just---

24 MR. RUNYON: Thank you, ma'am.

25 THE COURT: Anything further from the state?

1 MR. BAILEY: No, sir.

2 THE COURT: Okay, Ms. Gilliard, I need to talk to the
3 lawyers for a minute, would you please step back into the
4 back room again?

5 (Juror excused from courtroom.)

6 THE COURT: What says the state?

7 MR. BAILEY: I move to disqualify for cause.

8 THE COURT: What says the defendant?

9 MR. RUNYON: Your Honor, just for the record I'd note
10 that we had very limited examination of this witness.
11 That it was clear from her demeanor on the stand, the
12 twisting of paper, the method in which she delivered
13 her -- her answers in many respects were very reluctant
14 and her entire demeanor on the stand indicates that she
15 has a very serious bias or prejudice against the death
16 penalty and against participating in this trial, because
17 of her knowledge of the family or knowledge of the
18 defendant. And, therefore, I would concur that she is
19 disqualified as a juror.

20 THE COURT: Okay. She is not qualified, she says
21 she's a number two juror who could never give the death
22 penalty. Also she has been a neighbor of the defendant
23 and he played with her children and, therefore, she could
24 not be fair, she's clearly not qualified. Bring her back
25 in.

1 (Juror brought into courtroom.)

2 THE COURT: Ms. Gilliard, I'm going to excuse you from
3 service on this case. We appreciate you being here.
4 Thank you for coming back this morning. You are excused.
5 Thank you, ma'am.

6 (Juror excused.)

7 THE COURT: Bring in Sallie Scarberry, please.

8 (Juror brought into courtroom.)

9 EXAMINATION BY THE COURT:

10 Q Ms. Scarberry, I'm going to ask you some
11 questions. If you don't understand something don't try to
12 answer something you don't understand, ask me to explain
13 it, okay? There are no right or wrong answers to any of
14 the questions, we just want you to be completely honest
15 with us in your responses. You are under oath, you were
16 sworn in yesterday with the rest of the panel.

17 Since you received your summons to come here for jury
18 service, has anybody talked to you about this case?

19 A No.

20 Q Have you talked to anybody about the case?

21 A No.

22 Q Do you know anything about this case from prior
23 news reports or seeing it on TV or anything like that at
24 all?

25 A No, just what you said yesterday.

1 Q Okay. That's all you know?

2 A Yes, sir.

3 Q All right. Yesterday I called out a list of
4 names of people who could be witnesses in this case, did
5 you know any of those people?

6 A No.

7 Q Have you formed or expressed any opinion about
8 this case?

9 A No.

10 Q Do you have any bias or prejudice against the
11 prosecutors for bringing the case? Or against the
12 defendant just because he is the defendant in the case?

13 A No.

14 Q Do you know of any reason why you could not be
15 fair and impartial to both the state and the defendant?

16 A No.

17 Q I told you and the rest of the jurors yesterday
18 that in this case the defendant, Mr. Rogers, has already
19 been convicted of murder in a prior proceeding. The
20 purpose of this proceeding this week is to determine what
21 the punishment ought to be, either life in prison without
22 parole or the death penalty.

23 Now the jury will hear testimony and evidence,
24 mitigating and aggravating circumstances, all intended to
25 help the jury decide what the punishment ought to be,

1 either life in prison or the death penalty.

2 You've had the opportunity back in the jury room to
3 look over this form that has on it the three types of
4 jurors. Which one of those three do you think best
5 describes you as a potential juror?

6 A Number three.

7 Q That's a juror who will keep an open mind
8 throughout the entire process and listen to everything
9 before deciding on the appropriate punishment?

10 A Yes.

11 Q If you sat on a jury in a case like this, and
12 we're not talking about this case now because you haven't
13 heard the facts in this case now. But in general, if you
14 sat on a case like this. And you and the other jurors
15 listened to everything with an open mind and after
16 thoughtfully and thoroughly considering everything that
17 was presented, the jury unanimously decided that the death
18 penalty was the appropriate punishment. If that was your
19 choice, as a member of the jury, would you be able to sign
20 your name to a verdict form that said that was your
21 verdict, if it was?

22 A If that was my verdict, yes.

23 Q Okay. Would you be able to come out here into
24 open court and stand up and say that was your verdict, if
25 it was?

1 A If it was my verdict, yes.

2 Q Okay. Do you have any strong feelings -- well,
3 one other thing. If you do all those things and -- and
4 sat on such a jury, you do realize that eventually that's
5 going to result in the execution of a defendant?

6 A Yes.

7 Q Okay. Now, do you have any strong feelings or
8 beliefs that will interfere with your choice between a
9 life sentence or the death penalty? Religious beliefs or
10 anything like that, strongly held beliefs, that will
11 interfere with your choice?

12 A No. But he would receive that based upon certain
13 facts.

14 Q Oh, yes, ma'am. And I'm not asking you about
15 this case anyway, I'm asking you in general.

16 A No, I suppose not.

17 Q Okay. You understand, and will you remember,
18 that a vital part of this entire process is that all the
19 jurors keep an open mind and listen to everything before
20 deciding on the punishment?

21 A Right.

22 Q Can you do that?

23 A Oh, yeah.

24 Q Also part of this process is that the jurors who
25 are selected have to stay with us while the case is being

1 tried, you'll be sequestered with the other jurors at
2 county expense while this case is being tried.
3 Understanding that that's difficult for anybody to be able
4 to do, can you make arrangements to do that? If you're
5 picked on the jury.

6 A I guess so.

7 THE COURT: Okay. All right. Answer any questions
8 Solicitor Bailey may have for you. Thank you, ma'am.

9 DIRECT EXAMINATION BY MR. BAILEY:

10 Q Ms. Scarberry, I just have a few questions to
11 follow-up on what Judge Whetstone asked you. And, you
12 understand that in South Carolina, unlike some other
13 states, the jury and not the judge decides what the
14 punishment is when the state seeks the death penalty?

15 A I do now.

16 Q Okay. And, we use the word recommendation but
17 it's not really a recommendation because whatever the jury
18 decides should happen will happen.

19 A Okay.

20 Q If the jury decides on life without parole that
21 will be the sentence of the court. And on the other hand,
22 if after hearing all of the facts and the law from the
23 judge the jury decides for the death penalty, that person
24 will be executed.

25 Now, I'm not -- nobody's going to ask you to predict

1 what you would do in this case, because like the judge
2 said, you haven't heard any of the facts.

3 A That's the problem.

4 Q And -- and you've indicated you'd want to wait
5 and hear all the facts before you made that decision; is
6 that correct?

7 A Of course.

8 Q If the facts were bad enough could you vote to
9 impose the death penalty?

10 A They would have to be extremely bad.

11 Q Okay. And if you -- if the other 11 jurors felt
12 the same way you did, you have indicated you can sign that
13 death verdict form that would result in that execution
14 taking place; is that correct?

15 A He said if it was my -- my -- if I believed in
16 it, does it talk all -- all -- everybody? Or does it take
17 a majority or?

18 THE COURT: It takes everybody.

19 BY THE JUROR:

20 A It takes everybody? Then yes.

21 Q Okay. And I think he also asked you this, if
22 that -- if you voted for the death penalty, signed the
23 death verdict form, could you then announce that verdict
24 in open court?

25 A Yes, I guess so.

1 Q I'm sorry.

2 A Yes.

3 MR. BAILEY: Okay. Thank you. That's all I have.

4 THE COURT: Mr. Runyon, any questions?

5 MR. RUNYON: Mr. Leiendecker.

6 THE COURT: Mr. Leiendecker rather.

7 MR. LEIENDECKER: Yes, sir, Your Honor..

8 CROSS-EXAMINATION BY MR. LEIENDECKER:

9 Q Ms. Scarberry, do you have any relatives in -- in
10 this area?

11 A No.

12 Q You're originally from the Pennsylvania, West
13 Virginia area?

14 A Yes. Pennsylvania.

15 Q And, you have your bachelor of science in
16 engineering; is that right?

17 A No, it's in physics.

18 Q Physics?

19 A I just work as an engineer.

20 Q And you -- you came to Charleston in the last
21 seven, eight years as a result of marriage or job?

22 A Yes, it was -- it's been more than eight years,
23 but, yes. About ten.

24 Q And you are working now as a project engineer; is
25 that correct?

1 A Yes.

2 Q Is that a physics type field or would that be
3 : considered an engineering---

4 A I'm an electronics engineer.

5 MR. LEIENDECKER: Okay. Thank you.

6 THE COURT: Anything further from the state?

7 MR. BAILEY: Nothing from the state, Your Honor.

8 THE COURT: Ms. Scarberry, would you step back into
9 the back room here again while I talk to the lawyers,
10 please, ma'am?

11 (Juror excused from courtroom.)

12 THE COURT: What says the state?

13 MR. BAILEY: Qualified, Your Honor.

14 THE COURT: Defense?

15 MR. LEIENDECKER: Obviously qualified, Your Honor.

16 THE COURT: Okay, she's clearly a qualified number
17 three juror. Bring her back in.

18 (Juror brought into courtroom.)

19 THE COURT: Have a seat, please, ma'am.

20 Ms. Scarberry, I find that you are a qualified juror, that
21 means you're in the group from which the jury will be
22 selected.

23 You need to call this call in number between one and
24 two o'clock today. There will be a message on there that
25 will tell you what time you need to come back up here. I

1 think right now we'll be getting together some time
2 tomorrow, but I can't tell you the exact time. All of the
3 jurors who are qualified will be brought back up here and
4 from that group we will select the final 14 that will stay
5 with us.

6 Between now and then don't talk to anybody about this
7 case. Don't let anybody talk to you about the case.
8 Don't read the newspaper about this case and don't listen
9 to any radio or television reports. You need to be able
10 to decide this case based on what you hear in the
11 courtroom. Not something outside of here. Do you
12 understand?

13 JUROR: Yes, sir.

14 THE COURT: If anybody does try to talk to you after
15 you've told them you can't talk, find out who that person
16 is and let me know, that's improper and I need to deal
17 with that, please. Okay? Call that call in number
18 between one and two today. Thank you, ma'am, you're
19 excused.

20 Oh, also, when you come back up here tomorrow, have
21 your bags packed and in your car and be prepared to stay
22 with us for up to five to seven days if you are picked on
23 the jury. Okay? So be prepared to stay when you get
24 here. Thank you, ma'am.

25 (Juror excused.)

1 THE COURT: Larry Campbell, please.

2 (Juror brought into courtroom.)

3 EXAMINATION BY THE COURT:

4 Q Mr. Campbell, have a seat right here, please,
5 sir. Good morning.

6 A Good morning, sir.

7 Q Okay, Mr. Campbell, I'm going to ask you some
8 questions, there are no right or wrong answers to any of
9 these questions, we just want you to be completely honest
10 with us in your responses. You are under oath, you were
11 sworn in yesterday with the rest of the panel.

12 Since you received your summons to come here for jury
13 service, has anybody talked to you about this case?

14 A No, sir.

15 Q Have you talked to anybody about this case?

16 A No, sir.

17 Q Do you know anything about this case other than
18 what I told you yesterday?

19 A No, sir, I don't.

20 Q You haven't ever read or heard anything about it
21 at all?

22 A Only when -- when it first happened and that was
23 just something vaguely over -- over TV, I didn't know
24 anything about it, I didn't even know the case was being
25 tried.

1 Q Well would the fact that you might've heard
2 something about it have any affect on your ability to be
3 fair and impartial in this case?

4 A No, sir, it wouldn't have any -- have an affect
5 at all.

6 Q Okay. Yesterday I called out a list of names of
7 people who could be witnesses or otherwise involved in
8 this case, did you know any of those people?

9 A No, sir, I didn't -- I didn't know any of them --
10 any of them at all.

11 Q Okay. Have you formed or expressed any opinion
12 about this case?

13 A No, sir, I haven't.

14 Q Do you have any bias or prejudice against the
15 prosecutors for bringing the case or against the defendant
16 just because he is the defendant in this case?

17 A Oh, no, sir.

18 Q Do you know of any reason why you could not be
19 fair and impartial to both the state and the defendant?

20 A I don't -- I don't have any reason at all, sir.

21 Q Can you and will you follow the law as instructed
22 to you by the court?

23 A Yes, sir, I will.

24 Q Yesterday I told you and the rest of the panel
25 that the defendant in this case, Mr. Rogers, has already

1 been convicted of murder.

2 A Yes, sir.

3 Q So the decision for the jury in this case is to
4 decide what the punishment should be, either life in
5 prison without parole or the death penalty.

6 So the jury will hear testimony about what the
7 punishment ought to be, jury will hear mitigating and
8 aggravating circumstances and a variety of different
9 things. And then the jury will decide on the punishment,
10 life in prison or the death penalty.

11 You've had an opportunity back in the jury room to
12 look over the form that has on it the three types of
13 jurors. Which one of those three do you think best
14 describes you?

15 A Number -- number three, sir.

16 Q That's a juror who will keep an open mind?

17 A Yes, sir.

18 Q And listen to everything before deciding on the
19 appropriate punishment?

20 A Yes, sir.

21 Q If you sat as a juror in a case like this, we're
22 not talking about this case because you don't know any
23 facts in this case yet. But if you sat as a juror in a
24 case like this and listened to everything with an open
25 mind. And after thoughtfully and thoroughly considering

1 it all, you and the other jurors unanimously decided that
2 the death penalty was the appropriate punishment. If that
3 was your choice, would you be able to sign your name to a
4 verdict form that said that was your choice? If it was.

5 A Yes, sir.

6 Q Would you be able to come out here into open
7 court and stand up and say that was your verdict, if it
8 was?

9 A Absolutely, sir.

10 Q All right, sir. Would you be able to do those
11 things knowing that eventually that will result in the
12 execution of a defendant?

13 A Yes, sir.

14 Q Do you have any strong feelings or beliefs that
15 will interfere with your choice between a life sentence
16 and the death penalty?

17 A No, sir, I don't.

18 Q Understanding, Mr. Campbell, that it's vital to
19 this process that you listen with an open mind and
20 consider everything that is presented before you decide on
21 the appropriate punishment, will you be able to do that?

22 A Yes, sir, I will.

23 Q Now, Mr. Campbell, also part of this is that the
24 jurors who are actually selected on the jury have to stay
25 with us while the case is being tried, you are sequestered

1 and you're kept here until the case has been tried and
2 ended. If that is part of the process and if you are
3 selected on this jury, can you make arrangements to stay
4 with us while the case is being tried?

5 A I don't feel that'd be any problem, sir.

6 Q All right. So you've thought about that and you
7 think you can make those arrangements?

8 A Yes, sir.

9 THE COURT: All right, sir, answer any questions the
10 solicitor might have, please.

11 DIRECT EXAMINATION BY MR. BAILEY:

12 Q Mr. Campbell, I'm Walter Bailey, I want to ask
13 you a couple more questions to follow-up on what Judge
14 Whetstone asked you. There are no right or wrong answers.
15 But you understand that in South Carolina the jury and not
16 the judge determines the sentence? If the jury recommends
17 a life sentence without parole, that will be carried out,
18 that will be the sentence of the court?

19 A Right.

20 Q On the other hand, if the jury votes for the
21 death penalty that will be the sentence of the court, that
22 person actually will be executed?

23 A I understand, sir.

24 Q All right, sir. And nobody's going to ask you to
25 predict what you'd do in this case because you haven't

1 heard the facts--

2 A Yes, sir.

3 Q And you've indicated you'd want to wait and
4 listen to all the facts before you decided?

5 A Absolutely.

6 Q But if the case is bad enough can you vote for
7 the death penalty?

8 A Absolutely.

9 Q And can you then sign the death verdict form and
10 announce that decision if it is your decision?

11 A Yes, sir.

12 MR. BAILEY: Thank you, sir, that's all I have.

13 THE COURT: Mr. Runyon?

14 CROSS-EXAMINATION BY MR. RUNYON:

15 Q Good morning, Mr. Campbell.

16 A Good morning, sir.

17 Q Have you or any member of your family ever been
18 the victims of a crime of violence, for example?

19 A Well not really -- a crime of violence, I lost my
20 son three years ago at a party, he got -- he got shot, so,
21 I guess you'd say yes anyway.

22 Q Sorry, didn't mean to inquire.

23 A That's okay, sir.

24 Q Get too personal. Mr. Campbell, as a practical
25 matter, you -- you will, of course, follow the judge's

1 instructions?

2 A Absolutely, sir.

3 Q And -- and in what he says the law is?

4 A Yes, sir.

5 Q And as a practical matter also, do you have any
6 preconceived notions as to, you know, of course the state
7 would be -- may be asking you to impose the death penalty,
8 do you have any preconceived notions as to who has to
9 prove what in that situation?

10 A I'm not -- I'm not sure I understand that, sir,
11 would you---

12 Q Well, do you think that the state has to prove a
13 person---

14 A Oh, absolutely.

15 MR. BAILEY: Let me object to that, I -- I -- I think
16 if we get into a juror's preconceived ideas of what the
17 law is before they're instructed we're -- we're kind of
18 opening Pandora's box.

19 THE COURT: That is -- that is sustained. The juror
20 has already testified that he can follow the law as
21 instructed by the court.

22 BY MR. RUNYON:

23 Q Mr. Campbell, would any events of the last three
24 years prohibit you from being able to look at this case in
25 a -- in an objective fashion?

1 A No, sir, none.

2 MR. RUNYON: All right, sir.

3 THE COURT: Anything further from the state?

4 MR. BAILEY: No, sir, Your Honor.

5 THE COURT: Okay, Mr. Campbell, I need to talk to the
6 lawyers for just a minute, would you step back in the back
7 again, please, sir?

8 (Juror excused from courtroom.)

9 THE COURT: What says the state?

10 MR. BAILEY: Qualified, Your Honor.

11 THE COURT: Defense?

12 MR. RUNYON: He's obviously qualified, Your Honor.

13 THE COURT: All right. He is a qualified number three
14 juror and he is in the pool. Bring him back in.

15 (Juror brought into courtroom.)

16 THE COURT: Mr. Campbell, I find that you are
17 qualified to serve on this jury. That doesn't mean you're
18 on the jury, it means you're in the group from which the
19 jury will be selected.

20 But what I'll ask you to do please, sir, is call this
21 call in number between one and two o'clock today. Follow
22 the instructions that are on the machine. It may tell you
23 what time to come back, it may tell you to call back
24 again, but whatever the instructions are, follow those
25 instructions.

1 I think right now we will be having you come back up
2 here sometime tomorrow to actually select the jury and
3 select the 14 people who'll be staying with us.

4 So between now and then don't talk to anybody about
5 the case. Don't let anybody talk to you about the case.
6 Don't read the newspaper about this case and don't listen
7 to any radio or television reports. You need to be able
8 to decide the case based on what you hear in the
9 courtroom, not something outside of here.

10 Also, when you get here tomorrow have your bags packed
11 and in your car and be prepared to stay with us for five
12 to seven days while the case is being tried. All right?
13 Thank you, sir, you are excused until then. Call between
14 one and two today.

15 (Juror excused.)

16 THE COURT: Sharon Davidson, please.

17 (Juror brought into courtroom.)

18 EXAMINATION BY THE COURT:

19 Q Ms. Davidson, if you'd have a seat right here,
20 please. Good morning.

21 A Good morning.

22 Q Ms. Davidson, I'm going to ask you some
23 questions. There are no right or wrong answers to the
24 questions, we just want you to be completely honest with
25 us in your responses. If you don't understand a question

1 let me know that and I'll try to explain it to you. You
2 are under oath, you were sworn in yesterday with the rest
3 of the panel.

4 Since you received your summons to come here for jury
5 service, has anybody talked to you about this case?

6 A No, sir.

7 Q All right, you're going to need to speak up
8 because all these people right here at these tables have
9 to hear you.

10 A No, sir.

11 Q Okay. Pull your chair up a little bit, get a
12 little closer to the microphone, now that should take care
13 of it. Has anybody ever talked to you about this case at
14 anytime?

15 A No, sir.

16 Q Do you know anything about the case other than
17 what I told you yesterday?

18 A No, sir.

19 Q Yesterday I called out a list of names of people
20 who could be involved in this case either as witnesses or
21 otherwise, did you know any of those people?

22 A No, sir.

23 Q Have you formed or expressed any opinion about
24 this case?

25 A No, sir.

1 Q Do you have any bias or prejudice against the
2 prosecutors for bringing the case?

3 A No, sir.

4 Q Or against the defendant just because he is the
5 defendant in this case?

6 A No, sir.

7 Q Do you know of any reason why you could not be
8 fair and impartial to both the state and the defendant?

9 A No, sir.

10 Q Can you and will you follow the law that is
11 instructed to you by the court?

12 A Yes.

13 Q That means if I tell you what the law is, will
14 you follow those instructions?

15 A Yes, sir.

16 Q Yesterday I told you and the rest of the jurors
17 that this defendant, Mr. Rogers, has already been
18 convicted of murder in a prior proceeding. The purpose of
19 this trial is to determine what the punishment ought to
20 be, either life in prison or the death penalty.

21 Now what the jury will hear in this case is a
22 presentation of the evidence and exhibits and mitigating
23 and aggravating circumstances, presented to the jury to
24 help the jury decide on what the punishment ought to be,
25 either life in prison or the death penalty.

1 And the jury does make that decision, I don't, the
2 solicitor doesn't, the defense lawyer doesn't. The jury
3 is the one who decides what the punishment ought to be,
4 life in prison without parole or the death penalty.

5 Now you've had the opportunity, back in the jury room,
6 to look over the form that has on it the three types of
7 jurors. Which one of those three do you think best
8 describes you?

9 A One and two. I mean, one and three.

10 Q One and three? Well, one is a juror who when
11 someone is convicted of murder will always give the death
12 penalty. And three says -- that's a juror who'll keep an
13 open mind and listen to everything before deciding on the
14 punishment. So, is it both of them or can it -- is it
15 one -- one or the other?

16 A (No response.)

17 Q Would you like to look at the form again, I've
18 got it right here if you'd like to look at it. Do you
19 have a copy of it there?

20 (Juror reviewed document.)

21 BY THE JUROR:

22 A Three.

23 Q Three?

24 A Uh-huh.

25 Q All right, so you're a juror who can keep an open

1 mind and listen to everything before you decide on the
2 punishment? Is that right?

3 A Yes, sir.

4 Q I'm going to ask you in general now and not about
5 this case, because you don't know about this case yet.
6 But if you sat on a case like this. And listened to
7 everything with an open mind and thoughtfully and
8 thoroughly considered everything that was presented. And
9 after doing that you and all the other jurors unanimously
10 decided that the death penalty was the appropriate
11 punishment. If that was your choice, along with the other
12 jurors, would you be able to sign your name to a verdict
13 form saying that was your verdict, if it was?

14 A Yes.

15 Q Would you be able to come in here into open
16 court -- if I had all 12 of you jurors sitting over there
17 right in front of me and I pointed at you and said, stand
18 up, please and tell me whether that's your verdict and if
19 it's still your verdict. Would you be able to do that,
20 Ms. Davidson, if it was your verdict?

21 A Yes.

22 Q Would you be able to do those two things knowing
23 that's going to eventually result in the execution of a
24 defendant?

25 A What do you mean?

1 Q I mean in a case such as this, if you vote for
2 the death penalty and all the other jurors vote for the
3 death penalty and all of you sign that form and all of you
4 come in here and tell me that's your verdict and all of
5 you agree that the death penalty is the appropriate
6 punishment, that eventually that will result in that
7 defendant being executed?

8 A Uh-huh.

9 Q So you could still sign those -- sign that paper
10 and tell me that was your verdict if it was?

11 A Yes.

12 Q Knowing what the results will be?

13 A Yes.

14 Q Okay. Now, a vital part of this whole process is
15 that you keep an open mind throughout the entire
16 presentation that's made in this trial. That is, you're
17 telling me that you'll keep an open mind and listen to
18 everything and keep an open mind until everything's been
19 presented before you decide between the two choices; is
20 that what you will do?

21 A Yes.

22 Q Ms. Davidson, also part of this is that the
23 jurors who are selected have to stay with us while the
24 case is being tried, you'll be sequestered with the other
25 jurors and lodged at a motel at county expense and you'll

1 stay with us until we have completed this entire trial,
2 which ought to take five to seven days. Understanding
3 that that's a hardship on everybody, if you're chosen on
4 this jury, will you be able to make arrangements to stay
5 with us while the case is being tried?

6 A I don't know about my job.

7 Q Well, can you find out before tomorrow and let us
8 know?

9 A Yes.

10 Q Okay. If you tell your employer that you have to
11 stay with us until this case is completed, do you think
12 you can make those arrangements?

13 A Yes.

14 THE COURT: Okay. Answer any questions Mr. Bailey
15 has, please.

16 MR. BAILEY: Thank you, Your Honor.

17 DIRECT EXAMINATION BY MR. BAILEY:

18 Q Ms. Davidson, I'm Walter Bailey, I want to ask
19 you a few more questions. And, first of all, I notice
20 from your form that you -- the form that you filled out,
21 that you go to the Givhans Pentecostal Holiness Church?
22 Do you know if that church has any particular preachings
23 on the death penalty, one way or the other?

24 A I don't know.

25 Q You don't know of any?

1 A No.

2 Q Okay. Do you have any personal religious
3 convictions about the death penalty, whether it's good or
4 bad?

5 A Do I?

6 Q Yes, ma'am.

7 A (Nods head.)

8 Q Okay, is it something you just never thought of
9 before yesterday when you found out that you could be on
10 this jury?

11 A I'm scared, I don't really understand.

12 Q Okay. Well, we -- we want you to understand, you
13 know, what the process is all about. And if there are,
14 you know, any questions that you've got, you know,
15 possibly the judge could -- could answer that. But, let
16 me just say that there are no right or wrong answers. And
17 nobody's trying to -- to test you, to get you to say a
18 particular thing, we just want to know how you honestly
19 feel about the death penalty.

20 And you understand, from what the judge told you, that
21 in South Carolina the jury and not the judge decides what
22 the sentence is going to be in a case like this?

23 A Yes.

24 Q And whatever that jury decides is going to be
25 carried out. So if the jury votes, all 12 of you, on life

1 without parole, that's what he's going to get. On the
2 other hand, if after hearing all of the facts and the law,
3 the jury votes for the death penalty, that person's going
4 to be executed. And we're not going to ask you what you
5 would do in this case, because you haven't heard the first
6 word about the facts of the case, you don't know anything
7 about it really. But if the case is bad enough, can you
8 vote for the death penalty?

9 A I guess.

10 Q Okay. Again, we're not asking you, will you do
11 it. Because you haven't heard anything. We're asking if
12 the case is bad enough, can you do it?

13 A Yes.

14 Q Okay. And, if the other 11 jurors -- say you
15 were on a case like this and the other 11 jurors felt the
16 same way you did, and all 12 jurors voted for the death
17 penalty. The next thing, there's a -- a verdict form.
18 And each juror's asked to sign their names to that piece
19 of paper, which will result in that person being
20 executed. Could you sign that paper along with those
21 other jurors?

22 A Yes.

23 Q And could you -- the last thing that would happen
24 would be each person would be asked to stand up, on the
25 jury, when their name is called, and -- and they'd be

1 asked, is that your verdict. Could you announce that as
2 being your verdict, if it was your verdict?

3 A Yes.

4 Q Okay. Ms. Davidson, do you know of any reason
5 that, you know, the judge may not have addressed or I may
6 not have talked about, that you think would cause you any
7 problems at all in sitting as a juror on this case?

8 A No.

9 MR. BAILEY: Ms. Davidson, I believe that's all I've
10 got, thank you very much.

11 THE COURT: Mr. Runyon.

12 MR. RUNYON: Very briefly, Your Honor.

13 THE COURT: Yes, sir.

14 CROSS-EXAMINATION BY MR. RUNYON:

15 Q Ms. Davidson, as the solicitor said, there are no
16 right or wrong answers. And, in listening to you, you
17 have a very soft voice, and I may not have understood.
18 But you initially told the -- the judge that you were the
19 number one and number three type of juror. And you were
20 able to look at your sheet.

