

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

James R. Barber, III, Circuit Court Judge

Case No. 2006-CP-32-3221

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S.C. SUPREME COURT

Johnny O. Bennett.....Petitioner,

v.

State of South Carolina.....Respondent.

APPENDIX

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1 Q. Do you know of any reason at all why you could not
2 give both sides a fair trial in this case?

3 A. None.

4 THE COURT: Okay. Let me ask if you'll answer any
5 questions the attorney have, okay.

6 Mr. Myers?

7 VOIR DIRE EXAMINATION

8 BY MR. MYERS:

9 Q. Ms. Gaskin?

10 A. Yes, sir.

11 Q. Ms. Gaskin, prior to yesterday had you ever been up
12 in this courtroom before?

13 A. Yes, sir.

14 Q. And that was for a civil case, on a jury?

15 A. I was on a jury. It wasn't a murder trial or
16 anything like that.

17 Q. Right.

18 A. It was just a --

19 Q. So this is your first involvement with a murder
20 trial?

21 A. Correct.

22 Q. Ms. Gaskin, the jury, as the Judge told you, will
23 hand down a sentence in this case, life imprisonment or the
24 death penalty; did you understand that?

25 A. Yes, sir.

1 Q. Because normally a judge does the sentencing. But
2 when the death penalty is involved our law says the jury will
3 make the decision, life or the death penalty; you understand
4 that?

5 A. Yes, sir.

6 Q. And even though the defendant has been found guilty
7 of murder there will still be testimony about the crime for
8 the jury to consider. The jury will hear testimony about the
9 murder, how it was committed. They'll hear testimony about
10 the defendant; his background, his character, things about
11 him. Could be some things in his favor, could be some bad
12 things about him. Would you listen to all that testimony if
13 you were on this jury panel?

14 A. Yes, sir.

15 Q. And the Judge would tell the jury not to make up
16 their mind of what kind of sentence they should impose until
17 they've heard everything. Would you follow that instruction?

18 A. Yes, sir.

19 Q. Then the Judge would tell the jury what the law is.
20 He would tell them what aggravating circumstances mean. He
21 would define it. It may have a different meaning under the
22 law than we think about it in a regular life. He would tell
23 the jury that we have to prove one aggravating circumstance
24 for the jury to even consider the death penalty. He would
25 give the jury something in writing about aggravating

1 circumstance. Would you follow that law as he gave it to
2 you?

3 A. Yes, sir.

4 Q. And also, he would tell the jury what mitigating
5 circumstances mean under the law. He would tell the jury
6 what mitigating circumstances are involved and he would give
7 something in writing to the jury about mitigating
8 circumstances. You would follow that, also?

9 A. Yes, sir.

10 Q. Now, you know that all cases of murder doesn't
11 bring the death penalty into play, you know that?

12 A. Yes, sir.

13 Q. Murder is the same in South Carolina. Murder is
14 murder. But there are just some few cases in which the death
15 penalty becomes involved in a murder case; you understand
16 that?

17 A. Yes, sir.

18 Q. The Judge will tell the jury that they're not
19 concerned with the guilt because the defendant's been found
20 guilty of murder. But they will hear testimony and the Judge
21 would explain to them the law that relates to this case. You
22 would follow the law; is that correct?

23 A. Yes, sir.

24 Q. Now, Ms. Gaskin, as to the punishment itself, you
25 put yourself in that third category you told the Judge; is

1 that right?

2 A. Yes, sir.

3 Q. I take it from that that there are cases of murder
4 that you think that life imprisonment would be the right
5 sentence; is that right?

6 A. Yes, sir.

7 Q. Then there are also cases of murder that the death
8 penalty would be the appropriate punishment; is that right?

9 A. Correct.

10 Q. But you wouldn't know until you've heard
11 everything?

12 A. True.

13 Q. Once you've heard all the testimony and the law
14 then you could decide what is the right sentence based on the
15 crime and the person who committed it; is that right?

16 A. Yes, sir.

17 Q. So if I ask you what your position is on the death
18 penalty it's basically you have to hear everything and you
19 could vote for life or death; is that a fair statement?

20 A. Yes, sir.

21 Q. And the fact that somebody has committed murder,
22 and the defendant is guilty of murder, that wouldn't cause
23 you to just automatically vote right now life or death, you
24 would have to hear all the other testimony; is that a fair
25 statement?

1 A. Yes, sir.

2 Q. And, Ms. Gaskin, is it your position, after hearing
3 all of this and the law, if the death penalty was the
4 punishment that fit the crime you could so sign your name on
5 a death penalty verdict?

6 A. Yes, sir.

7 MR. MYERS: That's all we can ask of you. Thank
8 you, Ms. Gaskin.

9 VOIR DIRE EXAMINATION

10 BY MR. FLOYD:

11 Q. Good morning, Ms. Gaskin.

12 A. Morning.

13 Q. My name is Wayne Floyd, and I represent Mr. Bennett
14 together with Hervery Young. What are your opinions or what
15 is your opinion on the death penalty?

16 A. What is my opinion? If a person is found guilty of
17 murdering someone else then they would deserve the death
18 penalty.

19 Q. So -- now, you understand that in this case
20 Mr. Bennett has already been convicted of murder by another
21 jury? Are you aware of that?

22 A. Yes, sir.

23 Q. And so then is it your opinion that he should get
24 the death penalty?

25 A. I would have to hear the evidence before I could

1 definitely say.

2 Q. But I think you mentioned to me that your opinion
3 is if someone commits murder they should get the death
4 penalty. Is that your general opinion?

5 A. That's my general opinion, yes.

6 Q. How long have you had that opinion?

7 A. Quite some time.

8 Q. Has your opinion on the death penalty changed
9 during your life or is that kind of the opinion you've always
10 had?

11 A. Well, I started I didn't believe to begin with when
12 I was younger, but it has changed somewhat.

13 Q. And for some time now, for years now you've had the
14 opinion that if someone kills somebody then they should get
15 the death penalty?

16 A. Yes, sir.

17 Q. Now, do you understand in South Carolina we only
18 have one degree of murder? I don't know if you knew that.
19 Not every killing is a murder. But murder in South Carolina
20 means that the killing was done with premeditation or with
21 malice aforethought. Were you aware of that?

22 A. No, sir.

23 Q. So if a person were convicted of a killing that was
24 premeditated and with malice aforethought, what's your
25 opinion on the sentence they should get?

1 MR. MYERS: Does that mean that she wouldn't want
2 to hear all the aggravation and mitigation and all that?
3 Because what he's doing is he's trying to put emphasis on
4 some hypothetical situation. I think the question is would
5 she vote for the death penalty in every case of murder
6 without listening to any aggravating or mitigating
7 circumstances.

8 THE COURT: Yes, sir, I understand. And as I
9 understand the question, he's just asking for general
10 opinions at this point. And what I'm going to do is go back
11 and determine whether or not she could follow the
12 instructions of the Court at the appropriate time. I'll
13 clarify that. Go ahead.

14 A. Ask me that question one more time.

15 THE COURT: Do you want me to clarify it at this
16 point, Mr. Floyd, or just wait until after you're finished?

17 MR. FLOYD: How about if I just keeping going and
18 just see, if I can recall my question.

19 BY MR. FLOYD:

20 Q. If someone had been convicted of the killing of
21 another person with malice aforethought do you have an
22 opinion as to what the sentence that person should receive?

23 A. If they did it with malice aforethought, they had
24 planned it, they would deserve the death penalty.

25 Q. And you feel that in all cases where there's malice

1 aforethought that should happen?

2 A. I would have to have all the other circumstances
3 and evidence.

4 Q. And when you're talking about other circumstances,
5 are you referring to circumstances surrounding the killing
6 itself or circumstances other than the killing itself?

7 A. Circumstance --

8 MR. MYERS: He can't ask her that, what she's
9 looking for, Your Honor. He can't ask her what she would
10 want to hear. That's improper.

11 THE COURT: Yes, sir, sustained. Again, that's
12 staking out the jury a little bit.

13 MR. FLOYD: I guess I'm just trying to
14 understand --

15 THE COURT: Sure, I understand. And I understand
16 you're just trying to talk with her in terms of general
17 opinions at this point. Go ahead.

18 BY MR. FLOYD:

19 Q. So if I understand correctly, Ms. Gaskin, your
20 general view is that if someone commits a killing with malice
21 aforethought that the death penalty would be proper?

22 A. Correct.

23 Q. Is there any -- what type of situation would it not
24 be proper, in your opinion?

25 MR. MYERS: Objection.

1 THE COURT: Sustained. That's -- again, that's
2 staking out the jury. And I realize you're just asking
3 opinions, but again, you can't go into that.

4 MR. FLOYD: Getting some kind of -- well--

5 THE COURT: Sure.

6 BY MR. FLOYD:

7 Q. And how many years would you say you've had that
8 general opinion concerning the death penalty?

9 A. I'd say at least 20.

10 Q. At least 20?

11 A. Yes, sir.

12 Q. And you do understand that in this case Mr. Bennett
13 has already been convicted by another jury of a killing with
14 malice aforethought?

15 MR. MYERS: We object to the continued use of
16 malice aforethought because what he's trying to do is plant
17 in this juror's mind some horrible premeditated -- that's
18 getting into the facts of it. Murder is murder. So he's
19 putting too much emphasis on that without talking about
20 listening to the character and the aggravation and
21 mitigation. It's taken out of context. We object to the
22 continued use of that phrase.

23 THE COURT: I'm going to clarify it with this juror
24 in just a few minutes to be sure she understands. I'm not
25 totally sure she understands exactly what she's answering.

1 But I'm going to ask her a few questions in a minute and see
2 if I can clarify it. Go ahead

3 BY MR. FLOYD:

4 Q. Did you understand my last question? Did you
5 understand my last question?

6 A. Ask it over, please.

7 Q. You understand that Mr. Bennett has been convicted
8 already by another jury of a murder and that this jury will
9 not be considering that because he's already been convicted
10 of the murder, which is a killing with malice aforethought?

11 MR. MYERS: No, sir. I object to the continued
12 going back to malice aforethought. He keeps putting emphasis
13 on that and it is improper to do so.

14 THE COURT: You've asked the question three or four
15 times, Mr. Floyd. Go ahead.

16 BY MR. FLOYD:

17 Q. Do you understand Mr. Bennett has already been
18 convicted of a murder?

19 A. Yes, sir.

20 Q. And your general view is that anyone convicted of a
21 murder should get the death penalty?

22 A. As long as I heard all the circumstances.

23 Q. And which branch do you work at, Ms Gaskin?

24 A. The bank?

25 Q. Uh-huh.

1 A. In Cayce.

2 Q. Is it the one on --

3 A. On Knox Abbot.

4 Q. The one on Knox Abbott. Thank you very much.

5 A. You're welcome

6 FURTHER EXAMINATION

7 BY THE COURT:

8 Q. Let me go through a few things with you,
9 Ms. Gaskin. You told me a few minutes ago that you felt like
10 you were in the third category, and that even though a person
11 had committed murder that you still would want to hear all
12 the aggravating and mitigating circumstance before you
13 determined the appropriate sentence; is that right?

14 A. Yes, sir.

15 Q. Now, what -- and I'm not saying this, but what you
16 were saying just now almost sounded like you were actually in
17 that first category. And I'm trying to be sure whether you
18 were or not. The first category is the juror who says that
19 once a person has been convicted of murder, I would always
20 give them the death penalty. That's what the first category
21 says.

22 Now, I want to be sure you understand when we're
23 talking about murder what we mean, okay. Murder in South
24 Carolina is defined as the unlawful killing of a human being,
25 of another human being, by a human being, of course, of

1 another human being with what's called malice aforethought.

2 Now, the term malice, of course, means that it was
3 done maliciously. And aforethought means it was either at
4 the time or before the killing. So in other words, once a
5 person has been convicted of murder then the murder involves
6 a killing with malice involved in it; do you understand that?

7 A. Yes, sir.

8 Q. Now, the law says -- and I understand we've talked
9 about general opinions before, but the issue is whether you
10 can follow the law in this case. The law says that even
11 that, even a person killing someone else, even with malice
12 aforethought involved that that is not enough to give the
13 death penalty. The law says that in order to justify the
14 death penalty, there must be aggravating circumstances
15 involved. And my concern is I don't know whether you're
16 confusing malice with aggravating circumstances.

17 And by the way, I've done this enough times that I
18 realize that folks like you come in off the street and you've
19 never heard all these terms before, I know. So it's a little
20 bit easier to get confused real quick. And I don't know
21 sometimes if you mean aggravation or malice when you're
22 saying it. Malice, in other words, is sort of an evil state
23 of mind involved with the killing. That's what that means.
24 And it may mean, in essence, premeditated. But the law says
25 that's not enough to justify the death penalty. In order to

1 justify the death penalty, there must be an aggravating
2 circumstance along with the murder; you understand that?

3 A. Yes, sir.

4 Q. And so, in essence, an aggravating circumstance is
5 not the same thing as malice; you understand?

6 A. Malice, yes, sir.

7 Q. Malice basically means, again, premeditation. It
8 was a premeditated murder. And the law says that's not
9 enough for the death penalty. The death penalty can only be
10 involved if there is an aggravating circumstance. So let me
11 just ask it, and I want to be sure you understood that
12 distinction. Some jurors get confused on it. But do you
13 understand the difference in what I'm talking about?

14 A. Now, yes, sir, I do.

15 Q. Okay. So, in essence, when it comes down to it
16 then, again, in this case, the defendant has been found
17 guilty of murder by a jury; you understand that?

18 A. Yes, sir.

19 Q. And, of course, the murder involves malice
20 aforethought. There was malice involved with that. Now,
21 that jury before didn't even get into aggravating
22 circumstances; you understand? They weren't even worried
23 about that. All they were worried about was the killing and
24 whether it was done maliciously. That's what they
25 determined, okay? Now, understanding that, does that give

1 you a better idea of what we're talking about, about the
2 difference?

3 A. Yes, sir, I think so.

4 Q. Understanding that then -- and I'll just let you
5 tell me, where is your position? What is your position with
6 that then, in terms of these three categories of jurors? You
7 still seemed a little confused. I guess probably the best
8 way to do it is -- and I'll ask you specifically. Do you
9 still feel like you are in that third type category of juror?

10 A. Yes, sir.

11 Q. And that's the juror who says that -- and let's put
12 it this way. This juror says this, that although the
13 defendant has been found guilty of killing a person with
14 malice aforethought, in other words, he committed a murder
15 which involved malice, that I still would not have my mind
16 made up regarding the appropriate punishment, that I'd still
17 want to hear all those other things; is that right?

18 A. Yes, sir.

19 Q. And if it's wrong, tell me.

20 A. That's right.

21 Q. I'm not trying to put word in your mouth, but I'm
22 trying to be sure that you understand the difference. Jurors
23 get real confused between aggravation and malice, and I
24 understand that.

25 And I want to also be sure and tell you, you

1 understand the lawyers weren't trying to confuse you.
2 Mr. Floyd wasn't trying to confuse you. He's just trying to
3 get -- you know, it's his duty and the Solicitor's duty and
4 all of our duty to find out exactly what a juror thinks. And
5 this is not unusual, sometimes I have to explain the
6 differences to jurors. So that's not unusual at all and
7 don't be concerned about that.

8 So again, the third type of juror is a person who
9 says that although the defendant has been found guilty of
10 murder with malice aforethought involved in that murder that
11 I still would not have my mind made up as to the proper
12 punishment. I would want to hear all those aggravating
13 circumstances, I would want to hear those mitigating
14 circumstances, I want the judge to tell me the law and then
15 is when I would be ready to make a decision. Now, is that
16 what you're saying?

17 A. Yes, sir.

18 Q. Okay. And if I instruct the jury that they cannot
19 give a death sentence just because the defendant was found
20 guilty of murder which included malice, would you have any
21 problem following that instruction?

22 A. No, sir.

23 Q. And in other words, the State would be required to
24 prove beyond a reasonable doubt that there were aggravating
25 circumstances. In essence, I guess would you require the

1 State to prove that to you beyond a reasonable doubt before
2 you would even consider the death penalty?

3 A. Yes, sir.

4 Q. And again, would you also consider and listen to
5 and consider all the mitigating circumstances? In other
6 words, the things in the defendant's favor; would you
7 consider all of that, too?

8 A. Yes, sir.

9 Q. Taking all of that into account then, with all of
10 that into account, then wait until you heard the law, then
11 make your decision?

12 A. Yes, sir.

13 Q. Is that right?

14 A. Yes, sir.

15 Q. Okay. So do you understand now the difference
16 between what we say when we say malice and when we say
17 aggravation? Do you understand that difference?

18 A. I hope so.

19 Q. What I'm going to do is let the attorneys ask a few
20 other questions. And if you have any question now at any
21 point you just tell me, and it's my job -- and I probably
22 just didn't do a real good job at this point. It's my job to
23 explain these things to you, okay?

24 A. Yes, sir.

25 Q. And I'll explain them to you.

1 A. Yes, sir.

2 THE COURT: Any other questions, Mr. Myers?

3 MR. MYERS: Not at this time.

4 THE COURT: Any other questions, Mr. Floyd?

5 MR. FLOYD: Just a couple, Your Honor.

6 THE COURT: Sure.

7 And don't worry, nobody is giving you a hard.

8 MS GASKIN: It sounded that way.

9 THE COURT: I understand.

10 FURTHER EXAMINATION

11 BY MR. FLOYD:

12 Q. Ms. Gaskin?

13 A. Yes, sir.

14 Q. Now, I understand from our previous questions and
15 answers that your general view is that the death penalty is
16 appropriate for someone who commits murder?

17 A. Not in all circumstances.

18 Q. Would you agree with me that when I first asked you
19 you said anybody that --

20 MR. MYERS: He's arguing with her now. The record
21 speaks for itself.

22 MR. FLOYD: Your Honor, I --

23 THE COURT: No. No. I'm going to let her answer.
24 He's just asking her if that's what she said.

25 And I'll let you do that, Mr. Floyd. And

1 certainly, if she was confused she can say she was confused.
2 But if she remembers what she told you, she can say what she
3 remembers. Go ahead.

4 BY MR. FLOYD:

5 Q. Do you recall when I first asked you what your
6 opinion of the death penalty was and did you not say at that
7 time that if someone committed murder then they should get
8 the death penalty?

9 A. Depending on all the circumstances.

10 Q. And would you agree with me when I first asked you
11 that you didn't qualify it in that way?

12 A. True.

13 Q. Now, would your -- the opinions you hold on the
14 death penalty, would they in any way interfere with your
15 ability to give Mr. Bennett a fair hearing on the punishment
16 in this matter?

17 A. Not after I heard all the evidence, it wouldn't.

18 Q. Thank you, Ms. Gaskin.

19 A. You're welcome.

20 THE COURT: Anything else from the State?

21 MR. MYERS: No, sir.

22 THE COURT: Let me ask if you'll step outside for
23 just a minute, okay.

24 MS. GASKIN: Okay.

25 (WHEREUPON, Juror Gaskin leaves the

1 courtroom.)

2 THE COURT: What's the State's position on this
3 juror?

4 MR. MYERS: Qualified.

5 THE COURT: Defense?

6 MR. FLOYD: Your Honor, in our opinion, she is not
7 qualified to serve on the jury. I think when she was asked
8 what her opinion was on several occasions she said, if you
9 commit murder, you should get the death penalty. Now, she
10 said some other things, too, when people asked her questions
11 and tried to clarify and so forth. And now she's got this
12 new view depending on the circumstances because she
13 understands that's what you need.

14 But her real opinion and what she was asked when I
15 first asked her, and before everybody started talking to her
16 about it, was that the death penalty is what you should get
17 if you murder someone. And I think that personal opinion
18 she's got on the death penalty would significantly impair her
19 ability to be a fair juror in this case, no matter that
20 people have got her to say now, well, depending on the
21 circumstances. I mean, her real opinion is death penalty for
22 murder, and she's not qualified.

23 MR. MYERS: For the record, I never did re-examine
24 the witness. So he's saying all these other people asking
25 questions. When I got through with my direct examination, I

1 didn't ask her anymore questions. State vs. Bell, 393 S.E.2d
2 364, 1990.

3 THE COURT: I have that right in front of me. Go
4 ahead.

5 MR. MYERS: The Court held jurors were not
6 improperly qualified on their views concerning the death
7 penalty. Jurors stated they could give life or death
8 sentence depending on the facts. Although jurors initially
9 misunderstood the law in the trial proceedings, but later
10 after clarification responded they could vote for life or
11 death, they were properly qualified.

12 State vs. Green, 392 S.E.2d 157, 1990. The
13 defendant objects to the jurors being qualified on the ground
14 they were predisposed to only vote for the death penalty.
15 The Court held that the jurors were properly qualified as
16 they demonstrated the ability to consider all the evidence
17 before reaching a decision and willingness to follow the law
18 and vote for life or death.

19 State vs. Matthews, 353 S.E.2d, 444, 1986. The
20 defendant argued the responses of two jurors on voir dire
21 indicated they were predisposed to recommend the death
22 penalty in all cases. The Court said after explanation and
23 based on the entire colloquies, the entire responses of the
24 jurors, the two jurors were properly qualified by the Judge.

25 State vs. Smith, 334 S.E.2d 277 was another case on

1 point. State vs. Singleton, 326 S.E.2d, 153. It's another
2 on point where after clarifications, when the jurors said
3 they would consider all mitigating circumstance, follow the
4 judge's charge and could vote for either were properly
5 qualified.

6 State vs. Copeland, 300 S.E.2d 63, another case we
7 cite in support for qualification. State vs. Butler, 290
8 S.E.2d, page 1, 1982 case. The juror who favored the death
9 penalty was qualified when he stated he would vote for life
10 imprisonment if it was warranted.

11 State vs. Atkins, 399 S.E.2d, 760, 1990 case.
12 Atkins contended that four jurors were improperly qualified
13 because they were predisposed and opposed to the death
14 penalty. The Court disagreed saying here are the voir dire,
15 the questioned jurors revealed that all could depending on
16 the evidence presented recommend life or death.

17 Case most closely on point is State vs. George, 376
18 S.E.2d, 903, 1996. The appellant contends the trial judge
19 erred in qualifying Mr. Watkins after he stated he could not
20 sign his name to a life sentence form. Initially, Watkins
21 stated that if an aggravating circumstance was found, he
22 could not sign his name to a life sentence verdict.

23 However, when the judge further inquired as to his
24 ability to serve, the following took place. The juror was
25 asked, Now, I need to know this, are you willing to listen to

1 these instructions and to consider the evidence which would
2 warrant a life imprisonment? Not necessarily do it, but are
3 you willing to consider it or are you telling me that once
4 somebody is convicted of murder, you would always vote for
5 the imposition of the death penalty? I need to know that.

6 Here's the response of the juror. No, I wouldn't
7 because of that. I think I could listen to all the reasons
8 and everything before I put down the punishment.

9 The Judge then says, Are you telling me that you
10 would put down the punishment for death, but equally if you
11 felt warranted, you could give him life imprisonment.

12 The juror says, Yes, yes, I do.

13 Says, in addition, later during voir dire, the
14 juror confirmed that he could give a life sentence if an
15 aggravating circumstance was unanimously found. It would
16 depend on the evidence. The Court says, Although Watkins'
17 responses are somewhat inconsistent, we conclude that he had
18 the ability to perform the duties required of a juror and
19 render a verdict of life or death in accordance with his oath
20 and instructions. And they cite Waynewright vs. Whitt and
21 State vs. Green.

22 Now, from this record in totality and the entire
23 colloquy must be looked at. It's clear that the defense
24 attorney tried to impress upon the juror that the defendant
25 had been convicted of a premeditated, aggravated murder. He

1 tried to get her to say, well, the death penalty should be it
2 in something like that. Tried to implant in her mind
3 aggravation without explaining the aggravating circumstances,
4 mitigating circumstances and what comes after.

5 After Your Honor explained to her the law,
6 explained to her what was involved, she's in category three.
7 The State never did requisition her. The defense
8 requisitioned her. And the defense's last questions, In a
9 case of murder, you'd always vote for the death penalty.

10 She said, I'd have to listen to all the
11 circumstances. I'd have to listen to everything.

12 It's clear that this lady was confused. It's clear
13 that she's never been a juror in a criminal case. It's clear
14 she doesn't know all of these legal technicalities. And it's
15 clear now she does. She's proper qualified.

16 THE COURT: Mr. Floyd?

17 MR. FLOYD: Your Honor, contrary to the Solicitor's
18 argument, nothing was put in this juror's mind. She was
19 asked, what's your opinion on the death penalty. Nobody said
20 a thing about aggravation, nobody said a thing about malice
21 at that point. She said, My opinion is if you murder
22 somebody, you should get the death penalty. And that's her
23 opinion. It hasn't changed through anything we've said, and
24 the end result is no different.

25 If you're going to give the death penalty, it's no

1 better that you're willing to listen to aggravation,
2 mitigation before you give it. If what you're going to do is
3 give it, the fact that, yeah, you're willing to listen to
4 aggravation and mitigation before you give it, that doesn't
5 change it, you're still going to give it. That's all we ever
6 heard. I never heard from this witness that she could give
7 anybody a life sentence. All she said was I'd consider
8 everything before I give it, but the end result was the death
9 penalty was what she'd give.

10 MR. MYERS: If he didn't use the word malice
11 aforethought and tried to get premeditation out in
12 questioning this juror about murder, then I apologize. I'm
13 not only losing my hair, I'm losing my hearing. But this
14 lady up here taking this down, I have no doubt whatsoever
15 when this record is printed up that she'll be writing down
16 the questions from the defense attorney was what about that
17 malice aforethought, premeditated murder. I'm losing my
18 hearing, but part my hearing is still there.

19 THE COURT: Mr. Floyd?

20 MR. FLOYD: But he's not listening. What I said
21 was before we got into trying to explain everything to her,
22 what was her real position, there was no mention of malice,
23 there was no mention of premeditation. The simple question
24 was, what is your opinion on the death penalty. And that's
25 when it came out what her real opinion was, if you murder

1 somebody, you should get the death penalty.

2 Sure, we got into malice and all this other stuff
3 when it was explained -- everything was explained to her, but
4 her real opinion was murder, death penalty, and that never
5 changed through any of the colloquy that we went through.

6 MR. MYERS: No, sir, because I asked her if
7 somebody asked you your opinion on the death penalty, is it
8 life in some cases and the death penalty in some cases in the
9 case of murder. The question never was asked in all cases of
10 murder would you always give the death penalty. I wouldn't
11 object to that, that would have been a proper question. She
12 never put herself in category number one.

13 THE COURT: Mr. Floyd?

14 MR. FLOYD: I don't think to add anything to it. I
15 think her real opinion was expressed from the outset.

16 THE COURT: Yes, sir. Counsel, this juror, I think
17 was becoming -- just finding herself confused with some of
18 the terminology. You know, we do this a lot and we study
19 these things and we make a point of understanding the
20 distinctions. But these jurors are folks who come in off the
21 street. They've never heard that language before. They've
22 never heard all this. They don't understand the
23 distinctions. I may have, frankly, not done my job right by
24 explaining this to her ahead of time. But what I'm going to
25 do with future jurors is start explaining this to them ahead

1 of time and clarify it with them so they understand.

2 Now, she did use the term malice. I don't think
3 you used it, Mr. Floyd, I think she used the term malice
4 early on. She basically said if someone kills someone with
5 malice or murders someone with malice, they should get the
6 death penalty. Well, to me, that basically said, you know,
7 does she mean malice or is she talking about -- in other
8 words, she's talking about something beyond murder. I think
9 she has the right concept, she's just using the wrong words.
10 But once I clarified it to her and explained to her the
11 distinction, I think it was clear that she understood it.

12 The cases that Mr. Myers cited, of course,
13 basically say that in the Supreme Court. Also in State vs.
14 Council and State vs. Holmes, are a couple of other cases
15 that I've looked up here. Particularly, in the case of State
16 vs. Holmes, now, that was not on the death issue, but that
17 was -- I think State vs. Holmes, as I recall, was on
18 presumption of innocence. Let me find it here. Yeah, a
19 juror said that he thought the defendant had to prove his
20 innocence. The Court clarified that to him, and on
21 clarifying it he said that he could -- or she rather, I'm
22 sorry, could follow that presumption.

23 Again, the Supreme Court has unequivocally said
24 over and over that if a juror appears confused and the judge
25 clarifies the law to them and they indicate that they can

1 follow that instruction that it's appropriate to qualify that
2 juror. This lady, frankly, was getting the terms aggravation
3 and malice confused. Part of that was my fault for not
4 telling her in the first place. Once I clarified it to her,
5 she indicated she understood it and could follow the law.
6 And after that, her questions with you, Mr. Floyd, after that
7 were, frankly, appropriate answers under the law.