21 Now the number one type of juror is someone who thinks
22 the death penalty should always be imposed. Is that your
23 position? Or are you the third type, as you indicated
24 later, someone who keeps an open mind and will listen to
25 all the facts and then make a decision?

1 A The third one.

2 Q Third one. So you don't think that the death
3 penalty has to be imposed in every murder case?

4 A I can't answer that because I don't know.

5 THE COURT: He's not asking you about this case, he's
6 asking you in general.

7 BY MR. RUNYON:

8 Q In general.

9 A Yeah.

10 Q You believe that if someone's convicted of murder
11 that they should face the death penalty? At all -- all
12 times.

13 A Not necessarily.

14 MR. RUNYON: Not necessarily. All right. Excuse me
15 one moment, Your Honor.

16 (Counsel consulted cocounsel.)

17 BY MR. RUNYON:

18 Q Ms. Davidson, just very briefly. You indicated
19 and said before that -- initially that you -- you were the
20 first type of juror and then you indicated that it doesn't
21 have to always be imposed. Is there -- is there anything
22 about your personal beliefs that -- that would come to
23 bear on the death penalty?

24 A No.

25 Q Is there anything in your -- in your personal

1 beliefs that would indicate that certain facts need to be
2 shown or something of that sort?

3 MR. BAILEY: Objection, Your Honor. He's trying to
4 stake her out as to what -- what it would take for her to
5 impose the death penalty not---

6 THE COURT: That's sustained, rephrase your question,
7 please.

8 BY MR. RUNYON:

9 Q Ms. Davidson, are you truly -- and I -- there's
10 no right or wrong answer and I'm trying to understand
11 you. Are you truly someone who'll listen to all the
12 evidence and then make a decision on what the sentence --
13 sentence should be imposed?

14 A Yes.

15 MR. RUNYON: Okay. No further questions, Your Honor.

16 THE COURT: Anything further from the state?

17 MR. BAILEY: No, sir.

18 EXAMINATION BY THE COURT:

19 Q Okay. Now, Ms. Davidson, I want to be sure. You
20 said just a minute ago you were scared and you didn't
21 understand. Is there anything now that you don't
22 understand now that everybody's had an opportunity to talk
23 to you a little bit? Is there anything that you have a
24 question about or that you want explained any further or
25 do you think you understand now?

1 A Yeah.

2 Q You think you understand?

3 A (Nods head.)

4 THE COURT: Thank you, ma'am. I need to talk to the
5 lawyers, step back into the back just for another minute
6 or two.

7 (Juror excused from courtroom.)

8 THE COURT: What says the state?

9 MR. BAILEY: Would you indulge me a second, please?

10 (Counsels consulted.)

11 MR. BAILEY: Your Honor, I conferred with
12 Mr. Leiendecker and Mr. Runyon, and while I think that
13 all -- all of her answers, just if you were reading
14 that -- the transcript, qualify her, I'd just note her
15 demeanor and lack of eye contact with anybody and her
16 apparent lack of understanding of the process. I think
17 that the state and the defense could -- could agree that
18 she's not qualified.

19 THE COURT: What say, Mr. Runyon?

20 MR. RUNYON: The solicitor has correctly stated our
21 position, we would agree with the state that she's not
22 qualified, Your Honor.

23 THE COURT: On what basis? She said she understood,
24 she said she was a number three juror, she said she could
25 listen and be fair.

1 MR. RUNYON: Well, Your Honor, I -- I -- I understand.
2 And -- but once again, we're talking in terms of -- and --
3 and this is something the transcript wouldn't reflect.
4 And, later on somebody's going to be reading this, I
5 assume. Possibly reading it, hopefully not.

6 But based on her overall demeanor and the -- and
7 the -- and the contradictory answers, quite frankly. I
8 think she's a number one juror. Even though she later
9 said she was -- I -- I think she's the type of juror who
10 says -- who's saying I want to hear all the facts before I
11 impose the death penalty and that's what -- that's what
12 she's trying to say very honestly to the -- to the Court.
13 And that's -- that's my basis, Your Honor.

14 THE COURT: What say, Solicitor?

15 MR. BAILEY: Your Honor, I agree with Mr. Runyon.
16 It's sort of an unusual case where I -- I couldn't read
17 this lady. The fact that she said she was a one and
18 then a one and a three. And, at one point said she didn't
19 understand the process. And, again, there was no eye
20 contact with either you or me or Mr. Runyon when she
21 talked. I noticed she had sort of a wide-eyed stare
22 straight ahead. And, she had some concern about her --
23 her job also.

24 THE COURT: All right, she'll be excused with the
25 consent of both parties. Bring her back in, please.

1 (Juror brought into courtroom.)

2 THE COURT: Ms. Davidson, I'm going to excuse you from
3 serving on this jury panel, that completes your service,
4 we appreciate you coming back this morning and
5 participating, you are excused. Thank you, ma'am.

6 (Juror excused.)

7 THE COURT: Bring in Gregory Hart, please.

8 (Juror brought into courtroom.)

9 EXAMINATION BY THE COURT:

10 Q Mr. Hart, have a seat right here, please, sir.
11 Good morning.

12 A Good morning.

13 Q Mr. Hart, I'm going to ask you some questions.
14 There are no right or wrong answers to any of the
15 questions, we just want you to be completely honest with
16 us in your responses.

17 A Okay.

18 Q You are under oath, you were sworn in yesterday
19 with the rest of the panel.

20 A Yes.

21 Q Since you received your summons to come here for
22 jury service, have you talked to anybody about this case?

23 A No, sir.

24 Q Has anybody talked -- excuse me---

25 A Absolutely no one.

1 Q Has anybody talked to you about the case?

2 A No, sir, I've heard nothing about the case other
3 than what I heard in the courtroom yesterday.

4 Q Okay. So, prior to coming here yesterday you
5 didn't know anything about this case, hadn't read about it
6 in the newspaper or seen it on TV or anything?

7 A No, sir.

8 Q I called out -- called out a list of names
9 yesterday of people who could be witnesses in the case.
10 Did you know any of those people?

11 A No, sir. No names familiar.

12 Q Have you formed or expressed any opinion about
13 this case?

14 A No, sir, none whatsoever.

15 Q Do you have any bias or prejudice against the
16 prosecutors for bringing the case? Or against the
17 defendant just because he is the defendant in the case?

18 A No, sir.

19 Q Do you know of any reason why you could not be
20 fair and impartial to both the state of South Carolina and
21 the defendant, Mr. Rogers?

22 A No reason at all.

23 Q Can you and will you follow the law as instructed
24 to you by the court?

25 A Yes, I would.

1 Q In other words, if I tell you what the law is,
2 you will follow those instructions?

3 A Yes.

4 Q Yesterday I told you and the rest of the panel
5 that Mr. Rogers has already been convicted of murder in a
6 prior proceeding. So the purpose of this proceeding is to
7 determine the punishment, life in prison without parole or
8 the death penalty.

9 The jury will have the opportunity to hear mitigating
10 and aggravating circumstances. To hear whatever other
11 evidence and testimony's presented and to consider any
12 exhibits that might come in. The purpose of all that is
13 for the jury to have enough information to decide on the
14 punishment, life in prison or the death penalty.

15 Now you've had the opportunity back in the jury room
16 to look over the form that had on it the three types of
17 jurors. Which one of those three do you think best
18 describes you as a potential juror?

19 A The third.

20 Q That's a juror who will keep an open mind and
21 listen to everything before deciding on punishment?

22 A Correct. Yes.

23 Q Will you keep an open mind throughout this entire
24 process before you decide between a life sentence and the
25 death penalty?

1 A Yes, I will.

2 Q If you sat as a juror in a case such as this, and
3 I'm not talking about this case now because you don't know
4 anything about this case yet.

5 A Right.

6 Q But in general, if you sat on a case like this.
7 And you and the other jurors listened with an open mind to
8 everything that was presented. And after thoughtfully and
9 thoroughly considering it all, all of you unanimously
10 decided that the death penalty was the appropriate
11 punishment. If that was your choice, would you be able to
12 sign your name, along with the other jurors, to a -- to a
13 verdict form that said that was your verdict?

14 A Yes, I would.

15 Q Would you be able to come in here into open
16 court, if I had each of you stand over here in the jury
17 box and said, Mr. Hart, is that your verdict and is it
18 still your verdict? Would you be able to stand up and
19 tell me it was your verdict?

20 A Yes, I would.

21 Q Would you be able to do those things knowing that
22 eventually that's going to result in the execution of a
23 defendant?

24 A Yes, I would.

25 Q Do you have any strong feelings or beliefs that

1 will interfere with your choice between a life sentence
2 and the death penalty?

3 A No, sir, I do not.

4 Q Now understanding that -- do you understand that
5 it is vital to this process that each juror keep an open
6 mind and listen to everything that's presented before
7 deciding on punishment?

8 A Yes.

9 Q And will you be able to do that?

10 A Yes, I will.

11 Q Also part of this process is that the jurors who
12 are selected have to stay with us while the case is being
13 tried. Understanding that's a hardship on everybody,
14 would you be able to make arrangements to stay with us for
15 five to seven days while the case is being tried?

16 A Yes, I could.

17 THE COURT: Answer any questions the solicitor might
18 have, please.

19 MR. BAILEY: Thank you, Your Honor.

20 DIRECT EXAMINATION BY MR. BAILEY:

21 Q Mr. Hart, there are no right or wrong answers, we
22 just want to know how you feel about some of these issues
23 involving the death penalty. I notice from your
24 questionnaire that you attend the Catholic Church or
25 belong to the Catholic Church?

1 A Yes, sir, I do.

2 Q Okay. Do you have any religious beliefs about
3 the death penalty, one way or the other?

4 A No, sir, I do not.

5 Q Okay. Is this something that you've really had
6 any occasion to think about before yesterday when you
7 found out that you might be on this jury?

8 A I'm sorry. Could you repeat that?

9 Q Is the death penalty something that you've had
10 any reason to think about or talk about before yesterday?

11 A I've -- I've talked with no one about it, but
12 I've thought about it, of course. You know.

13 Q Okay. All right. You've indicated to Judge
14 Whetstone that you're the number three type juror that
15 would not have your mind made up one way or the other
16 until you heard all the facts and circumstances; is that
17 correct?

18 A That is correct.

19 Q All right, sir. And if the facts were bad enough
20 you could vote for the death penalty?

21 A Yes, I could. According to the facts and
22 circumstances, yes.

23 Q Knowing that sentence would be carried out?

24 A Yes.

25 Q Okay. And, if you and the other 11 jurors, after

1 hearing all of the facts and the law, voted for the death
2 penalty, you could then sign your name to the death
3 verdict form?

4 A Yes, I could.

5 Q Okay. And you could announce that decision in
6 open court?

7 A Yes.

8 MR. BAILEY: Mr. Hart, that's all I've got, thank you
9 very much.

10 THE COURT: Mr. Runyon or Mr. Leiendecker.

11 MR. LEIENDECKER: Thank you, Your Honor.

12 CROSS-EXAMINATION BY MR. LEIENDECKER:

13 Q Mr. Hart, just real briefly. The judge talked
14 with you or explained to you about the process that we'd
15 have to go through here, which would require sequestration
16 of witnesses for up to five to seven days [sic]. I just
17 notice, reviewing your questionnaire, that the job you're
18 at you've been at a little less than two years.

19 A Just a little less, correct.

20 Q And you don't feel that you have a problem
21 getting them to cooperate with missing a week of work?

22 A No, sir, I've already discussed it with them.

23 Q And the only other thing that I also noted,
24 because obviously we want people that are focused on the
25 case, is that you have -- you have a baby at home about 16

1 months old and another one on the way.

2 A Yes.

3 Q Congratulations about that, but what kind of
4 impact do you think that would have on your---

5 A Both -- both of their grandparents live right
6 here in town, my wife is a full-time student, so the
7 babies are taken care of every day. Within the family.

8 Q And where is she going to school?

9 A Trident Technical College.

10 Q When's the second baby due?

11 A February. She's not continuing next semester,
12 once this semester is over she will take a break for the
13 next semester.

14 Q Has the pregnancy gone fine so far, no problems
15 or concerns regarding that?

16 A No problems.

17 Q And so you don't feel that any of those factors
18 would -- would in any way distract from your ability to
19 work with or concentrate on this case?

20 A No, sir, I do not.

21 Q I also note from your questionnaire that,
22 although, you were born in Omaha, Nebraska, you've
23 apparently lived here most all of your life, having gone
24 to school here right through elementary to high school?

25 A Yes.

1 Q I didn't notice that you said that you knew any
2 of the people or witnesses involved in this case, though;
3 is that true?

4 A That is true, I did not hear a name I recognized.

5 Q Okay. And you didn't recognize anyone you've
6 seen in -- in the courtroom that you may have gone to
7 school with, high school?

8 A Only -- the only person I saw here yesterday I
9 recognized was one of the other jurors that sat in the
10 back.

11 Q Okay. And you don't know the victim's family at
12 all from having gone to school at the same time period
13 that -- that they would've gone to school?

14 A No, sir, I do not.

15 Q You don't know of any reason that would cause you
16 to be unable to concentrate on this case or in any way
17 prejudice involved -- involving this case before we get
18 started; is that right?

19 A That's right.

20 MR. LEIENDECKER: That's all I have.

21 THE COURT: Anything further from the state?

22 MR. BAILEY: No, sir.

23 THE COURT: Okay, Mr. Hart, I have a matter I need to
24 take up with the lawyers, if you'd step back into the back
25 again, please, briefly.

1 (Juror excused from courtroom.)

2 THE COURT: What says the state?

3 MR. BAILEY: Qualified, Your Honor.

4 THE COURT: Defense?

5 MR. LEIENDECKER: Qualified, Your Honor.

6 THE COURT: He's clearly a qualified number three
7 juror, bring him back in, please.

8 (Juror brought into courtroom.)

9 THE COURT: Mr. Hart, I find that you're qualified to
10 serve on this jury, that doesn't mean you're on the jury,
11 it means you're in the group from which the jury will be
12 selected.

13 You need to call this number between one and two
14 o'clock today. And follow the instructions that are on
15 the machine. It will probably say either call back at
16 sometime or come back sometime tomorrow. I anticipate
17 we'll start the trial some time tomorrow. So, please
18 listen carefully and follow whatever instructions are on
19 there.

20 When you are instructed to come back up here, have
21 your bags packed and in your car and be prepared to stay
22 with us for five to seven days while this case is being
23 tried.

24 Between now and then don't talk to anybody about the
25 case. Don't let anybody talk to you about the case.

1 Don't read the newspaper about the case and don't listen
2 to any radio or television reports about this case. You
3 need to be able to decide the case based on what you hear
4 in here not something outside of here. Do you
5 understand?

6 JUROR: I understand.

7 THE COURT: All right, sir. Thank you, sir. Call
8 between one and two today. Thank you, sir.

9 (Juror excused.)

10 THE COURT: Mickey Stewart, please.

11 (Juror brought into courtroom.)

12 EXAMINATION BY THE COURT:

13 Q Mr. Stewart, have a seat right here, please,
14 sir. Good morning.

15 A Good morning.

16 Q Mr. Stewart, I'm going to be asking you some
17 questions. There are no right or wrong answers to any of
18 the questions, we just want you to be completely honest
19 with us in your responses. You are under oath, you were
20 sworn in yesterday with the rest of the panel.

21 Since you received your summons to come here for jury
22 service, has anybody talked to you about this case?

23 A No.

24 Q Have you talked to anybody about the case?

25 A No.

1 Q Do you know anything about this case, other than
2 what I told you yesterday?

3 A Just what I've read in the paper.

4 Q Okay, so prior to coming here yesterday you had
5 read some news reports or seen some news reports about
6 this case?

7 A I had seen news reports, read in the paper about
8 it. And, I think it was in Wednesday's paper they were
9 talking about the new jury selection and I figured -- kind
10 of put two and two together.

11 Q Okay. Would the fact that you had read those
12 things before coming here yesterday have any affect on
13 your ability to be fair and impartial in this case?

14 A I don't think so.

15 Q You think you can put those things aside and
16 decide this case based on what you hear in the courtroom
17 here in this trial?

18 A Yes, sir.

19 Q All right, sir. Yesterday I called out a list of
20 names of people who could be witnesses in the case. Did
21 you know any of those people?

22 A Not by name. I might know them by face, but I
23 didn't recognize anybody, no.

24 Q Have you formed or expressed any opinion about
25 this case?

1 A (No response.)

2 Q That is, have you already got your mind made up

3 one way or the other?

4 A I haven't got my mind made up, but I've -- I've

5 got kind of -- just from what I've read in the newspaper

6 and all that I've kind of formed an opinion. I'd have to

7 say, I've -- yeah, I've kind of formed one, but I can't

8 say that I've made up any kind of mind, because I don't

9 know the whole -- the whole details.

10 Q Well, will you be able to put that opinion aside

11 and decide this case strictly on what you hear in court?

12 A Yes, sir.

13 Q All right. Do you have any bias or prejudice

14 against the prosecutors for bringing this case? Or

15 against the defendant just because he is the defendant in

16 the case?

17 A No, sir.

18 Q Do you know of any reason why you could not be

19 fair and impartial to both the state of South Carolina and

20 the defendant, Mr. Rogers?

21 A No, sir.

22 Q Yesterday I told you and the rest of the panel

23 that this defendant, Mr. Rogers, has already been

24 convicted of murder. The purpose of this proceeding is

25 for the jury to decide on punishment, either life in

1 prison without parole or the death penalty.

2 So the jury in this case is going to hear evidence and
3 testimony, mitigating and aggravating circumstances. In
4 other words, whatever is presented is presented to help
5 the jury decide on what the punishment ought to be, life
6 in prison or the death penalty.

7 Now you've had an opportunity back in the jury room to
8 look over the form that had on it the three types of
9 jurors. Which one of those three do you think best
10 describes you as a potential juror?

11 A Between one and three. Not really one and not
12 really three.

13 Q Well, one is a juror who, when someone is
14 convicted of murder, will always give the death penalty
15 without exception. And three is a juror who will listen
16 to everything before they decide between the two possible
17 punishments.

18 A Right.

19 Q Either life in prison or the death penalty.

20 A Well, one -- if there are no extenuating
21 circumstances, the guy just out and out killed somebody,
22 then I'm juror one. If there's extenuating circumstances
23 and I don't know the whole story then I'm three. So -- I
24 I'm between one and three.

25 Q So what you're going to do is listen to

1 everything before you decide?

2 A Right. Because I don't know the whole---

3 Q And look at those factors.

4 A I don't know the whole circumstances, so in this

5 case I'd be a three. Juror three.

6 Q Well, would you be a three in every case? If you

7 came in here not knowing anything about any kind of case,

8 would you sit and listen to the facts in any case before

9 you made up your mind?

10 A I -- I would in that. But if I saw somebody kill

11 somebody for no reason and it was an out and out I

12 would -- I would come in as a one.

13 Q Right. I understand that.

14 A I mean, that would be---

15 Q Okay, but in this case you're not an eyewitness?

16 A In this case I would be a three.

17 Q You're going to be a juror.

18 A Three.

19 Q So if you're going to be a juror, what I'm trying

20 to decide -- to find out from you is, will you listen to

21 everything before you make up your mind?

22 A Yes.

23 Q Will you sit here, and as the witnesses come in

24 and testify, will you listen and keep an open mind and

25 consider everything before you decide between a life

1 sentence and the death penalty?

2 A In this case I would be a juror three.

3 Q All right, sir. If you sat as a juror in a case
4 like this. And we're not talking about this case now
5 because you haven't heard the facts in this case. But if
6 you sat through a case like this and listened to
7 everything and you and the other jurors unanimously
8 decided, after hearing everything, that the death penalty
9 was the appropriate punishment, if that was your choice,
10 would you be able to sign a form that says that was your
11 verdict, if it was?

12 A Yes.

13 Q Would you be able to also stand up here in open
14 court and say that was your verdict, if it was?

15 A Yes.

16 Q Would you be able to do those things knowing that
17 is eventually going to result in the execution of a
18 defendant?

19 A Yes.

20 Q Part of this process, and a vital part of this
21 process, is that the jurors who are seated in this case
22 keep an open mind and listen to everything before deciding
23 on the punishment. Will you be able to do that?

24 A Yes.

25 Q Also part of this is that the jurors who are

1 seated have to stay with us. And be sequestered while the
2 case is being tried. Understanding that that's a hardship
3 on everybody involved, will you be able to make those
4 arrangements if you are selected on this jury?

5 A If I had to, yes.

6 Q All right, sir. So you can make them, I mean,
7 you're at the point where you've got -- you may have to if
8 you're picked, so I need to know if you can make the
9 arrangements.

10 A I realize that. I can make the arrangements. It
11 wouldn't be easy.

12 Q All right. I haven't found anybody yet that it's
13 easy for, but you think you can make the arrangements?

14 A I could, if I had to.

15 THE COURT: All right. Answer any questions Solicitor
16 Bailey has, please.

17 MR. BAILEY: Thank you, Your Honor.

18 DIRECT EXAMINATION BY MR. BAILEY:

19 Q Mr. Stewart, I'm Walter Bailey, I want to ask
20 just a couple of questions here to follow-up on what the
21 judge asked you. And I think you've answered most of the
22 questions I -- I would've asked. But, you'd indicated
23 some problem with making child support payments if you're
24 sequestered for any extended period of time?

25 A Yes, sir.

1 Q If we're talking about a matter of several days,
2 is that going to be an undue hardship?

3 A Several days, no. Several weeks, yes, that would
4 be a definite hardship.

5 THE COURT: I can tell you we're not talking about
6 several weeks. We're talking about several days.

7 BY THE JUROR:

8 A I -- I could -- I -- I just -- my little boy is
9 my life, he is my pride and joy, I take care of my kids,
10 I'm not a deadbeat dad, I don't miss my child support
11 payments, I don't ever plan on starting it. And, if it
12 was for any extended period of time it would be hard.

13 Q Okay. But a matter of days as opposed to a
14 matter of weeks is not going to create---

15 A I could do it.

16 Q Okay. All right, sir. And, you understand that
17 in South Carolina, unlike some other states, the jury, not
18 the judge, decides what the penalty's going to be?

19 A Yes.

20 Q So if the jury votes for life without parole, the
21 judge will order that. If the jury votes for the death
22 penalty, the judge is going to order the death penalty and
23 that sentence would be carried out.

24 A Yes.

25 Q All right, sir. And nobody's going to ask you

1 for a prediction of what you'd do in this case, because
2 you haven't heard the facts, and you said you'd want to
3 hear those facts before you make up your mind. But if the
4 facts were bad enough, can you vote for the death penalty?

5 A Yes, I can.

6 Q And if the other jurors joined you in that vote,
7 all 12 voted for the death penalty, you've indicated you
8 could sign your name to the verdict form; is that correct?

9 A Yes, sir.

10 Q And could announce that in open court?

11 A Yes, sir.

12 MR. BAILEY: All right, sir, thank you, Mr. Stewart,
13 that's all I've got.

14 THE COURT: Mr. Runyon.

15 CROSS-EXAMINATION BY MR. RUNYON:

16 Q Good morning, Mr. Stewart.

17 A Good morning.

18 Q As the solicitor and His Honor's told you, there
19 are no right or wrong answers. We're just trying to
20 understand where -- where -- where everything is. As a
21 practical matter I believe you responded to the Court's
22 inquiry saying that -- saying that you were between one
23 and three. And just if we could explore that for a couple
24 of moments here so I can understand what you're -- you're
25 talking about. As you understand, in this case, the

1 defendant has already been convicted of murder.

2 A Correct.

3 Q And, would that influence your ability to be a
4 one or a three?

5 A No, because I don't know the extenuating
6 circumstances.

7 Q All right. And -- and what do you mean by that?

8 A Well, if -- if it comes out in court that he
9 killed in cold blood, period, no -- where there was no --
10 no taunting, no -- no reason for it, no self-defense or
11 anything, I wouldn't have a problem in the world being a
12 jury one -- a juror one. But I don't know the extenuating
13 circumstances, I don't know what's going on in the case, I
14 just know it's in the paper. And, you believe only half
15 of what you see and none of what you read in the paper.

16 Q Okay. Obviously you've read -- you've read the
17 quotation of Benjamin Franklin somewhere in your -- in
18 your travels when you -- when you quote that. But as a
19 practical matter that -- would it be -- would it be a fair
20 statement that you'd try to be a fair person in your -- in
21 your dealings and whatever you're involved with?

22 A Yes, sir.

23 Q Isn't that correct? And you try to keep an open
24 mind?

25 A Yes, sir.

1 Q And receive the facts as -- as they come in on --
2 on most of your activities and business activities?

3 A On all of my activities.

4 Q Okay. And -- but when it comes to the death
5 penalty, have you formulated an opinion as to whether or
6 not the death penalty should always be imposed?

7 A Not always. But I do believe in the death
8 penalty.

9 Q All right.

10 A Bible says an eye for an eye and a tooth for a
11 tooth. And life for a life.

12 Q And that would be the rule that you'd usually
13 follow?

14 A Not in all cases. But, I mean, there's always
15 extenuating circumstances. But if you -- if you're going
16 to go by the way you live, I don't steal from people so I
17 don't want people stealing from me. You know, I mean this
18 is the way I live. My kids aren't allowed to do it, they
19 don't do it and that's -- that's my beliefs and the way I
20 live and the way -- my -- I bring up my kids and live my
21 life that way.

22 MR. RUNYON: Well, no one's suggesting that you
23 shouldn't have your beliefs, sir. No further questions,
24 Your Honor.

25 THE COURT: Anything further from the state?

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

2 THE COURT: Mr. Stewart, I need to talk to the lawyers
3 for just a minute, please step back into the back again,
4 please.

5 (Juror excused from courtroom.)

6 THE COURT: What says the state?

7 MR. BAILEY: Your Honor, he's -- he's stated that he
8 is qualified, he's somewhat of a death prone juror, but
9 he's said that he'd want to hear all the evidence and
10 aggravation and mitigation, he would reserve judgment
11 until he heard everything and could vote for life or death
12 depending on what he heard.

13 THE COURT: Mr. Runyon.

14 MR. RUNYON: Your Honor, we -- we would object, Your
15 Honor, we don't think he's qualified on the following
16 grounds.

17 Number one, while he obviously is a very well
18 intrusive individual and has been very forth right with
19 the Court, he has also said that -- that depending upon
20 the case he's either going to be a number one or a number
21 three.

22 He said that if extenuating circumstances could be
23 shown to him, that's burden shifting.

24 And I really think, Your Honor, that taking his
25 answers in the whole, that he is, in fact, a number one

1 juror, who if a defendant can show him some -- show him
2 some extenuating circumstances he might go ahead and be
3 merciful. Otherwise, it's an eye for an eye and a tooth
4 for a tooth, kind of the Old Testament kind of position,
5 which is very honorable and admirable that he would be so
6 candid with the Court. But I think he's a number one
7 juror.

8 And -- and, I think -- I think he's the gentleman who
9 probably would really try to -- to be fair with everybody,
10 but on the other hand he's a number one juror, Judge.

11 THE COURT: Thank you, sir. The juror, Mr. Stewart,
12 is a qualified number three juror. He says he can
13 consider all the facts before deciding on the punishment,
14 he is not a death prone juror, he couches it in such terms
15 as a one and a three, but he also says he will listen to
16 everything, he does not have the propensity to give the
17 death penalty in each and every case. He didn't say the
18 defendant had any burden, he said he wanted to listen to
19 the facts in each case before he decided.

20 He just articulated it a little differently than most
21 people might articulate it. He is clearly a number three
22 juror and he is qualified. Bring him back in, please.

23 (Juror brought into courtroom.)

24 THE COURT: Mr. Stewart, I find that you're qualified
25 to serve on this jury panel, that doesn't mean you're on

1 the jury yet, it means you're in the group from which the
2 jury will be selected.