8 Again, I try to make a point. Sometimes, it may
9 seem that I'm trying to suggest answers to witnesses, I'm not
10 -- jurors, I'm not trying to do that, but I am trying to be
11 sure that they understand what they're talking about. And
12 again, sometimes we just forget that these are folks who come
13 in and never -- they don't know this stuff from Adam when
14 they come in here. And it's my job to make sure they
15 understand it. I'll do a better job of that in the future.

16 But again, on clarification, this lady indicated
17 she could follow the instructions of the Court. I find she
18 is qualified.

19 Let's ask her to step in, please.

20 (WHEREUPON, Juror Gaskin enters the
21 courtroom.)

22 THE COURT: Ms. Gaskin, I've determined that you
23 would be qualified to sit on a jury in this case if you were
24 selected. So what I'll ask you to do is come back in the
25 morning at nine, nine o'clock, tomorrow morning, okay?

1 MS. GASKIN: Okay.

2 THE COURT: Just come back here to the courtroom
3 and sit back here in this middle section of the courtroom.
4 And you'll be there with about 35 or 40 other people, and
5 we'll pick the jury from that group, okay?

6 MS. GASKIN: Okay.

7 THE COURT: Now, when you come back, you need to
8 bring bags packed for as much as a week in a motel. The jury
9 will be sequestered during the trial. Leave the bags in the
10 car, and if you are picked on the jury then someone will take
11 care of your bags for you.

12 Now, it's still very, very important that until
13 that time you not talk about the case with anyone and you're
14 not to let anybody talk with you about the case. You
15 certainly will want to let your family know where you're
16 going to be, but don't talk about the case in any detail. At
17 the same time, please also still -- I know it's difficult,
18 but be sure and stay away from the news; no news on the
19 television, no news on the radio, stay away from newspapers,
20 okay?

21 MS. GASKIN: Okay.

22 THE COURT: With that in mind, we'll see you in the
23 morning at nine o'clock with your bags packed.

24 MS. GASKIN: Okay.

25 THE COURT: Thank you, ma'am.

1 (WHEREUPON, Juror Gaskin leaves the
2 courtroom.)

3 (WHEREUPON, Juror Number 39, JULIAN D. BLAKE,
4 a white male, enters the courtroom.)

5 JULIAN D. BLAKE, after having been duly sworn,
6 testified as follows:

7 VOIR DIRE EXAMINATION

8 BY THE COURT:

9 Q. Mr. Blake, just have a seat and relax, please, sir.

10 A. All right.

11 Q. You know, Mr. Blake, we told you in this case that
12 the State has charged Mr. Johnny Bennett with murder and they
13 have asked for the death penalty; do you recall that?

14 A. Yes, I do.

15 Q. Now, you recall, also, that we told you that a
16 previous jury had found Mr. Bennett guilty of murder; you
17 understand that?

18 A. I remember that, too.

19 Q. He's been found guilty of murder. And let me be
20 sure and clarify something so you'll understand what we're
21 talking about when we say murder, okay. Murder is defined
22 under South Carolina law as the unlawful killing of another
23 human being with what is called malice aforethought.

24 In other words, before someone can be found guilty
25 of murder, there must have been malice, it must have been

1 done maliciously, and the malice must have been there either
2 at or before the time of the killing. So in other words,
3 once someone is found guilty of murder, that means that there
4 was malice present at the time; you understand that?

5 A. I understand.

6 Q. Now, the law also says that that's not enough for
7 the death penalty. That in order to give the death penalty,
8 the State must also prove that there were aggravating
9 circumstances involved and the State is required to prove
10 those aggravating circumstances; you understand that?

11 A. I understand that, too.

12 Q. And you understand so that in this part of the
13 trial, the second part of the trial, that this jury is going
14 to worry about those aggravating and mitigating
15 circumstances; do you understand?

16 A. Yes, I do.

17 Q. You're not going to worry about the killing with
18 malice, a previous jury has already decided that; you
19 understand?

20 A. Right.

21 Q. Now, with that in mind, let me ask, did you --
22 Counsel, I'm going in a little bit of different
23 order this time.

24 Did you get a chance to look at this sheet right
25 here?

1 A. Yes, I did.

2 Q. And you notice it described three types of jurors
3 on it?

4 A. Right.

5 Q. Do you feel like one of those applies to you?

6 A. Probably this last one, the third one.

7 Q. The third one.

8 A. Yeah.

9 Q. Now, let's go over this and be sure we understand,
10 okay. Now, this third type of juror is a juror who says that
11 even though a person has been found guilty of murder, which
12 means that they were found guilty of killing someone with
13 malice, that I still would not have my mind made up as to the
14 proper sentence. What I want to do then is I want to hear
15 the rest of it. I want to hear all those aggravating
16 circumstances, I want to hear those mitigating circumstances,
17 I want the judge to tell me the law, and then and only then
18 am I going to make the appropriate decision; is that correct?

19 A. Yes, sir. I can't make a judgment unless I hear
20 both sides of the story.

21 Q. Okay.

22 A. It's just not fair.

23 Q. Yes, sir. So in other words, even though someone
24 has been found guilty of murder, which is killing someone
25 with malice, you're not going to have your mind made up at

1 that point as to the proper sentence; is that right?

2 A. That's true.

3 Q. You're going to wait until you hear all those
4 aggravating circumstances, wait until you hear all those
5 mitigating circumstances, you're going to wait until you hear
6 the law; is that right?

7 A. That's true.

8 Q. Then you decide it, correct?

9 A. Right.

10 Q. Now, this juror also says that after all -- I've
11 heard all that, if I determine that a life sentence is
12 appropriate, I can give the defendant a life sentence; is
13 that right?

14 A. Yes, I can.

15 Q. And this juror says that if after hearing all that
16 that if I determine that a death sentence is appropriate I
17 can give a death sentence; is that correct?

18 A. Yes.

19 Q. So in other words, it depends on the circumstances?

20 A. That's what I said, yes.

21 Q. Okay. Now, the law also says this. It says that
22 if a jury gives a death sentence that each juror, all 12
23 jurors must sign a form that says we have given the death
24 sentence. Now, if you were on a jury and you had determined
25 that a death sentence was appropriate would you be able --

1 and had given the death sentence, would you be able to sign
2 that form?

3 A. Yes. I can do that, yes.

4 Q. Now, have you heard anything about this case
5 before?

6 A. No, I haven't.

7 Q. And I'm going to ask if you know any of the folks
8 involved and let me introduce them to you, okay?

9 A. All right.

10 Q. This is Mr. Bennett sitting right here in the
11 middle in the white suit. Do you know Mr. Bennett or know of
12 him in any way?

13 A. No, I don't know him.

14 Q. His attorneys are Mr. Wayne Floyd and Mr. Hervery
15 Young over here on this side. Do you know or know of
16 Mr. Floyd or Mr. Young?

17 A. No, I don't.

18 Q. Don't know either of those gentlemen?

19 A. No, I don't.

20 Q. The State is represented by the Solicitor,
21 Mr. Donnie Myers, and he will be assisted by Mr. Dayton
22 Riddle, Mr. Shawn Graham. Do you know or know of any of
23 these gentlemen?

24 A. Just the Solicitor.

25 Q. You know Mr. Myers?

1 A. Well, you can't watch TV without hearing his name.

2 Q. Okay. So you know of him, is that it?

3 A. Know of him.

4 Q. Now, is there anything you've heard or heard about
5 Mr. Myers that would -- whether positive or negative that
6 would give you any problem in giving both sides a fair trial
7 in this case?

8 A. No.

9 Q. Wouldn't affect you, is that right?

10 A. That's right, it would not affect it.

11 Q. We also gave you a witness list. Did you get a
12 chance to look this witness list over?

13 A. Yes, I did.

14 Q. Did you recognize any of those names?

15 A. No, I did not recognize any of them.

16 Q. Also, the victim, the man killed in this case, was
17 Mr. Benton Smith, Benton Darrell Smith. Did you know
18 Mr. Smith or know of him?

19 A. No. No, I don't.

20 Q. So then, do you know of any reason -- and have you
21 ever had any dealings with the Solicitor's Office?

22 A. No, I haven't.

23 Q. Do you know then of any reason why you couldn't
24 give both sides a fair trial?

25 A. No, I don't, don't know of any reason.

1 Q. Let me ask you if you'll answer any questions --
2 both sides will have some questions. Let me ask you to
3 answer their questions, okay?

4 A. Okay.

5 VOIR DIRE EXAMINATION

6 BY MR. MYERS:

7 Q. Mr. Blake, on that form that the Judge gave the
8 jurors, number one said there are certain type of people that
9 once a person is found guilty of murder they would vote for
10 the death penalty in every case, no matter what. You don't
11 fall under that category?

12 A. No, I don't.

13 Q. And then the second type is that once a person is
14 found guilty of murder that that type of person would never
15 vote for the death penalty. You don't fall under that
16 category?

17 A. No, I don't.

18 Q. As you told the Judge, Mr. Blake, you would have to
19 listen to everything?

20 A. That's true.

21 Q. And I think your words were that you couldn't make
22 a judgment until you've heard all the facts?

23 A. Or both sides, I think is what I said, both sides
24 of them, yeah.

25 Q. So you would want to hear everything involved?

1 A. I think I would.

2 Q. And you couldn't make up your mind or express an
3 opinion until you've heard everything; is that correct?

4 A. That's true.

5 Q. Now, in this case, Mr. Blake, the jury will hear
6 testimony. They will hear good things and bad things about
7 the defendant. They'll hear some more testimony about the
8 crime. We can't tell you what that's going to be because
9 you're going to have to take that from witnesses who testify;
10 you understand that?

11 A. Yes.

12 Q. And once the jury has heard everything, the Judge
13 is going to tell the jury what the law is. He's going to
14 tell the jury what aggravating circumstances are, what
15 mitigating circumstances are. He's going to tell the jury
16 what aggravating circumstances are involved and he'll list
17 them, and what mitigating circumstances are involved and
18 he'll list them. He'll give some of that to the jury in
19 writing. Would you follow all that that the Judge gives to
20 the jury?

21 A. Yes.

22 Q. And, Mr. Blake, is it fair to say that you can't
23 express an opinion because you haven't heard anything?

24 A. That's fair to say, yeah. I don't believe I could
25 express any kind of opinion on it right now.

1 Q. And after you've heard all the testimony, after
2 you've heard the law, then you could decide what is the
3 appropriate sentence; is that right?

4 A. I think I can, yes.

5 Q. And you could either go with life imprisonment or
6 the death penalty?

7 A. True, that's true.

8 Q. But it would be based on the facts, the
9 circumstances and the law?

10 A. That's true.

11 Q. And what punishment fits the crime and the
12 defendant's character; is that fair to say?

13 A. That's true.

14 MR. MYERS: That's all we can ask of you. Thank
15 you, Mr. Blake.

16 THE COURT: All right, Mr. Young?

17 VOIR DIRE EXAMINATION

18 BY MR. YOUNG:

19 Q. Mr. Blake, have you ever discussed with any family,
20 friends, co-workers or anyone about your views or your
21 opinions about the death penalty?

22 A. No, I haven't.

23 Q. Have you ever had the opportunity to sit down and
24 think about how you feel about the death penalty?

25 A. Yeah. They gave us this little thing yesterday and

1 I thought about it last night, yes.

2 Q. Could you tell us, what are your opinions about the
3 death penalty?

4 A. I think I just expressed them, that I really
5 couldn't make a judgment on the death penalty until I hear
6 what the -- both sides of the story, the facts and what the
7 law says about it, too.

8 Q. Now, I'm not asking you if you could make a
9 decision today about the death penalty, whether you should
10 give it or not, what I want to know is is your feelings in
11 general about the death penalty.

12 MR. MYERS: Objection. He's answered it.

13 THE COURT: I'm going to give him a little bit of
14 latitude with it. Go ahead.

15 A. You're asking me if I think the death penalty is
16 right or wrong; is that what you're asking me?

17 Q. Whatever your feelings are.

18 A. I think the death penalty is right in some cases.

19 Q. Okay. Okay. As the Judge stated earlier, you
20 understand that before a jury could even consider to give the
21 death penalty in a murder case they must find that an
22 aggravating circumstance exists; do you understand that?

23 A. Yes, there had to be some malice and prethought and
24 all this to it. Yes, I understand that.

25 Q. The Judge will explain to you that aggravation and

1 malice are different, okay. Malice is what is involved with
2 the crime of murder. Aggravation is something extra,
3 something that may make the crime worse than what it is.
4 Mitigation is evidence that will make the crime less than
5 what it is; do you understand that?

6 A. I sure do.

7 Q. And the Judge will also instruct you that in order
8 to even consider the death penalty that as a jury you would
9 have to make a finding that there is an aggravating
10 circumstance, that there's some facts there that makes the
11 crime worse; you understand?

12 A. Yes.

13 Q. You understand that the Judge would never instruct
14 the jury that even if you find an aggravating circumstance
15 that you'd have to give the death penalty; you understand
16 that?

17 A. I understand that, too.

18 Q. You understand that a jury could return a sentence
19 of life for any reason whatsoever; you understand that?

20 A. Yes.

21 Q. In fact, the jury could return a sentence of life
22 for no reason at all, understand?

23 A. Okay. I understand that, too.

24 Q. Well, it's an independent, individual decision of
25 each one of the jurors; you understand?

1 A. Yes.

2 Q. You have to make the decision as to what you
3 believe is the appropriate punishment; you understand?

4 A. Yes, I do.

5 Q. And if after deliberating with the rest of the
6 jurors, if all of the jurors agree that the death penalty is
7 the appropriate sentence, then you would return that verdict
8 to the Judge and the death penalty will be the sentence; you
9 understand?

10 A. Yes, I do.

11 Q. And if the jury agrees that life is the appropriate
12 sentence, then life would be the sentence; you understand?

13 A. That's the way the judiciary system is supposed to
14 work. I understand that, yes.

15 Q. If in making your decision, your individual
16 decision, you believe that one or the other is the
17 appropriate sentence, would you be able to vote what you
18 believe is the appropriate sentence?

19 A. Yes.

20 MR. YOUNG: Thank you, Mr. Blake.

21 THE COURT: Anything else from the State?

22 MR. MYERS: No, sir.

23 THE COURT: All right. Mr. Blake, let me ask if
24 you'll step just outside the door, okay.

25 POTENTIAL JUROR: Okay. What about the list,

1 should I give it to his guy?

2 THE COURT: You can give it to me. Thanks.

3 (WHEREUPON, Juror Blake leaves the courtroom.)

4 THE COURT: What's the State's position on this
5 juror?

6 MR. MYERS: Submit he's qualified.

7 THE COURT: Defense?

8 MR. YOUNG: He's qualified, Your Honor.

9 THE COURT: I find he is qualified.

10 (WHEREUPON, Juror Blake enters the courtroom.)

11 THE COURT: Mr. Blake, I've determined you'd be
12 qualified to sit on a jury in this case.

13 MR. BLAKE: All right.

14 THE COURT: I'm going to ask if you'd come back in
15 the morning at nine o'clock. Come back here to the
16 courtroom, if you would, and just sit in that middle section.
17 There will be a group in there with you, and we'll pick the
18 jury from that group.

19 Now, when you come back, bring bags packed for as
20 much as a week in a motel. The jury will be sequestered
21 during that time.

22 MR. BLAKE: Okay.

23 THE COURT: Leave the bags in the car, and if you
24 wind up on the jury somebody will take care of the bags for
25 you.

1 MR. BLAKE: All right.

2 THE COURT: Now, until that time, it's still very
3 important you not talk about the case. Certainly, you'll
4 want to tell your family where you're going to be, but don't
5 talk about the details of the case. And also, please stay
6 away from any sort of news coverage still; no newspaper, no
7 news on the television or radio.

8 With that in mind, we'll see you in the morning at
9 nine o'clock with your bags packed.

10 MR. BLAKE: Okay.

11 THE COURT: Thank you, sir.

12 (WHEREUPON, Juror Blake leaves the courtroom.)

13 (WHEREUPON, Juror Number 23, Barbara G. Barrs,
14 a white female, enters the courtroom.)

15 BARBARA G. BARRS, after having been duly
16 sworn, testified as follows:

17 VOIR DIRE EXAMINATION

18 BY THE COURT:

19 Q. Let me ask you, Ms. Barrs, when you were called up
20 yesterday, did I recall you had a problem of some kind; is
21 that correct?

22 A. Yes, sir.

23 Q. If you would, how about turn that way and toward
24 the court reporter and speak into that microphone. She has
25 to pick you up, okay?

1 A. Okay.

2 Q. What was your problem?

3 A. The guy's mom works for the same school that I work
4 for in food service.

5 Q. And who is that? What do you mean the guy's mom?

6 A. Louise Bennett.

7 Q. Mr. Bennett's mother; is that correct?

8 A. Right.

9 Q. All right. And do you feel that that would give
10 you a problem sitting on the jury then?

11 A. Yes, sir.

12 Q. Okay. Let me ask if you'll step just outside the
13 door just for a second -- let me ask this, would it affect
14 your ability to give both sides a fair trial in the case?

15 A. Yes, sir.

16 THE COURT: Okay. Let me ask you to step outside
17 the door just for a minute.

18 (WHEREUPON, Juror Barrs leaves the courtroom.)

19 THE COURT: Did you hear that, Counsel? Were you
20 able to hear what she was saying?

21 MR. FLOYD: I think so.

22 THE COURT: She indicated that she works with
23 Mr. Bennett's mother and indicated it would give her problem
24 sitting as a juror. And I specifically asked if it would
25 interfere with her ability to give a fair trial, and she said

1 it would.

2 What's the State's position?

3 MR. MYERS: She was trying to bring that up
4 yesterday. I know when that panel came up she was about to
5 go over the rail, and she was just told to take that up with
6 the Judge today.

7 THE COURT: I remember Geri had to fight her off.

8 MR. MYERS: Which was the appropriate thing to do.
9 So we have no objection.

10 THE COURT: What's the defense position?

11 MR. FLOYD: We have no objection to the Court's
12 discretion.

13 THE COURT: Right. Certainly, the fact that she
14 knows Ms. Bennett is not in itself a disqualifying factor,
15 but when the juror indicates that it is a problem and would
16 interfere with her ability to follow her oath, that's when we
17 have to -- we'll take her word for that, and we'll have to
18 excuse her for that.

19 Let's ask her to step in.

20 (WHEREUPON, Juror Barrs enters the courtroom.)

21 THE COURT: Ms. Barrs, we'll excuse you from having
22 to sit in this case. I certainly understand how difficult
23 that would be for you. We appreciate you being forthright
24 with us. You're free to go. Thank you, ma'am.

25 (WHEREUPON, Juror Barrs was excused.)

1 (WHEREUPON, Juror Number 83, Joshua W. Conder,
2 a white male, enters the courtroom.)

3 JOSHUA W. CONDER, after having been duly
4 sworn, testified as follows:

5 VOIR DIRE EXAMINATION

6 BY THE COURT:

7 Q. Mr. Conder, just relax, okay. We have a few
8 questions to ask you here. Do you recall that I told you
9 yesterday that in this case the State has charged Mr. Johnny
10 Bennett with murder?

11 A. Yes, sir.

12 Q. Do you recall that?

13 A. Yes, sir.

14 Q. And they have asked for the death penalty; do you
15 remember that?

16 A. Yes, sir.

17 Q. Now, you'll recall that I also told you that a jury
18 has -- one jury, a previous jury has already found
19 Mr. Bennett guilty of the murder; do you understand that?

20 A. Yes, sir.

21 Q. And you understand that when we say murder -- I
22 want to be sure you understand what we say murder is. It's
23 not like manslaughter or self-defense or something like that,
24 it's basically what one would think of as premeditated
25 murder. Murder in South Carolina is the unlawful killing of

1 another human being with what is called malice aforethought;
2 do you understand that?

3 A. Yes, sir.

4 Q. Malice is basically referred to as an evil state of
5 mind, and aforethought means it was at or before the time of
6 the murder. So, in essence, that means that the defendant
7 was convicted by a jury of killing Mr. Benton Smith with an
8 evil state of mind at the time that he did it; do you
9 understand that?

10 A. Yes, sir.

11 Q. Now, the law also says that that is not enough in
12 itself for the death penalty, that malice in itself is not
13 enough for the death penalty. You cannot give the death
14 penalty for that; do you understand?

15 A. Yes, sir.

16 Q. What the law says is that in order to give the
17 death penalty the State must also prove what are called
18 aggravating circumstances. Now, aggravating circumstances
19 are different from malice. Malice is part of the murder.
20 Aggravating circumstance, in essence, means there was
21 something else along with the murder; you understand that?

22 A. Yes, sir.

23 Q. Now, so you understand that the jury in this case
24 is going to be considering only the appropriate sentence.
25 You're going to be considering only those aggravating and

1 mitigating circumstances; you understand that?

2 A. Yes, sir.

3 Q. Now, with that in mind, have you had a chance to
4 look over this sheet that we gave you earlier?

5 A. Yes, sir.

6 Q. Do you recall that it described three types of
7 jurors; do you recall that?

8 A. Yes, sir.

9 Q. And do you feel that one of those applies to you?

10 A. Yes, sir.

11 Q. Which is that?

12 A. The first one.

13 Q. The first?

14 A. Yes, sir.

15 Q. Now, that is a person who says that once the crime
16 of murder has been proven, once someone has been found guilty
17 of murder, which is the case here, that they would always
18 give the death penalty, would never consider anything else no
19 matter what the circumstances. In other words, they wouldn't
20 want to hear anything else, they're just going to give the
21 death penalty. Is that what you're saying?

22 A. Yes, sir.

23 Q. In other words, there are no circumstances where
24 you would give life?

25 A. No, sir.

1 THE COURT: Let me ask you to answer any questions
2 the attorneys have.

3 Anything from the State?

4 MR. MYERS: No questions.

5 THE COURT: The defense?

6 MR. FLOYD: No questions, Your Honor.

7 THE COURT: Mr. Condor, we'll excuse you from
8 having to serve in this case. You're free to go. And if you
9 would, just give that list to me. Thank you.

10 (WHEREUPON, Juror Conder was excused.)

11 (WHEREUPON, Wally K. Sox, a white male, enters
12 the courtroom.)

13 WALLY K. SOX, after having been duly sworn,
14 testified as follows:

15 VOIR DIRE EXAMINATION

16 BY THE COURT:

17 Q. Mr. Sox, why don't you just have a seat and relax,
18 okay. Nobody is going to give you a hard time. I haven't
19 bitten anybody yet, so don't worry about it.

20 Do you recall that I told you in this case that the
21 State has charged Mr. Johnny Bennett with murder and asked
22 for the death penalty; do you remember that?

23 A. Yes, sir.

24 Q. And you remember also that I told you that another
25 jury has previously heard the issue of murder itself and that

1 they have found Mr. Bennett guilty of murder; do you
2 understand?

3 A. Yes, sir.

4 Q. Now, you understand when we're talking about murder
5 -- I want to be sure you understand what we mean by murder.
6 Murder is defined in South Carolina as the unlawful killing
7 of another human being with what is called malice
8 aforethought. In other words, when the murder was committed
9 that the defendant operated with malice. A malice is called
10 -- considered to be an evil state of mind, and that it was
11 there at the time or before the killing; do you understand
12 that?

13 A. Yes, sir.

14 Q. Now, the law also says that that in itself is not
15 enough to give someone the death penalty. That even though
16 someone may have committed a killing and they did so with
17 malice that the malice is not enough for the death penalty.
18 The law goes on and says that before you can give someone the
19 death penalty the State must prove beyond a reasonable doubt
20 that there were also aggravating circumstances involved with
21 it; you understand that?

22 A. Yes, sir.

23 Q. And that's what the jury in this case, the second
24 case, would be hearing. You would be deciding only the
25 sentence in the case; do you understand that?

1 A. Yes, sir.

2 Q. And you would be hearing all those aggravating
3 circumstances and mitigating circumstances; you understand
4 that?

5 A. Yes, sir.

6 Q. Okay. Understanding that, have you had a chance to
7 look over the sheet that I gave you before?

8 A. Yes, sir.

9 Q. And do you feel that one of those categories of
10 jurors would apply to you?

11 A. Yes, sir.

12 Q. Which is that?

13 A. The C, third part.

14 Q. The third one?

15 A. Yes, sir.

16 Q. Now, let's go over it and be sure we understand,
17 okay. Now, this juror says this, that although the defendant
18 has been found guilty of murder, in other words, of killing
19 someone with malice, with malicious evil intent, that I still
20 would not have my mind made up as to the sentence.

21 A. Yes, sir.

22 Q. That, in other words, I want to hear all those
23 aggravating circumstances, I want to hear those mitigating
24 circumstance, I want the judge to tell me what the law is,
25 then once I've heard all of that and only then would I be

1 ready to decide the appropriate sentence. Is that what
2 you're saying?

3 A. Yes, sir.

4 Q. Now, do you understand that this juror also says
5 this, says that once I've heard all of that, those
6 aggravating, mitigating circumstances, the judge has told me
7 the law, if I determine that a life sentence is appropriate I
8 could give a life sentence; is that right?

9 A. Yes.

10 Q. And this juror says that if I determine that a
11 death sentence is appropriate I can give a death sentence?

12 A. Yes, sir.

13 Q. In other words, it depends on the circumstances of
14 the case, right?

15 A. Yes, sir.

16 Q. Now, the law also says that if a jury gives a death
17 sentence that all 12 jurors must sign a form. There's a form
18 that says that we have given a death sentence. If you were
19 on the jury and determined that a death sentence was
20 appropriate and had given a death sentence, would you be able
21 to sign that form?

22 A. Yes, sir.

23 Q. Now, I'm going to ask you -- let me ask, have you
24 ever heard anything about this case, know anything about it?

25 A. Not that I know of.

1 Q. And let me ask you, how about turn and face that
2 microphone a little bit. I notice you're kind of
3 soft-spoken. The microphones don't pick up too well here.
4 I'm going to ask if you know these folks involved in the
5 case, okay. This is Mr. Bennett right here. Do you know
6 Mr. Bennett or know of Mr. Bennett?

7 A. No, sir.

8 Q. And he's beside his attorneys, Mr. Wayne Floyd,
9 right here, and Mr. Hervery Young over here. Do you know or
10 know of Mr. Young or Mr. Floyd?

11 A. No, sir.

12 Q. Now, the State is represented by the Solicitor,
13 Mr. Donnie Myers --

14 MR. FLOYD: I think he stepped out, Your Honor.

15 BY THE COURT:

16 Q. And also by Mr. Dayton Riddle and Mr. Shawn Graham
17 over here. Do you know or know of any of these gentlemen?

18 A. I've seen maybe this one here on TV maybe.

19 Q. Mr. Riddle? You've seen Mr. Riddle on TV?

20 A. I might have. I know I've seen Mr. Myers.

21 Q. Right. Is there -- and I'm sorry, you said what
22 now?

23 A. I know I've seen Mr. Myers on TV.

24 Q. Okay. And when you've seen Mr. Myers or Mr. Riddle
25 on TV, is there anything you've seen that gave you any sort

1 of a positive or negative feeling such that it would affect
2 your ability to give both sides a fair trial in this case?

3 A. No, sir.

4 Q. And also, the victim in this case, the man who was
5 killed was Mr. Benton Smith, full name was Benton Darrell
6 Smith. Did you know Mr. Smith or know of him?

7 A. No, sir.

8 Q. We gave you a witness list, also. Did you got a
9 chance to look this over?

10 A. Yes, sir.

11 Q. Did you recognize any of those names?

12 A. The only name I might --

13 Q. And if you did, how about just give them to me by
14 number, okay?

15 A. The only name I might have known was number 28.

16 Q. Number 28. And how would you know him?

17 A. If it's the same David Martin, he works for the
18 State of South Carolina. And I worked there for the Budget
19 Control Board.

20 Q. If he were to testify would that affect your
21 ability to give both sides a fair trial?

22 A. No, sir.

23 Q. You know anybody else on the list?

24 A. No, sir.

25 Q. So then, do you know of any reason -- and have you

1 ever had any dealings with the Solicitor's Office?

2 A. No, sir.

3 Q. Do you know of any reason at all then why you could
4 not give both sides a fair trial in this case?

5 A. No, sir.

6 THE COURT: All right. The attorneys are going to
7 have some questions for you. Let me ask you if you will
8 answer their questions, okay.

9 Mr. Riddle?

10 VOIR DIRE EXAMINATION

11 BY MR. RIDDLE:

12 Q. Good afternoon, Mr. Sox. You're the first one
13 that's recognized me. I don't know if that's good or bad.
14 I just have a couple of questions I want to ask you. What
15 we're trying to do is just explore your feelings about the
16 death penalty and talk to you a little bit about the law in
17 this State. I want you to know there's no right or wrong
18 answers. We're just trying to get to know you a little bit.
19 I noticed on your questionnaire you've never served on a jury
20 before?