3 You need to call this number between one and two
4 o'clock today. Follow the instructions that are on the
5 machine. It will probably tell you to come back sometime
6 tomorrow. Or it may tell you to call back later this
7 afternoon. Follow the instructions and come back up here
8 when it eventually tells you to come back up here.

9 When you are instructed to come back up here, have
10 your bags packed and in your car and be prepared to stay
11 with us for up to five to seven days while we're trying
12 this case. Now, obviously, I'm guessing on the high end,
13 we may not take quite that much time, but I'd rather give
14 you the outside rather than trying to cut it too close.
15 So, be prepared to stay for that time.

16 Between now and then don't talk to anybody. Don't let
17 anybody talk to you about this case. Don't read the
18 newspaper. And don't listen to any radio or television
19 reports about the case. You have to be able to decide
20 this case based on what you hear in the courtroom and not
21 something outside of here. Do you understand?

22 JUROR: Yes, sir.

23 THE COURT: All right, sir, you are excused, call back
24 in between one and two and follow those instructions,
25 please. Thank you, sir, I appreciate it.

1 (Juror excused.)

2 MR. BAILEY: Your Honor, I'd just note that the next
3 juror's questionnaire, which came in yesterday I think,
4 indicates a full-time student.

5 THE COURT: Okay. Would you like -- would you like to
6 take a short break at this time or are you ready to go
7 ahead and keep on plowing through?

8 MR. BAILEY: Whatever pleases the Court.

9 MR. LEIENDECKER: Five minutes, Your Honor.

10 THE COURT: Let's take a five minute break then, thank
11 you.

12 (Brief recess was taken.)

13 THE COURT: Is the state ready?

14 MR. BAILEY: Yes, Your Honor.

15 THE COURT: Is the defendant ready?

16 MR. RUNYON: Yes, Your Honor.

17 THE COURT: Mr. Solicitor, you said that
18 Ms. Williams, who is the next juror, was a full-time
19 student?

20 MR. BAILEY: That's what she indicates on the
21 questionnaire.

22 THE COURT: Sir?

23 MR. BAILEY: She's indicated that on the
24 questionnaire, she goes to Tech full-time.

25 THE COURT: Do both sides concur with that? That is,

1 if she's a full-time student she will be transferred, as
2 we have done with other students?

3 MR. BAILEY: Yes.

4 THE COURT: If that is the case I'll ask her that
5 first.

6 MR. RUNYON: Yes, Your Honor, I think that out of an
7 abundance of caution, since the questionnaire came in so
8 late, if you -- if we could at least ask if she's going to
9 assert that -- that she wants to do that. Obviously we
10 would have no objection to the Court doing that if she
11 requests that.

12 THE COURT: Okay. I'll ask her that first then.

13 MR. BAILEY: Judge, I -- I think we've got somebody in
14 the next batch that hasn't done a questionnaire, if we
15 could get one back there to her to fill out.

16 MR. BELL: That was her.

17 MR. BAILEY: This was her? Okay, I'm sorry.

18 THE COURT: Bring in Ms. Williams, please.

19 (Juror brought into courtroom.)

20 EXAMINATION BY THE COURT:

21 Q Ms. Williams, if you'll have a seat right here,
22 please. Ms. Williams, how are you?

23 A I'm fine.

24 Q Ms. Williams, I notice from your questionnaire
25 that you are a full-time student?

1 A Uh-huh.

2 Q Where do you go to school?

3 A Trident Technical College.

4 Q Okay. And, do you have exams about this time of

5 year?

6 A This week. And next week.

7 Q This week. Okay. Based on the fact that you're

8 a full-time student, would you like to be transferred to

9 another term where it doesn't interfere with school and

10 with your exams?

11 A Yes.

12 Q All right. Were you going to ask me that any

13 way?

14 A Yes.

15 THE COURT: All right. Any objection from the state

16 or the defendant to transferring Ms. Williams?

17 MR. BAILEY: Not the state, Your Honor.

18 MR. RUNYON: Obviously none on our prior statement,

19 Your Honor.

20 THE COURT: Okay. You are excused or rather

21 transferred, the clerk will send you another notice as to

22 when to come back. Good luck on your exams. Thank you,

23 ma'am, I appreciate you coming back today.

24 Kimberly Walker, please.

25 (Juror brought into courtroom.)

1 EXAMINATION BY THE COURT:

2 Q Ms. Walker, have a seat right here, please. Good
3 morning.

4 A Good morning.

5 Q Ms. Walker, I'm going to ask you some questions.
6 There are no right or wrong answers to any of the
7 questions, we just want you to be completely honest with
8 us in your responses. You are under oath, you were sworn
9 in yesterday with the rest of the panel.

10 Since you received your summons to come here for jury
11 service, has anybody talked to you about this case?

12 A I briefly spoke with the -- my boss. Which I
13 thought was regarding this case.

14 Q Okay. To let them know that you were on jury
15 service?

16 A Yes.

17 Q Did you talk about the case itself or just to say
18 you thought you might be on the---

19 A No, I believe we talked about the case.

20 Q Talked about the case, okay. Would that have any
21 affect on your ability to be fair and impartial in the
22 case?

23 A No.

24 Q Do you know anything about this case other than
25 what I told you yesterday and from that conversation with

1 your employer?

2 A No.

3 Q You haven't read or heard anything about it other
4 than that?

5 A I heard about it on the news prior to discussing
6 it.

7 Q Okay. But will you be able to decide this case
8 based on what you hear in the courtroom and not something
9 that you've heard before coming here?

10 A Yes, I could.

11 Q Yesterday I called out a list of names of people
12 who could be witnesses in the case. Did you know any of
13 those people?

14 A Yes, I did.

15 Q Who did you know?

16 A You mentioned a name, Herthenia Lincoln. I work
17 for an optometrist and she's a patient of ours, if it's
18 the same one.

19 Q Okay. If she is a witness, would that have any
20 affect on your ability to be fair and impartial in the
21 case?

22 A No.

23 Q Have you formed or expressed any opinion about
24 this case?

25 A No.

1 Q Do you have any bias or prejudice against the
2 prosecutors for bringing the case? Or against the
3 defendant just because he is accused in the case?

4 A No.

5 Q Do you know of any reason why you could not be
6 fair and impartial to both the state of South Carolina and
7 the defendant, Mr. Rogers?

8 A No.

9 Q Can you and will you follow the law as instructed
10 to you by the court?

11 A Yes.

12 Q Yesterday I told you and the other jurors that
13 Mr. Rogers has already been convicted of murder in a prior
14 proceeding. The purpose of this proceeding is to have a
15 jury decide what the punishment ought to be, life in
16 prison without parole or the death penalty.

17 The jury will hear mitigating and aggravating
18 circumstances. The jury will hear testimony and consider
19 evidence. All of that intended to help the jury decide
20 what the punishment ought to be, life in prison or the
21 death penalty.

22 You've had the opportunity back in the jury room to
23 look over the form that had on it the three types of
24 jurors. Which one of those three do you think best
25 describes you as a potential juror?

1 A The third one.

2 Q That's a juror who will keep an open mind and
3 listen to everything before deciding on punishment?

4 A Correct.

5 Q If you sat on a jury in a case like this, and I'm
6 not talking about this case because you haven't heard the
7 facts in this case yet. But if you sat on such a case.
8 And you and the other jurors, after considering everything
9 that was presented, decided that the death penalty was the
10 appropriate punishment. If that was your choice, along
11 with all the other jurors, would you be able to sign your
12 name to a verdict form that said that was your verdict, if
13 it was?

14 A Yes.

15 Q Would you be able to come in here into open
16 court, and if I asked each juror individually, was that
17 your verdict and is it still your verdict? Would you be
18 able to answer it was, if it was?

19 A Yes.

20 Q Would you be able to do those things, Ms. Walker,
21 knowing that eventually that's going to result in the
22 execution of a defendant?

23 A Yes.

24 Q Do you have any strong feelings or beliefs that
25 will interfere with your choice between a life sentence

1 and the death penalty?

2 A I'm not sure. I haven't -- I'm not quite sure,
3 I'm a number three, I've never really formed an opinion if
4 someone should ever get the death penalty. So, I don't
5 know honestly that I could say someone deserves the death
6 penalty. But, I've never ever said that before.

7 Q But do you -- do you think then that you can
8 consider both punishments before deciding on one?

9 A I definitely would consider both. But, I'm just
10 saying I've never ever formed an opinion saying I would
11 definitely think someone should have the death penalty.

12 Q All right. Do you understand that it is vital to
13 this process that all jurors keep an open mind throughout
14 the entire process before deciding on a punishment?

15 A Yes.

16 Q And will you be able to do that?

17 A Yes.

18 Q Are you telling me, Ms. Walker, and I may not
19 understand what your answer is. Do you think that there
20 are circumstances somewhere where the facts might be bad
21 enough that you can give a death penalty? And then in
22 certain other circumstances where the circumstances might
23 not be as bad that you'd give a life sentence or that you
24 could fairly consider and impose whatever you think's
25 appropriate?

1 A Well I definitely would consider all the facts.
2 But, like I said, I -- I mean, I've never been put in a
3 position where I had to decide. And I guess I could -- I
4 mean, I know I could when it came down to it, but I just
5 never have formed an opinion like that.

6 Q Okay. Now, Ms. Walker, part of this process is
7 that the jurors who are selected to serve on the jury
8 panel have to stay with us while the case is being tried.
9 If it is required of you that you be sequestered with the
10 other jurors while we try this case, can you make those
11 arrangements?

12 A Yes.

13 THE COURT: All right. Answer any questions the
14 solicitor might have for you, please, ma'am. Mr. Bailey.
15 DIRECT EXAMINATION BY MR. BAILEY:

16 Q Ms. Walker, I'm Walter Bailey, I want to ask you
17 a few more questions. And, you've indicated to the judge
18 that -- that you have never really thought about the death
19 penalty before yesterday when you found out that you might
20 be on a jury where the state's seeking the death penalty;
21 is that correct?

22 A I've thought about it, I just have never said or
23 formed an opinion about it. I've never had a case come up
24 that says I think he deserves the death penalty or not.
25 I'm just not quite sure I agree with that or -- I'm sure

1 that if it boiled down to it I'd have to make a decision
2 one way or another.

3 Q Okay. Well, before yesterday, and we're not
4 talking about this case, just in general terms, when you
5 did think about the death penalty or talk to friends and
6 family, whatever about it, what -- what were your thoughts
7 on the death penalty, just in general?

8 A Every time it's ever been discussed I said I
9 don't -- I really don't know. I -- I don't believe in
10 murder. But, does that really apply to when you're making
11 a decision about someone being sentenced? It's just never
12 gone any further than that.

13 Q Okay. So you had thought about it, but never had
14 really decided whether or not you really believed in it or
15 not, would that be correct?

16 A Correct.

17 Q Okay. And you understand that the way it works
18 in South Carolina, when the state seeks the death penalty,
19 the jury has to make that decision, not the judge?

20 A Correct.

21 Q And whatever the jury decides the sentence ought
22 to be will be the sentence of the court, that sentence
23 will be carried out.

24 A Right.

25 Q Okay. Now, I'm not going to ask you and nobody's

1 going to ask you to predict what you would do in this
2 case, because you haven't heard any of the facts. And you
3 said you wanted to hear the -- would want to hear all of
4 the facts and the law from the judge before you made a
5 decision.

6 A Correct.

7 Q But if the facts were bad enough, could you vote
8 for the death penalty, knowing that penalty would actually
9 be carried out if the other 11 jurors vote for it also?

10 A I would make a decision either way, I don't -- I
11 don't know that I would ever say the death penalty, I
12 don't -- I don't know.

13 Q Okay. I might have asked that question the wrong
14 way, so let me -- let me try it again. And again nobody's
15 asking you for a prediction in this case, because you
16 haven't heard the facts. But if the facts are bad enough,
17 could you vote for it, knowing that penalty would be
18 carried out?

19 A I don't know.

20 Q Okay. Okay. If the jury, after hearing all of
21 the facts and the law from the judge, unanimously votes
22 for the death penalty, the next thing that happens is that
23 the foreman would have each member of that jury sign a
24 death verdict form, which would result in that execution
25 taking place. Could you, not would you, but could you

1 sign your name to a form like that?

2 A If that was the decision that I made.

3 Q Okay. And, could you stand up in open court and
4 announce that decision, if it was your decision?

5 A Yes.

6 Q Okay. Is there any other reason, Ms. Walker,
7 whether it's a personal reason or religious reason,
8 whatever, that would prevent you from sitting as a fair
9 and impartial juror on this case?

10 A Yesterday you had asked, or the judge had asked,
11 if I knew any member, I think of your party, your -- your
12 staff. And, I wasn't quite sure if I remember or -- I
13 wasn't positive at all, so I couldn't make a fair
14 statement yesterday. But I'm not -- I believe I have met
15 one of the girls that works for you, briefly, years and
16 years ago.

17 Q Okay. And do you recall who that was?

18 A Yes. Her name was Jody.

19 Q Okay.

20 A I wasn't even -- I'm still not sure.

21 Q This is Jody right over here, do you recognize
22 her now?

23 A If -- she looks very familiar like I -- I know
24 her.

25 Q Okay. If that's the person you recall, would

1 that make any difference to you as far as sitting on this
2 case?

3 A No.

4 Q Okay. Let me go back, and -- and I hate to keep
5 bringing the same thing up again, but this is the only
6 chance that any of us get to talk to jurors before we
7 actually pick a jury and start the case. But, when I was
8 asking about if you could vote for the death penalty, you
9 said, according to my notes, that you didn't know if you
10 could. Can you explain that a little bit? And again,
11 I've said this several times, I'm not asking you for a
12 prediction. But, what -- what I want to know and what we
13 all want to know is if the case is bad enough, can you
14 vote for the death penalty knowing that if you do that
15 person's going to be executed?

16 A I -- I can't really answer -- I don't -- I don't
17 know if I could or if I couldn't, I don't -- I don't know,
18 I've never been put in a position that I really have had
19 to make a decision like that or -- or put on the spot to
20 give anybody an answer like that, I don't know.

21 Q Okay.

22 A I've thought about it and I just -- I haven't
23 come to any conclusion about it.

24 Q Okay. So as you sit right now you don't know if
25 you could actually do it or not, regardless of the facts?

1 A Correct.

2 MR. BAILEY: Thank you. That's all I have,

3 Ms. Walker.

4 THE COURT: Mr. Runyon.

5 MR. RUNYON: Very briefly.

6 CROSS-EXAMINATION BY MR. RUNYON:

7 Q Good morning, Ms. Walker. I notice that you're

8 married?

9 A Yes.

10 Q And where is your husband employed?

11 A At Charleston Mill Company.

12 Q All right. And, has he ever been involved in law

13 enforcement?

14 A No.

15 Q Now, as a practical matter, let me see if I can

16 understand this and articulate it. Basically you've never

17 had to decide whether or not the death penalty should be

18 imposed before?

19 A Correct.

20 Q And, basically what you're saying is you have no

21 deep seeded objections to the death penalty, do you?

22 A No.

23 Q And, likewise, you have no deep seeded feelings

24 that life must always be imposed, do you?

25 A Right.

1 Q And so, therefore, as I understand it, you're
2 basically saying that you'll consider all the evidence
3 and---

4 A Yes, sir.

5 Q And -- and then consider what the court tells
6 you; correct?

7 A Correct.

8 Q And you'll give consideration to the death
9 penalty?

10 A I guess.

11 Q And you'll give consideration to life in prison?

12 A Yes.

13 Q And -- and you'll -- you'll -- you'll do your job
14 as a juror?

15 A I would.

16 Q And you'll make a decision based on the evidence
17 that you hear in this courtroom?

18 A I would.

19 MR. RUNYON: No further questions, Your Honor.

20 THE COURT: Anything further from the state?

21 MR. BAILEY: Yes, sir, let me follow that up just --
22 just briefly.

23 REDIRECT EXAMINATION BY MR. BAILEY:

24 Q Mr. Runyon asked if you could consider the death
25 penalty. Okay? My question is a little bit different.

1 I mean, I could consider jumping up and touching the
2 ceiling but I know I can't do it. And, could you not only
3 consider but actually vote for the death penalty, if the
4 case was bad enough? Or would your answer be the same as
5 it was when I asked you earlier, that you didn't know
6 whether you could actually vote for the death penalty?

7 A I definitely would consider it, I've just never
8 really sat down to -- to really form an opinion if I would
9 definitely go with death penalty or -- or not, I -- to sum
10 it all up, I don't really have an opinion, when it comes
11 to these things, because I don't know if I agree with any
12 of it, so. I mean, I -- if I was definitely cornered
13 and -- and -- and given evidence and said, you have to
14 make a decision, I would just have to make a decision. I
15 don't know what other way to say it.

16 Q Would it be fair that you don't know if that
17 decision could ever be for the death penalty?

18 A That's correct.

19 MR. BAILEY: Thank you. That's all I have.

20 THE COURT: Anything further, Mr. Runyon?

21 MR. RUNYON: Nothing further, Your Honor.

22 THE COURT: Okay, Ms. Walker, I have a matter I need
23 to take up with the lawyers, would you please step back
24 into the back one more time, please, ma'am.

25 (Juror excused from courtroom.)

1 THE COURT: What says the state?

2 MR. BAILEY: Your Honor, the state would contend that
3 Ms. Walker is not a qualified juror -- one second,
4 please.

5 (Pause.)

6 MR. BAILEY: And that would be based on State versus
7 Patterson. Where our Supreme Court held, it's not error
8 to disqualify a juror who stated that she was against the
9 death penalty and did not think she could ever recommend
10 imposing it. That's not exactly what she said.

11 Also State versus Elmore, stands for the proposition
12 that a juror's opposition to the death penalty does not
13 have to be stated but unmistakable clarity. In that case
14 the court pointed out, this is State versus Elmore, that
15 the juror never stated she could, in fact, impose the
16 death penalty. And a brief equivocation was not
17 sufficient to qualify her.

18 I asked Ms. Walker several times whether or not she
19 could, not would she, I didn't ask for a prediction, but
20 could she ever impose the death penalty and she repeatedly
21 told me both before and after Mr. Runyon cross-examined
22 her that she did not know.

23 I would also -- also state -- also cite State versus
24 James Neil Tucker, in which the juror Cannady was
25 disqualified by the judge, that was an issue on appeal.

1 In that case a potential juror said, I'm not saying
2 I'm against the death penalty, all I'm saying is whatever
3 he did he deserves the punishment, but for me I'd just say
4 give life in prison.

5 Then the defense counsel and the juror -- the juror
6 was cross-examined by defense counsel about whether or
7 not -- do you feel that you would be able to make a
8 decision on whether or not to impose the death penalty
9 after you've heard all of the evidence? The juror said,
10 yes, I can make the decision. And if the evidence was
11 sufficiently aggravating could you then impose the death
12 penalty? That juror said right. The trial judge found
13 that that juror was unqualified based on the totality of
14 the responses, despite that equivocation.

15 Your Honor, I -- I think Mr. -- in summary,
16 Ms. Walker, has never said that she could, under any
17 circumstances, impose a death penalty, she just doesn't
18 know. And it's not, as I understand it, not because she
19 hasn't heard the facts, but even hearing the facts she
20 can't say that she could ever do it and I don't think
21 she's qualified.

22 THE COURT: Mr. Runyon.

23 MR. RUNYON: Your Honor, I -- I was listening to my
24 colleague over there citing all those cases. Simple fact
25 of the matter if you read all three of those cases, none

1 of them are -- are on point with -- with what this lady
2 has done.

3 I think we're talking in the sound discretion of the
4 court to -- to a certain extent. We think she's qualified
5 because, number one, she says she will consider the
6 evidence. What she's saying is, is she says I've never
7 had to impose the death penalty before so I don't know
8 that if I'm -- if I'm going to do that.

9 On the other hand, I'm going to listen to all the
10 evidence, I'm going to consider everything and I'm going
11 to consider both options. And -- and -- and -- and she
12 said that if that's my decision I can sign my name to that
13 death form, there's no problem with that.

14 So I don't -- I don't think we have any of the
15 Patterson, Elmore, Tucker kind of colloquies here. I
16 think that her equivocation in contrast is no different,
17 in many respects, than -- than Mr. -- Mr. Stewart's
18 equivocation as it relates to whether or not the death
19 penalty should always be imposed, things of that sort.

20 So, I mean, you're going to get jurors who come in
21 here and they're going to equivocate to some extent. And
22 I think her equivocation merely reflects that she's -- she
23 hasn't had to think about it. And now she's thinking
24 about it and she has no deep-seeded beliefs for or against
25 the death penalty, she just wants to be a fair juror if

1 she's selected and she'll consider both options.

2 THE COURT: Thank you, sir. She's clearly a qualified
3 number three juror. Her answers were consistent, she said
4 she'd never had to make this kind of decision before, she
5 could consider both and impose what she thought was
6 appropriate. She is a clearly qualified number three
7 juror. Bring her back in.

8 (Juror brought into courtroom.)

9 THE COURT: Ms. Walker, I find that you're qualified
10 to serve on this jury panel. That doesn't mean you're on
11 the jury yet, it means you're in the group from which the
12 jury will be selected.

13 You need to call this call in number this afternoon
14 between one and two o'clock. Follow the instructions that
15 are on the machine. You will probably have to come back
16 up here tomorrow, I just don't know what time yet, for a
17 jury selection, when we'll select the final 14 that will
18 stay with us.

19 Between now and then don't talk to anybody about this
20 case. Don't let anybody talk to you about the case.
21 Don't read the newspaper about this case and don't listen
22 to any radio or television reports about the case. You
23 need to be able to decide this case based on what you hear
24 in this courtroom and not something outside of here. Do
25 you understand?

1 JUROR: Yes.

2 THE COURT: Now when you come back up here, when that
3 instruction is finally on the phone and you do come back
4 up here, have your bags packed and in your car and be
5 prepared to stay with us for five to seven days while the
6 case is being tried. Do you understand?

7 JUROR: Yes.

8 THE COURT: All right. Thank you ma'am, you're
9 excused.

10 (Juror excused.)

11 THE COURT: Okay, bring in No. 39, Jacqueline
12 D-I-N-G-E.

13 (Juror brought into courtroom.)

14 EXAMINATION BY THE COURT:

15 Q Have a seat right here, please, ma'am. Is the
16 proper pronunciation Dinge?

17 A That's correct.

18 Q Ms. Dinge, I'm going to ask you some questions.
19 There are no right or wrong answers to any of the
20 questions, we just want you to be completely honest with
21 us in your responses. You are under oath, you were sworn
22 in yesterday with the rest of the panel.

23 A Yes, sir.

24 Q Since you received your summons to come here for
25 jury service, has anybody talked to you about this case?

1 A No, sir.

2 Q Have you talked to anybody about the case?

3 A No, sir.

4 Q Do you know anything about this case other than
5 what I told you yesterday?

6 A No I do not.

7 Q You haven't ever read or heard anything about the
8 case?

9 A I do remember a situation that took place in the
10 Knightsville area, I don't know whether this was the one
11 or not. I -- if -- if I knew the location I may have
12 known or heard about it at the time, but I do not know.

13 Q Okay. Well if you heard about it at the time or
14 you realize some time later that you heard about it and
15 this is the case you heard about, would you be able to put
16 aside what you heard about it previously and decide the
17 case based on what you hear in the courtroom?

18 A Yes, sir.

19 Q Yesterday I called out a list of names of people
20 who could be witnesses in this case. Did you know any of
21 those people?

22 A No, sir, I've met the coroner one time, he
23 stopped and helped me with a flat tire.

24 Q Would the fact that he has helped you at one time
25 or another have any affect on your ability to be fair and

1 impartial in this case?

2 A No, it would not affect me.

3 Q Have you formed or expressed any opinion about
4 this case?

5 A No, I have not.

6 Q Do you have any bias or prejudice against the
7 prosecutors for bringing the case or against the defendant
8 just because he is the defendant in the case?

9 A No, sir.

10 Q Do you know of any reason why you could not be
11 fair and impartial to both the state of South Carolina and
12 the defendant, Mr. Rogers?

13 A No, sir.

14 Q Yesterday I told you and the rest of the jurors
15 that the defendant in this case, Mr. Rogers, has already
16 been convicted of murder in a prior proceeding. The
17 decision for the jury in this case is to decide the
18 punishment that should be imposed, life in prison without
19 parole or the death penalty.

20 The jury will hear mitigating and aggravating
21 circumstances. The jury will hear testimony, evidence and
22 see exhibits. All of that will be presented in this trial
23 for the purpose of helping the jury decide what the
24 punishment ought to be, life in prison or the death
25 penalty.

1 Now you've had the opportunity back in the jury room
2 to look over the form that has on it the three types of
3 jurors. Which one of those three do you think best
4 describes you as a potential juror?

5 A I think I could base my decision on the evidence
6 and the directions I'm given by the judge.

7 Q So that's a number three juror?

8 A Number three, yes, sir.

9 Q Will you keep an open mind throughout this entire
10 process and listen to everything that's presented before
11 you decide on the appropriate punishment?

12 A Yes, sir.

13 Q If you sat as a juror in a case like this, and
14 we're not talking about this case now because you don't
15 know about this case yet. But in general. If you sat as
16 a juror and you listened to everything that was
17 presented. And after hearing everything you and the other
18 jurors unanimously decided that the death penalty was the
19 appropriate punishment. If that was your decision and the
20 decision of the rest of the jurors, would you be able to
21 sign your name to a verdict form that said that was your
22 verdict, if it was?

23 A Yes, sir.

24 Q Would you be able to come in here into open court
25 and stand up and say it was your verdict, if it was?

1 A Yes, sir.

2 Q Would you be able to do those things, Ms. Dinger,
3 knowing that eventually that's going to result in the
4 execution of a defendant?

5 A Yes, sir.

6 Q Do you have any strong feelings or beliefs that
7 will interfere with your choice between a life sentence or
8 the death penalty?

9 A No, I do not.

10 Q Do you understand and will you remember that it
11 is a vital, important part of this process that each juror
12 keep an open mind and listen to everything before deciding
13 on punishment?

14 A Yes, sir.

15 Q And will you be able to do that?

16 A Yes, I will.

17 Q Also part of this process is that the jurors who
18 are selected on the jury have to stay with us and be
19 sequestered while the case is being tried. Understanding
20 that that is difficult for everyone who is involved, can
21 you make arrangements to stay with us if you are picked on
22 this jury?

23 A Yes, sir, I could.

24 THE COURT: Answer any questions the solicitor might
25 have. Mr. Bailey.

1 DIRECT EXAMINATION BY MR. BAILEY:

2 Q Ms. Dinger, I'm Walter Bailey, I want to ask just
3 a couple more questions to follow-up on what the judge had
4 asked you. You understand that the way the system works
5 in South Carolina is that in a case like this, where the
6 state seeks the death penalty, the jury and not the judge
7 makes that determination?

8 A Yes, sir.

9 Q And that whatever the jury decides, after hearing
10 all of the facts and evidence and the law from the judge,
11 will be the sentence of the court and that sentence will
12 be carried out, whichever one it is?

13 A Uh-huh. Yes, sir.

14 Q And, you've indicated to the judge that you're
15 the number three type juror that would want to hear all of
16 the facts, law from the judge, before you made up your
17 mind on the punishment and you could vote for life without
18 parole or the death penalty depending on what you heard?