21 A. No, sir.

22 Q. You're somewhat familiar with the jury system,
23 though?

24 A. Yes, sir.

25 Q. You know that ordinarily in a criminal case a jury

1 hears testimony and evidence about whether somebody is guilty
2 or not guilty?

3 A. Yes, sir.

4 Q. And they'll decide guilty or not guilty. And
5 ordinarily after that their job is done. And in an ordinary
6 criminal case you know that if the jury finds somebody guilty
7 the judge normally passes the sentence in that particular
8 case?

9 A. Yes, sir.

10 Q. And the judge may say, bring that fellow around.
11 And he may say, solicitor, tell me something about him. And
12 I might tell him the prior record, other things that he's
13 done, bad things. Then he might say -- the judge might say,
14 now, Mr. Defense lawyer, you tell me something about him.
15 And the defense lawyer will tell him some good things about
16 the defendant. And based on all that information the judge
17 will pass the appropriate sentence and give the appropriate
18 sentence in that case. You understand that process?

19 A. Yes.

20 Q. In a death penalty case, 12 men and women actually
21 give the sentence and not the judge. The judge won't ever
22 tell you what the sentence should be; you understand that?

23 A. Yes, sir.

24 Q. And what happens in a death penalty case is we have
25 a trial, and we put witnesses in that chair that you're

1 sitting in now. And the State is going to present to the
2 jury aggravating circumstances. And aggravating
3 circumstances may have to do with prior record, may have to
4 do with bad character of the defendant, circumstances of the
5 crime, that type information; you understand that?

6 A. Yes, sir.

7 Q. And then the defense may put up some evidence in
8 front of you about some good things about the defendant.
9 Now, you told the Judge that you were a category three juror;
10 is that correct?

11 A. Yes, sir.

12 Q. And I take it from that, that that means that
13 you're the kind of juror that would need to hear all that
14 aggravation and that mitigation, the good and the bad, before
15 you can say what the appropriate sentence in a particular
16 case should be; is that right?

17 A. Yes, sir.

18 Q. So as you sit here today, you can't say well,
19 Mr. Bennett should get one sentence or another sentence
20 because you don't know anything about this case; is that
21 right?

22 A. Yes, sir.

23 Q. Would it be fair to say, Mr. Sox, that you would
24 listen carefully to all the evidence that's presented, the
25 good and the bad?

1 A. Yes, sir.

2 Q. And that you would consider all of that evidence,
3 the good and the bad, in making whatever decision you'd make
4 in this case?

5 A. Yes, sir.

6 Q. You'd consider all that evidence, the good and the
7 bad, before you decide that; is that right?

8 A. Yes, sir.

9 Q. Now, the Judge, he was a lawyer before he was a
10 judge, but since he got that black robe he gets to instruct
11 you on the law in this case. And he'll do a good job at
12 that, and he'll give you a very formal legal definition of
13 aggravating circumstances and a very formal legal definition
14 of mitigating circumstances. As a matter of fact, he's going
15 to give it to you in writing. Now, would you be able to
16 follow the law that the Judge gives you in this case?

17 A. Yes, sir.

18 Q. And you could set aside any personal notions of
19 what you thought the law ought to be and follow the law that
20 the Judge gives you?

21 A. Yes.

22 Q. Could you not? And could you apply that law to the
23 evidence that you've heard and arrive at your verdict based
24 solely on the evidence you hear and law that the Judge gives
25 you?

1 A. Yes, sir.

2 Q. And in a particular case, some cases may warrant
3 the imposition of the death penalty; is that correct?

4 A. Yes, sir.

5 Q. Depending on the facts and circumstances?

6 A. Yes, sir.

7 Q. And on the other hand, some cases may warrant
8 giving a life sentence, depending on the facts and the
9 circumstances?

10 A. Yes, sir.

11 Q. And you would not make up your mind about what the
12 appropriate sentence is until you've heard everything?

13 A. Yes, sir.

14 Q. Including the law that the Judge gives you?

15 A. Yes, sir.

16 Q. Now, is there anything about you, Mr. Sox, from
17 your background and upbringing that would prevent you from
18 being fair and impartial to both sides in this case?

19 A. No, sir.

20 MR. RIDDLE: Thank you, sir. That's just what
21 we're looking for.

22 THE COURT: Mr. Young?

23 VOIR DIRE EXAMINATION

24 BY MR. YOUNG:

25 Q. How you doing, Mr. Sox?

1 A. Fine.

2 Q. My name is Hervery Young. I'm one of Mr. Bennett's
3 attorneys. This process here is basically for us to get to
4 know your feelings about the death penalty. There's no right
5 or wrong answers. All we ask is that you be honest. There's
6 nothing that we're specifically looking for but your honest
7 answers as to how you feel about the death penalty. Have you
8 ever had an occasion to discuss your views about the death
9 penalty?

10 A. I mean, I may have in the office talked about the
11 death penalty with people who have been around.

12 Q. Right. Tell us what your views are on the death
13 penalty. How do you feel about it?

14 A. It's pretty much that part three of this, if I
15 thought that he deserved that sentence that's what I would
16 vote for.

17 Q. I'm not trying to get you to commit to what you
18 would do or not do. What I want to know is not how you would
19 vote but how you feel about the death penalty in general.

20 A. If it warranted it, I wouldn't have any problem.
21 If it didn't, I wouldn't.

22 Q. Okay. So is it safe to say that you feel that the
23 death penalty is necessary in some cases and is not in other
24 cases?

25 A. I would think so, yes, sir.

1 Q. The Judge will instruct you that before a jury
2 could even consider giving the death penalty to anyone that
3 you must find that not only that a murder has been committed,
4 but that there's an aggravating circumstance that exists
5 also; you understand that?

6 A. Yes, sir.

7 Q. And that once you find that there is an aggravating
8 circumstance, then and only then, could you consider giving
9 anyone the death penalty, understand?

10 A. Yes, sir.

11 Q. And if you don't find that an aggravating
12 circumstance exists, then the person gets a life sentence;
13 you understand?

14 A. Yes, sir.

15 Q. You understand that the Judge will instruct you
16 that even if you do find that there was an aggravating
17 circumstance that you could still give a life sentence if you
18 feel that that is the appropriate sentence?

19 A. Yes, sir.

20 Q. I noticed on your questionnaire you stated that
21 your wife worked with Probation and Parole?

22 A. Yes, sir.

23 Q. What exactly does she do there?

24 A. She works at N. C. I. C.

25 Q. N. C. I. C?

1 A. Yes, sir.

2 Q. So she would log information in, into their
3 systems?

4 A. Yes, sir. And they have what they call a hit come
5 in that she'll send the warrant out and have that person
6 picked up to hold them.

7 Q. Have you and your wife ever had an occasion to talk
8 about the details of what she did?

9 A. We used to some but --

10 Q. Based on your conversations with her about her
11 work, have you formed any opinions about anyone who is
12 charged with a crime or convicted of a crime?

13 A. No, sir. She doesn't talk about the individuals.

14 Q. Okay. Just, in general, what she did?

15 A. Yes, sir.

16 Q. Just every day, how was you day type talk?

17 A. Yes, sir.

18 Q. So I take it that because your wife worked with
19 Probation and Parole that there is nothing about her job that
20 would interfere with your duties as a juror?

21 A. No, sir.

22 Q. Each juror will have the right to make their own
23 individual decision in what is the appropriate punishment;
24 you understand that?

25 A. Yes, sir.

1 Q. Then you will deliberate with the other jurors and
2 return a sentence. That sentence will be either life or
3 death; understand that?

4 A. Yes, sir.

5 Q. If your individual decision on the appropriate
6 punishment is life or death, would you be able to vote the
7 way your decision was?

8 A. Yes, sir.

9 MR. YOUNG: That's all we ask, thank you.

10 THE COURT: Anything else, Mr. Riddle?

11 MR. RIDDLE: No, sir.

12 THE COURT: All right. Mr. Sox, let me ask you to
13 step just outside the door for a second, okay.

14 (WHEREUPON, Juror Sox leaves the courtroom.)

15 THE COURT: What's the State's position on this
16 juror?

17 MR. RIDDLE: Submit he's qualified, Your Honor.

18 THE COURT: Defense?

19 MR. YOUNG: Qualified, Your Honor.

20 THE COURT: I find he is qualified.

21 Let's ask him to step in.

22 (WHEREUPON, Juror Sox enters the courtroom.)

23 THE COURT: Mr. Sox, I have determined that you
24 would be qualified to sit on a jury in this case. So what
25 I'm going to ask you to do is come back in the morning at

1 nine o'clock, okay. Just come back here to the courtroom and
2 sit right here in the middle of the courtroom. And you'll be
3 there with about 35 or 40 people, and we'll draw a jury from
4 that group.

5 Now, when you come back, if you would, bring your
6 bags packed for as much as a week in a motel. The jury will
7 be sequestered. You can just leave your bags in your car,
8 and if you are picked on the jury someone will take care of
9 the bags and get them to the motel for you.

10 Now, it's also very important that you still not
11 talk about the case with anybody. While you want to tell
12 your family where you're going to be, it's important that you
13 not talk about the details of the case. And stay away from
14 any news, if you would, please, no newspapers. Stay away
15 from any news on the radio or television, also.

16 With that in mind, we'll see you tomorrow morning,
17 that's Wednesday, tomorrow, at nine o'clock right here with
18 your bags packed. Thank you, sir.

19 (WHEREUPON, Juror Sox leaves the courtroom.)

20 (WHEREUPON, Juror Number 258, Wilson T.
21 Outlaw, III, a white male, enters the courtroom.)

22 WILSON T. OUTLAW, III, after having been duly
23 sworn, testified as follows:

24 VOIR DIRE EXAMINATION

25 BY THE COURT:

1 Q. Mr. Outlaw, why don't you just have a seat and
2 relax, okay. Nobody is going to give you a hard time. We're
3 just going to chat a little bit.

4 A. Yes, sir.

5 Q. Mr. Outlaw, do you recall yesterday that I told you
6 that in this case the State has charged Mr. Johnny Bennett
7 with murder and have asked for the death penalty?

8 A. Yes, sir.

9 Q. And you remember I also told you that another jury
10 has heard the first part, they've heard the issues regarding
11 the murder and they found Mr. Bennett guilty of murder; you
12 understand that?

13 A. Yes, sir.

14 Q. Now, what means is this, I want to be sure you
15 understand murder, okay?

16 A. Okay.

17 Q. South Carolina law says that murder is the unlawful
18 killing of another human being with what is called malice
19 aforethought. Now, malice aforethought simply is this,
20 malice means an evil state of mind.

21 A. Yes, sir.

22 Q. Doesn't mean anything else, just an evil state of
23 mind. That the individual had an evil state of mind when he
24 committed the killing, and that that evil state of mind was
25 there either before or during the time of the killing; you

1 understand?

2 A. Yes, sir.

3 Q. Now, the law also says that that in itself is not
4 enough to give the death penalty. That in order to give the
5 death penalty the State must also prove aggravating
6 circumstances. And those are set out in the law, that they
7 must prove at least one aggravating circumstance. And you
8 understand, that's why this jury -- we're trying to pick this
9 jury, and that is to determine that second part of the trial,
10 to determine the sentence, either life imprisonment or death;
11 you understand that?

12 A. Yes, sir.

13 Q. And to determine whether or not the State can prove
14 aggravating circumstances; you understand that?

15 A. Yes, sir.

16 Q. Now, in that second part of the trial, besides
17 aggravating circumstances, you would also hear what are
18 called mitigating circumstances. In other words, aggravating
19 circumstances are things that would tend to make Mr. Bennett
20 not look favorable, and mitigating circumstances would make
21 his look favorable, that's the two.

22 A. Yes, sir.

23 Q. And the jury would have to consider all of those
24 and plus the law as the judge gives it to them.

25 Understanding that, did you have a chance to look over the

1 sheet that we gave you?

2 A. Yes, sir.

3 Q. And do you feel like you fit within one of those
4 categories?

5 A. Yes, sir. I feel like I fit within the third
6 category, the third category.

7 Q. Right. Let's go over that, okay, just to be sure
8 we're talking about the same thing. The third category is a
9 juror who says that even though the defendant has been found
10 guilty of murder, in other words, even though he's been found
11 of maliciously killing someone else, that I still would not
12 have my mind made up as to the proper punishment; is that
13 right?

14 A. Yes, sir.

15 Q. This juror says that then I want to hear those
16 aggravating circumstances, right?

17 A. Yes, sir.

18 Q. I want to hear the mitigating circumstances?

19 A. Yes, sir.

20 Q. I want the judge to tell me the law, right?

21 A. Yes, sir.

22 Q. Then and only then would I be ready to start even
23 thinking about the proper sentence; is that right?

24 A. Yes, sir.

25 Q. Now, this juror also says this, says that if the

1 facts justify a life sentence I could give a life sentence;
2 is that right?

3 A. Yes, sir.

4 Q. And if the facts justified a death sentence I could
5 give the death sentence?

6 A. Yes, sir.

7 Q. In other words, it was just depend on the
8 circumstances of the case?

9 A. Yes, sir.

10 Q. Now, the law also says this, one other thing, and
11 that is that if a jury gives the death sentence that there is
12 a form that all 12 jurors must sign, each juror must sign
13 saying I have agreed to give the death sentence.

14 A. Yes, sir.

15 Q. Now, if you were on the jury, felt that the death
16 sentence was appropriate and had given the death sentence,
17 would you be able to sign that form?

18 A. Yes, sir.

19 Q. Now, have you heard anything about this case
20 before?

21 A. No, sir.

22 Q. Never heard anything?

23 A. Nothing at all.

24 Q. Let me introduce you to some folks and see if you
25 know them, okay?

1 A. Yes, sir.

2 Q. This case will be prosecuted by the Solicitor's
3 Office. And, first of all, have you ever had any dealings
4 with the Solicitor's Office?

5 A. No, sir.

6 Q. This is the Solicitor, Mr. Donnie Myers.

7 A. How you doing?

8 Q. And he'll be try the case along with Mr. Dayton
9 Riddle.

10 A. Okay, how you doing?

11 Q. And Mr. Shawn Graham.

12 A. How you doing?

13 Q. Do you know or know of any of these gentlemen?

14 A. No, sir.

15 Q. Now, the defendant is Mr. Bennett, sitting right
16 there.

17 A. How you doing?

18 Q. Do you know Mr. Bennett or know of Mr. Bennett?

19 A. No, sir.

20 Q. And Mr. Bennett is represented by Mr. Hervery
21 Young, right here.

22 A. How are you doing?

23 Q. And Mr. Wayne Floyd.

24 A. Hello.

25 Q. Do you know or know of either of those gentlemen?

1 A. No, sir.

2 Q. Don't know anybody in the case?

3 A. No, sir.

4 Q. Never heard of them?

5 A. Sure haven't.

6 Q. So you've got sort of a clean slate, right?

7 A. Yes, sir, very much so.

8 Q. We also gave you a witness -- and, first of all,
9 the victim in this case, the man killed was Mr. Benton Smith.
10 His full name was Benton Darrell Smith. Did you know
11 Mr. Smith or know of him?

12 A. No, sir.

13 Q. We also give you a witness list. Did you look that
14 over?

15 A. Yes, sir.

16 Q. Did you know or recognize any of the names on
17 there?

18 A. Yes, sir.

19 Q. And if you did, give them to me by number and not
20 by name, okay?

21 A. Yes, sir. Number 32.

22 Q. All right. And how do you know her?

23 A. I think she went to church with me.

24 Q. Which church is that?

25 A. Leesview United Methodist.

1 Q. By the fact that she goes to church with you, if
2 she testified would you tend to give her more credibility
3 than you would anyone else?

4 A. No, sir, not at all.

5 Q. Would that interfere with your ability to give a
6 fair trial?

7 A. No, sir.

8 Q. Anyone else you know?

9 A. Yes, sir, 55.

10 Q. 55, all right. And how do you know him or her?

11 A. I think it's a him, and I think he went to high
12 school with me.

13 Q. If he testified, would that interfere with your
14 ability to give a fair trial?

15 A. No, sir.

16 Q. You wouldn't give him more credibility than anybody
17 else?

18 A. No, sir.

19 Q. Anybody else?

20 A. One other, number 108.

21 Q. All right. And how did you know him?

22 A. I think he also went to school with me, high
23 school.

24 Q. Okay. Now, did you -- would the fact that he
25 testified give you any problem giving both sides a fair

1 trial?

2 A. No, sir.

3 Q. And it wouldn't -- you wouldn't give him more
4 credibility than anyone else?

5 A. No, sir.

6 Q. Anyone else on here?

7 A. No, sir, that's all.

8 Q. Okay. Understanding everything that I've asked
9 then do you feel like you would be able to give both sides a
10 fair trial in this case?

11 A. Yes, sir.

12 Q. All right. Let me ask you now, if you would,
13 answer any questions the lawyers have. They may have some
14 questions for you, okay?

15 A. Yes, sir.

16 VOIR DIRE EXAMINATION

17 BY MR. MYERS:

18 Q. Mr. Outlaw?

19 A. Yes, sir.

20 Q. Mr. Outlaw, you've never served on a jury panel
21 before; is that right?

22 A. No, sir.

23 Q. Is all of this kind of new to you?

24 A. Yes, sir, very much.

25 Q. Mr. Outlaw, you told the Judge that on that sheet

1 that you have there that you're in that third category.

2 A. Yes, sir.

3 Q. Now, the first category says that when a person is
4 convicted of murder, there's a juror that says if you're
5 convicted of murder you always get the death penalty. I
6 don't care what else, always get the death penalty. You
7 don't fit into that category?

8 A. No, sir.

9 Q. In the second category, a person convicted of
10 murder, there are jurors that say well, I never ever could
11 vote for the death penalty, I don't care what. You don't fit
12 in that category?

13 A. No, sir.

14 Q. You could vote for life or you could vote for
15 death, but it depends on the facts and circumstances?

16 A. Yes, sir.

17 Q. And, of course, you couldn't make up your mind
18 until you've heard all the facts and the circumstances; is
19 that right?

20 A. Yes, sir.

21 Q. In this case, the jury is going to hear testimony.
22 They'll hear testimony from a lot of witnesses that will be
23 sitting in that chair you're in right now. They'll hear
24 about the crime. The jury will hear about the defendant,
25 what kind of person he is or was. Some things may be

1 favorable, some things may be bad for him. And when the jury
2 has heard all of this, the Judge is going to tell the jury
3 what the law is. Would you be willing to listen to all this
4 testimony to reach your verdict?

5 A. Yes, sir.

6 Q. Would you be willing to follow the law as the Judge
7 tells you what the law is to reach your verdict?

8 A. What is that, sir?

9 Q. The Judge is going to tell the jury what the law
10 is, would you follow the law if he told you what the law was?

11 A. Yes, sir.

12 Q. For example, you've heard these terms aggravating
13 circumstances and mitigating circumstances?

14 A. Yes, sir.

15 Q. The Judge is going to tell the jury in detail what
16 those mean. He's going to give the jury a definition. He's
17 going to give the jury a list of those circumstances.

18 A. Okay.

19 Q. He's going to give that to the jury in writing so
20 they can refer to it. You would use that in reaching your
21 verdict and refer to it if the Judge told you to do so?

22 A. Yes, sir.

23 Q. Is it fair to say, Mr. Outlaw, that before you can
24 decide what the right punishment would be in a case you would
25 have to hear everything?

1 A. Yes, sir.

2 Q. And in a case of murder, you don't think life is
3 always the right sentence?

4 A. Right.

5 Q. Death isn't always the right sentence?

6 A. Yes, sir.

7 Q. It's pretty much the punishment should fit the
8 crime; is that correct?

9 A. Yes, sir.

10 Q. And you'd have to hear everything before you decide
11 that?

12 A. Yes, sir.

13 Q. Mr. Outlaw, the Judge told you about our law
14 requiring a signature?

15 A. Yes, sir.

16 Q. The jury will have a form in the jury room, it will
17 be the death sentence form. And it will have 12 lines on
18 there because every juror must sign it. If you were
19 convinced the death penalty was the right sentence, could you
20 so sign that form?

21 A. Yes, sir, I think I could.

22 Q. That's all we ask of you. Thank you, Mr. Outlaw.

23 A. Appreciate it.

24 VOIR DIRE EXAMINATION

25 BY MR. FLOYD:

1 Q. Good morning, Mr. Outlaw.

2 A. Morning.

3 Q. My name is Wayne Floyd.

4 A. Nice to meet you.

5 Q. I'm one of Johnny Bennett's lawyers.

6 A. Yes, sir.

7 Q. Mr. Outlaw, how do you feel about the death
8 penalty?

9 A. I think the death penalty is something harsh
10 sometimes, but I feel like sometimes it should be inflicted.

11 Q. Have you ever discussed the death penalty with your
12 wife, friends, co-workers?

13 A. No, sir, not really.

14 Q. Have your views on the death penalty changed in the
15 last five years?

16 A. I don't think so.

17 Q. Now, you understand, don't you, that Mr. Bennett
18 has been convicted of murder by another jury?

19 A. Yes, sir.

20 Q. And did you understand when the Judge explained to
21 you what that meant with murder?

22 A. Yes, sir.

23 Q. What a murder means?

24 A. Yes, sir.

25 Q. Now, having been explained what a murder means,

1 being a killing with malice aforethought, by the Judge, and
2 knowing that Mr. Bennett has been convicted of that by a
3 jury --

4 MR. MYERS: I'm sorry, I can't hear, Your Honor. I
5 apologize. There's a lot of moving around.

6 THE COURT: Speak up just a little bit.

7 BY MR. FLOYD:

8 Q. Having been convicted by a previous jury, could you
9 still consider a life sentence or a death sentence, depending
10 on the way -- the evidence you hear?

11 A. Yes, sir.

12 Q. Now, do you understand that in a death penalty
13 situation each side will be giving the jury evidence of other
14 things other than the crime itself to include bad acts or
15 good acts of the defendant or bad character or good character
16 of the defendant? Can you as a juror consider those items of
17 evidence in addition to the crime itself before you make your
18 decision?

19 A. Yes, sir.

20 Q. Now, if you were told that a juror is never
21 required to give the death penalty, that he can give a life
22 sentence for any reason whatsoever, could you follow the
23 Judge's instructions in that regard?

24 A. I think so.

25 MR. FLOYD: Thank you. No further questions.

1 THE COURT: Anything else from the State?

2 MR. MYERS: No, sir.

3 THE COURT: All right, sir. Let me ask you to step
4 just outside the door, okay.

5 (WHEREUPON, Juror Outlaw leaves the
6 courtroom.)

7 THE COURT: All right. What's the State's position
8 on this juror?

9 MR. MYERS: Submit he's qualified.

10 THE COURT: Defense?

11 MR. FLOYD: We think he's qualified, Your Honor.

12 THE COURT: All right. I find he is qualified.

13 (WHEREUPON, Juror Outlaw enters the
14 courtroom.)

15 THE COURT: Mr. Outlaw, I've determined that you
16 would be qualified to sit as a juror in this case if you're
17 selected.

18 MR. OUTLAW: Yes, sir.

19 THE COURT: Let me ask you to come back tomorrow
20 morning at nine o'clock, okay. That's Wednesday, tomorrow,
21 nine o'clock. Come back here to the jury room, sit here in
22 the middle section. You'll be there with about 35, 40
23 people, and we'll pick the jury from that group.

24 MR. OUTLAW: Okay.

25 THE COURT: Now, bring bags packed for as much as a

1 week in a motel. The jury will be sequestered during that
2 time. Leave the bags in the car, and if you do wind up on
3 the jury, somebody will take care of the bags for you.

4 MR. OUTLAW: Okay.

5 THE COURT: It's still important that you not talk
6 about the case. Let your family know where you are and what
7 you're going to be doing, but please don't go into any
8 details about the case. Stay away from any sort of news; no
9 newspaper, no news on television, no news on the radio.

10 MR. OUTLAW: Yes, sir.

11 THE COURT: With that in mind, we'll see you in the
12 morning at nine o'clock with your bags packed.

13 MR. OUTLAW: Okay. Thank you, sir.

14 THE COURT: Thank you, sir.

15 (WHEREUPON, Juror Outlaw leaves the
16 courtroom.)

17 (WHEREUPON, Juror Number 229, David E.
18 McNinch, a white male, entered the courtroom.)

19 DAVID E. MCNINCH, after having been duly
20 sworn, testified as follows:

21 VOIR DIRE EXAMINATION

22 BY THE COURT:

23 Q. Mr. McNinch, is that correct?

24 A. Yes, sir.

25 Q. Just relax. Nobody is going to give you a hard

1 time, okay?

2 A. All right.

3 Q. Mr. McNinch, you recall that we told you yesterday
4 that the State has charged Mr. Johnny Bennett with murder and
5 they've asked for the death penalty?

6 A. Yes, sir.

7 Q. And you recall that I told you that a previous jury
8 has already heard the first part?

9 A. Yes, sir.

10 Q. They've heard that part and they found Mr. Bennett
11 guilty of murder; you understand that?

12 A. Yes.

13 Q. Now, let me be sure you understand what we're
14 talking about. Murder in South Carolina is defined as the
15 unlawful killing of another human being with what is called
16 malice aforethought. In other words, that's when the person
17 killed another person. In other words, it wasn't
18 manslaughter, it wasn't self-defense, that they did so with
19 malice, with what is called an evil intent; you understand
20 that?

21 A. I understand that.

22 Q. And the law says -- and, of course, that the evil
23 intent was there at the time of the murder or before; you
24 understand that?

25 A. Yes, sir.

1 Q. Now, the law also says that in itself is not enough
2 for the death penalty. You cannot give the death penalty
3 just for that. The law says that in order to give the death
4 penalty that the State must also prove along with the murder
5 that there were what are called aggravating circumstances.
6 And the State has to prove those aggravating circumstances to
7 the jury beyond a reasonable doubt; you understand that?

8 A. Yes, sir.

9 Q. So then that's why we're drawing this second jury
10 here. This jury will decide the sentence, life in prison or
11 the death penalty; do you understand that?

12 A. Yes, sir.

13 Q. And this jury will listen to all of those
14 aggravating circumstances and determine whether or not the
15 State can prove it. This jury will also listen to mitigating
16 circumstances. Remember, aggravating circumstances are
17 things that would be against Mr. Bennett, would not make him
18 look so favorable. Mitigating circumstances would make him
19 look favorable, would be in his favor; you understand that?

20 A. Yes, sir.

21 Q. The jury would have to hear both of those and then,
22 of course, hear what the Judge has to say, hear the law
23 before they make a decision; you understand that?

24 A. Yes, sir.

25 Q. So, again, you understand that just because someone

1 has been convicted of murder, which it's killing someone with
2 malice aforethought, that's not enough to give the death
3 sentence; you understand?

4 A. Yes, sir.

5 Q. Now, understanding that, have you -- we gave you a
6 sheet to look over that described three types of jurors. Did
7 you look over that sheet?

8 A. Yes, sir, I did.

9 Q. And do you feel like one of those categories on
10 that sheet applies to you?

11 A. I would say the third one.

12 Q. The third. Let's be sure we're talking about the
13 same thing, okay. The third juror is a juror who says that
14 even though the defendant has been found guilty of murder, in
15 other words, has killed someone maliciously, that this juror
16 would still not have their mind made up as to the proper
17 punishment; is that correct?

18 A. Yes, sir.

19 Q. This juror says I want to hear more. I want to
20 hear those aggravating circumstances, I want to hear those
21 mitigating circumstances, I want the judge to tell me the
22 law, and then and only then am I going to be ready to decide
23 the sentence; is that correct?

24 A. Yes, sir.

25 Q. Now, this juror also says this, says that if I --

1 after all this, if I determine that a life sentence is the
2 proper sentence, I can give a life sentence.

3 A. Yes, sir.

4 Q. This juror says that if I determine that a death
5 sentence is the proper sentence I can give a death sentence.

6 A. Yes, sir.

7 Q. In other words, it just depends on the
8 circumstances; is that right?

9 A. Yes, sir.

10 Q. Now, also there's one other thing in the law I want
11 to tell you about, and that is this. The law says that if a
12 jury gives a death sentence all 12 jurors must sign a form.
13 There's a form which says we've agreed to give the death
14 sentence. All 12 jurors have to sign it. Now, if you were
15 on a jury and determined the death sentence was appropriate
16 and had given the death sentence, would you be able to sign
17 that form?

18 A. I believe so, yes, sir.

19 Q. You say I believe, any question in your mind at all
20 about it?

21 A. At the point in time of signing, you have to
22 reflect upon yourself.

23 Q. After what?

24 A. Reflecting upon yourself.

25 Q. Right.

1 A. I'm doing this is the right thing.

2 Q. Right. And you understand this would not happen
3 until you had actually deliberated with the entire jury?

4 A. Yes, sir.

5 Q. And the jury had come out with a unanimous decision
6 that the death sentence was appropriate, that's when you
7 would sign it; do you understand?