19 A Yes, sir.

20 Q Okay. And if the case was bad enough you could
21 vote for the death penalty?

22 A Yes, sir, I could.

23 Q And could sign the death verdict form if you and
24 the other 11 jurors voted for it?

25 A Yes, sir.

1 Q And could also announce that verdict in open
2 court?

3 A That is correct, sir.

4 MR. BAILEY: Ms. Dinge, that's all I've got. Thank
5 you very much.

6 THE COURT: Mr. Runyon.

7 CROSS-EXAMINATION BY MR. RUNYON:

8 Q I see by your questionnaire that you're an
9 elementary school teacher? School principal, I'm sorry.

10 A Yes, that's correct.

11 Q And what -- what school are you principal of?

12 A Springfield Elementary School in Charleston.
13 West of the Ashley.

14 Q And, what -- what age group of students does --
15 does that -- that -- does that cover?

16 A It's grades K-4 or four year olds through 5th
17 grade, which would normally be 10, 11 or 12.

18 Q All right. And, your -- your -- your -- your
19 school could get along without you for five to seven days?

20 A Yes, sir.

21 Q We don't like to admit that. It's a well run
22 school; correct?

23 A Yes, sir.

24 MR. RUNYON: Thanks. No further questions.

25 THE COURT: Anything further from the state?

1 MR. BAILEY: No, sir.

2 THE COURT: Okay, Ms. Dinge, I have a matter I need to
3 take up with the lawyers, would you step back into the
4 back one more time, please, ma'am?

5 (Juror excused from courtroom.)

6 THE COURT: What says the state?

7 MR. BAILEY: Qualified, Your Honor.

8 THE COURT: Defense.

9 MR. RUNYON: Obviously she's qualified, Your Honor.

10 THE COURT: All right. She is a qualified number
11 three juror. Bring her back in.

12 (Juror brought into courtroom.)

13 THE COURT: Ms. Dinge, I find that you are qualified
14 to serve on this jury. That doesn't mean you're on the
15 jury, it means you're in the group from which the jury
16 will be selected.

17 You need to call this call in number this afternoon
18 between one and two o'clock. There will be a message on
19 there that will tell you what time to call back or what
20 time to come back up here. I think sometime tomorrow is
21 when we'll be getting back together to select the 14
22 jurors who will stay with us and have to be sequestered.

23 So between now and then don't talk to anybody about
24 the case, don't let anybody talk to you about the case.
25 Don't read the newspaper about this case and don't listen

1 to any radio or television reports about this case. You
2 have to be able to decide this case based on what you hear
3 in the courtroom and not something outside of here, do you
4 understand?

5 JUROR: Yes, sir.

6 THE COURT: All right. When you are instructed to
7 come back up here, please come back with your bags packed
8 and have them in your car and be prepared to stay with us
9 for five to seven days while the case is being tried.

10 JUROR: Yes, sir.

11 THE COURT: All right. Thank you, ma'am. Please call
12 between one and two today and follow the instructions on
13 the machine. Thank you, ma'am.

14 (Juror excused.)

15 THE COURT: Robert Fletcher, please.

16 (Juror brought into courtroom.)

17 EXAMINATION BY THE COURT:

18 Q Mr. Fletcher, have a seat right here, please,
19 sir. Mr. Fletcher, I'm going to ask you some questions.
20 There are no right or wrong answers to the questions, I
21 just want you to be completely honest in your responses.

22 A Yes, sir.

23 Q You are under oath, you were sworn in yesterday
24 with the rest of the panel.

25 A Yes, sir.

1 Q Since you received your summons to come here for
2 jury service, has anybody talked to you about this case?

3 A No, sir.

4 Q Have you talked to anybody about the case?

5 A No, sir.

6 Q Do you know anything about this case other than
7 what I told you yesterday?

8 A Just -- just what I heard on TV.

9 Q Okay.

10 A You know. Before.

11 Q Previously?

12 A Yeah.

13 Q All right, sir. Would that have any affect on
14 your ability to be fair and impartial in this case?

15 A No.

16 Q Can you decide this case based on what you hear
17 in the courtroom and not consider what you heard before
18 that?

19 A Well, what -- the piece of paper you gave me
20 in -- in yonder.

21 Q Yes, sir.

22 A I'm -- I don't believe in the death penalty. In
23 a death sentence.

24 Q All right, sir. I was going to ask you a few
25 more questions before we got there, but let me ask you

1 about that since you've already brought it up. So you
2 would be a number two juror?

3 A Yes, sir.

4 Q That is, a juror who, regardless of the
5 circumstances, is always going to give a life sentence?

6 A Right. Yes, sir.

7 Q You never -- you can't think of any circumstances
8 that would be bad enough where you would impose the death
9 penalty?

10 A No, sir.

11 Q Is that a belief that you have had for some time?

12 A Yes, sir, I believe God Almighty is the one who
13 should take a person's life, not, you know, nobody here on
14 earth [sic].

15 Q So regardless of what you hear in a trial you're
16 always going to give a life sentence?

17 A Yes, sir.

18 THE COURT: Answer any questions the solicitor might
19 have for you, please, sir. Mr. Bailey.

20 MR. BAILEY: Indulge me a moment, Your Honor.

21 (Counsels consulted.)

22 MR. BAILEY: No questions, Your Honor.

23 THE COURT: Mr. Runyon.

24 MR. RUNYON: No questions, Your Honor.

25 THE COURT: Okay, Mr. Fletcher, I have a matter I need

1 to take up with the attorneys, would you step back into
2 the back just a minute, please, sir. Thank you.

3 (Juror excused from courtroom.)

4 THE COURT: What says the state?

5 MR. BAILEY: Not qualified, Your Honor.

6 THE COURT: Defense?

7 MR. RUNYON: Your Honor, clearly under the law he is
8 not qualified. And I would state for the record that
9 there is no sense asking him questions because he's
10 clearly a man, based on his demeanor and what have you, of
11 sincere beliefs. And, he's not going to change that
12 belief because someone asked him a question.

13 I just point out for the record that the jury
14 selection process does tend to weed out both -- both
15 extremes. And but for this process we might have had a
16 chance to get someone like that on the jury.

17 THE COURT: All right. Thank you, sir. He's clearly
18 not a qualified juror, says he could never impose the
19 death penalty. Bring him back in, please.

20 (Juror brought into courtroom.)

21 THE COURT: Okay, Mr. Fletcher, I'm going to excuse
22 you from service in this jury panel, I appreciate your
23 being here and thank you for your honest responses. Thank
24 you, sir, you are excused, I appreciate it.

25 (Juror excused.)

1 THE COURT: Bring in Penny Fender, please.

2 (Juror brought into courtroom.)

3 EXAMINATION BY THE COURT:

4 Q Ms. Fender, if you'd have a seat right here,
5 please, ma'am. Good morning.

6 A Good morning.

7 Q Ms. Fender, I'm going to ask you some questions.
8 There are no right or wrong answers to any of the
9 questions, we just want you to be completely honest with
10 us in your responses.

11 A Okay.

12 Q You are under oath, you were sworn in yesterday
13 with the rest of the panel.

14 A Yes, sir.

15 Q Since you received your summons to come here for
16 jury service, has anybody talked to you about this case?

17 A No, sir.

18 Q Have you talked to anybody about the case?

19 A No, sir.

20 Q Do you know anything about this case other than
21 what you were told yesterday?

22 A I remember hearing about it in the news when it
23 happened, but other than that nothing.

24 Q Well, will you be able to put aside what you've
25 heard about this in the news and decide this case based on

- 1 what you hear in the courtroom?
- 2 A Yes, sir.
- 3 Q I called out a list of names yesterday of people
4 who could be witnesses in this case, did you know any of
5 those people?
- 6 A No, sir.
- 7 Q Have you formed or expressed any opinion about
8 this case?
- 9 A No, sir.
- 10 Q Do you have any bias or prejudice against the
11 prosecutors for bringing this case or against the
12 defendant just because he is accused in the case?
- 13 A No, sir.
- 14 Q Do you know of any reason why you could not be
15 fair and impartial to both the state of South Carolina and
16 the defendant, Mr. Rogers?
- 17 A No, sir.
- 18 Q Can you and will you follow the law as instructed
19 to you by the court?
- 20 A Yes, sir.
- 21 Q Yesterday I told you and the other jurors that
22 the defendant, Mr. Rogers, has already been convicted of
23 murder in a prior proceeding. So the decision for the
24 jury in this case is to decide on the punishment, life in
25 prison without parole or the death penalty.

1 The jury will hear mitigating and aggravating
2 circumstances, the jury will hear testimony, consider
3 evidence and consider exhibits that might be presented.
4 All of which is intended to help the jury decide what the
5 punishment ought to be, life in prison or the death
6 penalty.

7 Now you've had an opportunity back in the jury room to
8 look over the form that had on it the three types of
9 jurors. Which one of those three do you think best
10 describes you as a potential juror?

11 A The third type.

12 Q That's a juror who will keep an open mind and
13 listen to everything before deciding on the appropriate
14 punishment?

15 A Yes, sir.

16 Q If you sat on a jury in a case like this, and I'm
17 speaking in general now, not about this case because you
18 haven't heard the facts in this case yet. But if you sat
19 on such a case and you listened to everything. And after
20 considering everything that was presented, you and the
21 other jurors unanimously decided that the death penalty
22 was the appropriate punishment. If that was your choice,
23 would you be able to sign a form, a verdict form, with the
24 other jurors, that said that was your verdict, if it was?

25 A Yes, sir, if understanding all the circumstances.

1 Q Yes, ma'am.

2 A Yes, sir.

3 Q Okay. Would you also be able to come in here
4 into open court and say that was your verdict, if it was?

5 A Yes, sir.

6 Q Would you be able to do those things knowing that
7 that will eventually result in the execution of a
8 defendant?

9 A If that was my decision.

10 Q Okay. Do you have any strong feelings or beliefs
11 that will interfere with your choice between a life
12 sentence or the death penalty?

13 A No, sir.

14 Q Do you understand, Ms. Fender, that part of this
15 process is -- a vital part of it is that each juror keep
16 an open mind and listen to everything before deciding on
17 the punishment?

18 A Yes, sir.

19 Q And will you do that?

20 A Yes, sir.

21 Q Also part of this process is that each juror who
22 is selected on the jury has to stay with us while the case
23 is being tried. That means being sequestered. If you're
24 selected on this jury, can you make arrangements to stay
25 with us for five to seven days while the case is being

1 tried?

2 A Yes, sir.

3 Q You've thought about that and you can do that?

4 A Uh-huh. Yes, sir.

5 THE COURT: All right. Thank you, ma'am. Answer any
6 questions the solicitor might have. Mr. Bailey.

7 DIRECT EXAMINATION BY MR. BAILEY:

8 Q Ms. Fender, I'm Walter Bailey, just a few more
9 questions. Do you understand, from what Judge Whetstone
10 told you, that in South Carolina the judge does not decide
11 on the penalty when the state seeks a death sentence?
12 That those two choices, life without parole and the death
13 penalty, that decision's made by the jury. And the judge
14 is going to order whatever that jury decides the sentence
15 ought to be and it will be carried out?

16 A Yes, sir.

17 Q Okay. And, we're not asking you to predict what
18 you would do in this case because you haven't heard any of
19 the facts and you've already said you'd want to hear all
20 of the facts before you made up your mind between those
21 two choices. But if the facts were bad enough could you
22 impose the death penalty knowing that the sentence would
23 be carried out?

24 A Yes, sir.

25 Q Okay. And could you then sign your name to the

1 verdict form, along with the other jurors, that would
2 result in that execution taking place at some point?

3 A Yes, sir.

4 Q And you've also said you could stand up and
5 announce that verdict in open court; is that correct?

6 A Yes, sir.

7 Q Okay. Is there any reason at all why you feel
8 like -- may feel like you could not be a fair juror for
9 both sides, the state and the defense?

10 A No, sir.

11 MR. BAILEY: Ms. Fender, that's all I've got. Thank
12 you very much.

13 THE COURT: Mr. Runyon.

14 MR. RUNYON: No questions, Your Honor.

15 THE COURT: Okay, Ms. Fender, I have a matter I need
16 to take up with the attorneys, would you step back in the
17 back again briefly, please, ma'am.

18 (Juror excused from courtroom.)

19 THE COURT: What says the state?

20 MR. BAILEY: Qualified, Your Honor.

21 THE COURT: Defense?

22 MR. RUNYON: Obviously she's qualified under the law,
23 Judge.

24 THE COURT: She is a qualified number three juror.
25 Bring her back in, please.

1 (Juror brought into courtroom.)

2 THE COURT: Have a seat, please, ma'am. Ms. Fender, I
3 find that you are qualified to serve on this jury panel,
4 that doesn't mean you're on the jury yet, it means you're
5 in the group from which the jury will be selected.

6 You need to call this call in number this afternoon
7 between one and two o'clock. There will be a message on
8 the phone that will tell you what time to come back up
9 here or what time to call back. Please follow those
10 instructions. I anticipate that sometime tomorrow you'll
11 have to come back up here so that we can pick the 14
12 jurors who will stay with us.

13 When you do get the instruction to come back up here,
14 have your bags packed and be prepared to stay with us for
15 five to seven days while the case is being tried. All
16 right?

17 Between now and then don't talk to anybody about this
18 case. Don't let anybody talk to you about the case.
19 Don't read the newspaper about this case and don't listen
20 to any radio or television reports about the case. You
21 have to be able to decide this case based on what you hear
22 in the courtroom and not something outside of here. Do
23 you understand?

24 JUROR: Yes, sir.

25 THE COURT: All right. Thank you, ma'am, you are

1 excused, please call between one and two today.

2 (Juror excused.)

3 THE COURT: Kenny Snider, please.

4 (Juror brought into courtroom.)

5 EXAMINATION BY THE COURT:

6 Q Mr. Snider, have a seat right here, please, sir.

7 Good morning.

8 A Good morning.

9 Q Mr. Snider, I'm going to ask you some questions.

10 There are no right or wrong answers to the questions, we
11 just want you to be completely honest with us in your
12 responses.

13 A Okay.

14 Q You are under oath, you were sworn in yesterday
15 with the rest of the panel. Since you received your
16 summons to come here for jury service, has anybody talked
17 to you about this case?

18 A No, sir.

19 Q Have you talked to anybody about this case?

20 A No, sir.

21 Q Do you know anything about this case other than
22 what I told you yesterday?

23 A No, sir.

24 Q You have never read or heard anything about this
25 case?

1 A Not as I can remember.

2 Q Okay. Yesterday I called out a list of names of
3 people who could be witnesses in this case, did you know
4 any of those people?

5 A The only one I may have recognized, I think you
6 said a Dr. Worthington. And the only reason I recognize
7 it is I work as a physical therapist. And I -- I think
8 there's a Dr. Worthington that maybe sends us patients
9 every now and then, but I don't think I've ever spoke with
10 him, I'm not even sure it's the same one.

11 Q Well, would that have any affect on your ability
12 to be fair and impartial in this case?

13 A No, sir.

14 Q Have you formed or expressed any opinion about
15 this case?

16 A No, sir.

17 Q Do you have any bias or prejudice against the
18 prosecutors for bringing this case? Or against the
19 defendant just because he is the defendant in the case?

20 A No, sir.

21 Q Do you know of any reason why you could not be
22 fair and impartial to both the state of South Carolina and
23 the defendant, Mr. Rogers?

24 A Well, other than my -- I have a personal belief
25 kind of against the death penalty, I'm not strictly

1 against it as written in our procedure, but I'm kind of
2 pretty much against it [sic].

3 Q Okay. Well let me ask you a few more questions
4 before we get to that point.

5 A Okay.

6 Q Can you and will you follow the law as instructed
7 to you by the court?

8 A Yes, sir.

9 Q That means, if I tell you what the law is will
10 you follow those instructions?

11 A Yes, sir.

12 Q Now yesterday you were told, along with the rest
13 of the jury panel, that Mr. Rogers has already been
14 convicted of murder in a prior proceeding. The purpose of
15 this proceeding is to determine the punishment, life in
16 prison without parole or the death penalty.

17 In this proceeding the jurors will hear mitigating and
18 aggravating circumstances. They'll hear testimony,
19 evidence, see exhibits. All of that intended to help the
20 jury decide on what the punishment ought to be, life in
21 prison or the death penalty.

22 Now you had an opportunity to read that form that we
23 gave you back in the jury room about the three types of
24 jurors. Which one of those three do you think best
25 describes you as a potential juror?

1 A I believe it's the second one.

2 Q That's a juror who will always give a life
3 sentence?

4 A No, always, I'm sorry, always -- yeah, yes,
5 you're right, always a life sentence.

6 Q Always a life sentence?

7 A Yeah, I can't say completely, but I definitely
8 would lean towards that way, it'd be major circumstances
9 to change my mind, put it that way.

10 Q Well let me ask you this then. Are there
11 circumstances out there that are bad enough where you
12 think that you might in some circumstances give a death
13 penalty?

14 A Yes, I could say it is possible.

15 Q Okay. In this case, will you consider and listen
16 to everything and consider both punishments before
17 deciding on one?

18 A Yes, sir.

19 Q Now, speaking in general and not about this
20 case. If you sat on a jury in a case like this with a
21 similar type question posed. And after listening to
22 everything you and all the other jurors unanimously
23 decided that a death penalty was the appropriate
24 punishment. If that was your choice, would you be able to
25 sign your name to a verdict form saying that was your

1 choice, if it was?

2 A Yes, sir.

3 Q Would you be able to come in here into open court
4 and stand up and say that was your verdict, if it was?

5 A Yes, sir.

6 Q Would you be able to do those things knowing that
7 eventually that's going to result in the execution of a
8 defendant?

9 A Yes, sir.

10 Q Now, Mr. Snider, a vital part of this entire
11 process is that you keep an open mind throughout and
12 listen to everything before you decide on the punishment.
13 Will you be able to do that?

14 A Yes, sir.

15 Q And again, you say you're a number two type juror
16 and that is a juror who will never, under any
17 circumstances, regardless of how bad, give a death
18 penalty. You tell me that there might be some instance
19 out there where you could give a death penalty.

20 A Yes, so that way I'd be number three---

21 Q Well, I'm trying to find out which one. You have
22 told me that you're a number two, but then you say that
23 there are circumstances that -- under which you might give
24 a death penalty, which would be more like a number three,
25 so I need for you to tell me which one you think best

1 describes you.

2 A I guess the one would have to be number three, if
3 I had to pick one then.

4 Q Okay. Also part of this process is that the
5 jurors who are picked on this jury have to stay with us
6 while the case is being tried. Understanding that is
7 difficult for everyone involved, if you are selected can
8 you make arrangements to stay with us while this case is
9 being tried?

10 A No, that would be very difficult because of my
11 job requirements.

12 Q Okay. Do you think you can make those
13 arrangements if that's required of you? We're probably
14 talking about five days. And I'm trying to estimate high
15 for everybody's benefit.

16 A Right. To be honest with you I don't think so.
17 I'm with the medical staff for the hockey team in town and
18 I'm the medical staff, so if I'm not there there's no one
19 else available. You know, I'm responsible for their daily
20 care, prevention of injuries, plus if an injury would
21 occur when I'm not there, I mean, we're looking at another
22 possible law suit. Because someone has -- medical people
23 have to be there at all times.

24 Q And nobody can fill in in that capacity for you?

25 A No, sir.

1 Q What if something happens to you and you get hurt
2 who's going to fill in for you?

3 A That's a good question, I don't know if they'd
4 have to hire -- I guess they'd hire somebody else.

5 Q But you don't have any substitute, if you get the
6 flu and you're out for two weeks nobody's there and
7 available to substitute for you?

8 A I -- I work with a physical therapy clinic and, I
9 mean, that supervises services for them, I guess it's
10 possible they could send someone else, yeah. Actually I
11 hadn't really thought about it, I'm not sure what they
12 would do to be honest with you.

13 THE COURT: Answer any questions Solicitor Bailey has,
14 please, sir. Mr. Bailey.

15 DIRECT EXAMINATION BY MR. BAILEY:

16 Q Mr. Snider, let me ask you first of all about
17 your work situation. Then I want to ask you a little bit
18 about the death penalty.

19 A Yes, sir.

20 Q But, you had also, in addition to what you told
21 Judge Whetstone about your job situation, you'd indicated
22 on your questionnaire that you wanted to be excused from
23 jury service because of your responsibilities with the
24 Stingrays?

25 A Yes, sir.

1 Q All right, sir. If you were chosen on this jury
2 and were sequestered for several days like Judge Whetstone
3 suggested, do you feel like you would be distracted from
4 paying close attention to the testimony in this very
5 important case because you'd be thinking about your --
6 your work situation, what was going on out there?

7 A It's possible, I would be concerned, again, I'm
8 not really sure what's going to happen if I'm not
9 available, I'm not sure who's going to be able to cover
10 them.

11 Q Okay. So whether or not you would be distracted
12 would depend on whether or not somebody else could fill in
13 for you?

14 A I guess it would depend on what happens. We
15 haven't made those plans yet.

16 Q Okay. All right, let me ask you a little bit
17 more about your thoughts on the death penalty. Before
18 yesterday when you found out that you might be a juror on
19 a case in which the state's seeking the death penalty, had
20 you ever sat down or really formulated your thoughts on
21 the death penalty?

22 A Yeah, I've thought about it often.

23 Q Okay. And when you thought about it often what
24 did you think, just in general terms?

25 A Well, in general, you know, I think it's, you

1 know, it's a sad case to start with when something like
2 this happens, you know, I'm not sure necessarily. I guess
3 I was raised in an environment where people saw the death
4 penalty as a -- something to prevent crime, I definitely
5 don't see it as a preventative measure for crime.

6 Q Okay.

7 A I guess it kind of depends -- it probably would
8 largely depend on what the defendant has done since this
9 time, I mean, if I see that he is making efforts to
10 improve himself, there's a good chance, you know, I would
11 not want to give him the death penalty. I'm sure the
12 circumstances of the trial itself would affect it also.

13 Q Okay. Do you understand that in South Carolina
14 the jury decides what the sentence is going to be when the
15 state seeks the death penalty in a case like this?

16 A Yeah.

17 Q Not the judge.

18 A Yes.

19 Q And that whatever the jury decides will be the
20 sentence of the court and that sentence will be carried
21 out?

22 A Yes.

23 Q Okay. Mr. Snider, if the case -- if you were on
24 a jury in a case like this and the case was bad enough,
25 could you vote for the death penalty, knowing that

1 sentence actually is going to be carried out and that
2 defendant will be executed based on the jury's vote?

3 A Yes, I believe so.

4 Q Okay. You said I believe so, and I'm not asking
5 you would you do it in this case, because you haven't
6 heard any of the facts.

7 A Yes.

8 Q But, could you do it?

9 A Yes, sir.

10 Q Okay. And, could you sign your name to a death
11 verdict form along with the other 11 jurors?

12 A Yes, sir.

13 Q That would result in that execution taking
14 place.

15 A Yes, sir.

16 Q And could you announce that decision in open
17 court?

18 A Yes, sir.

19 Q Mr. Snider, is there any reason that may not have
20 been mentioned by the judge or by me so far that you think
21 might cause you any problems from sitting as a juror in
22 this case?

23 A No, sir.

24 Q When do you think you could find out about your
25 work situation? Whether or not you can get a substitute

1 to fill in for you?

2 A I'm sure we could discuss it this afternoon. I'm
3 sorry, what period of time are we talking about, probably
4 five days you said or a week?

5 THE COURT: Yes. At the outside.

6 BY THE JUROR:

7 Q Would this -- are we -- is there a possibility
8 I'd be sequestered or would I have evenings off?

9 THE COURT: No, sir, you'd be sequestered.

10 BY THE JUROR:

11 A Be sequestered? We can discuss it, I hope, maybe
12 in the next couple of days, I'm not sure, I mean.
13 Actually, the team is going out of town tomorrow morning.
14 Going to Charlotte to practice because we don't have any
15 ice down here. Actually I was concerned about that, I
16 didn't know if I'd be available to go.

17 Q Well, let -- let's assume that the jury was
18 selected tomorrow morning. And the trial started
19 tomorrow. Could you make those arrangements in that time
20 frame?

21 A The only thing I can do is relay it to my work,
22 and, I mean, basically I work for a physical therapy
23 department, the physical therapy department provides it
24 for the hockey team. So, I've got two entities I'd have
25 to discuss it with and actually it'd be up to them to work

1 it out. Because I'm not employed directly by the
2 Stingrays.

3 MR. BAILEY: That's all I have at this time,
4 Mr. Snider. Thank you.

5 THE COURT: Mr. Leiendecker.

6 MR. LEIENDECKER: Thank you, Your Honor.

7 CROSS-EXAMINATION BY MR. LEIENDECKER:

8 Q Mr. Snider, just real briefly. And I think you
9 just answered my question. You are not personally
10 contracted by the Stingrays, but the physical therapy
11 group you work with is employed to provide therapists; is
12 that correct?

13 A Yes, sir.

14 Q You are the person that they have designated over
15 the last -- at least this year to be that person; correct?

16 A Yes, sir.

17 Q And you do travel with the team when they go
18 places?

19 A Yes, sir, I work there full-time now.

20 Q How many therapists are there in the group?

21 A Well, it would require an athletic trainer for
22 this position.

23 Q I understand.

24 A We have two others.

25 Q Besides yourself?

1 A Yes, sir.

2 Q And---

3 A And not to be sexually biased, but only one of
4 them is a male and it would most necessarily have to be a
5 male in our situation just because of a locker room
6 situation.

7 Q Right. We won't have this transcript transcribed
8 for anybody.

9 A Okay. I'm sorry.

10 Q But, the -- so there's -- you know at least one
11 other that you say would be qualified to travel with the
12 team?

13 A There is one other, yes.

14 Q Okay. And if -- if, in fact, this trial -- and
15 the judge is giving you an outside parameter when he says
16 five to seven days. If this trial were to carry you
17 through this week, which would mean Friday or Saturday of
18 this week, how many days -- I mean, you'd be with the team
19 every one of those days?

20 A Yes, sir, we -- we go to Charlotte the next two
21 games, we have games -- probably every day but Sunday, we
22 usually have Sundays off and we have -- at least we are
23 home the next couple of weeks and we leave for Charlotte
24 and Raleigh I think at the end of next week. So every day
25 but Sunday.

1 Q Mr. Snider, you understand the absolute
2 importance of this case--

3 A Yes, sir.

4 Q --obviously from the magnitude of what we've
5 seen?

6 A Yes, sir.

7 Q And how important it is that we get jurors that
8 are fair, impartial jurors, but people that are peers and
9 from the community. And that everybody, obviously, has
10 work and hardships. And, I mean, I'm hopeful that when
11 you discuss this with your employer that they understand
12 how important it is that by the -- by the draw you were
13 selected for this jury pool.

14 A Yes, sir.

15 Q And, you think that you can discuss with your
16 employer getting someone to replace you for a few days?

17 A Yes, sir.

18 MR. LEIENDECKER: I don't have any further questions,
19 Your Honor.

20 THE COURT: Anything further from the state?

21 MR. BAILEY: No.

22 THE COURT: Okay, Mr. Snider, I have a matter I need
23 to take up with the attorneys, would you step back in the
24 back briefly, please, sir.

25 (Juror excused from courtroom.)

1 THE COURT: What says the state?

2 MR. BAILEY: Qualified.

3 THE COURT: Defense?

4 MR. LEIENDECKER: Qualified, Your Honor.

5 THE COURT: Okay, he's a qualified number three juror,
6 I will ask him to go ahead and try to make arrangements
7 and be back here when the jury is summoned to be back
8 here. Bring him back in.

9 (Juror brought into courtroom.)

10 THE COURT: Mr. Snider, I find that you are qualified
11 to serve on the jury. That doesn't mean you're on this
12 jury yet, it means you're in the group from which the jury
13 will be selected.

14 You need to call this number between one and two this
15 afternoon. There will be a message on there that will
16 tell you what time to call back or what time to come back
17 up here. I anticipate that we're going to have everybody
18 come back up sometime tomorrow, I just don't know what
19 time yet. So call between one and two and find out what
20 the instruction is and follow the instructions that are on
21 the machine.

22 Between now and then don't talk to anybody about this
23 case. Don't let anybody talk to you about the case.
24 Don't listen to the radio or TV about this case and don't
25 read the newspaper about this case. You have to be able

1 to decide this case based on what you hear in the
2 courtroom and not something outside of here.

3 Now with your work situation, I'll ask you to go ahead
4 and try to make those arrangements. Please assure your
5 employer that we're not trying to inconvenience them or
6 you or put any undue hardship on them, I just want you to
7 go ahead and make your best effort to make the
8 arrangements. And come back up here when the message tells
9 you to come back.