8 A. Yes.

9 Q. And regardless of what any other jurors did, if you
10 had made that determination would you be able to sign that
11 form?

12 A. Yes, sir.

13 Q. Now, have you heard anything about this case
14 before?

15 A. Not to my recollection.

16 Q. Let me introduce you to some folks involved in the
17 case, okay?

18 A. Okay.

19 Q. The State will be represented by the Solicitor's
20 Office. Have you ever had any dealings with the Solicitor's
21 Office here?

22 A. None that I know of.

23 Q. The Solicitor is Mr. Donnie Myers, who is right
24 here. With him are Mr. Dayton Riddle and Mr. Shawn Graham.
25 Now, do you know or know of any of these gentlemen?

1 A. Not that I can recall.

2 Q. Okay. And this is Mr. Bennett right here,
3 Mr. Johnny Bennett. Do you know Mr. Bennett or know of
4 Mr. Bennett?

5 A. No, sir.

6 Q. And he's represented by Mr. Herverly Young, right
7 here in the middle, and Mr. Wayne Floyd. Do you know either
8 of them?

9 A. No, sir.

10 Q. Don't know anything about them?

11 A. No, sir.

12 Q. Now, we also gave you a list, a witness list. Did
13 you look that over?

14 A. Yes, sir, I did.

15 Q. Did you recognize any of the names on it?

16 A. One name.

17 Q. And if you did, if you would, give it to me by
18 number, okay?

19 A. 102.

20 Q. All right, 102.

21 A. I know an individual by that name.

22 Q. I'm sorry?

23 A. I know an individual by that name.

24 Q. And how do you know him?

25 A. Through business and family.

1 Q. Okay. If he were to -- are you related to him at
2 all?

3 A. Not directly. It would be through marriage.

4 Q. And tell me how that is, if you can. I understand
5 it's hard to remember sometimes. It's hard to keep up with
6 in-laws.

7 A. Yeah. I guess it would be my wife's great uncle.

8 Q. It's your wife's great uncle?

9 A. Yes, sir.

10 Q. Okay. And if he testified, would that give you any
11 problem giving both sides a fair trial?

12 A. No, sir.

13 Q. In other words --

14 A. I would haven't a problem.

15 Q. I'm sorry?

16 A. I do not believe I would have a problem.

17 Q. Okay. Would that give you any problem -- in other
18 words, would you tend to give him more credibility than
19 anyone else because he's your wife's great uncle?

20 A. No, sir.

21 Q. Wouldn't affect you?

22 A. Not being put in a situation before, I would have
23 to say no.

24 Q. Now, anybody else on the list that you know?

25 A. Just some last names look familiar, but first names

1 did not.

2 Q. Okay, which ones are those? What numbers are they?

3 A. Seven.

4 Q. Okay.

5 A. Eight.

6 Q. Okay. Well, these are common --

7 A. From the last names.

8 Q. All common last names; is that right?

9 A. Yes, sir.

10 Q. But you don't recognize any first names?

11 A. The first names do not look familiar.

12 Q. Now, in this case, the victim, the man killed was

13 Mr. Benton Smith. The full name was Benton Darrell Smith.

14 Did you know Mr. Smith or know of him?

15 A. Not that I know of.

16 Q. And understanding everything that I've asked now,
17 do you know of any reason -- and, of course, during the trial
18 it will be my duty as the Judge to instruct the jury as to
19 the law. Would you be able to follow the instructions that I
20 gave the jury and go by them?

21 A. I believe so.

22 Q. Well, you say I believe so. Is there any question
23 in your mind?

24 A. I guess you could say legal terminology.

25 Q. But, in essence, if I explained the legal

1 terminology, you'd be able to go by it?

2 A. Yes, sir.

3 Q. Okay, sure. Understanding that then, is there any
4 reason why you couldn't give both sides a fair trial?

5 A. None that I know of.

6 Q. Let me ask if you'll answer any questions the
7 lawyers have. They're going to ask you some questions, all
8 right?

9 A. Sure.

10 THE COURT: Mr. Myers?

11 MR. MYERS: Judge, I didn't hear that last
12 conversation you had with him. He said something to you and
13 I couldn't hear what he said.

14 THE COURT: Oh, I'm sorry. What I asked him was if
15 he could follow any instructions that I gave the jury. And
16 he said, I believe so. And I asked him what he meant by I
17 believe so. And he said, well, there was a question,
18 something about legal terminology. And I said if I explained
19 the legal terminology, could he go by it. He said he could.
20 That's what it was.

21 VOIR DIRE EXAMINATION

22 BY MR. MYERS:

23 Q. That means that you're really not familiar with all
24 the legal terminology; is that a fair statement? Don't feel
25 bad, because I'm not either.

1 A. I have had a course at Midlands Tech with law, and
2 some things I still am unfamiliar with, I guess.

3 Q. No problem. This is the first time you've been a
4 juror?

5 A. Yes, sir.

6 Q. So all of this process is new to you?

7 A. Very much so.

8 Q. Mr. McNinch, what it basically boils down to is
9 this. 12 men and women have to sit over here in these chairs
10 as jurors, and they have to listen to testimony. The
11 witnesses will testify. And when all the testimony is over
12 with, the Judge is going to tell the jury what the law is.
13 And then the jury would go back to that room and reach a
14 sentence of life imprisonment or the death penalty; you
15 understand that?

16 A. Yes, sir.

17 Q. And we can't tell you what that evidence is going
18 to be right now. You'll have -- if you're on this case,
19 you'll have to take it from the witnesses who testify; you
20 understand that?

21 A. Yes, sir.

22 Q. And we need to know basically about your position
23 on the death penalty because the jury has got to determine
24 life in prison or the death penalty, only two choices.

25 A. Yes, sir.

1 Q. You understand that?

2 A. I understand that.

3 Q. You put yourself in that third category?

4 A. Yes, sir.

5 Q. That means that you could impose a life sentence or
6 you could impose a death penalty, but it depends on the facts
7 and circumstances; is that a fair statement?

8 A. Yes, sir.

9 Q. Now, I take it from that, is there anything about
10 you throughout your life, your religion or anything else that
11 would just prevent you from voting for the death penalty?

12 A. No, sir, I do not believe so.

13 Q. It would depend on the case and on the
14 circumstances?

15 A. Yes, sir.

16 Q. And if the crime circumstances was such that the
17 death penalty was warranted, you could sign your name on that
18 sheet of paper?

19 A. As I said before, I believe so, depending on the
20 circumstances and everything.

21 Q. After you've heard everything?

22 A. Yes.

23 MR. MYERS: That's all we can ask of you. Thank
24 you.

25 THE COURT: Mr. Young?

VOIR DIRE EXAMINATION

1
2 BY MR. YOUNG:

3 Q. Good afternoon. My name is Hervery Young. I'm one
4 of Mr. Bennett's attorneys?

5 A. Yes, sir.

6 Q. What I want to do is just ask you some questions.
7 I don't want to embarrass you, just want to have a
8 conversation with you. Pretty much what I'm trying to find
9 out is your views on the death penalty, your opinions, your
10 feelings. Have you ever talked about the death penalty to
11 other folks?

12 A. Not that I can recall. It's been directly, should
13 it be or should it not.

14 Q. Can you tell us, what do you think about the death
15 penalty?

16 A. I think it would be something that should be used
17 in extreme cases, not just for little things.

18 Q. The Solicitor asked you if there was anything in
19 your background that would prevent you from voting for the
20 death penalty. Is there anything in your background that
21 would prevent you from voting for a life sentence?

22 A. Not that I know of.

23 Q. The Judge will instruct you that before a jury
24 could even consider giving the death sentence, that jury must
25 find that not only did the murder occur but also that there

1 is an aggravating circumstance. Now, in this case,
2 Mr. Bennett has already been convicted of the murder; do
3 understand that?

4 A. Yes, sir, I understand that.

5 Q. Understanding that, do you have any opinion as to
6 what should be the appropriate punishment?

7 A. At this point in time, I do not.

8 Q. The Judge will instruct you that in the event that
9 the jury finds that there is an aggravating circumstance,
10 something that makes the crime worse, and after hearing both
11 the aggravation and the mitigation, the mitigation is stuff
12 that makes the crime worse -- I mean, less.

13 A. Less.

14 Q. After deciding that, the jury can individually
15 decide whether or not to give life or death; you understand
16 that?

17 A. Yes, sir.

18 Q. And the Judge will instruct you that basically the
19 jury can return a verdict of life in any situation for any
20 reason they want.

21 A. Understandable.

22 Q. In fact, the jury could return a life sentence for
23 no reason at all; understand, if they believe that that is
24 the appropriate punishment?

25 A. Appropriate thing.

1 Q. You will be entitled to make your own decision as
2 to what is the appropriate punishment.

3 A. Yes, sir.

4 Q. Talk with the other jurors and you all will bring
5 your sentence out to the Court. After you have made your
6 decision as to what the appropriate punishment is, whether
7 it's life or death, would you be able to vote the way that
8 you believe is what you believe is the appropriate
9 punishment?

10 A. Yes, sir.

11 Q. And the Solicitor asked you about having to sign
12 your name onto the form. If you feel that the death sentence
13 is not the appropriate sentence but life is the appropriate
14 sentence, the foreman will be able to just sign the form.
15 But in a situation where the jury finds that the death
16 penalty is the appropriate punishment, then all 12 of the
17 jurors would have to sign.

18 A. Okay.

19 Q. Now, I believe you stated to the Court and to
20 Mr. Myers that if the circumstances warrant the death penalty
21 that you can sign the form?

22 A. Yes, sir.

23 Q. Without any hesitation. But before you could make
24 the decision as to the appropriate punishment, you'll have to
25 hear all the evidence?

1 A. Yes, sir.

2 Q. The good and the bad?

3 A. I would have to.

4 MR. YOUNG: Thank you very much.

5 THE COURT: Anything else from the State?

6 MR. MYERS: No, sir.

7 THE COURT: All right. Let me ask you to step just
8 outside the door, okay.

9 (WHEREUPON, Juror McNinch leaves the
10 courtroom.)

11 THE COURT: What's the State's position on this
12 juror?

13 MR. MYERS: Submit he's qualified.

14 THE COURT: The defense?

15 MR. YOUNG: He's qualified, Your Honor.

16 THE COURT: I find he is qualified.

17 (WHEREUPON, Juror McNinch enters the
18 courtroom.)

19 THE COURT: Mr. McNinch, I've determined you would
20 be qualified to sit on the jury in this case. So what we're
21 going to ask you to do is come back tomorrow morning, that's
22 Wednesday, tomorrow, at nine, okay. Just come here to the
23 courtroom, and you'll sit here in the middle section. Now,
24 you'll be there with about 35 or 40 other people, and we'll
25 pick the jury from that group that's right in there.

1 Now, when you come, if you would, bring bags packed
2 for as much as a week in a motel. You'll be sequestered if
3 you are on the jury. Leave your bags in the car, and if you
4 do wind up on the jury somebody will take care of the bags
5 for you and they'll get them to the motel for you.

6 Now, it's still very important that you not talk
7 about the case with anybody. Of course, let your family know
8 where you're going to be and what you're doing, but not talk
9 about the case in detail with them. Also, stay away from any
10 sort of news; no newspaper, no news on the radio, no news on
11 television, okay?

12 MR. MCNINCH: Yes, sir.

13 THE COURT: With that in mind, I'll see you in the
14 morning at nine with your bags packed.

15 MR. MCNINCH: Yes, sir.

16 THE COURT: Thank you, sir.

17 MR. MCNINCH: That's for one week?

18 THE COURT: Yes, sir, for a week.

19 (WHEREUPON, Juror McNinch leaves the
20 courtroom.)

21 (WHEREUPON, Juror 211, Cerita B. Loftis, a
22 white female, came forward.)

23 CERITA B. LOFTIS, after having been duly
24 sworn, testified as follows:

25 VOIR DIRE EXAMINATION

1 BY THE COURT:

2 Q. Ms. Loftis, just have a seat and relax. Nobody is
3 going to give you a hard time, okay?

4 A. Okay.

5 Q. First of all, I note on your sheet that you have a
6 ten-year-old son; is that correct?

7 A. That is correct.

8 Q. Now, the jury in this case will be sequestered. In
9 other words, they'll be in motel for as much as a week,
10 probably close to four or five days. If you were in a motel
11 and sequestered would you be able to arrange care for your
12 son?

13 A. Yes, sir.

14 Q. You would?

15 A. Yes, sir.

16 Q. Do you have somebody at home who could take care of
17 him?

18 A. Yes, sir.

19 Q. Not going to be a problem then?

20 A. No, sir.

21 Q. Maybe a problem, but you can do it; is that right?

22 A. Yes, sir.

23 Q. And you certainly understand if it's something you
24 feel like you can't do, please let me know and we'll work
25 with you on that.

1 A. Okay. Is that where the child care is concerned?

2 Q. Yes, ma'am. You understand what will happen is
3 you'll be staying overnight in a motel, you won't be going
4 home at the end of court each day? So somebody will have to
5 take care of child for four or five days.

6 A. Okay.

7 Q. All right. Do you recall in this case that we had
8 told you yesterday that the State has charged Mr. Johnny
9 Bennett with murder and they've asked for the death penalty;
10 do you remember that?

11 A. Yes, sir.

12 Q. And you remember that I told you that one jury has
13 already heard the first part of the case and they found
14 Mr. Bennett guilty of murder; you understand that?

15 A. Yes, sir.

16 Q. And that that's why we're drawing the second jury
17 now is to decide the sentence, the appropriate punishment.

18 A. Yes, sir.

19 Q. Only two possible sentences, life in prison or the
20 death penalty; you understand that?

21 A. Yes, sir.

22 Q. Now, if you would, how about do this. Just turn
23 around toward the front to where that microphone is. You're
24 a little bit soft-spoken. Actually, everybody is. I think
25 they're a little nervous when they come in. There's nothing

1 to be nervous about.

2 And let me be sure you understand when we're
3 talking about murder, okay. In South Carolina, murder is
4 defined as the unlawful killing of another human being with
5 what is called malice aforethought. Malice basically means
6 an evil intent. And aforethought means that it was at the
7 time or before the murder. So in other words, the jury has
8 found Mr. Bennett guilty of killing another person with an
9 evil intent at the time that he did it; you understand?

10 A. Yes, sir.

11 Q. Now, the law says that, however, you cannot give
12 the death penalty for that, that's not enough for the death
13 penalty; you understand that?

14 A. Okay.

15 Q. In other words, the law says that in order to give
16 the death penalty the State must also prove beyond a
17 reasonable doubt what are called aggravating circumstances.
18 In other words, along with the murder, there must be at least
19 one aggravating circumstance and the State has to prove that;
20 you understand that?

21 A. Okay. Yes, sir.

22 Q. So when we talk about murder, I want to be sure you
23 understand that's what we're talking about. It's done
24 maliciously. And the only issue after that then for this
25 second jury is to decide whether or not there were

1 aggravating circumstances, okay?

2 A. Okay.

3 Q. Now, in the trial in the part that you would be in
4 if you were on the jury, you would hear not only aggravating
5 circumstances but you would hear mitigating circumstances.
6 In other words, these would be some things in Mr. Bennett's
7 favor, things on his behalf that would make him look
8 favorable; you understand that?

9 A. Yes, sir.

10 Q. And then, of course, at the end of it, the Judge or
11 I would give you the law and tell you what the law is; you
12 understand that?

13 A. Yes, sir.

14 Q. Okay. Understanding that then, did you get a
15 chance to look at the sheet that we gave you that described
16 the three types of jurors on it?

17 A. Yes, sir.

18 Q. Do you feel that one of those applies to you? Do
19 you recall the three categories? Do you want me to go over
20 them with you?

21 A. No, sir. I believe the first one is probably more
22 applicable than any of the other two.

23 Q. Okay. Now, this is a juror who says that -- I want
24 to be sure we understand what we're talking about, the same
25 thing, okay? This is a juror that says that if someone has

1 committed murder that the only sentence they would give them
2 is the death penalty.

3 In other words, this juror says that I don't need
4 to hear anything else. I don't want to hear all of the other
5 aggravating or mitigating circumstances. If they committed
6 murder, plain and simple, I'm just going to give them the
7 death penalty, and that's all. Is that what you're saying?

8 A. I'm more prone that way, yes, sir.

9 Q. Okay. Well, I need to know what you mean by more
10 prone. In essence, are there circumstances that you would
11 not give the death penalty?

12 A. To be honest with you, I'm not really sure. And in
13 watching news media in the past where murder cases were
14 involved I was more prone to think if they were convicted of
15 murder they need to be put to death and not have my tax
16 dollars support them for the rest of their life.

17 Q. Okay. So you just feel that the appropriate
18 sentence is just the death penalty; is that right?

19 A. Yes, sir.

20 THE COURT: Let me ask you to answer any questions
21 -- well, let me do this. Let me ask if you'll step just
22 outside the door for a second.

23 (WHEREUPON, Juror Loftis leaves the
24 courtroom.)

25 THE COURT: Counsel, do either of you want to

1 follow up with any questions with this juror?

2 MR. MYERS: No, sir.

3 MR. FLOYD: No, Your Honor.

4 THE COURT: All right.

5 Let's ask her to step back in.

6 (WHEREUPON, the juror enters the courtroom.)

7 THE COURT: Ms. Loftis, we're going to excuse you
8 from having to sit on this case. We appreciate you being
9 forthright with us. You can take that back to the deputy.
10 Thank you for being with us. Have a good day.

11 (WHEREUPON, Juror Loftis was excused.)

12 THE COURT: Counsel, anything before we recess?

13 MR. MYERS: Nothing from the State.

14 THE COURT: Defense?

15 MR. FLOYD: Nothing from the defense, Your Honor.

16 THE COURT: All right. I'll See you back at 2:30.

17 (WHEREUPON, a lunch break was taken.)

18 THE COURT: Is the State ready?

19 MR. MYERS: The State is ready, Your Honor.

20 THE COURT: Is the defense ready?

21 MR. FLOYD: The defense is ready, Your Honor.

22 THE COURT: All right. Let's bring the next juror
23 in, please.

24 (WHEREUPON, Juror Number 260, Patricia B.

25 Padgett, a white female, enters the courtroom.)

1 Patricia B. Padgett, after having been duly
2 sworn, testified as follows:

3 VOIR DIRE EXAMINATION

4 BY THE COURT:

5 Q. Ms. Padgett, why don't you just relax a second,
6 okay?

7 A. Okay.

8 Q. We're just going to do a little chatting here.

9 Do you recall that we told you yesterday that in
10 this case the State has charged Mr. Johnny Bennett with the
11 offense of murder and have asked for the death penalty; do
12 you recall that?

13 A. Correct.

14 Q. Do you recall also that I told you that a previous
15 jury has heard the issue of the murder charge and have found
16 him guilty of murder?

17 A. Right.

18 Q. And, of course, that's why we're drawing this next
19 jury, and that is to determine the appropriate sentence; do
20 you understand that?

21 A. Yes, sir.

22 Q. Now, let me be sure you understand what we're
23 talking about when we say murder. South Carolina defines
24 murder as the killing of another human being with malice
25 aforethought. In other words, so the jury, in essence, has

1 convicted Mr. Bennett of killing another person with malice
2 aforethought.

3 In other words, malice is defined as an evil
4 intent. And a forethought is, in essence, means at or before
5 the time of the murder. So when we say murder that's what
6 we're talking about, it's not manslaughter, it's not
7 self-defense. It's murder with malice involved. Do you
8 understand that?

9 A. Yes, sir.

10 Q. Now, the law also says that that in itself is not
11 enough to give someone the death penalty. That in order to
12 give the death penalty there must also be aggravating
13 circumstances attached to it. There must be at least one
14 aggravating circumstance. And the State must prove this
15 beyond a reasonable doubt to the jury; you understand that?

16 A. Yes.

17 Q. So with that in mind, you understand that we're
18 drawing this jury then to determine whether or not the State
19 can prove the aggravating circumstances to the jury. With
20 that in mind, did you get a chance to look at this sheet that
21 I gave you earlier?

22 A. I did.

23 Q. And did you get a chance to think about it?

24 A. Yes, I did.

25 Q. Do you feel like one of those categories of jurors

1 would apply to you?

2 A. I do.

3 Q. Which is that?

4 A. Number 3.

5 Q. The third. Now, this is a juror who says that even
6 though a defendant has been found guilty of murder, and, of
7 course, that means that the defendant's been found guilty of
8 killing someone with malice, with an evil intent, that this
9 juror still would not have their mind made up regarding the
10 punishment?

11 A. Correct.

12 Q. This juror says that I want to hear those other
13 circumstances. I want to hear all of those aggravating
14 circumstances, I want to hear all of those mitigating
15 circumstances. In other words, mitigating circumstances in
16 favor of the defendant. I want to hear both sides of that.
17 I want the judge to tell me the law, and then and only then
18 would I be ready to decide the appropriate sentence; is that
19 correct?

20 A. Correct.

21 Q. And this juror says that if I determine from the
22 facts that the appropriate sentence was life in prison I
23 could give life in prison.

24 A. Correct.

25 Q. And if I determine that the appropriate sentence

1 was the death sentence I could give a death sentence.

2 A. Correct.

3 Q. It just depends on the circumstances.

4 A. Yes.

5 Q. Now, this juror also -- you understand the law says
6 this, that if a jury gives a death sentence that each juror
7 must sign a form. And there's a form that says we have all
8 agreed to give the death sentence. Each juror must sign that
9 form. Now, if you were sitting on a jury and had determined
10 that the death sentence was appropriate and had given the
11 death sentence would you be able to sign that form?

12 A. Yes, sir.

13 Q. Now, have you heard anything about this case
14 before?

15 A. No.

16 Q. Never heard of it?

17 A. Never heard of it.

18 Q. Let me ask if you know any of the parties involved.
19 This is Mr. Bennett, Johnny Bennett, right here. Do you know
20 Mr. Bennett or know of him in any way?

21 A. No, sir.

22 Q. He's represented by Mr. Hervery Young, who is in
23 the middle, and Mr. Wayne Floyd. Do you know or know of
24 either of those gentlemen?

25 A. No.

1 Q. Now, the State's represented by the Solicitor's
2 Office. Have you ever had any dealings with the Solicitor's
3 Office?

4 A. No.

5 Q. Of course, the Solicitor here is Mr. Donnie Myers,
6 and with him are Mr. Dayton Riddle and Mr. Shawn Graham.
7 They will be prosecuting this case. Do you know or know of
8 any of these gentlemen?

9 A. Only heard of Solicitor Myers, of course, through
10 the news.

11 Q. Is there anything that you've heard that's caused
12 you to have a positive or a negative impression of him such
13 that it would keep you from being able to give both sides a
14 fair trial?

15 A. No, sir.

16 Q. Now, we also gave you -- and let me note, too, that
17 the victim in this case, the man killed was Mr. Benton Smith,
18 full name was Benton Darrell Smith. Did you ever know
19 Mr. Smith or know of him?

20 A. No, sir.

21 Q. We gave you a witness list here. Did you get a
22 chance to look at that?

23 A. I did.

24 Q. And, first of all, tell me, did you recognize any
25 of the names in there?

1 A. I did.

2 Q. All right. If you would, can you tell me by
3 number, not by name, just by number which ones you
4 recognized.

5 A. There were several.

6 Q. Okay.

7 A. Two.

8 Q. And how do you know?

9 A. My husband is retired from the Lexington County
10 Sheriff's Department. He was the assistant jailer for the
11 Lexington County Sheriff's Department. Number two, of
12 course --

13 Q. And he knew him through that; is that correct?

14 A. Exactly.

15 Q. Did he work for him or work with him?

16 A. He worked with him.

17 Q. Okay. Go ahead and tell me any of the others that
18 you know.

19 A. 24.

20 Q. How do you know him?

21 A. Associated with the Lexington County Sheriff's
22 Department.

23 Q. Okay.

24 A. Number 33.

25 Q. How do you know him?

1 A. Same way. 39.

2 Q. How do you know her?

3 A. Same way, Lexington County Sheriff's Department.

4 94.

5 Q. And how do you know her?

6 A. Same way, through the Lexington County.

7 Q. Okay.

8 A. 106.

9 Q. Same way?

10 A. Same way. And 141.

11 Q. All right. How do you know him?

12 A. Same way.

13 Q. So you know all them through that. Now, would that
14 fact cause you to give any of these witnesses any greater
15 credibility than you would anyone else?

16 A. No, sir.

17 Q. Or less credibility as far as that goes?

18 A. No.

19 Q. So would the fact that any of these testifying in
20 the case give you any problem at all in giving both sides a
21 fair trial?

22 A. No, sir.

23 Q. And now then, as you gathered, there will be some
24 people from the Sheriff's Department testifying that worked
25 with your husband. Does the fact that your husband worked

1 previously for the Sheriff's Department, now, would that give
2 you any problem giving both sides a fair trial?

3 A. None at all.

4 Q. Do you know of any reason then why you could not
5 give both sides a fair trial in this case?

6 A. I know no reason at all.

7 THE COURT: Okay. Let me ask if you'll answer any
8 questions the attorneys have.

9 Mr. Myers?

10 VOIR DIRE EXAMINATION

11 BY MR. MYERS:

12 Q. Ms. Padgett, have you ever sat on a criminal jury
13 before?

14 A. 25 years ago, maybe.

15 Q. Was it up in this courtroom?

16 A. Yes, it was.

17 Q. I take it that wasn't a murder case?

18 A. No, it was not.

19 Q. If you were on the jury then, if the jury found
20 somebody guilty, I don't know whether they did or not, but if
21 they did, the jury's job is usually over with then and the
22 judge does the sentencing. But in this case because we're
23 seeking the death penalty the jury will hand down the
24 sentence; do you understand that?

25 A. Yes.

1 Q. And just as we have to tell the judge something
2 about the crime and the defendant for the judge to sentence
3 someone, that's what we have to do in this case for the jury
4 to hand down the sentence. Even though the defendant has
5 been found guilty of murder we'll still show the jury
6 something about the crime, the circumstances surrounding it.

7 The jury will hear testimony about the defendant,
8 maybe some things for him, maybe some bad things about him,
9 so the jury will have an idea for this crime how it was
10 committed and the person who committed it, the type of person
11 he was, what is the appropriate punishment. Do you
12 understand that?

13 A. Yes, I do.

14 Q. Now, there's only two choices, life imprisonment or
15 death penalty. Now, you put yourself in that third category;
16 is that correct?

17 A. Correct.

18 Q. Now, the first category, some jurors say that when
19 a person is found guilty of murder, it's always the death
20 penalty and nothing else. You don't fit into that category?

21 A. No.

22 Q. The second category is just the opposite. When
23 someone is found guilty of murder, they say I could never
24 vote for the death penalty. You're not in that category?

25 A. No.

1 Q. So you're the type of person that would have to
2 listen to everything, hear all about the crime, about the
3 person who committed the crime, listen to the law and then
4 decide what is the appropriate sentence; is that right?

5 A. That's right.

6 Q. And as of right now, you don't know anything about
7 the case, anything about the defendant, so you have no idea
8 what is the appropriate sentence?

9 A. I have no idea.

10 Q. Would you be willing to listen to all of that
11 testimony in this courtroom before you decided what is the
12 appropriate sentence?

13 A. Yes.

14 Q. Also, at the end of all the testimony, Judge
15 Westbrook is going to tell the jury in detail what are
16 aggravating circumstances, what are mitigating circumstances.
17 He'll define those terms and how they apply in the law.
18 Would you listen to that?

19 A. Yes, sir.

20 Q. He'll also tell the jury what aggravating
21 circumstances are involved in this case and what mitigating
22 circumstances are involved in this case. Would you listen
23 and follow that law?

24 A. Yes.

25 Q. He will also give to the jury in writing that they

1 can take to the jury room a list of aggravating circumstances
2 and a list of mitigating circumstances. You would follow his
3 instructions on that list and consider those?

4 A. Correct.

5 Q. And, Ms. Padgett, the jury then must reach a
6 decision, life imprisonment or the death penalty, and only
7 then. The Judge will tell the jury not to make up their
8 minds until they've heard all the testimony and heard all the
9 law and then make up their mind. You could follow that?

10 A. Yes.

11 Q. And, Ms. Padgett, not knowing anything, then you
12 would be that juror who was willing to listen to all the
13 things, something against the defendant, something for the
14 defendant; is that correct?

15 A. Correct.

16 Q. You would be willing to listen to all the law as
17 the Judge told you what the law was and follow that; is that
18 correct?