10 When you come back up here have your bags packed and
11 in your car and be prepared to stay with us for up to five
12 days while the case is being tried in case you are
13 selected on the jury.

14 JUROR: Starting tomorrow be prepared?

15 THE COURT: Whatever the message says. But I think
16 sometime tomorrow, yes, sir. I think we're going to have
17 everybody coming back up here and we're going to strike
18 the jury, pick the 14 who will stay, sometime tomorrow and
19 then we'll start the trial tomorrow and go from there.
20 All right, sir? Thank you, sir. I appreciate it.

21 (Juror excused.)

22 THE COURT: Evelyn White, please.

23 (Juror brought into courtroom.)

24 EXAMINATION BY THE COURT:

25 Q Ms. White, if you would have a seat right here,

1 please, ma'am. Good morning.

2 A Good morning.

3 Q Ms. White, I'm going to ask you some questions.
4 There are no right or wrong answers to any of the
5 questions, we just want you to be completely honest with
6 us in your responses.

7 A Okay.

8 Q You are under oath, you wore sworn in yesterday
9 with the rest of the jurors. Since you received your
10 summons to come here for jury service, has anybody talked
11 to you about this case?

12 A No.

13 Q Have you talked to anybody about the case?

14 A No.

15 Q Do you know anything about this case other than
16 what I told you yesterday?

17 A No.

18 Q I called out a list of names yesterday of people
19 who could be witnesses in this case, did you know any of
20 those people?

21 A No, I did not.

22 Q Have you formed or expressed any opinion about
23 this case?

24 A No, I have not.

25 Q Do you have any bias or prejudice against the

1 prosecutors for bringing this case?

2 A No.

3 Q Or against the defendant just because he is the
4 defendant in the case?

5 A No, I do not.

6 Q Do you know of any reason why you could not be
7 fair and impartial to both the state of South Carolina and
8 the defendant, Mr. Rogers?

9 A No.

10 Q Can you and will you follow the law as instructed
11 to you by the court?

12 A Yes.

13 Q Yesterday I told you and the other jurors that
14 Mr. Rogers has already been convicted of murder in a prior
15 proceeding. The purpose of this trial is to determine
16 what the punishment ought to be. Either life in prison
17 without parole or the death penalty.

18 The jury will have the opportunity in this case to
19 hear mitigating and aggravating circumstances, have the
20 opportunity to consider testimony and evidence and
21 exhibits. All of which is intended to help the jury
22 decide what the punishment ought to be. Life in prison or
23 the death penalty.

24 Now you've had the opportunity back in the jury room
25 to look over the form that had on it the three types of

1 jurors. Which one of those three do you think best
2 describes you as a potential juror?

3 A The third type.

4 Q That's a juror who will keep an open mind and
5 listen to everything before deciding on punishment?

6 A Yes.

7 Q Will you keep an open mind?

8 A Yes.

9 Q And listen to all the evidence that's presented
10 in this trial before you make up your mind between a life
11 sentence and the death penalty?

12 A Yes, I will.

13 Q If you sat on a case like this, and I'm not
14 talking about this case because you have not heard the
15 facts in this case. But if you sat on a case such as
16 this, where you had to make the same kind of decision.
17 You and the other jurors sat and listened to everything
18 with an open mind and after thoughtfully and thoroughly
19 considering everything all of you decided that the death
20 penalty was the appropriate punishment. If that was your
21 choice, would you be able to sign a verdict form, along
22 with the other jurors, saying that was your verdict, if it
23 was?

24 A Yes.

25 Q Would you be able to come out here into open

1 court and stand up and say that was your verdict?

2 A Yes.

3 Q If it was?

4 A Yes, sir.

5 Q Would you be able to do those things, Ms. White,
6 knowing that eventually that is going to result in the
7 execution of a defendant?

8 A Yes.

9 Q Do you have any strong feelings or beliefs that
10 will interfere with your choice between a life sentence or
11 the death penalty?

12 A No, I do not.

13 Q Do you understand, Ms. White, and will you
14 remember that it is a vital, important part of this
15 process that each juror keep an open mind and listen to
16 everything that is presented before deciding on the
17 punishment?

18 A Yes.

19 Q Also part of this process is the requirement that
20 the jurors who are picked have to stay with us while the
21 case is being tried. That means, you will be sequestered
22 and housed at county expense while this case is being
23 tried. Understanding that that's a hardship on everybody,
24 can you make arrangements to stay with us while this case
25 is being tried?

1 A Yes, I could.

2 Q And you've thought about that and you're
3 comfortable that you can make those arrangements?

4 A Yes.

5 THE COURT: Okay. Answer any questions Mr. Bailey
6 might have. Thank you, ma'am.

7 MR. BAILEY: May it please the Court?

8 DIRECT EXAMINATION BY MR. BAILEY:

9 Q Ms. White, I'm Walter Bailey, I want to ask a few
10 more questions.

11 A Okay.

12 Q And, before yesterday when you found out that you
13 might be a juror on a case where the state's seeking the
14 death penalty, had you ever really thought about the death
15 penalty?

16 A Yes.

17 Q Okay. And I guess you've had a chance since
18 yesterday to think about it in more depth and detail since
19 you're in the position you're in now, where you may get on
20 this jury?

21 A Yes.

22 Q Okay. And you've indicated to the judge that you
23 have no strong personal feelings in regard to the death
24 penalty one way or the other; is that correct?

25 A That's correct.

1 Q Okay. And you understand that in South Carolina,
2 unlike some other states, possibly, the judge does not
3 decide what the sentence is going to be when the state
4 seeks the death penalty for a convicted murderer?

5 A Yes.

6 Q That the jury makes that decision. And whatever
7 the jury decides the sentence ought to be, will be the
8 sentence of the court, that sentence will be carried out.

9 A Yes.

10 Q And nobody is going to ask you for a prediction
11 of what you'd do in this case, because you said you wanted
12 to hear all the facts and the law before you made up your
13 mind. But if the case is bad enough, could you vote to
14 impose the death penalty, knowing that sentence would
15 actually be carried out?

16 A Based on facts, yes.

17 Q Okay. And if the other 11 jurors joined you in
18 that vote and all 12 voted unanimously for the death
19 penalty, then the next thing that would happen would be
20 each juror would be asked to sign their name to a death
21 verdict form that would result in that person being
22 executed.

23 A Yes.

24 Q Could you sign that paper if you'd already voted,
25 along with the other jurors, for the death penalty?

1 A Yes.

2 Q And you've also indicated you could stand up and
3 announce that verdict in open court. Is that correct?

4 A That's correct.

5 MR. BAILEY: That's all I have. Thank you very much.

6 THE COURT: Mr. Leiendecker or Mr. Runyon.

7 MR. LEIENDECKER: No questions.

8 MR. RUNYON: No questions.

9 THE COURT: Okay, Ms. White, I have a matter I need to
10 take up with the attorneys, would you please step back
11 into the back.

12 (Juror excused from courtroom.)

13 THE COURT: What says the state?

14 MR. BAILEY: Qualified, Your Honor.

15 THE COURT: Defense?

16 MR. RUNYON: Obviously qualified, Judge.

17 THE COURT: She is a qualified number three juror,
18 bring her back in.

19 (Juror brought into courtroom.)

20 THE COURT: Ms. White, I find that you are a qualified
21 juror. That means you are in the group from which the
22 panel will be selected.

23 You need to call this number between one and two
24 o'clock this afternoon. There will be a message on there
25 that will tell you what time you need to come back up here

1 or what time you need to call back. Please follow those
2 instructions. I anticipate that at some point the message
3 is going to be to come back up here tomorrow and we will
4 select the 14 jurors who will stay with us and be
5 sequestered.

6 Between now and then don't talk to anybody about the
7 case. Don't let anybody talk to you about the case.
8 Don't read the newspaper about this case and certainly
9 don't listen to any radio or television reports that might
10 be about this case. You have to be able to decide this
11 case based on what you hear in the courtroom and not
12 something outside of here. Do you understand?

13 JUROR: Yes, I do.

14 THE COURT: When you are summoned to come back up
15 here, that is, when the message says come back up, have
16 your suitcase packed and in your car and be prepared to
17 stay with us for up to five days while this case is being
18 tried. Understand?

19 JUROR: Yes.

20 THE COURT: All right. Any questions?

21 JUROR: No questions.

22 THE COURT: All right, thank you, ma'am, you are
23 excused.

24 (Juror excused.)

25 THE COURT: Michael Hillery, please.

1 (Juror brought into courtroom.)

2 EXAMINATION BY THE COURT:

3 Q Mr. Hillery, have a seat, please, sir. Good
4 morning.

5 A Good morning.

6 Q Mr. Hillery, I'm going to ask you some
7 questions. There are no right or wrong answers to any of
8 the questions, we just want you to be completely honest
9 with us in your responses.

10 A Yes, sir.

11 Q Since you received your summons to come here for
12 jury service, has anybody talked to you about this case?

13 A No, sir.

14 Q Have you talked to anybody about the case?

15 A No, sir.

16 Q Do you know anything about this case other than
17 what I told you yesterday?

18 A No, sir.

19 Q Yesterday I called out a list of potential
20 witnesses, that is, people who could testify in this
21 trial.

22 A Yes, sir.

23 Q Did you know any of those people?

24 A Just one.

25 Q Who was that?

1 A George -- Jeff Rogers.

2 Q Would the fact that you know Mr. Rogers have any
3 affect on your ability to be fair and impartial in this
4 case?

5 A No, sir, he was just my teacher at Trident.

6 Q All right, sir. Have you formed or expressed any
7 opinion about this case?

8 A No, sir.

9 Q Do you have any bias or prejudice against the
10 prosecutors for bringing this case? Or against the
11 defendant just because he is the defendant in the case?

12 A No, sir.

13 Q Do you know of any reason why you could not be
14 fair and impartial to both the state of South Carolina and
15 the defendant, Mr. Rogers?

16 A No, sir.

17 Q Can you and will you follow the law that is
18 instructed to you by the court?

19 A Yes, sir.

20 Q Yesterday you were told, along with the rest of
21 the panel, that the defendant in this case, Mr. Rogers,
22 has already been convicted of murder in another
23 proceeding.

24 A Yes, sir.

25 Q The purpose of this trial is to determine the

1 punishment, life in prison without parole or the death
2 penalty.

3 A Yes, sir.

4 Q The jury's going to hear testimony and evidence
5 and consider mitigating and aggravating circumstances, all
6 of which will be presented to you to help the jury decide
7 on the appropriate punishment, life in prison or the death
8 penalty.

9 Now you've had the opportunity back in the jury room
10 to look over that form that had on it the three types of
11 jurors. Which one of those three do you think best
12 describes you as a potential juror?

13 A It's kind of a cross between one and three.

14 Q All right, sir, tell me what you mean by that,
15 please, sir?

16 A Well, I'm a strong believer in the death penalty,
17 I don't think it's used enough. But, there's, you know,
18 it's -- it's a very permanent solution. And, I feel that,
19 you know, if there are some mitigating circumstances, you
20 know, you'd have to just check that out.

21 Q All right. Well let me ask you this then. Will
22 you always, in a case, give the death penalty in every
23 instance? That's what a number one says. It says every
24 time somebody's convicted of murder they're going to get
25 the death penalty.

1 A That's why I said it was a cross between one --
2 one and three. Not necessarily -- I would lean towards
3 it. But I would listen.

4 Q Would you listen to everything that was presented
5 in that proceeding before you decide on the punishment?
6 Or are you going in with a preconceived leaning to the
7 death penalty or a preconceived decision of the death
8 penalty and have to be persuaded away from it?

9 A Yeah, I believe that would be the way I would go.
10 A lot of the defenses now are coming up with abuse of his
11 childhood. And that to me is not -- not a viable defense.

12 Q Okay, would it be fair to say, then, that you are
13 not going into a proceeding such as this with an open
14 mind?

15 A Not wide open maybe.

16 Q All right. Well, explain that to me, please,
17 sir?

18 A Well, I mean, like I said, I -- I -- I believe in
19 an eye for an eye a tooth for a tooth. You know,
20 self-defense obviously -- well, that would not be murder
21 anyway. I'm trying to think of how -- a good way to
22 explain it. I -- I would -- I would lean towards the
23 death penalty in a murder case. If I -- if there was
24 something that was very compelling that sort of made a
25 reason for it, and, you know, I don't -- I don't think

1 there's very many reasons to kill somebody.

2 Q So your leaning is going to be -- you'll be
3 leaning toward a death penalty in any case that you serve
4 as a juror---

5 A If -- if -- if it's been decided---

6 Q You'd have to be persuaded otherwise?

7 A Yes, sir.

8 THE COURT: All right, sir. Answer any questions the
9 solicitor may have for you. Mr. Bailey.

10 DIRECT EXAMINATION BY MR. BAILEY:

11 Q Mr. Hillery, I'm Walter Bailey and I'll be
12 prosecuting this case.

13 A Yes, sir.

14 Q And there are no right or wrong answers, we just
15 need to know what your true thoughts are on the death
16 penalty. And you've indicated that you would kind of lean
17 toward the death penalty; is that correct?

18 A Yes, sir.

19 Q Having heard nothing other than the fact that
20 you're dealing with an accused murderer?

21 A Right.

22 Q Okay. Now, as Judge Whetstone pointed out to
23 you, I believe, today and yesterday in front of all the
24 potential jurors, the purpose of this proceeding is to
25 have -- to have evidence introduced, evidence and

1 aggravation from the state, in which we would be trying to
2 convince the jury that the death penalty was the
3 appropriate sentence.

4 The defense, if it wishes, can introduce evidence in
5 mitigation. And they can then argue for a life sentence.

6 And, after all that happens Judge Whetstone would tell
7 the jury what the law is. And the jury would then be told
8 to apply the law as the judge gives it to you to the facts
9 as you found those facts to be from the witness stand and
10 then make a decision, in this case either life without
11 parole or the death penalty.

12 Now, if you are picked as a juror in a case of this
13 type, would you have your mind made up, before you heard
14 the first word, that you were going to vote for the death
15 penalty no matter what? Or on the other hand, would you
16 want to wait, listen to all the facts that came out,
17 listen to the people that testified and look at the
18 exhibits, hear the judge tell you what the law is and then
19 make up your mind?

20 A You -- I feel you would have to do that. You'd
21 have to wait and hear everything before you can fully make
22 up your mind.

23 Q So you would not have your mind made up until you
24 heard everything?

25 A Absolutely not.

1 Q And, if the case was bad enough, could you vote
2 for the death penalty?

3 A Yes, sir.

4 Q And on the other hand, if you felt, for whatever
5 reason, that based on what you heard, a life sentence was
6 the appropriate sentence, could you also vote for a life
7 sentence?

8 A If there was compelling or reasons, yes, I could.

9 Q Okay. And, you understand that the judge -- one
10 of his responsibilities is to tell the jury what the law
11 is?

12 A Yes.

13 Q And would you listen to the judge as he instructs
14 you what the law was if you were a juror?

15 A Absolutely.

16 Q Okay. And if part of what the judge told you was
17 that the defense had no burden of proof, at all, would you
18 follow that instruction of the judge?

19 A I would follow his instructions, I'm not sure I
20 would understand that one.

21 Q Okay. But you would try to listen to it and
22 follow those instructions?

23 A Yes, sir.

24 Q I notice that you'd served on a criminal jury
25 back in 1977. Was that here in South Carolina?

1 A No, that was in Virginia.

2 Q In Virginia, okay. What -- what kind of case was
3 that?

4 A A mail fraud, as I -- as I recall.

5 Q Okay. All right. So, to kind of sum it up, you
6 started off saying you were a cross between a number one
7 and a number three. Where would you put yourself now, now
8 that you've had a chance to talk to the judge a little bit
9 and talk to me a little bit; the number one juror that is
10 always going to vote for the death penalty, that wouldn't
11 even need to listen to testimony or the number three juror
12 that, you know, you're not born in a vacuum, but you --
13 you would be willing to listen to all the testimony and
14 then make up your mind one way or the other?

15 A Well, if you cut it down to black and white I'd
16 have to go with three.

17 MR. BAILEY: Thank you. That's all I have at this
18 time, Mr. Hillery.

19 THE COURT: Mr. Runyon.

20 CROSS-EXAMINATION BY MR. RUNYON:

21 Q Mr. Hillery?

22 A Yes, sir.

23 Q As -- as Mr. Bailey said, there are no right or
24 wrong answers, you're being fairly candid with us. And,
25 you don't know us and we're asking you all these

1 questions. So I apologize for imposing on you a little
2 bit -- a little while longer.

3 A No problem.

4 Q As a practical matter, I believe you testified
5 that you're a very strong proponent or believer in the
6 death penalty?

7 A Yes, sir.

8 Q And that if there's some compelling reasons shown
9 why it shouldn't be imposed you -- you -- you could vote
10 for a life sentence?

11 A It would have to be compelling but, yes, I could.

12 Q And -- and someone would have to show you,
13 otherwise you would vote, all the time, for -- for the
14 death penalty; correct?

15 A I believe so.

16 MR. RUNYON: No further questions.

17 THE COURT: Anything further from the state?

18 REDIRECT EXAMINATION BY MR. BAILEY:

19 Q Yes, sir. Just to try to clarify that last
20 point. I'd asked you earlier about your ability to listen
21 to the judge tell you what the law is and your ability to
22 be able to follow what the judge told you. And I realize
23 these are kind of new concepts, you're not a lawyer and
24 all that. But, if Judge Whetstone instructs you that the
25 defendant has no burden of proof, would you follow that

1 instruction to the best of your ability?

2 A To the best of my ability, I would.

3 Q Okay. And would you base your decision, life
4 without parole or the death penalty, based on all of the
5 evidence you heard and all the law that the judge gave you
6 at the end of a trial?

7 A Yes.

8 MR. BAILEY: Thank you, sir, that's all I have.

9 THE COURT: Anything further Mr. Runyon?

10 MR. RUNYON: Nothing further, Your Honor.

11 THE COURT: Okay, I have a matter I need to take up
12 with the attorneys, would you step back in the back,
13 please, sir.

14 (Juror excused from courtroom.)

15 THE COURT: What says the state?

16 MR. BAILEY: Your Honor, I would contend he is
17 qualified, if the Court would indulge me a second I'd like
18 to cite a couple of cases that I think are pretty much on
19 point with respect to this particular juror.

20 THE COURT: Yes, sir.

21 MR. BAILEY: The first one is State versus Ricky
22 George, that's a case that just came out in September of
23 this year. In that case the juror was properly qualified
24 even though he initially stated that he could not vote for
25 life if he found an aggravating circumstance.

1 We'd also cite State versus James Payne, a 1988 South
2 Carolina decision. That stated, the trial judge did not
3 err in qualifying a juror who stated that mitigating
4 circumstances of age and background would make no
5 difference to him when all the other pertinent questions
6 were answered directly.

7 And I would also cite, of course, Wainwright versus
8 Witt and Ross versus Oklahoma. Excuse me. Strike that.
9 I'd also cite State versus Pee Wee Gaskins, which -- one
10 juror was qualified in that case that knew about Gaskins
11 prior murder convictions. And had formed an opinion that
12 he should've received the death penalty on the prior
13 murder convictions. The court held that he was properly
14 qualified because he had no preconceived opinions on the
15 present case.

16 I would also cite, finally, State versus Donald Jones,
17 a 1989 South Carolina case. It held that a juror was
18 properly qualified when the juror had heard about the
19 defendant's original death penalty who had -- and who had
20 agreed with that original penalty, this was a resentencing
21 trial, but stated they could keep an open mind in this
22 case.

23 Your Honor, Mr. Hillery, when I compared him with
24 Mr. Snider, who was -- initially said he was a number two
25 type juror but was ultimately qualified. Snider was a

1 life prone juror who could listen to the evidence and vote
2 either way depending on what he heard. And, Mr. Hillery
3 is a death prone juror who could listen to all the
4 evidence and vote either way depending upon what he heard.

5 Your Honor, anticipating Mr. Runyon getting up here
6 and arguing that Mr. Hillery would impose some kind of a
7 burden on the defendant, of course, Mr. Hillery also said
8 he could listen to the Judge's instructions, as far as
9 burden of proof, and could and would attempt to follow
10 those instructions.

11 And I would contend it's kind of unfair to -- to kind
12 of ask these jurors whether or not the defendant ought to
13 have a burden when they haven't been instructed on that.

14 I think that -- again, comparing his situation with
15 Mr. Snider's situation, Snider's life prone, he's
16 qualified, Mr. Hillery's death prone, he's qualified,
17 because both said they could listen to all the evidence
18 and make a decision accordingly.

19 THE COURT: Yes, sir.

20 MR. RUNYON: Your Honor, I'm glad Mr. Bailey made my
21 argument for me. But as a practical matter, I think
22 Mr. Hillery is -- when you boil it down to -- in fact, he
23 very candidly, and I must say very admirably, has come in
24 here with all candor and said, I believe the death penalty
25 ought to be imposed, I don't believe it's used enough.

1 And if you show me a reason not to do it, then I won't do
2 it. And I can impose a life sentence. But I've got to be
3 shown a reason not to do it. That -- that's basically
4 what he -- what he -- what he said.

5 I -- I think that, as a practical matter, that's --
6 that's a number one juror who -- let's face facts, all
7 these jurors are trying to be honest and candid when they
8 come in here, at least most of them do.

9 And he's trying to honestly tell the court, look, this
10 is the way I really feel, I think the death penalty ought
11 to be imposed, if you can tell me why not, show me a
12 reason not to, then I won't do it. But until that time
13 I'm going to vote for the death penalty on every single
14 occasion. He's very honestly told us that. And I think
15 he's a number one type jury. He's not just death prone, I
16 mean, he's -- he's death qualified.

17 In contrast to No. 252, Your Honor, who was -- who was
18 let in, Mr. Stewart. I think if you -- I hate to make
19 this kind of argument, but if you contrast the two jurors,
20 where Mr. Stewart had some very serious feelings about the
21 death penalty, but he didn't go as far as Mr. Hillery did.
22 I think Mr. Stewart's the -- the end of the spectrum and
23 thereafter you kind of cross the line in being not just
24 death qualified but you're death prone. Absolutely.

25 MR. BAILEY: Your Honor, being -- being death prone

1 has never been a disqualification, there are numerous
2 cases saying a death prone juror can be qualified, as long
3 as they're willing to listen to all the evidence, the law
4 and can fairly consider Your Honor's---

5 THE COURT: Mr. Hillery's responses are similar to
6 those of Mr. Stewart who is a qualified juror.
7 Mr. Hillery says he's a one and a three, but the more he
8 is questioned the more he is a number three. He's a
9 qualified juror. He will base his response on his
10 opinions on everything that's presented. And I qualify
11 him given the totality of his responses, I think he -- his
12 saying that something has to be shown to him to convince
13 him is just his way of expressing himself. I think under
14 instruction from the court he will follow the court's
15 instructions, whatever they are, and I think he is a
16 qualified juror and he is qualified. Bring him in,
17 please.

18 (Juror brought into courtroom.)

19 THE COURT: Mr. Hillery, I find that you are qualified
20 to serve on this jury panel, that doesn't mean you're on
21 the jury yet, it means you're in the group from which the
22 jury will be selected.

23 You need to call this number between one and
24 two o'clock today. There will be a message on there that
25 will tell you what time to call back or what time to come

1 back up here.

2 Between now and then, that is, between now and the
3 time you come back up here, don't talk to anybody about
4 this case. Don't let anybody talk to you about the case.
5 Don't read the newspaper about this case and don't listen
6 to any radio or television reports about the case. You
7 have to be able to decide the case based on what you hear
8 in the courtroom and not something outside of here. Do
9 you understand?

10 JUROR: Yes, sir.

11 THE COURT: When you do get the instruction to come
12 back up here, and you will probably have to come back up
13 here sometime tomorrow, come up here prepared to stay with
14 us for at least five days while this case is being tried,
15 so have your suitcase in your car and be packed and ready
16 to stay. Can you make those arrangements?

17 JUROR: The one problem I'm running into, I'm supposed
18 to leave the country on Wednesday morning.

19 THE COURT: That's tomorrow morning or next---

20 JUROR: No, next Wednesday.

21 THE COURT: Then you should be fine. Should be fine.
22 I anticipate five to seven days at the outside. And I
23 think we'll be through by next Wednesday. All right, sir,
24 so other -- other than the problem next Wednesday you have
25 no problem making those arrangements?

1 JUROR: No, sir.

2 THE COURT: All right, sir. Do you understand these
3 instructions?

4 JUROR: Yes, sir.

5 THE COURT: All right, sir. Thank you, sir, you're
6 excused.

7 (Juror excused.)

8 THE COURT: Let's take about five minutes at this
9 point. Also, given -- how many do we have now?

10 MR. BAILEY: Twenty-four, Your Honor.

11 MR. RUNYON: Twenty-four.

12 THE COURT: Twenty-four?

13 MR. LEIENDECKER: Yes.

14 THE COURT: Do you think it's safe to tell these
15 jurors to come back at 9:30 in the morning to strike at
16 that time or nine o'clock, whatever suits y'all?

17 MR. BAILEY: I -- I -- I think so.

18 MR. RUNYON: Your Honor, I could not anticipate,
19 looking at the list, I mean, of course, it depends upon
20 the jurors' responses. But I can't anticipate that we
21 couldn't get another 12 or 13 folks out of -- or 14 folks
22 out of this---

23 THE COURT: The 30 or so we've got left.

24 MR. RUNYON: The 30 or so we've got left for today.

25 THE COURT: Nine o'clock in the morning suit you,

1 Solicitor, or 9:30?

2 MR. BAILEY: Nine o'clock.

3 THE COURT: Nine o'clock?

4 MR. RUNYON: Nine o'clock, Judge, I get up early
5 anyway.

6 THE COURT: All right, let's take a five minute break
7 and we'll go ahead and go on.

8 (Brief recess was taken.)

9 THE COURT: State ready?

10 MR. BAILEY: State's ready, Your Honor.

11 THE COURT: Defendant ready?

12 MR. RUNYON: Yes, Your Honor.

13 THE COURT: Now that the temperature is up to about 80
14 degrees, we'll let it stay on for a little while and we'll
15 cut the air conditioner on if it doesn't soon cool off.
16 All right, bring in the next juror, who will be Sandra
17 Stevenson.

18 MR. BAILEY: William Helwig, I think.

19 THE COURT: Oh, excuse me, I skipped over him. Yeah,
20 William Helwig. Thank you. Helwig, No. 45.

21 (Juror brought into courtroom.)

22 EXAMINATION BY THE COURT:

23 Q Have a seat right here, please, sir. Mr. Helwig,
24 I'm going to ask you some questions. There are no right
25 or wrong answers to any of the questions, we just want you

1 to be completely honest with us in your responses.

2 A Okay.

3 Q You are under oath, you were sworn in yesterday
4 with the rest of the panel. Since you received your
5 summons to come here for jury service, has anybody talked
6 to you about this case?

7 A No.

8 Q Have you talked to anybody about this case?

9 A No. My wife asked which case it was, she had
10 read that it may be this case. And I told her yes, it was
11 and that I could discuss nothing else on it.

12 Q Okay. Do you know anything about this case other
13 than what I told you yesterday?

14 A I remember when it happened and read about it in
15 the newspapers at that time.

16 Q Would the fact that you read something about it
17 before coming here for the trial have any affect on your
18 ability to be fair and impartial?

19 A No.

20 Q Yesterday I called out a list of people who could
21 be witnesses in this case, did you know any of those
22 people?

23 A Witnesses, no.

24 Q Have you formed or expressed any opinion about
25 this case?

1 A No.

2 Q Do you have any bias or prejudice against the
3 prosecutors for bringing the case? Or against the
4 defendant just because he is accused in the case?

5 A No.

6 Q Do you know of any reason why you could not be
7 fair and impartial to both the state of South Carolina and
8 the defendant, Mr. Rogers?

9 A No.

10 Q Can you and will you follow the law as instructed
11 to you by the court?

12 A Yes.

13 Q Now yesterday you and the rest of the jury panel
14 were all told that Mr. Rogers has already been convicted
15 of murder in a prior proceeding. The purpose of this
16 trial is to determine the punishment, life in prison
17 without parole or the death penalty.

18 Now the jury's going to hear mitigating and
19 aggravating circumstances, the jury will hear testimony,
20 consider evidence and look at exhibits that might be
21 presented. All of which will be presented to the jury to
22 assist the jury in deciding what the punishment should be,
23 life in prison or the death penalty.

24 Now you've had the opportunity back in the jury room
25 to look over the form that had on it the three types of

1 jurors. Which one of those three do you think best
2 describes you as a potential juror?

3 A The third.

4 Q That's a juror who will keep an open mind and
5 listen to everything before deciding on the punishment?

6 A Yes.

7 Q If you sat as a juror in a case like this, not
8 this case because you don't know anything about this case
9 yet, but in general. If you sat on such a case and you
10 listened to everything that was presented. And after
11 thoughtfully and thoroughly considering all the evidence,
12 you and all the other jurors on that jury, decided that
13 the death penalty was the appropriate punishment. If that
14 was your choice, would you be able to sign your name to a
15 form, a verdict form, that said that was your choice, if
16 it was?

17 A Yes.

18 Q Would you be able to come in here in open court
19 and stand up and say that was your verdict, if it was?

20 A Yes.

21 Q Would you be able to do those things knowing that
22 that's going to eventually result in the execution of a
23 defendant?

24 A Sadly, but yes.

25 Q Do you understand, Mr. Helwig, and will you

1 remember, that it is a vital and important part of this
2 process that each juror keep an open mind and listen to
3 everything that is presented before deciding on
4 punishment?

5 A Yes.

6 Q And will you do that?

7 A Yes.

8 Q Also a part of this process is the fact that the
9 jurors who are selected on the jury have to stay and be
10 sequestered while this case is being tried. If you are
11 picked on the jury, can you make arrangements to stay with
12 us for up to five days while this case is being tried?

13 A Yes.

14 Q You've thought about that and you're sure that
15 you can make those arrangements?

16 A Yes.

17 THE COURT: All right, sir. Answer any questions the
18 solicitor might have, please, sir. Thank you.

19 DIRECT EXAMINATION BY MR. BAILEY:

20 Q Mr. Helwig, I'm Walter Bailey, I just have a few
21 questions, I think Judge Whetstone asked pretty much all
22 of the questions that I would've asked. But do you
23 understand that in South Carolina the jury and not the
24 judge makes the sentencing decision when the state seeks
25 the death penalty when someone's already been convicted of

1 murder?

2 A Yes.

3 Q So whatever the jury decides the sentence ought
4 to be will be the sentence of the court and that sentence
5 will be carried out?

6 A Okay, yes.

7 Q And nobody's going to ask you for a prediction of
8 what you would do in this case if you're picked on this
9 jury, because you haven't heard any of the facts yet and
10 you've indicated you'd want to hear all of those facts
11 before you decided.

12 A That's correct.

13 Q But if the facts were bad enough, could you vote
14 for the death penalty?

15 A Yes.

16 Q And if the other 11 jurors felt the same way
17 could you and the other jurors -- along with the other
18 jurors sign your name to a death verdict form that would
19 result in that execution taking place at some point?

20 A Yes.

21 Q And could you stand up in open court and announce
22 that verdict if that was your verdict?

23 A Yes.

24 MR. BAILEY: Mr. Helwig, that's all I've got. Thank
25 you very much.

1 THE COURT: Mr. Runyon or Mr. Leiendecker.

2 MR. LEIENDECKER: Thank you.

3 CROSS-EXAMINATION BY MR. LEIENDECKER:

4 Q Mr. Helwig, Mark Leiendecker. You graduated from
5 Georgia Tech, what year was that?

6 A 1982.

7 Q Okay. And did you come to work at Westvaco after
8 that?

9 A Right, immediately upon graduation.

10 Q Okay. And do you work out at the -- the chemical
11 plant out on the Cooper River?

12 A I -- I work at the paper mill, the chemical plant
13 is part of that.

14 Q Okay. But you're connected with the -- with the
15 paper plant out there?

16 A I'm in the maintenance department with
17 supervision, I have actually both the chemical plant and
18 the paper mill.

19 Q Okay. And you are -- you are working with
20 your -- you're in that position because of your degree as
21 a chemical engineer?

22 A Mostly. In my position there's some degreed
23 engineers and some people who've advanced through the
24 ranks.

25 Q And had you lived in Chattanooga right up 'til

1 the time you went to college?

2 A Yes.

3 Q Okay. And then you---

4 A It was actually in North Georgia, the address was

5 Chattanooga, but it was a county adjacent to the state

6 line. But yes, I lived there my whole life.

7 Q So that was -- when you say Hamilton County, it's

8 Hamilton County, Georgia?

9 A It's Walker County, Georgia. Excuse me.

10 MR. LEIENDECKER: That's all right I just wanted to --

11 I thought Hamilton County was in Tennessee. I don't think

12 I have any other questions. Thank you.

13 THE COURT: Anything further, Solicitor?

14 MR. BAILEY: No, sir.

15 THE COURT: Mr. Helwig, I have a matter I need to take

16 up with the lawyers, would you please step back into the

17 back one more time.

18 (Juror excused from courtroom.)

19 THE COURT: What says the state?

20 MR. BAILEY: Qualified.

21 THE COURT: Defense?

22 MR. LEIENDECKER: He's qualified, Your Honor.

23 THE COURT: He's a qualified number three juror.

24 Bring him back in.

25 (Juror brought into courtroom.)

1 THE COURT: Mr. Helwig, I find that you are qualified
2 to serve on this jury. That doesn't mean you're on the
3 jury yet. It means you're in the group from which the
4 jury will be selected.

5 You need to be back up here tomorrow morning at
6 nine o'clock. Have your bags packed and in your car and
7 be prepared to stay with us for up to five days while this
8 case is being tried.

9 Between now and then don't talk to anybody about the
10 case, don't let anybody talk to you about the case. Don't
11 read the newspaper about this case and don't listen to any
12 radio or television reports that might be of this case.
13 You have to be able to decide this case based on the
14 evidence presented in the courtroom and not something
15 outside of here. Do you understand?

16 JUROR: Yes.

17 THE COURT: All right, sir, you are excused, please be
18 back at nine o'clock in the morning and be seated out here
19 where you were seated yesterday when you came and the
20 entire panel was here. All right, sir? Thank you, sir.

21 (Juror excused.)

22 THE COURT: Sandra D. Stevenson, please.

23 (Juror brought into courtroom.)

24 EXAMINATION BY THE COURT:

25 Q Ms. Stevenson, have a seat here, please.

1 Ms. Stevenson, I'm going to ask you some questions. There
2 are no right or wrong answers to any of these questions,
3 we just want you to be completely honest with us in your
4 responses.

5 Since you received your summons to come here for jury
6 service, has anybody talked to you about this case?

7 A No, sir.

8 Q Have you talked to anybody about this case?

9 A No, sir.

10 Q Do you know anything about this case other than
11 what I told you yesterday?

12 A No, sir.

13 Q Hadn't read about it or heard about it from
14 anywhere?

15 A No, sir.

16 Q Yesterday I called out a list of names of people
17 who could be witnesses in this case, did you know any of
18 those people?

19 A No, sir.

20 Q Have you formed or expressed any opinion about
21 this case or about the guilt -- excuse me, or about what
22 the punishment ought to be?

23 A No, sir.

24 Q Do you have any bias or prejudice against the
25 prosecutors for bringing this case?

1 A No, sir.

2 Q Or against the defendant just because he is the
3 defendant in a case?

4 A No, sir.

5 Q Do you know of any reason why you could not be
6 fair and impartial to both the state of South Carolina and
7 the defendant, Mr. Rogers?

8 A No, sir.

9 Q Can you and will you follow the law that is
10 instructed to you by the court?

11 A Yes, sir.

12 Q Yesterday I told you and the rest of the panel
13 that Mr. Rogers has already been convicted of murder in a
14 prior proceeding. The purpose of this trial is to
15 determine what the punishment ought to be, life in prison
16 without parole or the death penalty.

17 Now, in making that decision the jury's going to hear
18 mitigating and aggravating circumstances, you'll hear
19 testimony and evidence that'll be presented. From that
20 testimony the jury's going to decide on punishment, life
21 in prison or the death penalty.

22 Now you've had the opportunity back in the jury room
23 to look over this form that has on it the three types of
24 jurors. Which one of those three do you think best
25 describes you as a potential juror?

1 A Number two.

2 Q Number -- which one?

3 A Two.

4 Q Two? That's a juror who, in each case where

5 someone has been convicted of murder, will always give a

6 life sentence?

7 A Uh-huh.

8 Q So, it doesn't matter what the facts are or how

9 bad they might be, there's no circumstance that you can

10 think of where you would ever give anybody a death

11 penalty?

12 A No, sir.

13 Q You just couldn't consider that?

14 A Not killing nobody, no [sic].

15 Q Is that a belief that you've had for some time?

16 A Yes, sir.

17 Q And is that a religious belief or just some---

18 A Yes, sir.

19 Q That -- so you've had that belief for some time?

20 A (Nods head.)

21 THE COURT: All right. Answer any questions the

22 solicitor might have for you, please, ma'am. Thank you.

23 MR. BAILEY: One second, please, Your Honor.

24 (Counsels consulted.)

25 MR. BAILEY: No questions, Your Honor.

1 THE COURT: Mr. Runyon, any questions?

2 MR. LEIENDECKER; No, sir.

3 MR. RUNYON: No, sir.

4 THE COURT: Okay, Ms. Stevenson, I have a matter I
5 need to take up with the attorneys, would you step back
6 into the back again, please, ma'am.

7 (Juror excused from courtroom.)

8 THE COURT: What says the state?

9 MR. BAILEY: Not qualified, Your Honor.

10 THE COURT: Defense?

11 MR. LEIENDECKER: It's clear, Your Honor, for the
12 record, she's not qualified. We'd like to note that she
13 immediately, clearly and decisively answered the court
14 when asked about what type of juror she was, a number
15 two. Did not equivocate at all after that when given an
16 opportunity. When asked if there were any facts that
17 would ever be sufficient for her to give a death penalty,
18 she said, to paraphrase, that there's no way she could
19 ever kill somebody or vote to kill somebody.

20 She also explained to the court, as we would've tried
21 to inquire, that that was based on her personal, as well
22 as her beliefs grounded in her religion or faith. She
23 noted on her questionnaire that she is a -- a long time
24 member of the Bethel AME Church here in St. George and has
25 lived in St. George all of her life.

1 I don't think there's anything, based on her demeanor
2 and actions, that we could've done in questions that
3 would've changed or rehabilitated those responses, that's
4 why we didn't ask any questions, Your Honor.

5 THE COURT: Thank you, sir. Bring her back in,
6 please.

7 (Juror brought into courtroom.)

8 THE COURT: Ms. Stevenson, you are excused from
9 service on this jury. We appreciate you coming back up
10 here and participating, I appreciate your honest answers.
11 Thank you, ma'am.

12 (Juror excused.)

13 THE COURT: Gina Miller, please.

14 (Juror brought into courtroom.)

15 EXAMINATION BY THE COURT:

16 Q Ms. Miller, have a seat right here, please.
17 Ms. Miller, I'm going to ask you some questions. There
18 are no right or wrong answers to any of the questions, I
19 just want you to be completely honest with us in your
20 response. You are under oath, you were sworn in yesterday
21 with the rest of the panel.

22 Since you received your summons to come here for jury
23 service, has anybody talked to you about this case?

24 A No, sir.

25 Q Have you talked to anybody about the case?

- 1 A No, sir.
- 2 Q Do you know anything about this case other than
3 what I told you yesterday?
- 4 A Nothing at all.
- 5 Q Hadn't read or heard anything about it
6 whatsoever?
- 7 A Nope.
- 8 Q Yesterday I called out a list of names of people
9 who could be witnesses in this case, did you know any of
10 those people?
- 11 A No, sir.
- 12 Q Have you formed or expressed any opinion about
13 this case?
- 14 A Not yet, sir.
- 15 Q Do you have any bias or prejudice against the
16 prosecutors for bringing the case?
- 17 A No, sir.
- 18 Q Or against the defendant just because he is
19 accused in the case?
- 20 A No.
- 21 Q Do you know of any reason why you could not be
22 fair and impartial to both the state of South Carolina and
23 the defendant, Mr. Rogers?
- 24 A No, sir.
- 25 Q Can you and will you follow the law that is

1 instructed to you by the court?

2 A Yes, sir.

3 Q Yesterday, you, along with the rest of the panel,
4 were told that Mr. Rogers has already been convicted of
5 murder in a prior proceeding. The purpose of this trial
6 is to determine what the punishment ought to be. Either
7 life in prison without parole or the death penalty.

8 The jury has to decide on the punishment. The jury
9 will consider all the testimony and evidence that's
10 presented. And the mitigating and aggravating
11 circumstances. And after considering all that it's up to
12 the jury. The jury decides between a life sentence and
13 the death penalty.

14 Now you've had an opportunity back in the jury room to
15 look over the form that has on it the three types of
16 jurors. Which one of those three do you think best
17 describes you as a potential juror?

18 A The third juror.

19 Q That's a juror who will keep an open mind and
20 listen to everything before deciding on a punishment?

21 A Yes, sir.

22 Q Will you keep an open mind?

23 A Yes, sir.

24 Q And listen to everything before you decide
25 between a life sentence or the death penalty?

1 A Yes.

2 Q If you sat on a jury in a case like this, and I'm
3 not talking about this case, but in general. If you sat
4 on a case like this, as a juror, and listened to
5 everything that was presented, with an open mind. And
6 after considering everything you and all of the other
7 jurors decided that the death penalty was the appropriate
8 punishment. If that was your verdict, would you be able
9 to sign your name to a verdict form that said that was
10 your verdict, if it was?

11 A Yes, sir.

12 Q Would you also be able to come in here into open
13 court and stand up and if I asked you, was that your
14 verdict and is it still your verdict, would you be able to
15 tell me it was out here in front of everybody?

16 A Yes.

17 Q Would you be able to do those things knowing that
18 eventually that is going to result in the execution of a
19 defendant?

20 A Yes.

21 Q Do you have any strong feelings or beliefs that
22 would interfere with your choice between a life sentence
23 or the death penalty?

24 A No.

25 Q Now do you understand, Ms. Miller, and will you

1 remember, that it is a vital and important part of this
2 process that each juror keep an open mind and listen to
3 everything before deciding on the punishment?

4 A Yes.

5 Q And can you do that?

6 A Yes.

7 Q Also part of this process is that the jurors who
8 are selected on the jury have to stay with us and be
9 sequestered while the case is being tried. If you are
10 selected on the jury, can you make arrangements to stay
11 with us for up to five days while this case is being
12 tried?

13 A Yes.

14 Q You've thought about that and you can make those
15 arrangements?

16 A Yes.

17 THE COURT: Answer any questions the solicitor might
18 have. Thank you, Ms. Miller. Mr. Bailey.

19 DIRECT EXAMINATION BY MR. BAILEY:

20 Q Ms. Miller, I'm Walter Bailey, a few more
21 questions?

22 A Sure.

23 Q I notice on your questionnaire that you are a
24 full-time student and you work at Piggly Wiggly?

25 A Uh-huh.

1 Q But you've also told the judge that if you get
2 picked on this case, and you may be in a motel for the
3 rest of this week, it wouldn't be a problem as far as
4 school or work?

5 A No, it's not.

6 Q All right. And, you understand, from what
7 Judge Whetstone told you, that in South Carolina the judge
8 does not decide what the sentence is when the state seeks
9 the death penalty for a convicted murderer, the jury makes
10 that decision. And whatever the jury decides the sentence
11 ought to be, will be the sentence of the court and will be
12 carried out. Do you understand that?

13 A Yes, I understand.

14 Q Okay. And nobody's going to ask for you to
15 predict what you would do as a juror if you were picked on
16 this case, because you haven't heard any of the facts yet.
17 But if the case is bad enough, can you vote for the death
18 penalty?

19 A Yes, I can.

20 Q Knowing that sentence is going to be carried out?

21 A Yes.

22 Q And if you and the other 11 jurors, after hearing
23 all of the facts vote for the death penalty, could you
24 then sign your name to a death verdict form that's going
25 to result in that person being executed at some point?

1 A Yes.

2 Q And if you did both those two things, could you
3 stand up here in open court and announce that decision
4 when your name is called?

5 A Yes.

6 MR. BAILEY: Ms. Miller, that's all I've got, thank
7 you very much.

8 THE COURT: Mr. Leiendecker.

9 CROSS-EXAMINATION BY MR. LEIENDECKER:

10 Q Ms. Miller, you remember when you returned your
11 jury form to the clerk?

12 A (Nods head.)

13 Q Did you or -- or didn't you, I may be confused,
14 send them a -- a note or an explanation asking to be
15 excused because of your schooling?

16 A No, I did not.

17 Q You never requested to be let off of the jury
18 because you were a full-time student?

19 A No, I did not.

20 Q When are exams?

21 A I've exempted my exams. I don't have them. I
22 don't have school until January the 15th or something like
23 that.

24 Q Okay. It's obviously my clerical mistake and I
25 just wanted to make sure. So you're not in class right

1 now?

2 A No, sir.

3 MR. LEIENDECKER: Okay. That's all I'd have.

4 THE COURT: Anything further from the state?

5 MR. BAILEY: No, sir.

6 THE COURT: Okay, Ms. Miller, I need to talk to the
7 lawyers for just a minute, would you please step back into
8 the back.

9 (Juror excused from courtroom.)

10 THE COURT: What says the state?

11 MR. BAILEY: Qualified, Your Honor.

12 THE COURT: Defense?

13 MR. LEIENDECKER: She's qualified, Your Honor.

14 THE COURT: She's a qualified number three juror,
15 bring her back in, please.

16 (Juror brought into courtroom.)

17 THE COURT: Ms. Miller, I find that you are qualified
18 to serve on this jury panel, that doesn't mean you're on
19 the jury, it means you're in the group from which the jury
20 will be selected.

21 You need to be back up here at nine o'clock tomorrow
22 morning. Have your bags packed and have them in your car
23 and be prepared to stay with us for up to five days while
24 this case is being tried.

25 Between now and tomorrow morning don't talk to anybody

1 about the case. Don't let anybody talk to you about the
2 case. Don't read the newspaper about this case and don't
3 listen to any radio or television reports about the case.
4 You have to be able to decide this case based on what you
5 hear in the courtroom here and not something outside of
6 here. Do you understand?

7 JUROR: Yes, sir.

8 THE COURT: All right, any questions about these
9 instructions?

10 JUROR: No.

11 THE COURT: Come out here and sit on the same side of
12 the courtroom you did yesterday when you were here and
13 we'll start the jury selection process around nine
14 o'clock. Thank you, ma'am.

15 (Juror excused.)

16 THE COURT: Okay, Julia P. White.

17 (Juror brought into courtroom.)

18 EXAMINATION BY THE COURT:

19 Q Ms. White, I'm going to ask you some questions.
20 There are no right or wrong answers to the questions, we
21 just want you to be completely honest with us in your
22 responses. You are under oath, you were sworn in
23 yesterday with the rest of the panel.

24 A Yes.

25 Q Since you received your summons to come here for

1 jury service, has anybody talked to you about this case?
2 A No.
3 Q Have you talked to anybody about this case?
4 A No.
5 Q Do you know anything about this case other than
6 what I told you yesterday?
7 A Nothing.
8 Q You hadn't read or heard about it from anywhere?
9 A I heard about it on television, but that's --
10 that's it.
11 Q Would the fact that you heard something about
12 this case on television have any affect on your ability to
13 be fair and impartial in the case?
14 A No.
15 Q Can you decide the case based on what you hear in
16 the courtroom and not even consider what you heard on
17 television?
18 A Yes.
19 Q Yesterday I called out a list of names of people
20 who could be witnesses in this case, did you know any of
21 those people?
22 A Witnesses? No, no.
23 Q Okay.
24 A I don't know any of them.
25 Q Have you formed or expressed any opinion about

1 this case?

2 A No.

3 Q Do you have any bias or prejudice against the
4 prosecutors for bringing this case or against the
5 defendant just because he is the defendant in the case?

6 A No, I don't.

7 Q Do you know of any reason why you can't be fair
8 and impartial to both the state of South Carolina and the
9 defendant?

10 A I don't know of any reasons.

11 Q Okay. Can you and will you follow the law that
12 is instructed to you by the court?

13 A Yes.

14 Q Yesterday I told you and the rest of the jurors
15 that Mr. Rogers, the defendant in this case, has already
16 been convicted of murder. The purpose of this trial is to
17 determine what the punishment ought to be, either life in
18 prison without parole or the death penalty.

19 The jury decides on the punishment. So the jury is
20 going to hear and consider mitigating and aggravating
21 circumstances, consider whatever testimony is presented
22 and whatever other evidence or exhibits might come in
23 during this trial. After considering all of that the jury
24 decides on punishment, life in prison or the death
25 penalty.

1 Now you've had the opportunity back in the jury room
2 to look over this form that has on it the three types of
3 jurors. Which one of those three do you think best
4 describes you as a potential juror?

5 A Well, I can't say anything about it until I know
6 what was, you know, what the situation is.

7 Q No, I'm not asking you about this case. I'm
8 asking you about what type juror you would be. On this
9 form the first one is a juror who, when somebody is
10 convicted of murder, will always give a death penalty.

11 The second one is a juror who, when someone is
12 convicted of murder, will always give a life sentence.

13 And the third one is a juror who will listen with an
14 open mind to everything before deciding on the punishment.

15 Now which of those three do you think best describes
16 you? And I'm not asking you about this case yet, I'm
17 asking you in general.

18 A The third one.

19 Q You will be a juror who can keep an open mind and
20 listen to everything before deciding on a punishment?

21 A Yes.

22 Q So, what you're telling me then is that in some
23 cases if the facts are bad enough and the situation's bad
24 enough you could give a death penalty?

25 A No, I'm -- I'm not saying that, I'd have to hear

1 what's---

2 Q I'm not asking you about this case, I'm asking
3 you in general. Can you think of or do you think there's
4 a case bad enough where you would give a death penalty?
5 We aren't talking about this case, you don't know anything
6 about this case, I'm asking you in general.

7 A In general?

8 Q Yes, ma'am.

9 A If I could do that?

10 Q Yes, ma'am.

11 A I don't think I could do that.

12 Q Okay. Well if you sat on a jury in a case like
13 this and you listened to everything, not talking about
14 this case now, talking in general. And you sat over there
15 as a juror and you listened to everything. And after
16 considering everything you and the other jurors all
17 decided that the death penalty was the appropriate
18 punishment. If that was your verdict, could you put your
19 name or sign your name on a paper that said that was your
20 verdict, if it was?

21 A I don't think so.

22 Q Could you come out here into open court and stand
23 up and say that was your verdict, if it was?

24 A If -- and say that it's my verdict if it was?

25 Q If it was, yes.

1 A The death penalty?

2 Q Yes, ma'am.

3 A I don't think I could do that.

4 Q So, realizing that those two things are going to

5 result in the execution of a defendant you just couldn't

6 do that?

7 A No, I don't think I could live up to that.

8 Q So it doesn't matter how bad the situation might

9 be you're just never going to give a death penalty?

10 A I just -- I guess it's guilty. I'd feel guilty

11 about it, I guess.

12 Q Okay. And because of that you don't think you

13 could ever give a death penalty?

14 A I don't feel like I can.

15 Q Okay. Is that a -- a feeling or a belief that

16 you've had for some time?

17 A I've always believed that.

18 Q You've always believed that?

19 A Yes, I've always believed that.

20 Q So that -- that's something that you've lived by

21 for some time?

22 A Yes, yes.

23 Q That is, you don't believe in the death penalty?

24 A No, I don't.

25 THE COURT: Answer any questions the solicitor might

1 have, please, ma'am. Thank you.

2 MR. BAILEY: One moment.

3 (Counsels consulted.)

4 MR. BAILEY: No questions, Your Honor.

5 THE COURT: Questions, Mr. Runyon?

6 MR. RUNYON: No questions, Your Honor.

7 THE COURT: Okay, Ms. White, I need for you to step

8 back into the back for just a minute, please, ma'am.

9 (Juror excused from courtroom.)

10 THE COURT: What says the state?

11 MR. BAILEY: Not qualified, Your Honor.

12 THE COURT: Defense?

13 MR. RUNYON: Your Honor, obviously, under the law

14 she's not qualified. This lady apparently is very sincere

15 and would be a fair juror, I'm sure she'd listen to both

16 sides, but based on her demeanor on the stand there's just

17 no way we could qualify her as a number three juror.

18 Based on her responses and her demeanor on the stand.

19 THE COURT: Okay, she's clearly not a number three

20 like she said she was, she is a number two who will never

21 give a death penalty under any circumstances. Bring her

22 back in, please.

23 (Juror brought into courtroom.)

24 THE COURT: Ms. White, you are excused from service on

25 this jury, we appreciate you coming back up here and

1 participating and thank you for your honest responses.

2 Thank you, ma'am, I appreciate it.

3 (Juror excused.)

4 THE COURT: Bring in Edward Phillips, please.

5 (Juror brought into courtroom.)

6 EXAMINATION BY THE COURT:

7 Q Mr. Phillips, come right here and have a seat,
8 please, sir. Mr. Phillips, I'm going to ask you some
9 questions. There are no right or wrong answers to any of
10 the questions, you just need to be completely honest with
11 us in your responses. All right, sir?

12 A Yes, sir.

13 Q You are under oath, you were sworn in yesterday
14 with the rest of the panel.

15 A Yes, sir.

16 Q Since you received your summons to come here for
17 jury service, has anybody talked to you about this case?

18 A No.

19 Q Have you talked to anybody about this case?

20 A No.

21 Q Do you know anything about this case other than
22 what I told you yesterday?

23 A No.

24 Q You hadn't ever read or heard anything about it
25 or seen it on TV or anything?

1 A Well, the day before -- let me see, Friday after
2 Thanksgiving, I had a fellow that was working at my
3 house. And, I mentioned to him, I said, you know, I got
4 jury duty. I'd never been here before. Then he goes
5 what's it about? He goes, what do you think it is? I
6 said, I don't know. He mentioned what transpired, that he
7 went through some things and said this and said that and
8 said that. But still I remember back when the incident
9 happened, but I didn't know the individual personally
10 involved. All I knew was what was basically said and
11 stuff like that.

12 Q All right. Well, based on what he told you this
13 past Friday, given all that information he gave you about
14 that incident, do you think you're going to be able to be
15 fair and impartial in this case?

16 A Well, let me say it like this, I'm a strong
17 religious man. In the first place I don't feel as if I
18 can judge an individual. The Bible says judge not for the
19 same merits that you judge you will be judged accordingly.
20 And, I believe that for me to sit in judgment -- the man
21 has already been tried, is that right?

22 Q Yes, sir. He's already been convicted of
23 murder.

24 A That is correct. Okay, so, if he's been already
25 convicted of murder what am I doing here?

1 Q The purpose of having a jury in this case is to
2 decide on punishment, life in prison without parole or the
3 death penalty.

4 A Well, see now you're getting into something
5 that -- I don't believe in capital punishment.

6 Q That's a belief you've had for some time?

7 A I've always believed like that.

8 Q So there's no circumstance that you can think of
9 where you would ever give a death penalty?

10 A Under any circumstances I wouldn't do it.
11 Because see, for me to give a person -- I've got to live
12 with that. Do you understand what I'm saying?

13 Q Yes, sir, I understand exactly what you're
14 saying.

15 A Now, I don't see where it was justified. I mean,
16 I understand what he did, whatever happened there, the man
17 is found guilty. But there's still -- my responses to
18 this, for a person to receive the death penalty, it's not
19 going to bring this individual back.