19 A. Yes.

20 Q. And then if you thought the appropriate sentence
21 should be life you could vote for life?

22 A. Correct.

23 Q. On the other hand, if you thought the appropriate
24 sentence was the death penalty and that was the punishment
25 that fit the crime, could you so sign your name on a death

1 penalty verdict?

2 A. Yes.

3 Q. But you'd have to hear everything first?

4 A. Correct.

5 MR. MYERS: Thank you. I appreciate it.

6 THE COURT: Defense?

7 VOIR DIRE EXAMINATION

8 BY MR. FLOYD:

9 Q. Good afternoon, Ms. Padgett. My name is Wayne
10 Floyd, and I represent Mr. Bennett, along with Hervery Young.
11 What are your feelings about the death penalty?

12 A. I think in certain circumstances it's warranted. I
13 don't know about all of them, but I definitely think in some
14 circumstances the death penalty is appropriate.

15 Q. Have you talked with your husband, friends,
16 co-workers about the death penalty in the past?

17 A. Sure.

18 Q. And are the opinions that you have on the death
19 penalty now the same as you've always had or have they
20 changed over time?

21 A. I don't think they've changed.

22 Q. Now, I understand that your husband is retired from
23 the Sheriff's Department; is that right?

24 A. Correct.

25 Q. And do you know how many years he was there?

1 A. He was there 15 years.

2 Q. And can you tell us when he retired?

3 A. He retired in June of 1990.

4 Q. June of 1990?

5 A. Yes.

6 Q. And what was his position when he retired?

7 A. He was the assistant jail administrator.

8 Q. And after his retirement, did he continue to do
9 some work with the Sheriff's Department?

10 A. He did not.

11 Q. He didn't do any work with the phone system?

12 A. Well, yeah, you're right, but that's -- yeah, the
13 phone system in -- actually, at Richland and Lexington
14 County.

15 Q. And how long was he involved with the phone system
16 at the Lexington County jail?

17 A. Probably approximately a year to two.

18 Q. And that would have been like from when he retired
19 for a couple years?

20 A. Yes, correct.

21 Q. So 1990 to say, 1992?

22 A. To '92.

23 Q. And in connection with those duties, was he over at
24 the jail a good bit?

25 A. Correct. When you say a good bit, maybe he was

1 there once a week, once every two weeks.

2 Q. Did he ever tell you about things at the jail
3 during that time?

4 A. During that time? Probably, I'm sure some things
5 were discussed. After he retired, I told him I just as soon
6 we not discuss law enforcement.

7 Q. Did he ever discuss with you some incidents over at
8 the jail involving guards who were selling cigarettes to the
9 inmates?

10 A. No, not that I can recall.

11 Q. And I think you said he retired in June of '90?

12 A. Correct.

13 Q. And then for about two years he was involved in the
14 telephone system at the jail?

15 A. Correct.

16 Q. So that would have been sometime around June of
17 '92?

18 A. Yeah.

19 Q. Did y'all socialize with other members of the
20 Lexington County Sheriff's Department?

21 A. No.

22 Q. Do you still have acquaintances employed at the
23 Lexington County Sheriff's Department?

24 A. There are some that's there. I don't think my
25 husband has had any contact with any of them for quite a

1 while, for some years. Actually, he gets calls and things
2 about different people retiring and he hasn't even been to
3 any of those for the last several years.

4 Q. And when he was the assistant jailer, do you know
5 who the jailer was at that time?

6 A. Yeah, Mr. Bost.

7 Q. Adrian Bost?

8 A. Adrian.

9 Q. How long did he work under Adrian Bost?

10 A. I don't really know. I would say four or five
11 years maybe.

12 MR. FLOYD: Excuse me just a moment.

13 BY MR. FLOYD:

14 Q. Ms. Padgett, did you know Captain Bost or it might
15 have been Major Bost, I'm not sure, did you know him?

16 A. Yes.

17 Q. And how often did you have contact with him?

18 A. Twice a year maybe.

19 Q. And I don't want to delve into personal life too
20 much, but could you kind of generally tell us what type of
21 contact that would be?

22 A. My husband in '88 had heart surgery. On different
23 occasions, he visited my husband. My husband was in the
24 hospital for a couple months. Actually, when my husband --
25 actually, he had his heart attack at the jail and he came to

1 get me at work.

2 Several months after that, my husband had another
3 attack, and he visited him in the hospital. One of the
4 gentleman that worked at the jail with my husband passed away
5 and I saw Mr. Bost at his funeral. Once or twice a year, I
6 would go to the jail with my husband for a brief time and I
7 would see him.

8 Q. Ms. Padgett, do you think that this relationship
9 over the years you had with Mr. Bost, could it all interfere
10 in your ability to be a fair and impartial juror since he's
11 going to be a witness in this case?

12 A. Not at all.

13 Q. And you don't think your husband's relationship
14 with the jail, and so many things about the jail may come out
15 in this case, would not interfere with your ability to be a
16 fair and impartial juror for Mr. Bennett?

17 A. No. My husband's relationship with the jail has
18 nothing to do with how I personally feel.

19 Q. Were you grateful to Mr. Bost for the
20 considerations he gave to you and your family with your
21 husband's illness?

22 A. Mr. Bost did no more than any other concerned
23 person that came to visit my husband, no.

24 MR. FLOYD: Nothing further, Your Honor.

25 THE COURT: Anything else from the State?

1 MR. MYERS: No, sir.

2 THE COURT: Tell me again what dates your husband
3 worked at the jail. Do you recall basically when he left the
4 jail, do you remember that?

5 MS. PADGETT: He left the jail June 30th, 1990.

6 THE COURT: Okay, you remember to the date.

7 MS. PADGETT: Yes, I do.

8 THE COURT: All right. Let me ask you to step
9 outside just one second, okay.

10 (WHEREUPON, Juror Padgett leaves the
11 courtroom.)

12 THE COURT: What's the State's position on this
13 juror?

14 MR. MYERS: Submit she's qualified.

15 THE COURT: Defense?

16 MR. FLOYD: Your Honor, we would object to her
17 qualification. We think that relationship of her husband
18 with the jail and with the witnesses in this case is such
19 that it would impair her ability to serve as a fair juror. I
20 know Your Honor was not the trial judge when we tried this
21 case before, but if it goes -- if the State proceeds with the
22 case as they did in the past, we're going to see numerous
23 witnesses from the jail.

24 And one of the most significant ones is -- I'm not
25 sure if it's Major Bost or Captain Bost, I don't recall the

1 rank that he had, but he had some significant run-ins with
2 Mr. Bennett, including times when he tazer gunned him. And I
3 would suggest he's very hostile to Mr. Bennett.

4 In fact, it was at his request that Mr. Bennett was
5 removed from the Lexington County jail and put in safekeeping
6 with the State system on two different occasions. So I don't
7 know how she cannot be affected by the close relationship her
8 husband had with Major Bost.

9 Now, additionally, he was at the jail himself, her
10 husband, with this telephone contact or at least --
11 approximately a couple years while Mr. Bennett was in the
12 jail. That's how I knew it, because Mr. Bennett was able to
13 tell me that he did the phones at the jail. You know, she
14 didn't volunteer that information, that's how I happened to
15 know it when Mr. Padgett's name came up. For those reasons,
16 we don't think she would be qualified and we'd ask that she
17 be excluded.

18 MR. MYERS: That's pure speculation. And it'll
19 have to be an allegation that this woman was lying, which I
20 don't think she is. Her husband retired June 1990. The
21 defendant was not incarcerated in the Lexington County jail
22 for this crime until December of 1990, some six months later.

23 If her husband was over there on some telephone
24 stuff, she doesn't know about it. And not only that, when
25 she called out those witnesses and numbers, she told you they

1 were all with the Lexington County Sheriff's Department and
2 it wouldn't interfere with her ability. When Mr. Floyd asked
3 her don't you think that that would interfere, cause you some
4 problems, her answer was absolutely not.

5 State vs. Owens, 284 S.E.2d, 584, a 1981 case. A
6 juror whose wife was employed by the sheriff and had formally
7 been employed by the solicitor was properly qualified. There
8 is no common law or statute which disqualifies a juror
9 because of his relationship to a witness.

10 State vs. Matthews, 353 S.E.2d, 444, 1986.

11 Juror who had previously been employed with the county police
12 department was not disqualified under 14-7-820. As an
13 officer of the United States, the juror could have claimed an
14 exemption, but didn't. Even a special deputy sheriff is not
15 automatically disqualified without a showing of bias or
16 prejudice.

17 I think State vs. George, 476 S.E.2d 903, a 1996
18 case is probably directly on point. The appellate maintains
19 that Mrs. Walker, who was married to an Horry County police
20 officer should have been disqualified for cause. We
21 disagree. According to South Carolina Code 14-7-820, county
22 officers are ineligible to be jurors. However, Ms. Walker
23 was not a county employee, and her marriage to a police
24 officer did not disqualify her.

25 State vs. Dingle is cited in that case. And Dingle

1 held that a juror is not disqualified because of her
2 relationship by blood or marriage to a police officer. And
3 the case goes on to say this, ironically, that the juror's
4 husband was not employed by the Horry County Police
5 Department at the time of the crime. I don't know how we can
6 get any more directly on point.

7 Anything as to allegation that Ms. Padgett should
8 be disqualified because her husband had one time been
9 employed by the Lexington County Sheriff's Department and
10 that somehow makes her biased, prejudiced, and not able to
11 perform her duties as a juror are directly in conflict with
12 her sworn testimony. We submit she's qualified.

13 THE COURT: Anything else, Mr. Floyd?

14 MR. FLOYD: Your Honor, we're not suggesting she's
15 ineligible to serve simply because she is married to a
16 Lexington County Sheriff's -- a former Lexington County
17 Sheriff's Department employee. That's not the basis of our
18 objection. Her husband worked for, directly under, one of
19 the key witnesses in this case, Adrian Bost.

20 Adrian Bost came to get her to carry her to the
21 hospital when her husband had a heart attack, and then
22 visited him in the hospital. Adrian Bost is going to sit on
23 the stand and say this is this most violent person he's ever
24 had to deal with, if he testifies the way he did in his first
25 trial. He's going to say this man was so bad I couldn't have

1 him in my jail. I had to send him over to the State for
2 safekeeping.

3 Her husband was coming into the jail during that
4 time. He may not have been an employee of Lexington County
5 Sheriff's Department anymore, but he was with the phone
6 system, which I think, if my memory is correct from what was
7 in the news at the time, was somehow owned or an interest was
8 owned by Sheriff Metts, who was Adrian Bost's employer.

9 Now, she may sit there and say -- and I think she's
10 trying -- she's saying what she thinks, that that won't
11 affect me, but when you really get down to it and Adrian Bost
12 sits in that stand and testifies, there's no way she can get
13 out of her mind that relationship, and I think the fact that
14 it may impair her ability. The relationship was just too
15 close for this case, and we would move that she be excluded.

16 MR. MYERS: Her husband was --

17 THE COURT: Let me ask one thing. I understand
18 that she testified that she only met Mr. Bost what, about
19 twice a year? Did I get that wrong?

20 MR. FLOYD: I think a couple times a year or so is
21 what she said, other than, I guess, the time when he had the
22 heart attack and he came and visited him in the hospital and
23 so forth.

24 THE COURT: I'm going to bring her back out. I'm
25 going to ask her that again to be sure. And I'm going to ask

1 her how often she's seen Mr. Bost since her husband left.

2 Ask her to step back in a minute.

3 (WHEREUPON, Juror Padgett enters the
4 courtroom.)

5 FURTHER EXAMINATION

6 BY THE COURT:

7 Q. Ms. Padgett, I want to get a couple things clear in
8 my mind. You testified, as I understand it, and just tell me
9 if I'm wrong, okay. Did you testify that you saw Mr. Bost
10 maybe twice a year; does that sound right?

11 A. Yes.

12 Q. Was it more or less than that? Just tell me how
13 often you saw him.

14 A. I'm trying to think back. It probably was no more
15 than that. Like I said, once or twice I know that he has
16 stopped by since my husband has been retired ten years ago to
17 see him. I probably have not seen Mr. Bost in five years.

18 Q. Okay. Okay. And prior to that, you saw him maybe
19 twice a year?

20 A. Yeah. Just a couple times, yeah, a year, that I
21 can recall. Like I said, I would go periodically -- when my
22 husband was off and something he had to do at the jail, I
23 would go with him and I would see Mr. Bost at that time.

24 Q. Right. Did I understand you to tell me, too, that
25 when your husband retired, he retired June 30 of 1990; is

1 that right?

2 A. Yeah.

3 Q. And you said he worked there for a couple of years
4 working on the telephone system?

5 A. Right.

6 Q. And I thought I heard you say that he was there
7 maybe one day a week, does that sound right, or did I miss
8 that, too?

9 A. No, I think that's probably -- when they had
10 trouble with the phone system is when he would go to the jail
11 to see about it. Mostly, when they had trouble with it. So
12 that was once, twice maybe a week, maybe every two weeks. It
13 was not a daily thing.

14 THE COURT: Counsel, does either of you have any
15 other questions of her about those issues?

16 MR. MYERS: No, sir.

17 MR. FLOYD: Just one.

18 FURTHER EXAMINATION

19 BY MR. FLOYD:

20 Q. Ms. Padgett, when your husband was working on the
21 phone system, didn't Sheriff Metts have some kind of interest
22 in that phone system?

23 A. I have no idea. I do not know.

24 Q. That's not how Mr. Padgett got his job with the
25 phone?

1 A. Mr. Padgett worked through a company in Charlotte.
2 My understanding is who he directly worked for was a company
3 in Charlotte.

4 Q. Sheriff Metts didn't have any interest in that,
5 that you know of?

6 A. Not that I'm aware of.

7 THE COURT: Okay. Let me ask you to step back out.

8 (WHEREUPON, Juror Padgett leaves the
9 courtroom.)

10 THE COURT: Anything else from Mr. Myers?

11 MR. MYERS: No, sir, I can just cite some more
12 cases about a juror even being friends with the victim. That
13 was in State vs. Jones, a 1989 case. State vs. Lupus,
14 talking about associations.

15 One other one, Your Honor, State vs. Jones. In
16 that case, they were talking about the qualifications of the
17 juror, and it said there that the juror's friendship with the
18 deceased was casual. It is also clear that friendship would
19 not prevent this juror from giving the defendant a fair
20 trial. That's exactly what this woman has said here.

21 Now, maybe her husband, if he was a juror, it might
22 be a different thing. But she doesn't know what goes on or
23 what went on at the Sheriff's Department. She's answered
24 pretty directly and straightforward, about as direct and
25 straightforward as you can get. She's got to base her

1 sentence and verdict on what she hears in the courtroom.
2 Anything regarding her husband would not interfere, not in
3 the least, with her ability to return a verdict based on the
4 law and the evidence in this courtroom.

5 THE COURT: Mr. Floyd, anything else?

6 MR. FLOYD: Your Honor, I think that the evidence
7 will reveal in this trial that her husband was a witness to
8 at least once of the incidents involving Mr. Bennett and
9 Major Bost.

10 MR. MYERS: Her husband is not on our witness list
11 and will not be a witness in this trial.

12 MR. FLOYD: I didn't say he would be.

13 THE COURT: You said what now?

14 MR. FLOYD: I'm just saying that her husband was a
15 witness to one incident, at least one incident, between Major
16 Bost and Mr. Bennett.

17 MR. MYERS: We have never talked with her husband.
18 We know nothing about the husband. And if he can show me
19 that, I'd like to see it just for my own personal curiosity.
20 But her husband's name will not be mentioned at all in this
21 trial, not by the State it won't.

22 THE COURT: Mr. Floyd, do you have some kind of
23 incident report or something that indicates that he was --

24 MR. FLOYD: I don't know where his name would
25 appear. It's my understanding that he was present and

1 working on the phone system in April or May of 1992 when
2 there was an incident involving the flooding of cells, which
3 shortly after Mr. Bennett was sent to safekeeping the first
4 time.

5 THE COURT: Counsel, that's -- most of that is just
6 a little bit too remote. It's just too far off, frankly, to
7 be able to use that as a reason to disqualify this jury. My
8 understanding of her testimony is that her husband retired
9 from the jail June 30th of 1990. Mr. Bennett went into the
10 jail in December of 1990, six months later. Now, during that
11 time, he probably, apparently, was working on the phone
12 systems and would go about -- according to her testimony,
13 about a day a week.

14 She indicated as far as to Mr. Bost, she had met
15 him, saw him a couple of times a year when her husband was
16 working there. And even in the time after he had retired
17 until about -- she said about five years ago. She said she
18 hadn't even seen him in five years. That's just really not
19 enough to -- particularly in light of the witness's
20 testimony, sworn testimony, that it wouldn't affect her. And
21 that's just not enough to be able to disqualify her.

22 And I understand certainly -- you know, we always
23 from time to time have reasons as to whether a witness is
24 really not just telling the truth, as to whether they're
25 facing the truth themselves. But as you know, we have to go

1 by what the witnesses tell us. And based on what this
2 witness has told us, along with the facts as I understand
3 them, I would have to qualify her. Now, certainly, if you
4 can come up with something indicating that her husband may
5 have been a witness to something at some point we could take
6 another look at it at that time if you want to.

7 MR. FLOYD: Of course, Your Honor, we just gave
8 evidence of his witnessing one incident, which I think we're
9 going to hear about.

10 MR. MYERS: No, sir. No, sir. And I want to see
11 that report because we don't have it. Maybe he got something
12 from the jail I didn't, but we have never talked with Jim
13 Padgett, this juror's husband. He has never been
14 interviewed, he has never been involved. And if they've got
15 some written documents on him, I'd like to see them because
16 we don't have that.

17 MR. FLOYD: Your Honor, we didn't say we had
18 written documents. Now, if they would give us the truth on
19 all their documents and give us all their witnesses, then
20 maybe we would have them. They didn't -- the reason it's not
21 in there is because they didn't put him in there as a
22 witness. That's not our fault and we didn't say he was in
23 there as a witness.

24 THE COURT: Well, either way, I'm going to qualify
25 her as a juror at this point. That's just not enough to be

1 able to disqualify a juror. And particularly in light of the
2 Supreme Court cases.

3 All right. Let's ask her to come back in.

4 (WHEREUPON, Juror Padgett enters the
5 courtroom.)

6 THE COURT: Ms. Padgett, I've determined you would
7 be qualified to sit as a juror in this case if you're picked.
8 So what I'm going to ask you to do is come back tomorrow
9 morning, that's Wednesday, tomorrow morning, at nine o'clock.

10 Bring with you bags packed for as much as a week in
11 a motel. The jury is going to be sequestered, and if you're
12 picked you won't be going back home. So bring your bags with
13 you. Leave them in your car, and if you are picked on the
14 jury then somebody will take care of your bags for you and
15 get them to the motel.

16 Now, until that time, again, please don't talk with
17 anybody about the case. And I know you want to tell your
18 family where you're going and what you're doing, and please
19 understand, that has got to be absolutely it, no more. Don't
20 talk with your family, anybody in your family at all, beyond
21 that, about telling them what you're doing and where you're
22 going. It's important that people not talk about the case at
23 all and I tell every juror that.

24 Also, please stay away from any sort of newspapers,
25 no newspapers. Stay away from news on television or radio.

1 No news at all. Okay?

2 MS. PADGETT: Okay.

3 THE COURT: With that in mind, we'll see you
4 Wednesday morning at nine o'clock with your bags packed.
5 Thank you, ma'am.

6 (WHEREUPON, Juror Padgett leaves the
7 courtroom.)

8 (WHEREUPON, Juror Number 49, Karen K.
9 Brenneke, a white female, entered the courtroom.)

10 KAREN K. BRENNEKE, after having been duly
11 sworn, testified as follows:

12 VOIR DIRE EXAMINATION

13 BY THE COURT:

14 Q. It's Ms. Brenneke; is that correct?

15 A. That's correct.

16 Q. Ms. Brenneke, you recall that yesterday I told the
17 jurors that this is a case in which the State has charged Mr.
18 Johnny Bennett with murder and has asked for the death
19 penalty; do you recall that?

20 A. Yes, I do.

21 Q. And you recall that I told you a jury has
22 previously heard the issue of the murder charge itself and
23 has found Mr. Bennett guilty of murder; do you recall that?

24 A. Yes, I do.

25 Q. And I want to be sure you understand when we're

1 talking about murder. Murder in South Carolina is defined as
2 the unlawful killing of another human being with malice
3 aforethought. In other words, malice is defined as an evil
4 intent, it's malicious, and that it was there at the time of
5 or before the killing. So, in essence, you understand
6 Mr. Bennett has been found guilty by a jury of a malicious
7 killing; you understand that?

8 A. Yes, I do.

9 Q. Now, the law says that that's not enough to give
10 someone the death penalty. That the only way someone can get
11 the death penalty is if there are aggravating circumstances
12 in addition to the murder; you understand that?

13 A. Yes, I do.

14 Q. And, of course, that's why we're here at this point
15 for the second part of the trial. In essence, for this jury
16 to determine the appropriate sentence. There are only two
17 possible sentences, life imprisonment or the death penalty;
18 you understand that?

19 A. Yes, I do.

20 Q. Now, given that, have you had a chance to look over
21 this sheet that we gave you?

22 A. Yes, I did.

23 Q. Have you had a chance to think about it?

24 A. Yes, I have.

25 Q. And you notice there are three categories of jurors

1 described on here?

2 A. Uh-huh.

3 Q. And do you feel like one of these categories would
4 apply to you?

5 A. Yes, I do.

6 Q. Which is that?

7 A. The third.

8 Q. Third. Now, this is a juror who says that even
9 though a person's been found guilty of murder, in order
10 words, even though someone has been found guilty of killing
11 another person maliciously, with evil intent, that I still
12 would not have my mind made up as to the proper sentence; is
13 that correct?

14 A. That's correct.

15 Q. This juror says I want to hear the rest of it. I
16 want to hear all of those aggravating circumstances, I want
17 to hear mitigating circumstances, in other words, things in
18 the defendant's favor. I want to hear all of that. I want
19 the judge to tell me the law, and only then am I ready to
20 make my decision; is that correct?

21 A. That's correct.

22 Q. And this juror says that if I determine that the
23 appropriate sentence is a life sentence I can give a life
24 sentence, and if I determine that the appropriate sentence is
25 a death sentence I can give a death sentence; is that

1 correct?

2 A. That's correct.

3 Q. Now, the law also says that if a jury finds that a
4 death sentence is appropriate and gives the defendant a death
5 sentence then each member of that jury must sign a form
6 saying I have agreed to the death sentence. Now, if you're
7 on a jury and you had, in essence, found that a death
8 sentence is appropriate, would you be able to sign that form?

9 A. Yes, I would.

10 Q. Okay. Now, you understand that during the trial
11 that I will from time to time give the jury instructions as
12 to the law. And, in essence, tell you what the law is. Will
13 you be able to follow the instructions as I give them and
14 apply that law to the case?

15 A. Yes, I would.

16 Q. Now, have you heard anything about this case
17 before?

18 A. Not that I know of. I don't the name.

19 Q. And I'm going to ask you to see if you know some of
20 the folks involved, also, okay?

21 A. Okay.

22 Q. The State will be represented by the Solicitor's
23 Office. And this is the Solicitor, Mr. Donnie Myers. With
24 him are Mr. Dayton Riddle and Mr. Shawn Graham. Do you know
25 or know of any of these gentlemen?

1 A. No, I don't.

2 Q. And have you ever had any dealings with the
3 Solicitor's Office at all?

4 A. No, I haven't.

5 Q. Now, this is Mr. Bennett, Mr. Johnny Bennett, right
6 here. Do you know Mr. Bennett or know of Mr. Bennett?

7 A. No, I don't.

8 Q. He's represented by Mr. Hervery Young and Mr. Wayne
9 Floyd. Do you know or know of either of these gentlemen?

10 A. No, I don't.

11 Q. So as I understand, you don't know anything about
12 the case and don't know anybody involved in it; is that
13 right?

14 A. No, I don't.

15 Q. Now, we gave you a witness list. Did you look over
16 this witness list that we gave you?

17 A. Yes, I did, and I didn't know anyone.

18 Q. Didn't know anybody on that, okay. And the victim
19 in this case, the man killed was a man named Benton Smith.
20 His full name was Benton Darrell Smith. Did you know
21 Mr. Smith or know of him at all?

22 A. No, I didn't.

23 Q. So, in essence, you don't know anybody, know
24 anything, you start with a totally clean slate; is that
25 right?

1 A. Right.

2 Q. Now, understanding everything that I've asked you
3 at this point, then, do you feel like you could give both
4 sides a fair trial in this case?

5 A. I think I could, yes. I don't know.

6 Q. Now, the attorneys are going to have some
7 questions. Let me ask if you'll answer any questions they'll
8 have, okay?

9 A. Okay.

10 THE COURT: Mr. Myers?

11 MR. MYERS: We've got the wrong jury information
12 here.

13 THE COURT: I'm sorry?

14 MR. MYERS: We've got the wrong jury information --
15 How do you pronounce your last name?

16 MS. BRENNEKE: Brenneke.

17 MR. MYERS: Brenneke, okay.

18 THE COURT: Do you want to take a --

19 MR. MYERS: No, no, that's fine.

20 VOIR DIRE EXAMINATION

21 BY MR. MYERS:

22 Q. Ms. Brenneke, have you ever served on a criminal
23 jury panel before?

24 A. No, I haven't.

25 Q. All this is new to you?

1 A. Yes, it is.

2 Q. Ms. Brenneke, let me tell you a few things about
3 this procedure, if I could. First of all, in a normal case,
4 the judge hands down the sentence, not a jury. You're aware
5 of that, aren't you?

6 A. Not really.

7 Q. OKAY. Normally, when a jury finds someone guilty,
8 their job is over with. And the judge in the great majority
9 of the cases, he's the one that sentences people. And before
10 he does, he says tell me something about this person. Tell
11 me something good or bad about him, tell me something about
12 the crime so I'll know what's the right sentence to hand
13 down. Because the death penalty is involved, the jury is
14 going to hand down the sentence in this case; do you
15 understand that now?

16 A. Yes, I do.

17 Q. And that's why we need this trial. The defendant
18 has been found guilty previously, so he's guilty of murder,
19 but we've got to put up evidence in this case to show the
20 jury something about the crime, something about the
21 defendant, good and bad, so the jury will know what's the
22 right sentence for the crime and the person who committed it;
23 you understand that?

24 A. Yes.

25 Q. Would you be willing to listen to all that

1 testimony, Ms. Brenneke, before you decided what's the right
2 sentence?

3 A. Yes, I would.

4 THE COURT: Mr. Myers, you said y'all got the wrong
5 information; is that correct?

6 MR. MYERS: Yes, but they're bringing it in.

7 THE COURT: Defense, did you get the wrong
8 information, also?

9 MR. FLOYD: No.

10 THE COURT: I was going to let either of you use
11 mine, if you wanted to.

12 MR. MYERS: It's no problem, we just had 48 instead
13 of 49. It's no problem.

14 THE COURT: You want to take a second to look it
15 over?

16 MR. MYERS: No, sir, it's okay.

17 BY MR. MYERS:

18 Q. Now, after all the testimony is in, Ms. Brenneke,
19 the Judge is going to tell the jury what the law is. You've
20 heard these terms aggravating circumstances and mitigating
21 circumstances?

22 A. Yes.

23 Q. The Judge is going to explain that to the jury.
24 He's going to define what those mean under the law. Would
25 you follow that law as he told you what it meant?

1 A. Yes, I would.

2 Q. He's also going to tell the jury what aggravating
3 circumstances are involved in this case, what mitigating
4 circumstances are involved in this case. And he's going to
5 give those to the jury in writing, they can take that to the
6 jury room. Would you follow that that the Judge would give
7 to the jury?

8 A. Yes, I would.

9 Q. He's also going to tell the jury that they are to
10 determine what the truth is from all the witnesses, the
11 credibility of the witnesses. He's going to tell them to
12 follow the law and come back with a sentence of life or the
13 death penalty; you understand that?

14 A. Yes.

15 Q. Now, you just told the Judge that you were in that
16 third category; is that correct?

17 A. That's correct.

18 Q. Now, that first category, if you recall, says when
19 someone is convicted of murder, there are some jurors say if
20 you're convicted of murder, always the death penalty, nothing
21 else. You don't fall under that category?

22 A. No.

23 Q. The second category is where someone is convicted
24 of murder, some jurors say well, I'll never vote for the
25 death penalty, don't care what happened or who it is. You

1 don't fall under that category either?

2 A. No.

3 Q. So you have to listen to everything?

4 A. Right.

5 Q. Once you've heard all the testimony and the law,
6 then you can decide what is the appropriate sentence?

7 A. Yes.

8 Q. And I take it that if you think that the sentence
9 of this crime is life you could so vote for life?

10 A. Yes.

11 Q. On the other hand, if the punishment that fits this
12 crime and fits this defendant is a death penalty you could so
13 sign your name to it?

14 A. Yes, I could.

15 Q. But you would have to hear everything before you
16 can say what the right sentence is?

17 A. Yes.

18 MR. MYERS: That's all we can ask of you. Thank
19 you, Ms. Brenneke.

20 THE COURT: Defense, anything?

21 VOIR DIRE EXAMINATION

22 BY MR. YOUNG:

23 Q. Ms. Brenneke, have you ever had the occasion to
24 discuss your views and feelings about the death penalty with
25 anyone?

1 A. You mean lately?

2 Q. Friends, family, at any period of time?

3 A. Any period, yes.

4 Q. Would you tell us what that opinion -- what those
5 feelings are.

6 A. Just that if the crime is really, really hideous, I
7 mean, and there's no hope of ever -- the person ever being
8 rehabilitated, I'd said that they should have the death
9 penalty. There's no sense in letting them out to do it
10 again.

11 Q. You understand that -- well, let me ask you this.
12 You would not give the death penalty to somebody just because
13 they were convicted of murder?

14 A. No, I would not.

15 Q. The Judge will instruct you that before you could
16 even consider giving the death penalty in a case that you
17 have to find what is called an aggravating circumstance.
18 That's something bad, something that makes the crime worse.
19 And then and only then could you even decide or consider to
20 give a death penalty; do you understand that?

21 A. I understand that.

22 Q. Do you understand that the Judge will never
23 instruct a jury that they have to give the death penalty? Do
24 you understand that?

25 A. Yes, I do.

1 Q. And it's an individual decision. It's your
2 decision to decide; do you understand that?

3 A. Right, uh-huh.

4 Q. Because serving on this jury, that will be your
5 job, to decide what is the appropriate punishment. The Judge
6 informed you earlier today that Mr. Bennett has already been
7 convicted of murder by another jury at another time. Does
8 that form any opinions in your mind as to what you believe to
9 be the appropriate punishment?

10 A. No.

11 Q. So what you're telling us today is that for you to
12 make your decision you'll have to hear all of the evidence,
13 the aggravating and the mitigating?

14 A. That's correct.

15 Q. Good and the bad?

16 A. Right.

17 Q. Before you can make your decision as to what is the
18 appropriate punishment?

19 A. That's right.

20 Q. It's my understanding that if you -- once you make
21 your decision that you are able to vote your decision,
22 whether it's life or death?

23 A. That's correct.

24 Q. And it would not cause you any problems to sign
25 your name if death is your decision?

1 A. No, it would not.

2 MR. YOUNG: Thank you, that's all we could ask.

3 THE COURT: Anything else, Mr. Myers?

4 MR. MYERS: No, sir.

5 THE COURT: Let me ask if you'll step just outside
6 the door for a minute, okay.

7 (WHEREUPON, Juror Brenneke leaves the
8 courtroom.)

9 THE COURT: What's the State's position on this
10 juror?

11 MR. MYERS: Submit she's qualified.

12 THE COURT: Defense?

13 MR. YOUNG: She's Qualified, Your Honor.

14 THE COURT: I find she is qualified.

15 (WHEREUPON, Juror Brenneke enters the
16 courtroom.)

17 THE COURT: Ms. Brenneke, I've determined you would
18 be qualified to sit on a jury in this case if you were
19 called. So what I'm going to ask you to do is come back
20 tomorrow morning at nine o'clock, okay. That's Wednesday
21 morning, tomorrow, at nine. Just come to the courtroom here
22 and sit in this middle section. You'll be with about 35 or
23 40 other people there, and we'll draw a jury from that group.

24 Now, if you would, bring bags packed for as much as
25 week in a motel because the jury will be sequestered. So

1 have your bags with you. Just leave them in your car, and if
2 you are on the jury then someone will get the bags for you
3 and take care of them.

4 It's also important that you still not talk with
5 anyone about the case in any way. Certainly, let your family
6 know where you're going to be, but don't talk about the case
7 at all. And stay away from any sort of news at all, any
8 newspapers, news on the television, news on the radio, that
9 sort of thing.

10 With that in mind, we'll see you in the morning at
11 nine o'clock with your bags packed. Thank you, ma'am.

12 (WHEREUPON, Juror Brenneke leaves the
13 courtroom.)

14 (WHEREUPON, Juror Number 87, Linda W. Corley,
15 a white female, enters the courtroom.)

16 LINDA W. CORLEY, after having been duly sworn,
17 testified as follows:

18 VOIR DIRE EXAMINATION

19 BY THE COURT:

20 Q. Ms. Corley, why don't you just relax. I'm just
21 going to chat with you, okay?

22 A. Okay.

23 Q. First of all, do you recall yesterday I told that
24 the State has charged Mr. Bennett, Mr. Johnny Bennett in this
25 matter, with the charge of murder and they're asking for the

1 death penalty; do you understand that?

2 A. Yes, I do.

3 Q. Now, you understand also that I told you that a
4 previous jury has found Mr. Bennett guilty of murder. They
5 determined that he was guilty of the charge of murder; you
6 understand that?

7 A. Yes.

8 Q. And that means that we're thereby calling this jury
9 to determine the appropriate sentence.

10 A. Right.

11 Q. Now, I want to be sure you understand what we say
12 when we say murder. In South Carolina, murder is defined as
13 the unlawful killing of another human being with what is
14 called malice aforethought. Now, malice means an evil
15 intent, maliciously done. It is -- aforethought means it was
16 at the time of or before the killing. So, in essence, the
17 jury has found Mr. Bennett guilty of killing another person
18 maliciously at the time that he did it; do you understand
19 that?

20 A. (Juror nodded.)

21 Q. That means it was not manslaughter, it was not
22 self-defense or anything like that. It was done maliciously
23 at the time it was done.

24 A. Right.

25 Q. Now, you understand the law also says that you

1 cannot give the death penalty for murder alone. Just for
2 that, what I just described, you cannot give the -- a jury
3 cannot give the death penalty for that; do you understand?

4 A. Uh-huh.

5 Q. Rather, what the law says is that the death penalty
6 can be given only if the jury finds that there were other
7 aggravating circumstances along with the murder. And that's
8 why the jury is here, is to determine whether or not the
9 State can prove those aggravating circumstances. And the
10 State must prove those aggravating circumstances beyond a
11 reasonable doubt; do you understand that?

12 A. Uh-huh.

13 Q. Okay. Now, what the jury in this part of the trial
14 would hear, you would hear aggravating circumstances and you
15 would also hear what are called mitigating circumstances. In
16 other words, circumstances that are in Mr. Bennett's favor,
17 that are on his behalf; do you understand that?

18 A. Right.

19 Q. And then, of course, at the end of all that, I, as
20 the Judge, would give you the law and then let the jury make
21 a decision. Now, understanding that, did you get a chance to
22 look at the sheet that we gave you yesterday --

23 A. Yes, I did.

24 Q. -- that described three types of jurors?

25 A. Uh-huh.

1 Q. Do you feel like one of those applies to you?

2 A. Well, it would have to be the third one.

3 Q. The third one, okay. Now, you understand that --
4 and let's go over this to be sure, okay. The third type of
5 juror is a juror who says that although the defendant been
6 found guilty of murder, in other words, although he's been
7 found guilty of a malicious killing, which is what's happened
8 here, that I still would not have my mind made up as to the
9 appropriate sentence; is that right?

10 A. Right.

11 Q. This juror says I would like to hear all those
12 aggravating circumstances, I want to hear all those
13 mitigating circumstances, I want the judge to tell me the
14 law, and only then, only then would I be ready to make the
15 appropriate decision as to punishment.

16 A. Right.

17 Q. Is that right?

18 A. Right.

19 Q. And this juror also says this, that if I determined
20 that a life sentence was appropriate I could give a life
21 sentence, and if I determined that the death sentence was
22 appropriate I could give the death sentence. I could give
23 either one, depending on the circumstances; is that your
24 situation?

25 A. Yes, sir.

1 Q. Now, let me tell you what the law also says in a
2 case like this. It says that if a jury gives a death
3 sentence that all 12 jurors must sign a form saying that we
4 have agreed to give the death sentence. You would have to
5 sign that form, also. Now, if you were on a jury and you
6 determined that the death sentence was appropriate and had
7 given the death sentence, would you be able to be sign that
8 form?

9 A. Yes, sir.

10 Q. Now, have you heard of anything about this case
11 before?

12 A. No.

13 Q. Never heard of it?

14 A. No.

15 Q. And let me ask if -- and also, the victim in this
16 case was a Mr. Benton Darrell Smith. I think he went by
17 Benton, as I recall, Benton Smith. Did you know Mr. Smith or
18 know of him in any way?

19 A. No.

20 Q. Now, I'm going to see if you know any of the folks
21 involved in this case, okay. This is Mr. Bennett right over
22 here, Mr. Johnny Bennett. Do you know Mr. Bennett or know of
23 Mr. Bennett?

24 A. No.

25 Q. Thank you. Mr. Bennett is represented by

1 Mr. Hervery Young, who's right here with him, beside him; and
2 Mr. Wayne Floyd. Do you know or know of either of these
3 gentlemen?

4 A. No.

5 Q. Now, the State will be represented by the
6 Solicitor's Office. And let me ask first, have you ever had
7 any dealings with the Solicitor's Office?

8 A. No.

9 Q. Okay. Hope not, anyway?

10 A. No, I don't think so.

11 Q. This is the Solicitor, Mr. Donnie Myers. And with
12 him are Mr. Dayton Riddle and Mr. Shawn Graham. They will be
13 prosecuting the case. Now, do you know or know of any of
14 these gentlemen?

15 A. Well, I've seen Mr. Donnie Myers on television a
16 whole lot. That's all we know about him. That's all I know.

17 Q. All right. Now, has that caused you to form any
18 positive or negative impressions about Mr. Myers that would
19 prevent you from giving both sides a fair trial in this case?

20 A. No.

21 Q. That wouldn't affect you at all; is that correct?

22 A. No.

23 Q. And, of course, you understand that during the
24 trial I will be giving the jury instructions as to the law
25 from time to time. Would you be able to follow the

1 instructions of the law as I give them?

2 A. Yes, sir.

3 Q. Now, we also gave you a list, a witness list. Did
4 you get a chance to look that over?

5 A. Yes, I did.

6 Q. Did you recognize any of the names on there?

7 A. One.

8 Q. And let me ask you, if you would, go down and just
9 tell me by number which ones you recognize. Do you have the
10 list in front of you? Just tell me the numbers of the ones
11 that you recognize?

12 A. It was only one, number 10.

13 Q. Number 10, and how do you know him?

14 A. Know him as -- he was -- I mean, can I say how --

15 Q. Sure.

16 A. He's a coach.

17 Q. Sure.

18 A. And also, I run a -- it's called Lynlee Hall, which
19 is a banquet facility, and his wife, Linda Killian, and I are
20 friends. And they come to our place and cater on occasions,
21 and he helps his wife.

22 Q. Right. Now, if he were to testify would that give
23 you any problem in giving both sides a fair trial in the
24 case?

25 A. No.

1 Q. It wouldn't sway you at all; is that right?

2 A. Well, I don't think so. He's -- I mean, he's a
3 very nice person, I know.

4 Q. Right. Right.

5 A. That's all I would know.

6 Q. I guess what I'm asking is this. By the fact that
7 he testified, would that cause you to give him more
8 credibility than it would any other witness by the fact that
9 you know him?

10 A. No, not really.

11 Q. Okay. Anybody else you know on this list?

12 A. No.

13 Q. And considering everything we've been over at this
14 point then, do you know of any other reason why you couldn't
15 give both sides a fair trial?

16 A. No.

17 Q. Thank you, ma'am. Let me ask you if you'll answer
18 any questions for the lawyers. They're going to ask you some
19 questions, okay?

20 A. Okay.

21 VOIR DIRE EXAMINATION

22 BY MR. MYERS:

23 Q. Ms. Corley, have you ever sat on a criminal jury
24 panel before?

25 A. No, I haven't.

1 Q. Ms. Corley, in a normal case, in a criminal case, a
2 judge, he imposes the sentence. In this case, the jury is
3 going to impose the sentence. And that's because we're
4 asking for the death penalty; do you understand that?

5 A. Yes.

6 Q. And before a judge hands down a sentence to someone
7 he wants to know about the crime that was committed and he
8 wants to know about the person who committed the crime.
9 Well, in this trial, that's what the evidence will be about.
10 It goes to the circumstances surrounding the crime, how the
11 crime was committed, and the character of the defendant. It
12 might be something in his favor, could be some bad things
13 about him. And the jury would have to listen to that
14 testimony. Would you be willing to listen to that type of
15 testimony if you were on this jury panel?

16 A. Yes.

17 Q. Once all that testimony is in, Ms. Corley, Judge
18 Westbrook is going to tell the jury what the law is and he'll
19 go into detail. You heard these terms aggravating and
20 mitigating circumstances, he'll tell the jury what that means
21 under the law. You would follow that law as he told you what
22 it was, wouldn't you?

23 A. Oh, yes.

24 Q. He's also going to give the jury a list of what
25 aggravating circumstances are involved and what mitigating

1 circumstances are involved. You also would follow that, too?

2 A. Yes.

3 Q. And then the jury must decide life imprisonment or
4 the death penalty. Now, as I understood you tell the Judge,
5 a category number 1 was where somebody was guilty of murder,
6 some jurors say, well, it's always the death penalty. No
7 questions, always. You're not in that category?

8 A. No.

9 Q. And number two is just the opposite. If someone is
10 guilty of murder, some jurors say, well, I could never give
11 the death penalty. You're not in that category either?

12 A. No.

13 Q. You'd have to listen to everything, hear all the
14 evidence, all the testimony, hear the law, then decide what
15 punishment fits the crime and the person; is that correct?

16 A. Correct.

17 Q. You wouldn't know unless you've heard all of that;
18 is that correct?

19 A. Right.

20 Q. And, Ms. Corley, if you were a juror and after
21 hearing all of that, evidence and the law, if your position
22 is that life is right, then you could vote for life; but if
23 the death penalty was the necessary sentence and the
24 appropriate sentence, you can sign jury name on a death
25 penalty?

1 A. (Nodded.)

2 Q. But you would have to hear all of this before you
3 can decide; is that correct?

4 A. Right.

5 MR. MYERS: That's all we can ask of you. Thank
6 you, Ms. Corley.

7 THE COURT: Mr. Floyd?

8 VOIR DIRE EXAMINATION

9 BY MR. FLOYD:

10 Q. Good afternoon, Ms. Corley.

11 A. Hi.

12 Q. My name is Wayne Floyd and I, along with Hervery
13 Young, represent Johnny Bennett. What is your opinion on the
14 death penalty, Ms. Corley?

15 A. Well, I haven't -- I don't really -- I'm not
16 against it. I don't feel -- I think in certain cases, it
17 should be and -- you know, talking about serial killers or
18 people who have done horrible acts, you know. And I think
19 it's awful that you keep somebody in jail for life then we
20 have to pay -- all the taxpayers pay for it all.

21 Q. I understand that. And have you discussed your
22 feelings about the death penalty with other people in the
23 past?

24 A. You mean -- not since I was instructed not to, I
25 didn't. I didn't do anything.

1 Q. I mean, like family members or co-workers, you
2 know.

3 A. Yeah, I mean people talk about it.

4 Q. Do you think that everyone who's convicted of
5 murder should get the death penalty?

6 A. No.

7 Q. So you feel that there are some situations where if
8 someone commits a murder that a life sentence is appropriate?

9 A. Uh-huh.

10 Q. Now, you understand in this case that Johnny
11 Bennett has already been convicted of murder by another jury,
12 and I think the Judge went through with you the definition of
13 murder?

14 A. Right.

15 Q. So you understand, in South Carolina to be
16 convicted of murder the jury has to determine, you know, that
17 there was a killing with malice aforethought, a premeditated
18 murder?

19 A. Right.

20 Q. And knowing that, could you still consider a life
21 sentence as opposed to a death sentence for that act?

22 MR. MYERS: We object to the term of going back
23 into it and using premeditated murder and then not talking
24 about aggravating and mitigating circumstances because this
25 lady has said it's life or death, it depends on the

1 circumstances. He's taking it out of context and emphasizing
2 two words unduly, causes confusion.

3 THE COURT: Let me do this. I'll let you ask the
4 question, but I want to clarify it for her first. You
5 understand that when we say the term premeditated, some
6 people consider it the same thing as malicious, as malice
7 aforethought, you remember I told you that term a few minutes
8 ago?

9 MS. CORLEY: Right.

10 THE COURT: And remember, there's a difference
11 between that and aggravated circumstances?

12 MS. CORLEY: Right.

13 THE COURT: You remember that I told you if there's
14 malice aforethought or, in other words, premeditated, that's
15 part of murder itself?

16 MS. CORLEY: Right, if the person had planned it
17 ahead of time.

18 THE COURT: Right. And remember, I told you that
19 the law says that's not enough to give the death penalty?

20 MS. CORLEY: Right.

21 THE COURT: That there have to be aggravating
22 circumstances. So be sure to keep those terms separate.

23 MS. CORLEY: Oh, I see.

24 THE COURT: Premeditation is part of murder itself.
25 Aggravating means there's got to be something else besides

1 the murder. And it's the aggravated circumstance that allows
2 the jury to give the death penalty if they determine it's
3 appropriate; do you understand that?

4 MS. CORLEY: Yes, sir.

5 THE COURT: Okay. Go ahead, Mr. Floyd.

6 BY MR. FLOYD:

7 Q. We got you confused now?

8 A. Well, I'm trying not to be.

9 Q. Well, actually, what I was trying to ask,
10 Ms. Corley, because I haven't really gotten to the
11 aggravation yet, understanding now that any murder is
12 premeditated --

13 A. Right.

14 Q. -- do you still feel that not everybody that
15 commits murder should get the death penalty?

16 A. Right.

17 Q. Now, you understand that when they ask for the
18 death penalty like that, then we go into aggravation, and
19 there must be aggravation to ask for the death penalty?

20 A. Uh-huh.

21 Q. And so you, the jury, would consider aggravation
22 evidence from the State and then mitigation evidence or
23 evidence of good acts or things like that from the defense
24 before you make your decision. And could you follow the
25 Judge's instructions and wait until you heard all of that

1 type of evidence and still consider a life sentence in
2 connection with that type of a situation?

3 A. I feel like I could.

4 Q. Now, do you understand that in a situation like
5 this, each juror is entitled to their own opinion on the
6 punishment, and if you had a certain opinion about the
7 appropriate punishment, would you stick to your opinion?

8 A. Yes.

9 MR. FLOYD: Thank you. No further questions.

10 THE COURT: Anything else from the State?

11 MR. MYERS: No, sir.

12 THE COURT: Let me ask you to step just outside the
13 door, okay.

14 (WHEREUPON, Juror Corley leaves the
15 courtroom.)

16 THE COURT: What's the State's position on this
17 juror?

18 MR. MYERS: Submit she's qualified, sir.

19 THE COURT: Defense?

20 MR. FLOYD: Qualified, Your Honor.

21 THE COURT: All right. Ask her to step back in. I
22 find she is qualified.

23 (WHEREUPON, Juror Corley enters the
24 courtroom.)

25 THE COURT: Ms. Corley, I've determined you would

1 be qualified to sit on a jury in this case if you're picked.
2 So what I'm going to do is ask you to come back tomorrow
3 morning at nine o'clock. Now, you need to come back here in
4 this courtroom and just sit out here in the middle section.
5 You'll be there with about 35 or 40 people and we're going to
6 pick the jury from that group.

7 Now, you need to bring bags packed for as much as a
8 week in a motel. The jury will be sequestered during the
9 trial. And just leave the bags in your car, and if you do
10 wind up on the jury somebody will go to the car and get them
11 for you, and take care of them for you. Do you have a
12 question?

13 MS. CORLEY: Bring enough for a week?

14 THE COURT: Yes, ma'am, a week. You may not be
15 there entirely for a week, but to be cautious about it, it
16 should be enough for a week.

17 MS. CORLEY: Okay. Be here at nine?

18 THE COURT: Right. Now, until that time, it's also
19 very important that you don't talk about the case with
20 anyone, stay away from any sort of television news, any news
21 on the radio or any news from the newspapers. No news until
22 then, okay?

23 MS. CORLEY: Okay.

24 THE COURT: And we'll see you then at nine o'clock
25 tomorrow morning with your bags packed. Thank you, ma'am.

1 (WHEREUPON, Juror Corley leaves the
2 courtroom.)

3 (WHEREUPON, Juror Number 177, Adam T.
4 Humphrey, a white male, entered the courtroom.)

5 ADAM T. HUMPHREY, after having been duly
6 sworn, testified as follows:

7 VOIR DIRE EXAMINATION

8 BY THE COURT:

9 Q. Mr. Humphrey, have a seat please. Nobody is going
10 to give you a hard time.

11 Mr. Humphrey, you recall we told you that the State
12 has charged Mr. Johnny Bennett with murder and they're asking
13 for the death penalty; you recall that?

14 A. Yes, sir.

15 Q. You recall that I also told you that a jury has
16 previously heard the first part, and that is the part related
17 to the murder, and have found Mr. Bennett guilty of murder;
18 you understand that?

19 A. Yes, sir.

20 Q. I want to be sure you understand -- and, of course,
21 that's why we go to this second part of the trial. That's
22 why this jury will decide the appropriate sentence; you
23 understand?

24 A. Yes, sir.

25 Q. Only two sentences available, life in prison or the

1 death penalty. That's what this jury is going to decide; you
2 understand that?

3 A. Yes, sir.

4 Q. Now, you understand when we're talking about
5 murder, I want to be sure you understand what we mean by
6 that. In South Carolina, the law defines murder as the
7 unlawful killing of another human being with what is called
8 malice aforethought.

9 Now, malice aforethought means that -- malice means
10 that it was done with an evil intent, in other words, it was
11 done maliciously, and the malice was there at or before the
12 time of the killing. So, in essence, the jury has found
13 Mr. Bennett guilty of killing someone with evil intent at the
14 time that he did it; do you understand that?

15 A. Yes, sir.

16 Q. Now, the law says that that's not enough to give
17 the death penalty in South Carolina. There has to be more.
18 In addition to the murder, this must be at least one
19 aggravating circumstance. The law sets out certain
20 aggravating circumstances, and if any of those are present
21 the State can ask for the death penalty on the basis of
22 those. But the State must prove any aggravating
23 circumstances beyond a reasonable doubt; you understand that?

24 A. Yes, sir.

25 Q. And that's why the jury is here, to determine

1 whether they prove that beyond a reasonable doubt. So you
2 understand, of course, the jury would also hear, in addition
3 to those aggravating circumstances, they would also hear
4 mitigating circumstances, in other words, circumstances in
5 Mr. Bennett's favor; you understand that?

6 A. Yes.

7 Q. And, of course, at the end of it, I, as the Judge,
8 would tell you the law in the case, and you would then apply
9 that law to the facts and go out and come back with a
10 sentence; do you understand that?

11 A. Yes, sir.

12 Q. Now, based on that, did you got a chance to look
13 over this sheet that we gave you that described the three
14 types of jurors?

15 A. Yes, sir.

16 Q. Did you have some time to think about it?

17 A. I'd say I was the third type.

18 Q. You think you're the third type?

19 A. Yes, sir.

20 Q. I want to go over it with you just to be sure we're
21 talking about the same thing, okay?

22 A. All right.

23 Q. The third type of juror is a juror who says this.
24 This juror says that even though the defendant has been found
25 guilty of murder, in other words, even though he's been found

1 guilty of killing someone else maliciously that I still do
2 not have my mind -- I wouldn't make up my mind as to the
3 punishment; is that right?

4 A. Right.

5 Q. This juror says I want to hear all of those
6 aggravating circumstances, I want to hear all of those
7 mitigating circumstances, I want the judge to tell me what
8 the law is, and once I've heard all of that, and only then,
9 am I ready to decide the appropriate sentence; is that
10 correct?

11 A. Yes, sir.

12 Q. And this juror also says that if the facts of the
13 case justify a life sentence I could give a life sentence,
14 and if they justify a death sentence I could give a death
15 sentence. It would just depend on the circumstances. I
16 could give either one, depending on circumstances; is that
17 what you're saying?

18 A. Right.

19 Q. Now, the law also in South Carolina has another
20 unique twist about it. It says this. That in a death case,
21 death penalty case, if a jury gives a death sentence, all 12
22 jurors must sign a form saying we have agreed to give the
23 death sentence. Now, if you're on the jury and had given the
24 death sentence, would you be able to sign that form?

25 A. Yes, sir.

1 Q. Now, have you heard anything about this case
2 before?

3 A. No, I haven't. The only thing --

4 Q. Sir?

5 A. The only thing is the name sounds familiar.

6 Q. Well, that's the next question.

7 A. I went to school with a fellow that could be the
8 same person.

9 Q. What high school did you go to?

10 A. Brooklyn Cayce.

11 Q. Brooklyn Cayce High School?

12 A. Yes, sir.

13 THE COURT: Did Mr. Bennett go to Brooklyn Cayce
14 High School?

15 MR. FLOYD: No, Your Honor.

16 BY THE COURT:

17 Q. That would not be Mr. Bennett then. I'm going to
18 introduce you to Mr. Bennett now. This is Mr. Bennett right
19 here. Do you know Mr. Bennett or know -- feel like you know
20 Mr. Bennett or know of him in any way?

21 A. I don't think so.

22 Q. I gather that's not the individual you went to
23 school with?

24 A. No, sir.

25 Q. Now, he's represented by Mr. Hervery Young and

1 Mr. Wayne Floyd. Do you know Mr. Young or Mr. Floyd?

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

3 Q. Now, the State in this case is represented by the
4 Solicitor's Office. Let me ask you first, have you ever had
5 any dealings with the Solicitor's Office?

6 A. No, sir.

7 Q. Now, this is the Solicitor, Mr. Donnie Myers, who
8 will be prosecuting the case, along with Mr. Dayton Riddle
9 and Mr. Shawn Graham. Do you know or know of any of these
10 gentlemen?

11 A. Other than news programs.

12 Q. Okay. And is there anything you've seen or heard
13 on the news that would cause you to have any feelings about
14 Mr. Myers or any of these, pro or con, that would have any
15 sway on you as a juror?

16 A. No.

17 Q. Now, we also gave you a witness list to look over.
18 Did you got a chance to look that over?

19 A. Yes, sir, I don't know anybody.

20 Q. Don't know anybody on it. And let me also ask if
21 you knew -- the victim in this case was Mr. Benton Smith,
22 full name is Benton Darrell Smith. Did you know Mr. Smith in
23 any way?

24 A. Not that I know of.

25 Q. So from what I gather, you really don't know

1 anything about this case at all? Don't know the people,
2 don't know the facts, don't know anything?

3 A. Uh-uh.

4 Q. Understanding everything that I've asked then, do
5 you feel like you can give both sides a fair trial?

6 A. I think so, yes, sir.

7 THE COURT: All right. I'm going to ask you --
8 now, the attorneys are going to have some questions, let me
9 ask if you'll answer them, okay.

10 Mr. Myers?

11 VOIR DIRE EXAMINATION

12 BY MR. MYERS:

13 Q. That form you sent back in, Mr. Humphrey, you said
14 you'd never served on a criminal jury before?

15 A. Correct.

16 Q. All this kind of strange to you?

17 A. Yeah, it is.

18 Q. All these questions about legal definitions and all
19 that, that's a little unusual to you?

20 A. Uh-huh.

21 Q. Mr. Humphrey, let me tell you this. The jury is
22 going to have to hear testimony. They're going to have to
23 listen to witnesses testify. When all the testimony is in,
24 the Judge is going to tell the jury what the law is, and the
25 jury is going to sentence the defendant. 12 people over here

1 will hand down the sentence, life imprisonment or the death
2 penalty. You understand that, don't you?

3 A. Yes, sir.

4 Q. Now, Mr. Humphrey, as to life in prison and the
5 death penalty, you said you're in that third category, right?

6 A. Right.

7 Q. The first category was where someone is convicted
8 of murder, some jurors say, it's always the death penalty. I
9 don't want to hear anything else, it's the death penalty.
10 You don't fall under that one?

11 A. No, sir.

12 Q. And the second category is just the opposite,
13 someone convicted of a murder, no matter how horrible, they
14 could never give the death penalty. You don't fall under
15 that category?

16 A. No, sir.

17 Q. You would have to listen to everything, hear all
18 the evidence and the law, then make up your mind; is that
19 right?