20 THE COURT: All right, sir. Thank you, sir. Answer
21 any questions the solicitor might have. Mr. Bailey.

22 MR. BAILEY: One moment, Your Honor.

23 (Counsels consulted.)

24 MR. BAILEY: No questions, Your Honor.

25 THE COURT: Questions, Mr. Runyon or Mr. Leiendecker?

1 MR. RUNYON: None, Your Honor.

2 THE COURT: Okay, Mr. Phillips, would you step back in
3 the back for me briefly, please, sir.

4 (Juror excused from courtroom.)

5 THE COURT: What says the state?

6 MR. BAILEY: Not qualified, Your Honor.

7 THE COURT: What says the defense?

8 MR. RUNYON: Your Honor, obviously this -- this juror
9 has very articulately expressed a desire not to impose the
10 death penalty at anytime. And, therefore, under the
11 present law, we could not qualify him as a juror.

12 THE COURT: Bring him back in, please, sir. He's
13 clearly not qualified.

14 (Juror brought into courtroom.)

15 THE COURT: Okay, Mr. Phillips, I'm going to excuse
16 you from service on the jury. We appreciate you coming
17 back and thank you for your honest responses. Thank you
18 for participating. You are excused. Thank you, sir.

19 (Juror excused.)

20 THE COURT: Bring in Charles E. Ferrall, please.

21 (Juror brought into courtroom.)

22 EXAMINATION BY THE COURT:

23 Q Mr. Ferrall, have a seat, please, sir.

24 A Thank you.

25 Q Mr. Ferrall, I'm going to ask you some

1 questions. There are no right or wrong answers to any of
2 the questions, what we ask of you is to be completely
3 honest with us in your responses. You are under oath, you
4 were sworn in yesterday with the rest of the jurors.

5 Since you received your summons to come here for jury
6 service, has anybody talked to you about this case?

7 A No, sir.

8 Q Have you talked to anybody about this case?

9 A No, sir.

10 Q Do you know anything about this case other than
11 what I told you yesterday?

12 A No, sir.

13 Q Haven't ever read or heard anything about it?

14 A It was some years ago I probably read it, if it
15 was two years ago I wouldn't remember it.

16 Q Yesterday I called out a list of names of people
17 who could be witnesses in this case, did you know any of
18 those people?

19 A No, sir.

20 Q Have you formed or expressed any opinion about
21 this case?

22 A No.

23 Q Do you have any bias or prejudice against the
24 prosecutors for bringing this case?

25 A No, sir.

1 Q Or against the defendant just because he is the
2 defendant in a case?

3 A No.

4 Q Do you know of any reason why you could not be
5 fair and impartial to both the state of South Carolina and
6 the defendant, Mr. Rogers?

7 A No.

8 Q Can you and will you follow the law that is
9 instructed to you by the court?

10 A Yes, sir.

11 Q Yesterday I told you and the rest of the jurors
12 that Mr. Rogers has already been convicted of murder in
13 another proceeding. The purpose of this trial is to
14 determine the punishment, life in prison without parole or
15 the death penalty.

16 In this case the jury is going to hear mitigating and
17 aggravating circumstances. And after considering all of
18 that and any evidence and testimony that might come in
19 during the course of the trial, the jury decides on the
20 appropriate punishment; life in prison or the death
21 penalty.

22 You've had the opportunity back in the jury room to
23 look over this form that has on it the three types of
24 jurors. Which one of those three do you think best
25 describes you as a potential juror?

1 A I would say one. Type one.

2 Q All right. And that's a juror who, in every
3 instance where someone is convicted of murder, will always
4 give a death penalty?

5 A Yes, sir.

6 Q So in this particular case, since Mr. Rogers has
7 already been convicted of murder, you've already got your
8 mind made up that he ought to get the death penalty.

9 A I don't have my mind made up that he ought to
10 have it, 'til I hear the circumstance.

11 Q All right, sir. Well now, I need to know which
12 one it is. Because a number one juror is going to always
13 give a death penalty in every case.

14 A I'm a number one juror.

15 Q So you'd listen to everything but you're going to
16 give him a death penalty?

17 A Yes, sir.

18 THE COURT: All right, sir. Answer any questions the
19 solicitor might have, please.

20 DIRECT EXAMINATION BY MR. BAILEY:

21 Q Just very briefly, Mr. Ferrall. I'm
22 Walter Bailey, I want to just make sure I understand
23 clearly what your position is. The number one type juror
24 would have his mind made up, if you're dealing with a
25 convicted murderer, before you heard the first word of

1 evidence, in this case, to bring back the death penalty.

2 A Yes, sir.

3 Q The number three type juror would -- would be the
4 type juror that would not have their mind made up ahead of
5 time, they'd want to listen to all the evidence, let the
6 judge tell them what the law is, then make up their mind.

7 A I'd have to say that I'm a number one type juror.

8 MR. BAILEY: Okay. All right. Thank you very much,
9 that's all I have.

10 THE COURT: Questions, Mr. Runyon and
11 Mr. Leiendecker?

12 MR. RUNYON: No questions.

13 THE COURT: Mr. Ferrall, would you step back in the
14 back for a minute while I talk to the lawyers, please.

15 (Juror excused from courtroom.)

16 THE COURT: What says the state?

17 MR. BAILEY: Not qualified, Your Honor.

18 THE COURT: Defense?

19 MR. RUNYON: Likewise, Your Honor, that's our
20 position.

21 THE COURT: He is not qualified. He's a number one.
22 He will always give a death penalty. Bring him back in,
23 please.

24 (Juror brought into courtroom.)

25 THE COURT: Mr. Ferrall, I'm going to excuse you from

1 service on the jury panel, we appreciate you being here
2 and thank you for participating. Thank you for your
3 honest responses. Thank you, sir, I appreciate it.

4 (Juror excused.)

5 MR. BAILEY: Your Honor, this next one says he lives
6 in Charleston County.

7 THE COURT: Okay. Bring in Kirk D. Williams, please.
8 That's on his response form?

9 MR. BAILEY: Yes, sir, on the form he does, line 7, he
10 says he lives in Charleston County.

11 (Juror brought into courtroom.)

12 EXAMINATION BY THE COURT:

13 Q Mr. Williams, have a seat, please, sir.

14 Mr. Williams, before I ask any other questions, I notice
15 on your return form that you said you lived in Charleston
16 County?

17 A Yes, sir.

18 Q Do you live in Charleston County or
19 Dorchester County?

20 A I live in Dorchester.

21 Q You live in Dorchester. So what you put on that
22 form was just a mistake?

23 A No, I live in Dorchester County but I live in
24 North Charleston.

25 Q Okay. All right. You live in North Charleston

1 but that part of Dorchester County that runs into North
2 Charleston; right?

3 A Uh-huh.

4 Q Okay. Now, Mr. Williams, I'm going to ask you
5 some questions, if you don't understand let me know that.
6 Please don't answer anything you don't understand.

7 A Okay.

8 Q There are no right or wrong answers to the
9 questions, we just want you to be completely honest with
10 us in your responses. You are under oath, you were sworn
11 in yesterday with the rest of the panel.

12 Since you received your summons to come here for jury
13 service, has anybody talked to you about this case?

14 A No, sir.

15 Q Have you talked to anybody about this case?

16 A No, sir.

17 Q Do you know anything about this case other than
18 what I told you yesterday?

19 A No, sir.

20 Q You hadn't read or heard anything about it?

21 A No, sir.

22 Q Hadn't seen it on television?

23 A (Nods head.)

24 Q Yesterday I called out a list of names of people
25 who could be witnesses in this case, did you know any of

1 those people?

2 A No, sir.

3 Q Have you formed or expressed any opinion about
4 this case?

5 A No, sir.

6 Q Do you have any bias or prejudice against the
7 prosecutors for bringing this case or against the
8 defendant just because he is accused in the case?

9 A No, sir.

10 Q Do you know of any reason why you could not be
11 fair and impartial to both the state of South Carolina and
12 the defendant, Mr. Rogers?

13 A No, sir.

14 Q Can you and will you follow the law that is
15 instructed to you by the court?

16 A Yes, sir.

17 Q Now yesterday I told you and the rest of the
18 jurors that Mr. Rogers has already been convicted of
19 murder in a prior proceeding. The purpose of this trial
20 is to determine the punishment, life in prison without
21 parole or the death penalty.

22 The jury decides on the punishment. The jury's going
23 to hear all the testimony, will hear mitigating and
24 aggravating circumstances, and after considering all of
25 that the jury decides between a life sentence and the

1 death penalty.

2 Now you've had the opportunity, back in the jury room,
3 to look over that form that had on it the three types of
4 jurors. Which one of those three do you think best
5 describes you as a juror in this case?

6 A The first one.

7 Q That's a juror who is, in every instance, when
8 someone is convicted of murder, going to always give the
9 death penalty?

10 A (Nods head.)

11 Q So every time you would sit on a case such as
12 this and deal with someone who's been convicted of murder
13 you're always going to give a death penalty, never give a
14 life sentence?

15 A Yes, sir.

16 Q And that's without exception?

17 A (Nods head.)

18 Q So, if we go through a trial such as this and all
19 the facts and circumstances are presented to you, that's
20 not going to matter to you because you don't -- it doesn't
21 matter what the circumstances are, if someone's convicted
22 of murder you think they ought to get a death penalty?

23 A Yes, sir.

24 THE COURT: All right, sir. Answer any questions
25 Mr. Bailey might have. Thank you, sir, I appreciate it.

1 DIRECT EXAMINATION BY MR. BAILEY:

2 Q Mr. Williams, just a few more questions to
3 follow-up on what the judge asked you. Before yesterday
4 when you found out that you might be called upon to be a
5 juror on a death penalty case, had you ever thought about
6 the death penalty?

7 A No, sir.

8 Q Okay. But since yesterday -- since yesterday you
9 think you've had enough time to think about it and read
10 over that form with the three kind of jurors and you're
11 pretty sure you're a number one type juror?

12 A Yes, sir.

13 Q Okay. Now, the number one type juror would not
14 even need to listen to any of the testimony, wouldn't need
15 to listen to the judge, because they'd have their mind
16 made up ahead of time. They would say this person's
17 convicted of murder, no matter what I hear, no matter what
18 the judge tells me, I'm going to find him -- I'm going to
19 vote for the death penalty every time. Does that describe
20 you?

21 A Uh-huh.

22 Q Okay. The number three type juror would, you
23 know, might have some -- some thoughts one way or the
24 other, but they'd want to listen to the facts, listen to
25 the law before they made up their mind. Could you do

1 that? Could you listen to both sides before you made up
2 your mind?

3 A Yes, sir.

4 Q Okay. So would that put you as a number one
5 juror that would always vote for the death penalty, no
6 matter what they heard? Or the number three, that would
7 want to hear everything, hear all the testimony and look
8 at the exhibits, let the judge talk to you and tell you
9 what the law is, before you made up your mind?

10 A Yes, sir.

11 Q Okay. Now, without telling me what they are, are
12 there some circumstances you could think of, that even
13 though you've got a fellow that committed a murder, that
14 you could vote for life in prison instead of the death
15 penalty?

16 A If I heard both sides then I would.

17 Q Okay. And, could you and would you listen to
18 both sides before you made up your mind?

19 A Yes, sir.

20 Q Okay. So if I was to ask you again or the judge
21 was to ask you again, after you've had a chance to think
22 about it a little bit, whether you're a number one juror
23 that's going to always vote for the death penalty or a
24 number three that might vote for the death penalty or they
25 might, on the other hand, vote for life without parole,

1 depending on what they heard, which one would you think
2 you were, now?

3 A Three.

4 MR. BAILEY: Thank you, Mr. Williams. That's all I've
5 got right now.

6 THE COURT: Mr. Runyon.

7 CROSS-EXAMINATION BY MR. RUNYON:

8 Q Yes, sir, Mr. Williams.

9 A Yes, sir.

10 Q You went to Fort Dorchester High School, didn't
11 you, and that's in Dorchester County?

12 A (Nods head.)

13 Q Where do you -- what's your present address?

14 A [REDACTED] Street.

15 Q And where is that?

16 A It's on Ashley Phosphate. [REDACTED]

17 Subdivision.

18 Q Okay. Have you always lived there?

19 A No, sir.

20 Q All right. Was that where you lived when you
21 went to Fort Dorchester?

22 A Yes, sir.

23 Q On -- in [REDACTED]?

24 A Uh-huh.

25 Q All right. Now, Mr. Bailey asked you some

1 questions with regards to listening to both sides and what
2 have you and then whether or not you could consider
3 imposing a life sentence. But previously you said that
4 you would -- you felt that you were a person who would
5 always impose the death penalty.

6 A Yeah.

7 Q Is that your position that you -- while you'd
8 listen to both sides you'd still impose the death penalty?

9 A I would listen to both sides and then decide
10 whether or not I would choose the death penalty or not.

11 Q Okay. So you're not really a number one juror
12 who would always impose the death penalty?

13 A Yes, sir.

14 Q Excuse me one moment.

15 (Counsel consulted cocounsel.)

16 BY MR. RUNYON:

17 Q Now, Mr. Williams, you understand, I think you've
18 been told by the court, that there's -- there's not a
19 question of guilt or innocence in this -- in this case,
20 this is where Mr. Rogers, as he sits here, is convicted of
21 murder. And that the jury's only concern in this case is
22 the type of punishment that should be imposed.

23 Now, as a result of -- of knowing that, would that
24 change your position from -- in any way? As a result --
25 as it -- as it relates to listening to both sides?

1 A Yes, sir, it could.

2 Q Well, in what way would it change your position?

3 A I'd have to hear all the facts.

4 Q Well, you understand, of course, that Mr. Rogers
5 is -- is guilty of murder?

6 A Uh-huh.

7 Q And that issue is not going to be before the
8 jury?

9 A (Nods head.)

10 Q It's just a question of sentence. Is it your
11 position that someone convicted of murder should always
12 get the death penalty?

13 A No.

14 MR. RUNYON: No further questions then.

15 THE COURT: Anything further from the state?

16 MR. BAILEY: No, sir.

17 THE COURT: Okay, Mr. Williams, I have a matter I need
18 to take up with the attorneys, please step into the back
19 just briefly, please, sir.

20 (Juror excused from courtroom.)

21 THE COURT: What says the state?

22 MR. BAILEY: Your Honor, Mr. Williams, I think, is
23 probably the youngest potential juror that we've
24 questioned so far. And he said he'd never thought of the
25 death penalty before yesterday. He indicated some initial

1 confusion. But after thinking about it and having it
2 explained to him he's clearly a number three, Your Honor,
3 and he's qualified.

4 THE COURT: Mr. Runyon.

5 MR. RUNYON: Obviously, Your Honor, he's -- he's --
6 he's qualified.

7 THE COURT: He's a qualified number three juror, bring
8 him back in.

9 (Juror brought into courtroom.)

10 THE COURT: Mr. Williams, I find that you are
11 qualified to serve on this jury panel. That doesn't mean
12 you're on the jury yet, it means you're in the group from
13 which the jury will be selected.

14 You need to be back up here tomorrow morning at
15 nine o'clock. Have your bags packed and in your car and
16 be prepared to stay with us for up to five days while the
17 case is being tried.

18 Between now and then don't talk to anybody about the
19 case. Don't let anybody talk to you about the case.
20 Don't read the newspaper about this case. And don't
21 listen to any radio or television reports that might be of
22 the case. You have to be able to decide this case based
23 on what you hear in the courtroom and not something
24 outside of here. Do you understand?

25 JUROR: Sir, can I ask you something?

1 THE COURT: Yes, sir.

2 JUROR: Could I -- I wanted to ask could I be like
3 excused? Because I -- I don't have no transportation of
4 getting here, back and forth, anyway [sic].

5 THE COURT: Well, if you come up -- we can get you
6 transported up here, we'll have the sheriff pick you up in
7 the morning. And, you'll stay with us if you're picked on
8 the jury. And then we'll take you home. If you aren't
9 picked on the jury I can have the sheriff take you back
10 home again. So we can solve your transportation problem.
11 All right, sir. So you need a ride in the morning?

12 JUROR: (Nods head.)

13 THE COURT: All right, somebody will be there to pick
14 you up probably around eight o'clock to get you up here by
15 nine. So have your bags packed and be ready and whatever
16 sheriff's deputy picks you up, you can't talk to them
17 about the case now, you understand that, them or anybody
18 else. You ride up here and if you aren't picked on the
19 jury we'll get you transportation back home. Okay?

20 JUROR: All right.

21 THE COURT: Thank you, sir, I appreciate it. All
22 right, let him talk to one of the deputies and give
23 somebody his correct address so they can pick him up in
24 the morning.

25 (Juror excused.)

1 THE COURT: Anything further from the state?

2 MR. BAILEY: No, sir.

3 THE COURT: All right. From the defendant in regard
4 to the transportation problem?

5 MR. RUNYON: Absolutely none, Your Honor.

6 THE COURT: Okay. Okay, the next juror is
7 Deborah Owens.

8 (Juror brought into courtroom.)

9 EXAMINATION BY THE COURT:

10 Q Ms. Owens, have a seat right here, please, ma'am.
11 Ms. Owens, I'm going to ask you some questions. There are
12 no right or wrong answers to any of the questions, we just
13 want you to be completely honest with us in your
14 responses. You are under oath, you were sworn in
15 yesterday with the rest of the panel.

16 Since you received your summons to come here for jury
17 service, has anybody talked to you about this case?

18 A No, sir.

19 Q Have you talked to anybody about this case?

20 A No, sir.

21 Q Do you know anything about this case other than
22 what I told you yesterday?

23 A I do not.

24 Q You haven't ever read or heard anything about it
25 whatsoever?

- 1 A No, I haven't.
- 2 Q Yesterday I called out a list of names of people
3 who could be witnesses in this case, did you know any of
4 those people?
- 5 A I did not.
- 6 Q Have you formed or expressed any opinion about
7 this case?
- 8 A I have not.
- 9 Q Do you have any bias or prejudice against the
10 prosecutors for bringing this case?
- 11 A I do not.
- 12 Q Or against the defendant just because he is
13 accused in the case?
- 14 A No, sir.
- 15 Q Do you know of any reason why you could not be
16 fair and impartial to both the state of South Carolina and
17 the defendant, Mr. Rogers?
- 18 A I do not.
- 19 Q Can you and will you follow the law that is
20 instructed to you by the court?
- 21 A I will.
- 22 Q Now yesterday you were told, along with the other
23 jurors, that Mr. Rogers, the defendant, has already been
24 convicted of murder in this case.
- 25 A Yes, sir.

1 Q In a prior proceeding. The purpose of this trial
2 is to determine the punishment. Life in prison without
3 parole or the death penalty.

4 The jury decides the punishment. The jury will
5 consider all the testimony and evidence that's presented
6 in this trial. And listen to all the mitigating and
7 aggravating circumstances. And after considering all of
8 that the jury sets the punishment, life in prison or the
9 death penalty.

10 Now you had the opportunity back in the jury room to
11 look over the form that had on it the three types of
12 jurors. Which one of those three do you think best
13 describes you as a potential juror?

14 A Number three.

15 Q That's a juror who will keep an open mind and
16 listen to everything before deciding on a punishment?

17 A Yes, sir.

18 Q Will you keep an open mind and listen to all of
19 the evidence and testimony that is presented before you
20 decide between a life sentence or the death penalty?

21 A I will.

22 Q If you sat as a juror in a case like this, and
23 I'm not talking about this case, because you don't know
24 anything about this case yet. But if you sat on a case
25 like this and listened to everything that was presented,

1 with an open mind. And after considering all the evidence
2 you and the other jurors unanimously decided that a death
3 penalty was the appropriate punishment. If that was your
4 verdict, would you be able to sign your name to a verdict
5 form that said that was your verdict, if it was?

6 A Yes, I would.

7 Q Would you be able to come in here into open court
8 and if I asked each juror individually to stand up and
9 tell me whether that was their verdict or not, would you
10 be able to stand up here and announce your verdict in open
11 court?

12 A Yes, I would.

13 Q Would you be able to do those things knowing that
14 eventually that's going to result in the execution of a
15 defendant?

16 A Yes, I would.

17 Q Do you have any strong feelings or beliefs that
18 will interfere with your choice between a life sentence
19 and the death penalty?

20 A No, sir.

21 Q A vital part of this process is that each juror
22 keep an open mind and listen to everything that's
23 presented before deciding on punishment. Can you do that?

24 A Yes, I can.

25 Q All right. Also part of this process is that

1 each juror who is selected in the final group of 14 will
2 have to stay with us and be sequestered until this trial
3 has been completed. Understanding that that is a hardship
4 on everyone, can you make arrangements to be here and stay
5 with us if you are selected on the jury panel?

6 A I can.

7 THE COURT: Answer any questions Solicitor Bailey
8 might have, please. Thank you, ma'am.

9 DIRECT EXAMINATION BY MR. BAILEY:

10 Q Ms. Owens, I'm Walter Bailey, I want to ask you a
11 few more questions. I notice from your questionnaire that
12 you were a witness in a criminal case?

13 A Yes, I was.

14 Q Could you tell us about that, when -- when it
15 occurred and what type case you were a witness in?

16 A It was in 1988 in Beaufort County, it was an
17 assault with intent to kill.

18 Q Okay. And, were you directly involved in that or
19 were you a bystander that just happened to observe it?

20 A I had recently married this person and he was the
21 person who committed the crime.

22 Q Okay. All right. Would that experience with the
23 criminal justice system cause you any problems, do you
24 think, sitting as a juror in this case?

25 A No, sir.

1 Q You could set that aside and just base your
2 decision strictly on the evidence you heard from the
3 witness stand?

4 A Yes, I could.

5 Q And, Ms. Owens, you understand from what Judge
6 Whetstone explained, that in South Carolina the jury and
7 not the judge decides what the penalty's going to be when
8 we have a situation like we've got now with a convicted
9 murderer, where the state's seeking the death penalty.
10 Whatever that jury decides will be the sentence of the
11 court and that sentence will be carried out?

12 A Yes, sir.

13 Q Okay. And since you have not heard any of the
14 facts yet, no one's going to ask you to predict what you'd
15 do in this case. But if the case is bad enough, can you
16 vote for the death penalty, knowing that sentence is going
17 to be carried out?

18 A If the evidence presented itself, yes, I could.

19 Q Okay. And if the other 11 jurors felt the same
20 way you did, could you sign your name along with the other
21 11 jurors to a death verdict form that's going to result
22 in that execution taking place some day?

23 A Yes, I could.

24 Q And can you stand up and announce that decision
25 if that is your decision?

1 A Yes, sir.

2 MR. BAILEY: Ms. Owens, I believe that's all I've got
3 right now, thank you very much.

4 THE COURT: Mr. Leiendecker.

5 MR. LEIENDECKER: Thank you, Your Honor.

6 CROSS-EXAMINATION BY MR. LEIENDECKER:

7 Q Ms. Owens, just to follow-up on the incident in
8 Beaufort County back in '88. As I understand, you say you
9 were a witness in -- in that case, did that case go to
10 trial?

11 A Yes, it did.

12 Q So you did testify?

13 A Yes, I did.

14 Q And, you were a witness to your, at that time,
15 husband's alleged assault? Or were you a victim?

16 A I actually was not a witness, but I had to give
17 testimony on his behavior prior to the incident.

18 Q Okay. On behalf of the state or the defense?

19 A The defense.

20 MR. LEIENDECKER: Okay. Thank you.

21 THE COURT: Anything further from the state?

22 MR. BAILEY: Nothing further, Your Honor.

23 THE COURT: Okay, Ms. Owens, would you step back into
24 the back briefly while I talk to the lawyers, please,
25 ma'am.

1 (Juror excused from courtroom.)

2 THE COURT: What says the state?

3 MR. BAILEY: Qualified, Your Honor.

4 THE COURT: Defense?

5 MR. LEIENDECKER: Qualified, Your Honor.

6 THE COURT: She is a qualified number three juror,
7 bring her back in, please.

8 (Juror brought into courtroom.)

9 THE COURT: Ms. Owens, I find that you are a qualified
10 juror. That means that you are in the group from which
11 the jury will be selected.

12 You need to be back up here at nine o'clock tomorrow
13 morning.

14 Between now and then don't talk to anybody about this
15 case, don't let anybody talk to you about the case. Don't
16 read the newspaper about this case and don't listen to any
17 news reports on either radio or television that might be
18 about this case. You have to be able to decide the case
19 based on what you hear in the courtroom and not something
20 outside of here, do you understand?

21 JUROR: Yes, I do.

22 THE COURT: Now when you come up here tomorrow have
23 your bags packed and have them in your car and be prepared
24 to stay with us for up to five days while this case is
25 being tried if you are selected on the jury.

1 JUROR: Yes, sir.

2 THE COURT: Any questions?

3 JUROR: No, sir.

4 THE COURT: All right. We'll see you at nine o'clock
5 in the morning. Thank you, ma'am. Come over and sit on
6 the same side of the courtroom as you did yesterday
7 morning. Thank you, ma'am. Come this way right now. And
8 sit over on that other side tomorrow morning when you get
9 here. Thank you, ma'am.

10 (Juror excused.)

11 THE COURT: Okay, bring in Walter Baldwin, please.

12 (Juror brought into courtroom.)

13 EXAMINATION BY THE COURT:

14 Q Mr. Baldwin, have a seat right here, please,
15 sir.

16 A Yes, sir.

17 Q Mr. Baldwin, I'm going to ask you some
18 questions. There are no right or wrong answers to any of
19 the questions, we just ask of you that you be completely
20 honest with us in your responses. You are under oath, you
21 were sworn in yesterday with the rest of the panel.

22 Since you received your summons to come here for jury
23 service, has anybody talked to you about this case?

24 A No, sir.

25 Q Have you talked to anybody about this case?

1 A No, sir.

2 Q Do you know anything about this case other than
3 what I told you yesterday?

4 A No, sir, I don't.

5 Q Never have read or heard anything about the case
6 whatsoever?

7 A No, sir. As a matter of fact you said it was
8 in '92; right?

9 Q Yes, sir.

10 A That's been a long time.

11 Q Just don't recall anything about it at all?

12 A No, sir, I don't.

13 Q All right, sir. Yesterday I called out a list of
14 names of people who could be witnesses in this case, did
15 you know any of those people?

16 A No, sir.

17 Q Have you formed or expressed any opinion about
18 this case?

19 A No, sir.

20 Q Do you have any bias or prejudice against the
21 prosecutors for bringing the case? Or against the
22 defendant just because he is the defendant in the case?

23 A No, sir.

24 Q Do you know of any reason why you could not be
25 fair and impartial to both the state of South Carolina and

1 the defendant?

2 A No, sir.

3 Q Can you and will you follow the law that is
4 instructed to you by the court?

5 A Yes, sir.

6 Q Yesterday you were instructed, along with the
7 other jurors, that the defendant in this case, Mr. Rogers,
8 has already been convicted of murder in a prior
9 proceeding. The purpose of this trial is to determine
10 what the punishment ought to be. Either life in prison
11 without parole or the death penalty.

12 The jury decides on the punishment. The jury will
13 hear and consider all of the evidence and testimony, all
14 the mitigating and the aggravating circumstances. And
15 after considering all those things the jury decides
16 between a life sentence and the death penalty.

17 Now you've had the opportunity back in the jury room
18 to look over the form that has on it the three types of
19 jurors. Which one of those three do you think best
20 describes you as a potential juror?

21 A The third paragraph, Your Honor.

22 Q That's a juror who will keep an open mind and
23 listen to everything that's presented before deciding on a
24 punishment?

25 A Yes, sir.

1 Q Will you keep an open mind and listen to
2 everything before you decide between a life sentence and
3 the death penalty?

4 A Yes, sir.

5 Q If you sat as a juror in a case like this, and
6 I'm not talking about this case now, because you haven't
7 heard the facts in this case yet. But in general. If you
8 sat on such a case, as a juror. And listened to
9 everything. And after thoughtfully and thoroughly
10 considering everything you and the other jurors
11 unanimously decided that the death penalty was the
12 appropriate punishment. If that was your verdict, would
13 you be able to sign your name, with the other jurors, to a
14 verdict form that said that was your verdict, if it was?