20 A. Right.

21 Q. So, I guess that means as far as the death penalty,
22 you don't think it applies in all cases of murder?

23 A. No, sir.

24 Q. It could be life or death?

25 A. Right.

1 Q. But you would have to know about it before you
2 could decide?

3 A. Correct.

4 Q. That's what's going to happen here. There will be
5 testimony -- even though the defendant is guilty of murder,
6 the jury is not concerned with his guilt, but the jury is
7 going to have to hear some more testimony. They're going to
8 have to hear about the circumstances surrounding how the
9 murder was committed. They are going to have to hear things
10 about the defendant, things in his favor, some bad things
11 about him. You'd be willing to listen to all that testimony
12 before you decided what the right sentence is?

13 A. Yes, sir.

14 Q. And then after the testimony is in, Judge Westbrook
15 is going to tell the jury what these legal terms are again,
16 but he'll do it in more detail. He'll tell the jury what an
17 aggravating circumstance is. He'll tell them what a
18 mitigating circumstance is. You would follow that law as he
19 told you, wouldn't you?

20 A. Right.

21 Q. He's going to give the jury a list of these
22 circumstances. He'll give it to them in writing and he'll
23 explain the jury that. You would follow his instructions on
24 what are aggravating and mitigating circumstances, wouldn't
25 you?

1 A. Uh-huh.

2 Q. And, Mr. Humphrey, after all that is in then the
3 jury has to reach that verdict. Is it fair to say there's no
4 way in the world you can give your opinion about the life
5 imprisonment or the death penalty until you've heard
6 everything; is that right?

7 A. That's correct.

8 Q. The death penalty is appropriate in some cases of
9 murder, life imprisonment is appropriate in some cases of
10 murder; is that correct?

11 A. Yes, sir.

12 Q. But after hearing all that if you thought life was
13 right, you could vote for life; is that right?

14 A. Yes, sir.

15 Q. But if you also felt that the death penalty was the
16 punishment that fit the crime, you could sign your name on
17 the death penalty verdict; is that correct?

18 A. Yes, sir.

19 Q. But it's fair to say you'd have to listen to
20 everything, hear everything before you could make that
21 decision?

22 A. Correct.

23 MR. MYERS: Thank you, sir. That's all we can ask
24 of you, Mr. Humphrey.

25 THE COURT: Mr. Young?

VOIR DIRE EXAMINATION

1
2 BY MR. YOUNG:

3 Q. Mr. Humphrey, have you ever had the occasion to
4 discuss your views and feelings about the death penalty with
5 anyone; family, friends, co-workers?

6 A. Not that I can recall, no.

7 Q. Have you ever -- before the Judge gave you that
8 form, have you ever sat down and thought about your feelings
9 about the death penalty?

10 A. Yeah. Probably so, yeah.

11 Q. Could you tell us -- you know, what are your
12 feelings about the death penalty?

13 A. It's really hard to say until I hear, you know, the
14 evidence in the case. In other words, really, I don't -- I
15 mean, it could be either way.

16 Q. Well, I'm not asking you how you would vote. I
17 don't want you to answer that. What I'm asking you is, in
18 general, how do you feel about -- what are your opinions?

19 A. I think death is wrong, period. Killing a person
20 is wrong, period. But, you know, the law is the law, and we
21 ought to enforce it correctly depending on how it was
22 accomplished.

23 Q. Understanding that you hold the opinions that death
24 is wrong, do you believe that the appropriate punishment for
25 someone who is convicted of murder should be death?

1 A. Depending, depending.

2 Q. At the same time, could that punishment be life?

3 A. Yes, sir.

4 Q. So what you're telling us is that before you can
5 make your decision as to what is the appropriate punishment,
6 you'll have to hear aggravating and mitigating evidence?

7 A. Correct.

8 Q. Information that makes the crime worse and better?

9 A. Right.

10 Q. You mentioned that whatever the law says that's
11 what we have to go by. You understand that the Judge will
12 never instruct the jury that you have to give the death
13 penalty?

14 A. Right.

15 Q. Understand that the Judge will also instruct you
16 that you will have to find an aggravating circumstance before
17 you can even consider giving the death penalty; you
18 understand that?

19 A. Right, uh-huh.

20 Q. Given the fact that Mr. Bennett has already been
21 convicted of murder, does that bring forth any feelings or
22 opinions in your mind as to what the appropriate punishment
23 should be?

24 A. Well, not necessarily, no, sir.

25 Q. The Judge will also instruct you that even if you

1 find an aggravating circumstance you could return a verdict
2 of life; you understand that?

3 A. Yes, sir.

4 Q. For any reason whatsoever or for no reason at all.
5 I noticed on your questionnaire, you have some young
6 children?

7 A. Yes, sir.

8 Q. I don't know if the Judge had mentioned this yet or
9 not, but if you're qualified to be on the jury the Judge will
10 be sequestering the jury; you understand that?

11 A. Yes, sir.

12 Q. And that would mean that you would be away from
13 your family.

14 MR. MYERS: That's a matter for the Judge to take
15 up, I think.

16 THE COURT: I understand. Since he's opened it,
17 I'll let him go ahead and ask the question.

18 MR. YOUNG: Your Honor, I would ask the Court if
19 the Court would like to go ahead.

20 THE COURT: Okay. I will.

21 Mr. Humphrey, you understand that -- in essence,
22 you have small children. What are the ages of your children?

23 MR. HUMPHREY: I have a 13-year-old and a
24 2-year-old. A 13-year-old stepson.

25 THE COURT: Is your wife at home with you?

1 MR. HUMPHREY: Yes, sir.

2 THE COURT: If you are on the jury and sequestered,
3 would you be able to arrange care, would there be someone
4 there to care for the child.

5 MR. HUMPRHEY: Yes, sir. But one other thing that
6 really bothers me about doing it is I own my own business and
7 I'm training employees now. And with me not being there
8 really dampers my work load. I mean, I depend on making my
9 money and paying -- my brother is an employee of mind, I'm
10 paying him, and I'm paying a new employee I just hired
11 yesterday, as a matter of fact. And for anything to really
12 get done and done correctly, I need to be on the job.

13 THE COURT: Yes, sir.

14 MR. HUMPHREY: But, yeah, as far as my kids go, my
15 mother keeps the kids during the day so that's not a problem.

16 THE COURT: You understand as far as the work
17 situation, we have certain parameters that we can go by, that
18 we go by or not and, unfortunately, that doesn't fall within
19 it. And I certainly feel for you on that, and I understand
20 that can be difficult, but I'm not able to excuse you for
21 that reason.

22 Okay. Go ahead, Mr. Young.

23 BY MR. YOUNG:

24 Q. If I may, I would like to follow up on the work
25 situation. You say that that would cause you a problem.

1 Would sitting on a jury knowing that you have your business
2 out there, would your attention be focused on your business
3 and how it's going?

4 A. Probably not. A certain extent, I'll probably be
5 thinking about it somewhat, a certain extent.

6 Q. Do you think that concern would in any way
7 interfere with your ability to serve as a juror?

8 A. I don't think so, no, sir.

9 Q. And it's my understanding that before you can make
10 your decision on what is the appropriate punishment you would
11 have to hear all of the evidence?

12 A. Correct.

13 Q. The good and the bad?

14 A. Correct.

15 Q. And then and only then you could make your
16 decision?

17 A. Right.

18 Q. And regardless of what your decision is, you will
19 be able to vote that way?

20 A. Yes, sir.

21 MR. YOUNG: Thank you, that's all we ask.

22 THE COURT: Anything else, Mr. Myers?

23 MR. MYERS: No, sir.

24 THE COURT: Let me ask you to step just outside the
25 door, okay.

1 (WHEREUPON, Juror Humphrey leaves the
2 courtroom.)

3 THE COURT: What's the State's position on this
4 juror?

5 MR. MYERS: Submit he's qualified.

6 THE COURT: Defense?

7 MR. YOUNG: He's qualified, Your Honor.

8 THE COURT: I find he is qualified.

9 (WHEREUPON, Juror Humphrey enters the
10 courtroom.)

11 THE COURT: Mr. Humphrey, I've determined you would
12 be qualified to sit on a jury in this case if you're
13 selected. And what I'll ask you to do is come back tomorrow,
14 Wednesday morning, tomorrow morning at nine o'clock, okay?
15 Just come here into the courtroom and sit in this middle
16 section. Now, you'll be there with about 35 or 40 people and
17 we'll draw the jury from that group. Bring with you bags
18 packed for as much as a week in a motel. If you are picked
19 on the jury, someone will get the bags for you and take them
20 to the motel, so just go ahead and leave them in your car.

21 MR. HUMPHREY: Okay.

22 THE COURT: Now, be sure -- when you come back, be
23 sure again not to talk to anybody about the case. Stay away
24 from any kind of news on the radio or television, no
25 newspapers or anything like that, too.

1 MR. HUMPHREY: All right.

2 THE COURT: With that in mind, I'll see you
3 tomorrow morning at nine. Thank you, sir.

4 (WHEREUPON, Juror Humphrey leaves the
5 courtroom.)

6 (WHEREUPON, Juror Number 12, Iry J. Austin, a
7 white male, enters the courtroom.)

8 IRY J. AUSTIN, after having been duly sworn,
9 testified as follows:

10 VOIR DIRE EXAMINATION

11 BY THE COURT:

12 Q. Mr. Austin, just have a seat. Mr. Austin, do you
13 recall yesterday I told you that in this case the State has
14 charged Mr. Johnny Bennett with the offense of murder?

15 A. Right.

16 Q. You recall I told you that the State is asking for
17 the death penalty in this case?

18 A. Right.

19 Q. And you also recall, as I told you then, that a
20 jury has already heard the issue of the murder charge and
21 found Mr. Bennett guilty of murder; do you understand that?

22 A. Yes, sir. Yes.

23 Q. Now, I want to be sure you understand -- first of
24 all, before we go on, do you understand what murder is in
25 South Carolina. In South Carolina, murder is defined as the

1 unlawful killing of another human being with what is called
2 malice aforethought. Some people consider it the same as
3 premeditation. But in South Carolina terms, it means that
4 there was malice. In other words, that there was an evil
5 intent there and that it was there at the time of or before
6 the killing; do you understand that?

7 A. All right.

8 Q. So, in essence, the jury has found Mr. Bennett
9 guilty of killing another person maliciously; you understand
10 that?

11 A. Okay.

12 Q. Now, the law, however, says that that is not enough
13 to give someone the death penalty. That in order to give the
14 death penalty there must be certain aggravating circumstances
15 or at least one aggravating circumstance along with the
16 murder; you understand?

17 A. Okay.

18 Q. So killing someone with malice aforethought is not
19 enough for the death penalty. There must be at least one
20 aggravating circumstance, and the State is the required to
21 prove that beyond a reasonable doubt; do you understand that?

22 A. Okay.

23 Q. Now, given that, have you had a chance to look over
24 this sheet that we gave you?

25 A. Yes, I have.

1 Q. And have you determined which of these juror
2 categories would apply to you?

3 A. I would more fully meet the third one than I would
4 the other two. The second one, I would not meet. And the
5 first one, of course, that would again come back to what was
6 proven.

7 Q. Yes, sir, right. Well, you understand in terms of
8 -- let's be sure we understand when you say the first one, to
9 go back to what's proven. You understand the first one, the
10 first category is a juror who says that if someone is guilty
11 of murder that I would always give them the death penalty?

12 A. That wouldn't fit me.

13 Q. And you understand applied in this situation that
14 would mean that by the fact that Mr. Bennett's convicted of
15 murder now, that means that without ever hearing the first
16 word, you would automatically give him the death penalty?

17 A. No, that wouldn't fit.

18 Q. That's not you, correct?

19 A. No.

20 Q. So you feel like you're in the third category?

21 A. I would fall under the third category.

22 Q. Now, this third juror -- and let's go over this to
23 see if we're talking about the same thing. This is a juror
24 who says that even though a defendant has been found guilty
25 of murder, in other words, even though he's been found guilty

1 of maliciously killing another person with an evil intent
2 that I still would not have my mind made up as to the proper
3 sentence; is that correct?

4 A. That would be correct.

5 Q. Now, this juror says I want to hear all of those
6 aggravating circumstances, all those other things that are
7 involved; is that correct?

8 A. That would be correct.

9 Q. The juror says I want to hear the mitigating
10 circumstances. In other words, I want to hear things in
11 Mr. Bennett's favor. I want to hear some good things about
12 him.

13 A. Want to hear it all.

14 Q. Right. And then that juror says after I've heard
15 all of that then I want the judge to tell me the law. Once
16 I've heard all of that, then and only then would I be ready
17 to determine the appropriate sentence.

18 A. That would be correct.

19 Q. Okay. Now, this juror also says this, that if I
20 did all this and I determined that a life sentence was the
21 appropriate sentence, I could give a life sentence, right?

22 A. Yes, sir.

23 Q. And this juror says that if I determine that the
24 death sentence was the appropriate sentence I could give the
25 death sentence?

1 A. I could.

2 Q. So in other words, I could give either sentence,
3 depending on the circumstances?

4 A. On the information.

5 Q. And that's what you're saying; is that right?

6 A. That's correct.

7 Q. Now, let me tell you this. The law also says in
8 South Carolina that if a jury gives a death sentence that
9 each juror must sign a form, and that form says we have
10 agreed to give the death sentence. And you as a juror would
11 have to sign it. If you were on a jury and determined the
12 death sentence was appropriate and had given the death
13 sentence, would you be able to sign that form?

14 A. I would be able to sign it.

15 Q. And, of course, now, during the trial it would be
16 my duty as the Judge, as I told you a moment ago, to instruct
17 the jury as to the law, in other words, tell you what the law
18 is in this case.

19 A. Right.

20 Q. Would you be able to go by the law as I give it to
21 you, very strictly, and apply that law to the facts of the
22 case?

23 A. It's all I would know to use.

24 Q. Now, have you heard anything about this case
25 before?

1 A. Not what little you've said here, I can't identify
2 it.

3 Q. Okay. You can't place anything about it. All
4 right.

5 A. No.

6 Q. Let me introduce you to the folks involved and see
7 if you know any of them. This is Mr. Johnny Bennett right
8 here. This is Mr. Bennett. Do you know Mr. Bennett or know
9 of Mr. Bennett?

10 A. No, sure don't.

11 Q. He's represented by Mr. Hervery Young and Mr. Wayne
12 Floyd, these two attorneys here. Do you know or know of
13 either of them?

14 A. Not that -- I have never seen them that I know of.

15 Q. And in this case, the Solicitor's Office would
16 prosecute the case. And let me ask first, have you ever had
17 any dealings with the Solicitor's Office?

18 A. No.

19 Q. Any relationship at all with them?

20 A. None.

21 Q. And this is the Solicitor, Mr. Donnie Myers, who
22 will be the prosecutor, along with Mr. Dayton Riddle and
23 Mr. Shawn Graham. Do you know or know of any of these three
24 gentlemen?

25 A. Mr. Myers I'm familiar with. I've seen him on

1 television.

2 Q. Is there anything you've seen that would cause you
3 to have any positive or negative feelings about him or about
4 the case in any way?

5 A. None that I can think of.

6 Q. Wouldn't sway you as a juror in any fashion; is
7 that right?

8 A. He's just been in the position of having to deal
9 with a lot of situations.

10 Q. Now, in this case, the victim was a gentleman named
11 Benton Darrell Smith. I think they called him Benton Smith.
12 Did you know Mr. Smith or know of him in any way?

13 A. No, sir.

14 Q. We also gave you a witness list. Did you get a
15 chance to look that over?

16 A. Yes, I did.

17 Q. Did you recognize any of those names?

18 A. I recognized none of the names on that list.

19 Q. So from what I gather, you don't know anything --
20 you've never heard of the case, don't know any of the
21 parties, none of the witnesses, don't know anything.
22 Starting with a total -- basically a clean sheet; is that
23 right?

24 A. That's right.

25 Q. Understanding everything that I've asked then, do

1 you feel like you could give both sides a fair trial?

2 A. I believe I could.

3 Q. Now, the attorneys are going to have some questions
4 for you. Let me ask if you'll answer their questions, okay?

5 A. Sure.

6 THE COURT: Mr. Riddle?

7 VOIR DIRE EXAMINATION

8 BY MR. RIDDLE:

9 Q. How are you, Mr. Austin?

10 A. Fine.

11 Q. My name is Dayton Riddle, I'm Deputy Solicitor here
12 in Lexington. I've just got a couple questions I need to ask
13 you to find out some of your feelings regarding the death
14 penalty, some of your thoughts and find out some of your
15 knowledge about ALL the courtroom procedure and that type of
16 thing. Have you ever served on a jury before?

17 A. Not on this type of jury, just a -- juries where
18 somebody was being charged for robbery or something like
19 that.

20 Q. Not in a murder case?

21 A. Not in a murder case.

22 Q. OKAY. You've served on a criminal jury before,
23 though?

24 A. No, no -- well, when I say that, I've served on the
25 one that was downstairs and it was usually whether or not

1 somebody was involved with a car accident.

2 Q. Civil jury, money?

3 A. Yeah, more money.

4 Q. Money issues?

5 A. Yeah, I didn't know how to explain it.

6 Q. Let me ask you a few things or tell you a few
7 things and find out if you were aware of them. You're aware
8 that ordinarily a jury speaks through the foreperson or the
9 foreman and they are kind of the spokesman for the jury?

10 A. Okay.

11 Q. And you're aware that in a criminal case, the issue
12 ordinarily is guilty or innocence, did he do it or did he not
13 do it.

14 A. Right.

15 Q. And then the State would present evidence to the
16 jury and we would ask the jury to decide guilty or not
17 guilty.

18 A. That's correct.

19 Q. And in an ordinary situation, say a rape case or a
20 shoplifting or what have you, then once the jury decides
21 guilty or not guilty, then their job is pretty much done.
22 And then we would have the judge do the sentencing in that
23 type of a case. You're aware of that?

24 A. Right.

25 Q. And if the jury finds someone guilty, the judge may

1 say bring that fellow around, solicitor, and tell me
2 something about him. And I may tell the judge his prior
3 record. I may tell the judge some bad things about him or
4 other things that he has done. I may tell the judge some
5 more about the crime that didn't come out in the trial, that
6 type of information. Then he may say now, Mr. Defense
7 lawyer, you tell me something about your man. The defense
8 lawyer tells the judge something good about him. You
9 understand that?

10 A. Right.

11 Q. And based on all that information, the judge would
12 decide what the appropriate sentence to give in that case is.
13 Do you follow that?

14 A. I understand that.

15 Q. In a death penalty case, which is what we're here
16 on, is a little bit different because instead of the judge
17 doing the sentencing, the jury actually does the sentencing.
18 So we have 12 men and women who decide what the appropriate
19 sentence is. Now, the Judge told you that Mr. Bennett has
20 already has been found guilty of murder. So what we're going
21 to do is impanel a jury to decide what the appropriate
22 sentence is; do you understand that?

23 A. Right.

24 Q. And we'll have a trial. And the purpose of that
25 trial is sort of the same thing I outlined in a normal

1 criminal case that we just tell the judge. And you'll hear
2 testimony from that witness stand and you'll hear some things
3 about the crime. And you'll hear some things about the
4 defendant and his background and his character. There may be
5 some bad things about the defendant, may be some good things
6 about the defendant; you understand that?

7 A. Right.

8 Q. And after you have heard all that testimony, the
9 Judge is going to tell you the law which applies, okay?

10 A. All right.

11 Q. And the Judge is going to tell you about some
12 things called aggravating circumstances. And simply put,
13 those are things that would tend to make it more appropriate
14 to give the death penalty. And the Judge will tell you about
15 things called mitigating circumstances, which would tend to
16 lead people more likely to give a life sentence; you
17 understand that?

18 A. That's right, uh-huh.

19 Q. When the Judge gives you these aggravating and
20 mitigating circumstances he's going to define them for you in
21 detail; you understand that?

22 A. Right.

23 Q. At as a matter of fact, he's going to give you
24 those in writing. He'll have it written down where you and
25 the other jurors could refer to that if you needed to. When

1 the Judge gives you that information could you follow the law
2 as he gives it to you?

3 A. I'd follow it. It's the only thing I know to
4 follow.

5 Q. Sure, sure. And you don't have any problem with
6 accepting the law as the Judge tells you?

7 A. No.

8 Q. And you wouldn't have any problem listening to all
9 the evidence in this case, both aggravating and mitigating,
10 good and bad, to decide what the appropriate sentence is?

11 A. No, sir.

12 Q. Now, I understood you to tell the Judge that you're
13 a category three juror. Sometimes the death penalty is
14 appropriate, sometimes it's not; is that correct?

15 A. Right.

16 Q. And that you don't fall into the other two
17 categories. In other words, you wouldn't say someone is
18 guilty of murder, so I'm always going to vote for death; is
19 that correct?

20 A. That's correct.

21 Q. And you wouldn't say but if somebody is guilty of
22 murder, no matter how bad it is, I would never, ever, ever
23 vote for the death penalty?

24 A. No.

25 Q. So it depends on the facts and circumstances; is

1 that a fair statement?

2 A. That's correct.

3 Q. And as you sit here today, you don't know anything
4 about Mr. Bennett's case; is that correct?

5 A. Nothing.

6 Q. So as you sit here today, you couldn't tell anybody
7 how you would vote in this particular case; is that correct?

8 A. That would be correct.

9 Q. You would base your vote if you were on this jury
10 on the evidence you hear from the witness stand, the
11 aggravating circumstances, the mitigating circumstances?

12 A. That's right.

13 Q. And the law that the Judge gives you?

14 A. Right, that's correct.

15 Q. Sir, is there anything about you, your background,
16 your upbringing, the things that make you who you are that
17 would prevent you from being fair and impartial to everybody
18 involved?

19 A. No.

20 MR. RIDDLE: Thank you, sir. That's all we're
21 looking for.

22 THE COURT: Defense, Mr. Floyd?

23 VOIR DIRE EXAMINATION

24 BY MR. FLOYD:

25 Q. Good afternoon, Mr. Austin.

1 A. How you doing?

2 Q. My name is Wayne Floyd and I, along with Hervery
3 Young, represent Mr. Johnny Bennett. When you first -- when
4 the Judge first asked you about which category you were in, I
5 thought I heard you say that maybe one or three or something
6 to that effect. Was there some confusion on that point as to
7 which one you come under?

8 A. Well, I said I was more like number three. That
9 definitely not number two, but number one. And then the
10 Judge clarified what number one was, and then I responded
11 that, no, that I wouldn't fit in my category.

12 Q. What do you feel about the death penalty?

13 A. I think that at times it's appropriate due to the
14 crime that's been committed. Other times, it is not,
15 according to the crime.

16 Q. Have you ever discussed the death penalty with
17 family or friends or co-workers?

18 A. Not at this particular time, but in times past.

19 Q. I don't mean in connection with this case, but like
20 in the past?

21 A. In times past, I have.

22 Q. And I noticed that. -- I believe you're a Sunday
23 school teacher?

24 A. That's correct.

25 Q. Have you ever discussed the death penalty with your

1 class?

2 A. With the class as the Bible gives credence to the
3 death penalty, especially in the Old Testament.

4 Q. Is that like the eye for eye type?

5 A. Not so much the eye for eye, but the penalties of
6 where the person who had committed murder could go to a city
7 of refuge and the high priest would hear the counsel. And,
8 of course, if the crime had truly been committed as a murder,
9 the person would be put to death. If it wasn't, then that
10 person would have to stay in the city of refuge until the
11 high priest died. Then he could go home.

12 Q. Which book is that in?

13 A. Well, that's basically in Exodus.

14 Q. Exodus. Now, you do understand that in this case
15 Mr. Bennett has already been convicted by another jury of
16 murder?

17 A. That's what I understand from here.

18 Q. So by your comments, by your answers, I guess to
19 the Judge and to Mr. Riddle, you don't feel that anyone who's
20 been convicted of murder must necessarily receive the death
21 penalty?

22 A. Well, from what the Judge told me, by law, that's
23 not the standing. It has to be something else. So murder is
24 -- death penalty is not automatic with murder.

25 Q. Is that your opinion, also?

1 A. Oh, yes, yes. Well, it has to be because that's
2 what the law is.

3 Q. Now, I also notice you had a Bush for president
4 bumper sticker?

5 A. Well, it's on my hood -- or on my dash.

6 Q. Is that Bush the son or the father?

7 A. The son.

8 Q. It's a recent one?

9 A. Right.

10 Q. Is it his stand on the death penalty that attracts
11 you to him?

12 A. No, because I was for him long before I ever heard
13 about his stand for the death penalty.

14 Q. Has your opinion on the death penalty changed or is
15 it the same you've always had?

16 A. I think that probably as I've grown older, it's
17 probably mellowed to some degree. But I still pretty much
18 believe that there are crimes that are worthy of the death
19 penalty.

20 Q. But in your earlier years, I assume then you felt
21 that all murder should get the death penalty?

22 A. I was a little bit more drawn in that direction,
23 yes.

24 Q. How long have you been retired now, Mr. Austin?

25 A. Nine years.

1 MR. FLOYD: Thank you. No further questions.

2 THE COURT: Anything else, Mr. Riddle?

3 MR. RIDDLE: No, sir.

4 THE COURT: Let me ask you to step just outside the
5 door, okay?

6 (WHEREUPON, Juror Austin leaves the
7 courtroom.)

8 THE COURT: What's the State's position on this
9 juror?

10 MR. RIDDLE: Qualified.

11 THE COURT: Defense?

12 MR. FLOYD: Qualified.

13 THE COURT: I find he is qualified.

14 (WHEREUPON, Juror Austin enters the
15 courtroom.)

16 THE COURT: Mr. Austin, I've determined you would
17 be qualified to sit on a jury in this case if you were
18 selected. I'm going to ask if you'll come back tomorrow
19 morning, that's Wednesday morning, tomorrow, at nine o'clock.
20 Just come here to the courtroom and sit in the middle
21 section. There will be 35 or 40 people there. We'll draw
22 the jury from that group, all right?

23 MR. AUSTIN: All right.

24 THE COURT: Now, also, bring bags packed for as
25 much as a week in a motel. The jury will be sequestered

1 during this time. But leave the bags in your car. If you do
2 go on the jury, someone will take care of your bags for you
3 and get them to the motel for you. So just leave them there.

4 Until then, it's also important that you not talk
5 about the case with anybody in any way. Certainly let your
6 family know what you're doing, but be sure not to talk about
7 the case. And stay away from any sort of news; no television
8 news, radio news, no newspapers at this point, okay?

9 MR. AUSTIN: Right.

10 THE COURT: With that in mind, we'll see you in the
11 morning at nine o'clock with your bags packed.

12 (WHEREUPON, Juror Austin leaves the
13 courtroom.)

14 THE COURT: Counsel, why don't we take a short
15 break at this point.

16 (WHEREUPON, a short break was taken.)

17 THE COURT: All parties and attorneys are in the
18 courtroom. The defendant is present. Counsel, we are -- you
19 can tell we're near the end of the selection stage, we're
20 starting to have juror problems. Yesterday, we qualified --
21 let's see, the 11th juror qualified, Number 19 on the first
22 page, was Juror Number 161, Ms. Harris. I am told by the
23 clerk now that in contacting jurors to tell them to come at
24 9:00 instead of 2:30 nobody can find Ms. Harris. She
25 apparently is in absentia.

1 As I understand, she was the lady, if you recall,
2 that needed transportation. The deputy, at her request, let
3 her out at a store, which she said was near her home. And
4 her mother, as I understand -- and listen to this, Madam
5 Clerk, correct me if I'm wrong, her mother says she didn't
6 come home from jury service last night. Her employer says
7 she didn't go to work. She told them that she was on jury
8 duty. So apparently has not been located at this point.

9 My anticipation, I assume, is that she would plan
10 to be ready to show up here tomorrow at 2:30 instead of 9:00,
11 not knowing about the nine o'clock at this point. As I
12 understand, the mother has tried pretty hard to find where
13 she is and they've got some folks out looking for her
14 basically.

15 Is that correct, Madam Clerk?

16 THE CLERK: That's correct, Judge.

17 THE COURT: I would think at this point, we'd
18 probably want to keep her on the list, but we may need to
19 kind of keep an eye out tomorrow for possible problems with
20 this juror, unless they find her during the night.

21 What's the State's position on that?

22 MR. MYERS: Whatever you want to do, just have them
23 keep looking for her, I guess.

24 THE COURT: I think that's the best answer.

25 What's the defense's position?

1 MR. FLOYD: We don't have any magic solution
2 either. I agree, just keep looking and hope we get her.

3 THE COURT: We'll just wait and see, and if she
4 doesn't show tomorrow we'll take her out of the selection
5 process if we need to. But obviously we'll see what your
6 positions are on it.