15 A Yes, sir.

16 Q Would you be able to come out here into open
17 court and announce that as your verdict, if it was your
18 verdict?

19 A Yes, sir.

20 Q Would you be able to do those things knowing that
21 eventually that is going to result in the execution of a
22 defendant?

23 A Yes, sir.

24 Q Do you have any strong feelings or beliefs that
25 will interfere with your choice between a life sentence

1 and the death penalty?

2 A No, sir.

3 Q Do you understand, and will you remember, that it
4 is a vital and important part of this process that each
5 juror keep an open mind and listen to everything that is
6 presented before deciding on a punishment?

7 A Yes, sir.

8 Q Also a part of this process, Mr. Baldwin, that
9 each juror who stays with us has -- who is picked on the
10 jury has to stay with us and be sequestered while the case
11 is being tried. Now understanding that that is difficult
12 for everybody, can you make arrangements to stay with us
13 if you are picked on this jury?

14 A Yes, sir.

15 Q You've thought about that and you're comfortable
16 that you can make those arrangements?

17 A Yes, sir.

18 THE COURT: All right, sir. Answer any questions the
19 solicitor might have, please, sir.

20 MR. BAILEY: May it please the Court, Your Honor.

21 DIRECT EXAMINATION BY MR. BAILEY:

22 Q Mr. Baldwin, I'm Walter Bailey, I want to ask you
23 a few more questions to follow-up on what Judge Whetstone
24 asked you and I'll keep this kind of short because he's
25 asked pretty much what I would've ordinarily asked you.

1 Mr. Baldwin, you understand that in South Carolina
2 when we've got a situation where there's a convicted
3 murderer and the state's seeking the death penalty, it's
4 the jury and not the judge that decides whether he gets
5 life without parole or the death sentence?

6 A Yes, sir.

7 Q In other words, whatever the jury votes on
8 unanimously will be the sentence of the court and that
9 sentence will be carried out.

10 So if the jury, after hearing all of the facts,
11 decides on life without parole, Judge Whetstone would
12 sentence that defendant to life without parole.

13 On the other hand, if they decide on the death penalty
14 then that would be the sentence of the court and that
15 person is going to be executed. Do you understand?

16 A Yes, sir.

17 Q All right, sir. And no one would ask -- is going
18 to ask you to predict what you would do in this case,
19 because you haven't heard the facts and the number three
20 type juror, that you say you are, would not make up their
21 mind 'til they heard all the facts and the law. But if
22 those facts were bad enough, can you impose the death
23 penalty, knowing that sentence is actually going to be
24 carried out?

25 A Yes, sir.

1 Q All right, sir. And if the other 11 jurors felt
2 the same way you did and all 12 voted for the death
3 penalty, could you sign your name to a death verdict form
4 that would result in that person being executed at some
5 future date?

6 A Yes, sir, I could.

7 Q And can you stand up in open court and announce
8 that decision when your name is called, if that was your
9 decision?

10 A Yes, sir.

11 MR. BAILEY: Mr. Baldwin, that's all I've got. Thank
12 you very much.

13 THE COURT: Questions, Mr. Leiendecker.

14 MR. LEIENDECKER: Yes, Your Honor, thank you.

15 CROSS-EXAMINATION BY MR. LEIENDECKER:

16 Q Mr. Baldwin, I notice in quickly reviewing your
17 questionnaire you sent back that apparently you just have
18 gone back to work on a -- in a kind of part-time basis; is
19 that right?

20 A Yes, sir.

21 Q And, you don't believe it's going to cause any
22 real problem with your job to take a week off at this
23 point?

24 A No, sir, I sure don't.

25 Q Okay. And, I also noticed, and not being very

1 acquainted with -- with all of these organizations that
2 you list, specifically your membership in the -- in the
3 Masonry or Shrine organization; is that right?

4 A Yes, sir.

5 Q Are there any teachings of the -- of the Mason
6 organization that deal with -- with punishment or
7 execution or anything that you're aware of?

8 A No, sir.

9 MR. LEIENDECKER: I don't have any further questions.
10 Thank you.

11 THE COURT: Anything further from the state?

12 MR. BAILEY: No, sir.

13 THE COURT: Okay, Mr. Baldwin, I have a matter I need
14 to take up with the attorneys, would you please step out?

15 JUROR: Could I ask you a question, sir?

16 THE COURT: Yes, sir.

17 JUROR: Yesterday you asked the question if anybody
18 was kin that worked in the courthouse or the jail. Did
19 you also -- I may have misunderstood -- did you also
20 include the penal system?

21 THE COURT: I said the Department of Corrections, yes,
22 sir.

23 JUROR: Okay. I have a son that works -- I
24 misunderstood you. I have a son that works at Richland,
25 he's a correction officer at Richland. And I'm sorry

1 about that, Your Honor.

2 THE COURT: That's all right. Would the fact that
3 your son works in the Department of Corrections have any
4 affect on your ability to be fair and impartial in this
5 case?

6 JUROR: No, sir. I just wanted to let you know that.
7 I'm sorry about that.

8 THE COURT: I appreciate that. Any further questions
9 from the state?

10 MR. BAILEY: No, sir.

11 THE COURT: From the defendant?

12 MR. LEIENDECKER: No, sir.

13 THE COURT: I appreciate that Mr. Baldwin. Now, step
14 back to the back just briefly.

15 (Juror excused from courtroom.)

16 THE COURT: What says the state?

17 MR. BAILEY: Qualified, Your Honor.

18 THE COURT: Defense?

19 MR. LEIENDECKER: Qualified number three juror.

20 THE COURT: He is a qualified number three juror,
21 bring him back in, please.

22 (Juror brought into courtroom.)

23 THE COURT: Okay, Mr. Baldwin, I find that you are
24 qualified to serve on this jury. That means that you are
25 in the group from which the jury will be selected.

1 You need to be back up here at nine o'clock tomorrow
2 morning. Have your bags packed and have them in your car
3 and be prepared to stay with us for up to five days while
4 this case is being tried.

5 Between now and then don't talk to anybody about the
6 case. Don't let anybody talk to you about the case.
7 Don't read the newspaper about this case and don't listen
8 to any radio or television reports about the case. You
9 have to be able to decide the case based on what you hear
10 in the courtroom and not something outside of here. Do
11 you understand?

12 JUROR: Yes, sir.

13 THE COURT: Any questions?

14 JUROR: No, sir.

15 THE COURT: All right, sir, you are -- you are
16 excused, please be in the jury -- in the courtroom out
17 here on the same side you sat on yesterday at nine o'clock
18 in the morning. All right. Thank you, sir, you are
19 excused for the day today, I appreciate it.

20 (Juror excused.)

21 THE COURT: Okay, Ronda Rabon, please.

22 (Juror brought into courtroom.)

23 EXAMINATION BY THE COURT:

24 Q Right here Mrs. Rabon. How are you?

25 A Fine and scared, how are you?

1 Q Don't be scared. I'm going to ask you some
2 questions.

3 A Yes, sir.

4 Q There are no right or wrong answers to the
5 questions, we just want you to be completely honest with
6 us in your responses.

7 A Okay.

8 Q You are under oath, you were sworn in yesterday
9 with the rest of the panel.

10 A Yes, sir.

11 Q Since you received your summons to come here for
12 jury service, has anybody talked to you about this case?

13 A No, sir.

14 Q Have you talked to anybody about this case?

15 A No, sir.

16 Q Do you know anything about this case other than
17 what I told you yesterday?

18 A Yes, sir, that's it.

19 Q All right, tell me about that, please, ma'am.

20 A What I recollect about Mr. -- about him shooting
21 somebody?

22 Q Yes, ma'am. Did you read that somewhere, you saw
23 it on TV?

24 A And they found him guilty.

25 Q Ma'am?

1 A They found him guilty.

2 Q Yes, ma'am, he's been convicted of murder, I told
3 you that yesterday.

4 A Yeah, been convicted of murder. And, they want
5 to retry him again.

6 Q Well, let me ask you this. Based on what you
7 have heard before you came here, what you've heard and
8 read about the case, do you think you can be a fair and
9 impartial juror in this case?

10 A Yes, sir.

11 Q Okay.

12 A But, let me ask you something, my husband is
13 disabled, he has seizures. So, would that---

14 Q Well, do you care for him?

15 A Yes, sir.

16 Q So he doesn't have any -- you don't have anybody
17 to take care of him other than you?

18 A Other than me, yeah.

19 Q Well part of serving as a juror in this case is
20 that if you're picked on the jury you have to stay with us
21 while the case is being tried and you might be sequestered
22 for up to five days while this case is being tried. Would
23 you be able to make arrangements for your husband if you
24 are picked on the jury?

25 A Well, unless I take him to -- no, I couldn't do

1 that. No, sir, I don't have nobody to watch him [sic].

2 Q You don't have anybody to take care of him? So
3 if you were away from home for five days you don't have
4 anybody to take care of your husband?

5 A No, sir.

6 Q And you don't think you can make those
7 arrangements?

8 A I could try. I can't promise you.

9 Q Well, I kind of need to know. We're going to
10 start at nine o'clock in the morning. So, do you think
11 you can make arrangements by in the morning to be here to
12 stay with us if you're picked on the jury?

13 A Yes, sir, I'll try.

14 Q You think you could now? Don't tell me what you
15 think I want to hear, I want your -- I want to know your
16 honest response.

17 A No, to be honest I don't think I could find
18 anybody to watch him.

19 THE COURT: Let me take that up with the attorneys
20 just briefly, step back into the back, please, ma'am.

21 (Juror excused from courtroom.)

22 THE COURT: What says the state?

23 MR. BAILEY: I would have no objection to excusing her
24 if she can't find anybody, she's obviously kind of upset
25 about it.

1 THE COURT: Mr. Runyon and Mr. Leiendecker?

2 MR. RUNYON: Your Honor, obviously, likewise for the
3 record, this -- this lady -- it's just not a question of
4 simple maintenance or maybe cooking some meals, the
5 gentleman apparently has a medical disorder that -- that
6 requires someone with some knowledge of how to handle that
7 medical disorder, at least temporarily until help would
8 arrive, so. I think that -- we have no objection to her
9 being excused because, obviously, she'd be in a bind.

10 THE COURT: Also, if she was picked on the jury she'd
11 probably be more concerned about her husband's situation
12 and who was taking care of him than paying attention to
13 what was going on, so all things considered it's probably
14 best to excuse her. Bring her back in.

15 (Juror brought into courtroom.)

16 THE COURT: Mrs. Rabon, given the situation with your
17 husband and your inability to -- on such short notice --
18 find somebody to care for him, I'm going to excuse you
19 from service on this case, we appreciate you coming back
20 up here. You are excused.

21 (Juror excused.)

22 THE COURT: Okay, we'll be at ease until two o'clock.
23 Thank you.

24 (Lunch recess was taken.)

25 THE COURT: Is the state ready?

1 MR. BAILEY: State's ready, Your Honor.

2 THE COURT: Defendant ready?

3 MR. RUNYON: Yes, Your Honor.

4 THE COURT: Okay, bring in John Nolen, please.

5 (Juror brought into courtroom.)

6 EXAMINATION BY THE COURT:

7 Q Mr. Nolen, have a seat right here, please, sir.

8 Mr. Nolen, I'm going to ask you some questions, there are
9 no right or wrong answers to any of these questions, I
10 just want you to be completely honest in your responses.
11 You are under oath, you were sworn in yesterday with the
12 rest of the jurors.

13 Since you received your summons to come here for jury
14 service, has anybody talked to you about this case?

15 A No.

16 Q Have you talked to anybody about this case?

17 A No.

18 Q Do you know anything about this case other than
19 what I told you yesterday?

20 A I'd heard when they -- when it actually happened,
21 about four or five years ago. I heard about it then,
22 that's it.

23 Q And hadn't heard anything since then?

24 A No.

25 Q Would that have any affect on your ability to be

1 fair and impartial in this case?

2 A I don't see that it would.

3 Q Yesterday I called out a list of names of people
4 who could be witnesses in this case, did you know any of
5 those people?

6 A No, sir.

7 Q Have you formed or expressed any opinion about
8 this case?

9 A No.

10 Q Do you have any bias or prejudice against the
11 prosecutors for bringing the case or against the defendant
12 just because he is the defendant in the case?

13 A No.

14 Q Do you know of any reason why you could not be
15 fair and impartial to both the state of South Carolina and
16 the defendant, Mr. Rogers?

17 A No, I don't see why.

18 Q Can you and will you follow the law as instructed
19 to you by the court?

20 A Yes, I will.

21 Q Yesterday I told you and the rest of the jurors
22 that Mr. Rogers has already been convicted of murder in a
23 prior proceeding. The purpose of this trial is to
24 determine the punishment. Either life in prison without
25 parole or the death penalty.

1 The jury decides on the punishment after listening to
2 all the mitigating and the aggravating circumstances that
3 might be presented and all the testimony and exhibits and
4 whatever else is presented during this trial. So the jury
5 decides between a life sentence and the death penalty.

6 You've had the opportunity back in the jury room to
7 look over the form that had on it the three types of
8 jurors. Which one of those three do you think best
9 describes you as a potential juror?

10 A I'd probably say the third one.

11 Q That's a juror who will keep an open mind and
12 listen to everything before deciding on the punishment?

13 A I believe I'd be open-minded.

14 Q If you sat as a juror in a case like this, I'm
15 not talking about this case, but speaking in general,
16 because you don't know anything about this case yet. If
17 you sat on a case such as this, as a juror, and listened
18 to everything that was presented. And after listening
19 with an open mind you and the other jurors unanimously
20 decided that the death penalty was the appropriate
21 punishment. If that was your verdict, would you be able
22 to sign your name to a verdict form that said that was
23 your verdict, if it was?

24 A I think so.

25 Q Would you be able to come in here into open court

1 and announce that as your verdict, if it was your verdict?

2 A I believe so.

3 Q Would you be able to do those things knowing that
4 eventually that's going to result in the execution of a
5 defendant?

6 A Yeah.

7 Q Do you have any strong feelings or beliefs that
8 will interfere with your choice between a life sentence
9 and the death penalty?

10 A No, sir.

11 Q Do you understand, Mr. Nolen, that a vital and
12 important part of this process is that each juror keep an
13 open mind throughout this entire proceeding and listen to
14 everything before deciding on punishment?

15 A I would understand that.

16 Q And will you do that?

17 A I will do that.

18 Q All right, sir. Also part of this process is
19 that the jurors who are selected on this jury have to stay
20 and be sequestered while this case is being tried. Now
21 understanding that's difficult for anyone to do, can you
22 make arrangements to be with us for about five days while
23 this case is being tried?

24 A I believe I could do it.

25 THE COURT: All right. Answer any questions the

1 solicitor might have, please, sir. Mr. Bailey.

2 DIRECT EXAMINATION BY MR. BAILEY:

3 Q Mr. Nolen, I'm Walter Bailey, I want to ask you a
4 few more questions. And there are no right or wrong
5 answers, we just need to know how you really think,
6 because this is the only chance that the lawyers get to
7 talk to potential jurors before we start this trial.

8 Judge Whetstone asked you about your ability to sign
9 the death verdict form, if all the jurors unanimously
10 found for the death penalty. And I think, according to my
11 notes, you said I -- I think so, when he asked you to sign
12 the form. Okay. You sort of qualified that a little bit
13 by saying I think so. Is there any -- any problem that
14 you think you would have, if you'd voted for the death
15 penalty, to then sign that form?

16 A No, I don't think it would be any problem.

17 Q Okay. And the same with respect to announcing
18 the decision, you said I believe so. Could you announce
19 that decision if it was your decision?

20 A I could -- I could announce it.

21 Q All right, sir. And you understand in South
22 Carolina that the jury and not the judge decides the
23 punishment when the state is seeking a death penalty when
24 the defendant's been convicted of murder?

25 A I understand that.

1 Q And that whatever the jury decides should happen,
2 will be the sentence of the court and that sentence will
3 be carried out?

4 A Yeah, I understand.

5 Q So, if the case is bad enough, can you vote for
6 the death penalty?

7 A Yes, sir, I could.

8 Q And you can then sign the death verdict form and
9 announce that decision?

10 A Yes, sir.

11 MR. BAILEY: Thank you. That's all I have, Mr. Nolen.

12 THE COURT: Mr. Leiendecker or Mr. Runyon.

13 CROSS-EXAMINATION BY MR. RUNYON:

14 Q Mr. Nolen, just -- just for clarification. I see
15 you live in Ladson?

16 A Yes, sir.

17 Q Now, where do you pay your taxes?

18 A Where do I pay my taxes?

19 Q Yes, sir.

20 A Dorchester County.

21 Q Okay. So you're -- you're definitely in that
22 part of Ladson that's in -- that's in Dorchester County
23 not Berkeley or Charleston County?

24 A Right. Yes, sir, Dorchester County.

25 MR. RUNYON: All right. No other questions, Your

1 Honor.

2 THE COURT: Anything further from the state?

3 MR. BAILEY: No, sir.

4 THE COURT: I have a matter I need to take up with the
5 attorneys, Mr. Nolen, would you please step back into the
6 back again, please, sir.

7 (Juror excused from courtroom.)

8 THE COURT: What says the state?

9 MR. BAILEY: Qualified.

10 THE COURT: Defense?

11 MR. RUNYON: Obviously he's qualified, Your Honor.

12 THE COURT: He is a qualified number three juror,
13 bring him back in, please.

14 (Juror brought into courtroom.)

15 THE COURT: Mr. Nolen, I find that you are qualified
16 to serve on this jury panel. That doesn't mean you're on
17 the jury, it means you're in the group from which the jury
18 will be selected.

19 You need to be back up here at nine o'clock tomorrow
20 morning, sit over on this side of the courtroom where you
21 did yesterday morning. Have your bags packed and in your
22 car and be prepared to stay with us for up to five days
23 while this case is being tried.

24 Between now and then don't talk to anybody about the
25 case and don't let anybody talk to you about the case.

1 Don't read the newspaper about this case. And don't
2 listen to any radio or television reports that might be of
3 this case. You need to be able to decide this case based
4 on the evidence presented in the courtroom and not
5 something outside of here. Do you understand?

6 JUROR: I understand.

7 THE COURT: Any questions about these instructions?

8 JUROR: No, sir.

9 THE COURT: All right, sir. Please be back at nine
10 o'clock in the morning. Thank you, sir.

11 (Juror excused.)

12 THE COURT: Sallie Johnson, please.

13 (Juror brought into courtroom.)

14 EXAMINATION BY THE COURT:

15 Q Ms. Johnson, have a seat, please. Ms. Johnson,
16 I'm going to ask you some questions. There are no right
17 or wrong answers to any of these questions, we just need
18 for you to be completely honest with us in your
19 responses.

20 A Okay.

21 Q You are under oath, you were sworn in yesterday
22 with the rest of the jurors.

23 Since you received your summons to come here for jury
24 duty, has anybody talked to you about this case?

25 A No.

1 Q Have you talked to anybody about this case?
2 A No.
3 Q Do you know anything about this case other than
4 what I told you yesterday?
5 A No, I don't.
6 Q Haven't read or heard anything about it at
7 anytime?
8 A Uh-huh.
9 Q Yesterday I went through a list of names of
10 people who could be witnesses in this case, did you know
11 any of those people?
12 A No, I don't.
13 Q Have you formed or expressed any opinion about
14 this case?
15 A Yes, I have.
16 Q Tell me about that, please.
17 A I don't believe in the death penalty.
18 Q Okay, so you've looked through that form that I
19 gave you to look at back there on the three types of
20 jurors? So which one of those three do you think best
21 describes you?
22 A The first one.
23 Q The first one, that's somebody who'd always give
24 a death penalty?
25 A Oh, I'm sorry. Oh, yes, sir, the first one, I

1 just don't believe in the death penalty.

2 Q Okay. Well, you're talking about the second one
3 then that says you'd never give a death penalty?

4 A Yes, sir, the second one.

5 Q The second one. Is that a belief that you've had
6 for some time?

7 A Yes, sir.

8 Q And you just -- it doesn't matter how bad the
9 facts might be or what might be presented, you're never
10 going to give a death penalty?

11 A I don't believe in it.

12 THE COURT: Thank you, ma'am. Answer any questions
13 the solicitor might have.

14 MR. BAILEY: One moment, please, Your Honor.

15 (Counsels consulted.)

16 MR. BAILEY: No questions, Your Honor.

17 THE COURT: Mr. Runyon, any questions?

18 MR. RUNYON: No, questions, Your Honor.

19 THE COURT: Okay, Ms. Johnson, I have a matter I need
20 to take up with the lawyers, please step back in the back
21 for just a minute.

22 (Juror excused from courtroom.)

23 THE COURT: What says the state?

24 MR. BAILEY: Not qualified, Your Honor.

25 THE COURT: Defense?

1 MR. RUNYON: Your Honor, obviously she's not qualified
2 based on her questionnaire and information from the
3 background we had and based on her fairly forthright and
4 aggressive position on the stand with stating to the court
5 what her beliefs were, which makes her clearly a number
6 two juror. She's clearly not qualified.

7 THE COURT: Bring her back in, please.

8 (Juror brought into courtroom.)

9 THE COURT: Ms. Johnson, I'm going to excuse you from
10 service on the jury panel in this case, we thank you for
11 coming back, we appreciate your participating. Thank you,
12 ma'am, you're excused.

13 (Juror excused.)

14 THE COURT: Bring in Victoria Ellis, please.

15 (Juror brought into courtroom.)

16 EXAMINATION BY THE COURT:

17 Q Ms. Ellis, have a seat right here. Ms. Ellis,
18 I'm going to ask you some questions. There are no right
19 or wrong answers to any of the questions, we just want you
20 to be completely honest in your responses. You are under
21 oath, you were sworn in yesterday with the rest of the
22 panel.

23 Since you received your summons to come here for jury
24 duty, has anybody talked to you about this case?

25 A No, sir.

- 1 Q Have you talked to anybody about this case?
- 2 A No, sir.
- 3 Q Do you know anything about this case other than
- 4 what I told you yesterday?
- 5 A No, sir. I vaguely remember something about it
- 6 when you mentioned his name, but I don't remember details.
- 7 Q Okay. So whatever you heard, is that going to
- 8 have any affect on your ability to be fair and impartial
- 9 in the case?
- 10 A No, sir, I don't think so.
- 11 Q Yesterday I called out a list of names of people
- 12 who could be witnesses in this case, did you know any of
- 13 those people?
- 14 A Not to my knowledge. I didn't recognize any
- 15 names.
- 16 Q Have you formed or expressed any opinion about
- 17 this case?
- 18 A No, sir.
- 19 Q Do you have any bias or prejudice against the
- 20 prosecutors for bringing this case?
- 21 A No, sir.
- 22 Q Or against the defendant just because he is
- 23 accused in the case?
- 24 A No, I don't know anything about it.
- 25 Q Do you know of any reason why you could not be

1 fair and impartial to both the state and the defendant?

2 A No, sir.

3 Q Can you and will you follow the law that is
4 instructed to you by the court?

5 A Yes, sir, I will.

6 Q Yesterday I told you and the rest of the panel
7 that Mr. Rogers has already been convicted of murder in a
8 prior proceeding. The purpose of this trial is to decide
9 the punishment, life in prison without parole or the death
10 penalty. Those are the two choices that the jury will
11 have.

12 The jury will hear and consider all the evidence and
13 testimony that's presented in this trial and there'll be
14 mitigating and aggravating circumstances. And after
15 considering all of that the jury decides on punishment,
16 life in prison or the death penalty.

17 Now you've had the opportunity back in the jury room
18 to look over the form that had on it the three types of
19 jurors. Which one of those three do you think best
20 describes you as a juror?

21 A Probably the last one, it's probably the fairest.

22 Q The juror who will keep an open mind and listen
23 to everything before deciding on the punishment?

24 A (Nods head.)

25 Q Will you keep an open mind and listen to

1 everything before you decide between a life sentence or
2 the death penalty?

3 A Yes, sir.

4 Q If you sat on a case like this as a juror, not
5 this case, because you don't know the facts of this case
6 yet, but speaking in general. If you sat on such a case
7 as a juror and listened to everything that was presented
8 with an open mind. And after doing that you and the other
9 jurors unanimously decided that the death penalty was the
10 appropriate punishment. If that was your choice of
11 verdict, would you be able to sign your name to a verdict
12 form that said that was your verdict, if it was?

13 A Yes, it -- yes, I would.

14 Q Would you be able to come out here into open
15 court and if I asked each juror to stand up and say if
16 that's your verdict, would you be able to stand up in
17 court and announce that as your verdict, if it was?

18 A It wouldn't be easy, but if I said I would I
19 would.

20 Q Okay. You have -- well, back up a minute.
21 Understanding, if you do those two things, that I just
22 asked you about, that's going to end up in the eventual
23 execution of a defendant. Do you understand that?

24 A Yes, I understand that.

25 Q Do you have any strong feelings or beliefs that

1 will interfere with your choice between a life sentence
2 and the death penalty?

3 A If I'm not involved in it personally I would --
4 yeah, I would have a strong feeling if I---

5 Q If you were involved?

6 A Yes.

7 Q But if you're not involved and don't know
8 anything about it you could consider everything before
9 deciding?

10 A Right.

11 Q Do you understand and will you remember that it
12 is a vital part of this process that each juror who is
13 selected in the case keep an open mind and listen to all
14 of the testimony before deciding on the punishment?

15 A Yes, I understand that.

16 Q Also part of this process is that the jurors who
17 are selected on the case have to stay with us and be
18 sequestered while the case is being tried.

19 A Right. I understand that.

20 Q If that requires you to stay with us for about
21 five days or so while this case is being tried, will you
22 be able to make arrangements to do that?

23 A Is this going to be before Christmas?

24 Q Yes, ma'am. I'm talking about starting
25 tomorrow.

1 A Starting tomorrow. I can make arrangements.

2 THE COURT: Okay. Thank you, ma'am. Answer any
3 questions the solicitor might have, please. Mr. Bailey.

4 DIRECT EXAMINATION BY MR. BAILEY:

5 Q Ms. Ellis, I'm Walter Bailey, I want to ask you a
6 few more questions.

7 A Okay.

8 Q Before yesterday when you found out that you
9 might be a juror on a death penalty case had you ever
10 given any thought to the death penalty in general terms?

11 A Oh, yeah, when I was younger I thought it was
12 awful.

13 Q Okay. How about as you got---

14 A As you get older you understand a little bit
15 better, I think, sometimes. Maybe. I know the other day
16 they just put somebody and it just -- I didn't think about
17 it. You know, it didn't -- so if I didn't mind it
18 probably I would -- I would've been out there saying don't
19 do this to this man. I don't even remember who it was.
20 That's terrible. So apparently it doesn't bother me.

21 Q Okay. And, I understand -- we're not talking
22 about this case because you haven't heard any of the
23 facts, but just in general terms.

24 A I should be able to remember it because I've
25 lived here my whole life, but I do not remember. The only

1 Rogers I can think of is the South Carolina football
2 player.

3 Q Okay. All right. Okay.

4 A I tried to remember it.

5 Q Yes, ma'am. And you understand that in South
6 Carolina when the state is seeking the death penalty and
7 the person's already been found guilty of murder, it's the
8 jury and not the judge that makes the decision?

9 A I -- I was aware of that just now.

10 Q Okay. And, you also understand that whatever the
11 jury decides the sentence ought to be will be the sentence
12 of the court and that sentence will be carried out?

13 A Uh-huh.

14 Q Okay. And if the -- I'm not asking you what you
15 would do in this case, because you haven't heard the
16 facts. But if the facts were bad enough, can you vote for
17 the death penalty knowing that sentence is going to be
18 carried out?

19 A I think I could.

20 Q Okay. And if the other 11 jurors felt the same
21 way you did and all 12 jurors unanimously voted for the
22 death penalty, could you then sign that death verdict form
23 that would result in that execution taking place?

24 A I think so.

25 Q Okay.