7 Also, a juror we just qualified a few minutes ago,
8 Ms. Corley, she was the 30th juror qualified, she's Juror
9 Number 87, apparently has advised the deputy that she has
10 problems in her business, her wedding business, that my law
11 clerk warned me about, but Ms. Corley didn't say anything
12 about. She is supposed to cater a wedding this weekend with
13 250 people involved. And, unfortunately, didn't mention it
14 when she was here a few minutes ago. Any objection to taking
15 this juror up again and seeing what her situation is from the
16 State?

17 MR. MYERS: No objection.

18 THE COURT: Defense?

19 MR. FLOYD: No objection, Your Honor.

20 THE COURT: Let's bring her in.

21 (WHEREUPON, Juror Corley enters the
22 courtroom.)

23 THE COURT: Ms. Corley, have a seat. I understand
24 that apparently you brought up to the deputy or someone that
25 you have a business commitment this weekend with a number of

1 people involved; is that right?

2 MS. CORLEY: Yes. I own a banquet hall, and I'm
3 having a wedding reception this Saturday. And, you know, we
4 have to get ready for it on -- I own Lynlee Hall banquet
5 facility in Columbia. I was wanting to be a good citizen, so
6 I worked it out that I came yesterday morning and got all my
7 stuff ready. I had a business meeting today and got someone
8 to cover for me this morning, but I had no idea that, you
9 know, it would be -- well, first of all, if they even picked
10 me then I'd be asked to stay like that.

11 THE COURT: Okay. Any questions from the State?

12 MR. MYERS: No, sir.

13 MS. CORLEY: I'm sorry.

14 THE COURT: The defense?

15 MR. FLOYD: None, Your Honor.

16 THE COURT: Okay. Let me ask you to step back
17 outside the door, okay.

18 MS. CORLEY: Okay.

19 (WHEREUPON, Juror Corley leaves the
20 courtroom.)

21 THE COURT: What's the State's position on the
22 juror's request?

23 MR. MYERS: The Court's discretion.

24 THE COURT: Defense?

25 MR. FLOYD: Court's discretion, Your Honor.

1 THE COURT: You are just going to let me make the
2 decision. All right, I'll excuse her then for unusual
3 business purposes.

4 (WHEREUPON, Juror Corley enters the
5 courtroom.)

6 THE COURT: Ms. Corley, we'll excuse you from
7 having to serve on the jury then.

8 MS. CORLEY: Well, thank you very much.

9 (WHEREUPON, Juror Corley was excused.)

10 THE COURT: My law clerk said I don't want to be
11 known as somebody who disrupts somebody else's wedding, I
12 guess. That means we have 31 qualified, as I understand it.
13 Is that your understanding?

14 THE CLERK: Yes, sir.

15 (WHEREUPON, Juror Number 370, Ronald E.
16 Turner, a white male, entered the courtroom.)

17 RONALD E. TURNER, after having been duly
18 sworn, testified as follows:

19 VOIR DIRE EXAMINATION

20 BY THE COURT:

21 Q. Mr. Turner, why don't you just have a seat and
22 relax, please, sir, okay. I apologize for running late.
23 We've actually been running very good the last two days and
24 this is about the first time we've been behind.

25 Mr. Turner, you understand in this case -- I told

1 you earlier that in this case that the State has charged
2 Mr. Johnny Bennett with murder and they've asked for the
3 death penalty; do you understand that?

4 A. Yes, sir.

5 Q. You understand -- do you recall that I told you
6 that a jury has already found Mr. Bennett guilty of murder?

7 A. Yes.

8 Q. And that this jury will simply decide the sentence;
9 do you understand that?

10 A. Yes.

11 Q. And to be sure you understand it, when we say
12 murder in South Carolina, murder is defined as the unlawful
13 killing of another human being with malice aforethought. In
14 other words, that it was a killing that took place
15 maliciously; do you understand that?

16 A. Yes, sir.

17 Q. And the law says that you cannot give the death
18 penalty for that, there must be more. And in addition to the
19 murder, there must be at least one of what is called an
20 aggravating circumstance. And, of course, the State has the
21 burden of proving any aggravating circumstances to the jury;
22 do you understand that?

23 A. Yes.

24 Q. All right. Now, understanding that then, did you
25 get a chance to look over this sheet that I gave you?

1 A. Yes.

2 Q. And did you -- in looking the sheet over, did you
3 get a determination as to which category you would fit in?

4 A. Generally, yes.

5 Q. And which is that?

6 A. Probably that I would not be inclined to impose the
7 death penalty.

8 Q. Okay. Let me be sure we understand what the second
9 type of juror is, okay. And that's the second type, as I
10 understand. The second type of juror is a juror who says
11 this, it says that no matter what anyone has done I could
12 never give the death penalty. Now, you say inclined. This
13 juror says under no circumstances would I ever give the death
14 penalty.

15 A. I wouldn't go that far.

16 Q. Okay. As I understand, in essence, you're opposed
17 to the death penalty, but you're not saying that you could
18 never give it; is that correct?

19 A. Right.

20 Q. Now, I want to be sure you understand it. You
21 understand as we -- let me just kind of give you some
22 background on this. The law says that in order to sit on a
23 jury in a case such as this that a juror must, in essence, be
24 able to follow their oath, that they must be able to take the
25 law as I give it to them and apply that law to the facts of

1 the case as they find it; do you understand?

2 A. Uh-huh.

3 Q. And, of course, I will tell you up front that at no
4 time is anyone ever going to tell you or the jury what
5 sentence they have to give. In other words, we're not going
6 to say you've got to give life or you've got to give death.
7 That is always left to the jury; you understand?

8 A. Yes.

9 Q. But what happens in the second phase is this. Now,
10 again, remember, in this phase, the defendant has already
11 been found guilty of murder in the first part, understand?

12 A. (Nodded.)

13 Q. You need to say yes or no.

14 A. Yes.

15 Q. In this part of the trial what will happen is this.
16 We will have evidence of what are called aggravating
17 circumstances. In other words, they are circumstances that
18 are very unfavorable to the defendant. They are against the
19 defendant. They are inclined to encourage you to give the
20 death penalty, okay..

21 Now, you will also hear what are called mitigating
22 circumstances. Those are circumstances which are favorable
23 to the defendant. In essence, they are designed to encourage
24 you to give a life sentence.

25 Now, the law says that in order to sit on a jury a

1 juror must be able to consider all of those circumstances.
2 You must consider the aggravating circumstances, you must
3 consider all the mitigating circumstances, and then, of
4 course, listen to the law as the judge gives it. And, in
5 essence, then that he must take that law and apply it to the
6 facts of the case as he finds them. Do you understand that?

7 A. Yes, sir.

8 Q. And, of course, all 12 jurors must do that
9 together, they must make that determination. And, in
10 essence, I guess, do you feel like you would be able to
11 follow the instructions that I gave you and take all those
12 circumstances, aggravating circumstances, all the mitigating
13 circumstances and determine what is the appropriate sentence?

14 A. Yes.

15 Q. Okay. Now, the law says this, says that when a
16 jury does this the juror must, in essence, be able to say
17 that if the facts justify a life sentence I can give a life
18 sentence, and if the facts justify a death sentence I can
19 give a death sentence. It depends on the facts and the
20 circumstances. Do you feel that you can do that?

21 A. Yes.

22 Q. And as I understand, you're basically very honest,
23 you're saying that you basically tend to be opposed to the
24 death penalty; is that correct?

25 A. Yes.

1 Q. But that you can consider all of the facts and the
2 circumstances and you can give whatever sentence you deem
3 appropriate under the circumstances?

4 A. Yes.

5 Q. Is that correct?

6 A. Yes.

7 Q. Okay. Now, let me ask you, have you ever heard
8 anything about the case?

9 A. No.

10 Q. Never heard anything. And I'm go to ask you if you
11 know any of these folks involved in the case. This is the
12 Solicitor, Donnie Myers, who will be involved prosecuting the
13 case. And with him are Mr. Dayton Riddle and Mr. Shawn
14 Graham. Do you know or know of any of these gentlemen?

15 A. No.

16 Q. Have you ever had any dealings with the Solicitor's
17 Office?

18 A. No.

19 Q. All right. Now, this is Mr. Bennett, Mr. Johnny
20 Bennett. Do you know Mr. Bennett or know of him?

21 A. No.

22 Q. He's represented by Mr. Wayne Floyd and Mr. Hervery
23 Young. Do you know either of them?

24 A. No.

25 Q. So at this point, as I understand, you don't know

1 anything about the case, you don't know anybody involved; is
2 that right?

3 A. No.

4 Q. Now, the victim in this case was a gentleman named
5 Benton Smith. I think his full name was Benton Darrell
6 Smith. Did you know Mr. Smith or know of him in any way?

7 A. No.

8 Q. All right. And we also gave you a sheet here, a
9 witness list.

10 A. Right.

11 Q. Did you look over this witness list?

12 A. Yes.

13 Q. Did you know anybody on it?

14 A. No.

15 Q. Didn't recognize any name on it?

16 A. No.

17 Q. So, now, understanding everything that I've asked,
18 do you feel like you could give both sides a fair trial?

19 A. Yes.

20 THE COURT: Let me ask if you'll answer any
21 questions the attorneys have, okay.

22 Mr. Myers?

23 MR. MYERS: Thank you, Judge.

24 VOIR DIRE EXAMINATION

25 BY MR. MYERS:

1 Q. Mr. Turner, have you ever been on a jury panel
2 before?

3 A. No.

4 Q. And on your responses to Judge Westbrook about the
5 categories, you put yourself in the category that I think you
6 said you would be inclined not to impose the death penalty;
7 is that correct?

8 A. Yes.

9 Q. And, Mr. Turner, you realize that in this case a
10 jury is going to have to impose a sentence?

11 A. Yes.

12 Q. Life imprisonment or the death penalty. And if you
13 are a juror, is it fair to say that you would go into this
14 matter based on your belief that you were inclined not to
15 impose the death penalty; is that correct?

16 A. Yes.

17 Q. And you would have -- is that a firm belief -- and
18 I'm not arguing with you. Is that a firm belief that you've
19 had some time?

20 A. Yes.

21 Q. Is it based on any particular incident in your life
22 or it's just your basic feelings?

23 A. Not any incident, just what I believe.

24 Q. And going into that, of course, that same feeling
25 would be with you in any deliberations?

1 A. Yes, sir.

2 Q. And you understand why we're asking these
3 questions. First of all, the law requires us to do it. And
4 then also on a case like this it's kind of like having an
5 even playing field on the possible punishments. That field
6 would not quite be even based on your beliefs; isn't that
7 correct?

8 A. Yes, sir.

9 Q. Now, Mr. Turner, let me tell you this, and I don't
10 know whether Judge Westbrook mentioned it or not. Our law
11 says this, that if a jury panel, all 12, decided that the
12 death penalty is the right sentence they would have a verdict
13 form that says we sentence the defendant to death, and it
14 would be 12 lines, because our law says every juror must sign
15 the death penalty verdict. Could you tell me you could sign
16 your name to a death sentence?

17 A. I can't tell you that without knowing the facts.

18 Q. Based on your belief, are you telling us that you
19 could not sign your name?

20 A. No, I'm not saying I couldn't sign it. I can't
21 make that decision and I can't tell you that decision.

22 Q. I understand that. Going into the jury room,
23 Mr. Turner, is it fair to say that you would still have this
24 belief in your mind as being -- not being inclined to vote
25 for the death penalty?

1 A. Yes.

2 Q. And that would be in your mind during the
3 deliberations?

4 A. No, I would be listening to what was presented and
5 not prejudging.

6 Q. How strong are you in that belief, not being
7 inclined?

8 A. I can't tell you how strong that is.

9 MR. MYERS: No further questions.

10 THE COURT: Anything from the defense?

11 VOIR DIRE EXAMINATION

12 BY MR. FLOYD:

13 Q. Good afternoon, Mr. Turner. My name is Wayne Floyd
14 and I, along with Hervery Young, represent Mr. Bennett in
15 this matter. I just have a couple of questions for you,
16 also. I think, Mr. Turner, you mentioned that you could
17 listen to the facts in the case and make a decision based
18 upon the facts that were presented to you; is that correct?

19 A. Yes.

20 Q. And that if the facts were such that were presented
21 to you that you felt justified the death penalty, then you
22 could vote for the death penalty?

23 A. Yes.

24 Q. And if the facts were such that justified to you
25 the imposition of the death penalty, then you could follow

1 the law and sign your name?

2 A. Yes.

3 MR. FLOYD: Thank you. I have no further
4 questions.

5 THE COURT: Anything else, Solicitor?

6 MR. MYERS: No, sir.

7 THE COURT: All right. Let me ask if you'll step
8 just outside the room for a second, okay.

9 (WHEREUPON, Juror Turner leaves the
10 courtroom.)

11 THE COURT: What's the State's position on this
12 juror?

13 MR. MYERS: Court's discretion.

14 THE COURT: Defense position?

15 MR. FLOYD: I think he's qualified, Your Honor.

16 THE COURT: I find he's qualified.

17 Let's ask him to step back in.

18 (WHEREUPON, Juror Turner enters the
19 courtroom.)

20 THE COURT: Mr. Turner, I've determined you'd be
21 qualified to sit on a jury if you're selected. So what I
22 will do is ask you to come back in the morning, if you would.
23 Come back at nine o'clock in the morning. And just come
24 right back here to the courtroom, sit right back here in the
25 middle. Now, at that time, if you would, please bring bags

1 with you packed for as much as a week in a motel. The jury
2 is going to be sequestered in this case.

3 Now, before you come back let me also ask you,
4 please, be sure not to talk about the case in any way with
5 anybody. Certainly, you want to let your family know where
6 you're going to be, but don't talk about any details of the
7 case. And if you would, please stay away from any news.
8 Don't watch any television, radio, news, don't read the
9 newspaper or anything like that. With that in mind, we'll
10 see you in the morning at nine o'clock with your bags packed.
11 Thank you, sir.

12 (WHEREUPON, Juror Turner leaves the
13 courtroom.)

14 (WHEREUPON, Juror Number 294, Joan R. Rivers,
15 a white female, enters the courtroom.)

16 JOAN R. RIVERS, after having been duly sworn,
17 testified as follows:

18 VOIR DIRE EXAMINATION

19 BY THE COURT:

20 Q. Ms. Rivers, why don't you just have a seat and
21 relax, okay. We're not going to give you a hard time here.

22 A. Okay.

23 Q. Let me ask you first, do you have any small
24 children?

25 A. I have an 11-year-old year old, almost 11-year-old.

1 Q. Almost 11. The jury in this case will be
2 sequestered. They'll be in a motel for possibly as much as a
3 week, probably four to five days. Do you have anybody else
4 at home that will be able to care for the child?

5 A. Yes.

6 Q. Okay. Would they be able to give adequate care for
7 the child?

8 A. Yes, I think so.

9 Q. You feel like you could handle that; is that
10 correct?

11 A. I think so.

12 Q. And certainly, if there's any problem, if you feel
13 like there's any doubt in your mind you need to let me know
14 that?

15 A. No, there would be someone there that could take
16 care of her.

17 Q. You're pretty sure of that?

18 A. Yes.

19 Q. Now, do you recall that I told you in this case
20 that the State has charged Mr. Johnny Bennett with the
21 offense of murder and they have asked for the death penalty?

22 A. Correct.

23 Q. Do you remember I told you also that one jury has
24 heard the first part of this case and they found Mr. Bennett
25 guilty of murder?

1 A. Yes, sir.

2 Q. Now, in South Carolina -- I want to be sure you
3 understand this. In South Carolina, murder is defined as the
4 unlawful killing of another human being with what is called
5 malice aforethought. Now, malice is defined as an evil
6 intent, and aforethought means it was either at the time of
7 the murder or before. So, in essence, a jury has convicted
8 Mr. Bennett of killing another person with an evil intent at
9 the time that he did so; you understand?

10 A. Yes, sir.

11 Q. Now, the law in South Carolina, though, says this,
12 says that that is not enough to give the death penalty. The
13 death penalty can only be given if a jury determines that in
14 addition to the murder there was also an aggravating offense.
15 In other words, what's called a statutory aggravating
16 circumstance. Do you understand that?

17 A. Yes, sir.

18 Q. Our legislature has set out certain circumstances
19 and the State must prove beyond a reasonable doubt that at
20 least one of those circumstances existed at the time of the
21 murder; you understand that?

22 A. Yes, I do.

23 Q. So I want to be sure you understand when we say
24 murder, we're talking about a killing with evil intent; you
25 understand that?

1 A. Yes.

2 Q. All right. Now -- and again, remember, that that's
3 not enough for the death penalty.

4 A. Right.

5 Q. So that's why we are then drawing this jury, and
6 that is to determine the sentence. There are only two
7 possible sentences, life imprisonment or the death penalty.
8 That's the only two available to the jury; you understand
9 that?

10 A. Yes, I do.

11 Q. And again, as I told you, that the State has to
12 prove at least one statutory aggravating circumstance; you
13 understand that?

14 A. Yes, sir.

15 Q. Now, understanding that, have you had a chance to
16 look over this sheet that we gave you?

17 A. Yes, I have.

18 Q. And do you feel like you fall within one of those
19 categories of jurors?

20 A. Yes, I did.

21 Q. Which is that?

22 A. I don't believe in the death penalty.

23 Q. Okay. Now, I want to be sure you understand, and
24 you understand that's the second type of juror. And
25 sometimes people fall in between, and I want to see exactly

1 where you are, okay?

2 A. Right.

3 Q. The second type of a juror is described in here as
4 a juror who says under no circumstances could they ever give
5 the death penalty. Now, there may be people who say, well, I
6 don't believe in the death penalty, but I could give it if I
7 felt the circumstances were appropriate.

8 A. I don't think I could.

9 Q. Okay. You don't think you could?

10 A. I don't think I could. I don't think I could live
11 with myself if I did.

12 Q. Are you saying you don't think or you know?

13 A. I know I couldn't.

14 Q. Are you telling me that you could never give the
15 death penalty?

16 A. I don't think so, that's my honest opinion. I
17 don't think I could.

18 Q. Sure, sure. And you understand the reason I'm
19 asking all the questions is the law makes me be sure that,
20 you know, you're absolutely definite about what your feeling
21 is?

22 THE COURT: Let me ask, any questions from the
23 State?

24 MR. MYERS: Not at this time.

25 THE COURT: Defense?

1 MR. FLOYD: No questions, Your Honor.

2 THE COURT: All right. We're going to excuse you
3 from having to sit in this case. And I appreciate you being
4 straightforward with us about that, and you're free to go.

5 MS. RIVERS: Thank you, sir.

6 THE COURT: Thank you, ma'am.

7 (WHEREUPON, Juror Rivers was excused.)

8 (WHEREUPON, Juror Number 361, William W.
9 Taylor, a white male, enters the courtroom.)

10 WILLIAM W. TAYLOR, after having been duly
11 sworn, testified as follows:

12 VOIR DIRE EXAMINATION

13 BY THE COURT:

14 Q. Mr. Taylor, why don't you just have a seat and
15 relax, please, sir, okay. We just have a few questions to
16 ask you, chat with you a little bit. You recall yesterday,
17 Mr. Taylor, that I told you that in this case the State has
18 charged Mr. Johnny Bennett with murder and is asking for the
19 death penalty; you recall that?

20 A. Yes, sir.

21 Q. You need to say yes or no. How about just speak
22 into the microphone so the court reporter can pick it up.
23 And do you recall that I told you that one jury has already
24 heard the first part of it and they've determined that
25 Mr. Bennett was guilty of murder; do you recall that?

1 A. Yes, sir.

2 Q. And I want to be sure you understand that when we
3 say murder in South Carolina, that is defined as the unlawful
4 killing of another human being with what is called malice
5 aforethought. Malice is defined as evil intent, an evil
6 intent, and that means that it was done at the time of or
7 before the killing; do you understand that?

8 A. Yes, sir.

9 Q. So in other words, a jury has convicted Mr. Bennett
10 of killing another person with an evil intent at the time
11 that he did it; you understand that?

12 A. Yes, sir.

13 Q. So when we say murder, we're not talking about
14 manslaughter or self-defense or anything like that, we're
15 talking about a killing with malice aforethought. Now, with
16 that in mind, you understand that the law says that that's
17 not enough to give the death penalty. There has to be more.
18 There has to be at least one aggravating circumstance. And
19 the State is required to prove beyond a reasonable doubt any
20 aggravating circumstance; you understand that?

21 A. Yes, sir.

22 Q. Now, of course, that's why we will draw the jury in
23 second part, is to determine whether the State proves an
24 aggravating circumstance; do you understand that?

25 A. Yes, sir.

1 Q. All right. Now, given that, have you had a chance
2 to look over this sheet that we gave you here?

3 A. Yes, sir.

4 Q. And on that sheet, did you -- were you able to
5 determine if you fit within one of those categories of
6 jurors?

7 A. Yes, sir.

8 Q. And which is that?

9 A. The third one, sir.

10 Q. You understand that -- as I understand -- and let
11 me go over it so we both can be sure we're talking about the
12 same thing. As I understand, the third juror is a juror who
13 says this, that although a defendant has been found guilty of
14 murder, in other words, although he's been found guilty of
15 killing someone else with an evil intent at the time he did
16 it, that I still would not have my mind made up as to the
17 appropriate punishment; is that correct?

18 A. Yes, sir.

19 Q. This juror goes on and says this, that I want to
20 hear all of that evidence about aggravating circumstances. I
21 want to hear those aggravating circumstances. I also want to
22 hear mitigating circumstances, in other words, things in
23 favor of Mr. Bennett that may make Mr. Bennett look good. I
24 want to hear those things, too. In other words, I want to
25 hear everything I can about the crime, everything I can about

1 Mr. Bennett, good and bad, before I make a decision; is that
2 correct?

3 A. Yes, sir.

4 Q. This juror also says that I want the judge to tell
5 me the law. Once I've heard all of those facts, I want to
6 hear the law. And once I've heard all those aggravating and
7 mitigating circumstances and once the judge has told me the
8 law, then and only then would I be ready to decide the
9 appropriate sentence; is that correct?

10 A. Yes, sir.

11 Q. Now, this juror also says this, says that if I
12 determine that a life sentence is appropriate I could give a
13 life sentence; is that right?

14 A. Yes, sir.

15 Q. And this juror says that if I determine that a
16 death sentence is appropriate I could give a death sentence;
17 is that correct?

18 A. Yes, sir.

19 Q. So in other words, the juror says I could give
20 either life or death depending on the circumstances; is that
21 right?

22 A. Yes, sir.

23 Q. Okay. Thank you. Now, you understand in South
24 Carolina we have another unique proviso in a death penalty
25 case, and that is this, that if a jury gives a death sentence

1 then all jurors, each juror, must sign a form that says that
2 I have agreed to give the death sentence. If you're on a
3 jury and you had determined the death sentence was
4 appropriate and had given the death sentence, would you be
5 able to sign that form indicating you have given a death
6 sentence?

7 A. Yes, sir.

8 Q. Now, have you heard anything about this case
9 before, Mr. Taylor?

10 A. No, sir, I have not.

11 Q. Never heard anything about it?

12 A. No, sir.

13 Q. And let me introduce you to some of the folks
14 involved and see if you know them, okay? This is Mr. Bennett
15 over here, Mr. Johnny Bennett. Do you know Mr. Bennett or
16 know of him?

17 A. No, sir, I do not.

18 Q. Now, he is represented by Mr. Hervery Young,
19 sitting next to him, and Mr. Wayne Floyd. Do you know or
20 know of either of them?

21 A. No, sir, I do not.

22 Q. Now, the State will be represented by the
23 Solicitor's Office in this circuit. Have you ever had any
24 dealings or any relationship at all with the Solicitor's
25 Office?

1 A. No, sir.

2 Q. Now, this is the Solicitor, Mr. Donnie Myers, who
3 will be trying the case, prosecuting the case, along with
4 Mr. Dayton Riddle and Mr. Shawn Graham. Do you know or know
5 of any of these gentlemen?

6 A. No, sir, I do not.

7 Q. So as I understand, you don't know anything about
8 the case and you don't know any of these folks involved?

9 A. No, sir, I do not.

10 Q. Now, the victim in this case, the man who was
11 killed, was a man named Benton Darrell Smith. Did you know
12 Mr. Smith or know of him?

13 A. No, sir.

14 Q. Also, we gave you a witness list. Did you get a
15 chance to look over this witness list?

16 A. Yes, sir.

17 Q. Did you know or know of any of the names on here?

18 A. No, sir, just Number 35.

19 Q. Which one?

20 A. 35.

21 Q. Number 35?

22 A. And that would be last name only.

23 Q. You recognized the last name and that's all?

24 A. Yes, sir.

25 Q. If this -- if you did recognize this person and he

1 testified, would that affect your ability to give both sides
2 a fair trial in the case?

3 A. No, sir.

4 Q. In other words, he wouldn't sway you either way by
5 his testimony; is that right?

6 A. No, sir.

7 Q. Understanding everything that I've asked then,
8 Mr. Taylor, do you feel like you could give both sides a fair
9 trial in this case?

10 A. Yes, sir.

11 THE COURT: Let me ask if you'd answer any
12 questions the attorneys might have for you, okay.

13 Mr. Myers?

14 VOIR DIRE EXAMINATION

15 BY MR. MYERS:

16 Q. Mr. Taylor, the law requires us to ask you a few
17 questions. I have to go first. Mr. Taylor, I saw on that
18 form that you sent back in that you've never served on a
19 criminal jury before; is that right?

20 A. Not in South Carolina.

21 Q. Was it Tennessee?

22 A. Yes, sir.

23 Q. Kingsport, not far from Church Hill?

24 A. Oh, really?

25 Q. Yeah. In other states or Tennessee when you served

1 on a jury before, was it a murder case?

2 A. No, sir.

3 Q. So this is all kind of new to you, all these
4 terminologies and everything?

5 A. Yes, sir.

6 Q. Now, Mr. Taylor, normally a judge hands down the
7 sentence in criminal cases; did you know that?

8 A. No, sir.

9 Q. In this case, our law says when a death penalty
10 case is involved, the jury must impose the sentence. So 12
11 men and women have to sit in these chairs. They have to
12 listen to the testimony. The Judge will tell them what the
13 law is and they'll have to come back with a sentence of life
14 imprisonment or the death penalty; you understand that?

15 A. Yes, sir.

16 Q. Now, the jury in this case, even though the
17 defendant was found guilty, they'll hear circumstances
18 surrounding how the murder was committed. They'll hear
19 things about the defendant, his character. They'll hear
20 things maybe for him. They'll hear some bad things about
21 him. Because the law says the jury should take the
22 circumstances of the crime, the character of the defendant,
23 follow the law and impose a punishment that fits the crime;
24 you understand that?

25 A. Yes, sir.

1 Q. Would you be willing to listen to all that
2 testimony if you were on this jury panel?

3 A. Yes, sir.

4 Q. Would you follow the law as Judge Westbrook would
5 explain the law to you?

6 A. As explained and instructed.

7 Q. And he would go into more detail explaining
8 aggravating circumstances, mitigating circumstances, what
9 they are. He'd give a list to the jury. You would follow
10 him on those instructions; is that right?

11 A. Yes, sir.

12 Q. And, Mr. Taylor, you said you fit in that third
13 category on the death penalty; is that correct?

14 A. Yes, sir.

15 Q. I take it from that that you would not be a person
16 who would say someone convicted of murder always deserves the
17 death penalty in every case. You don't fit into that
18 category?

19 A. No, sir.

20 Q. And just the opposite, you don't fit in the
21 category that if someone committed murder that you could
22 never vote for the death penalty. You don't fit in that
23 category?

24 A. No, sir.

25 Q. It would depend on the facts, the circumstances,

1 the crime for you to decide; is that right?

2 A. Yes, sir.

3 Q. And after hearing all of the testimony about the
4 crime, the character of the defendant and after the law, if
5 you thought life imprisonment was appropriate, you could vote
6 for that; is that right?

7 A. Yes.

8 Q. On the other hand, as the Judge said, if you
9 thought the death penalty was the punishment that fit the
10 crime, you could so put your name on that death verdict?

11 A. Yes, sir.

12 MR. MYERS: That's all we can ask of you,
13 Mr. Taylor. Thank you so much.

14 THE COURT: Mr. Young?

15 VOIR DIRE EXAMINATION

16 BY MR. YOUNG:

17 Q. Mr. Taylor, have you had the opportunity to think
18 about or discuss your views on the death penalty with anyone?

19 A. No, sir.

20 Q. Prior to the Judge giving you the form with the
21 different types of jurors on it, had you ever thought about
22 how you felt about the death penalty?

23 A. Not in depth.

24 Q. In general, can you just tell us how you feel about
25 the death penalty?

1 A. That would be something that would be administered
2 as a total last resort if that sentence were required.

3 Q. In order for you to make that decision, you're
4 telling us that you would have to hear everything?

5 A. I would have to know all the facts, of course.

6 Q. And that would include the aggravation and the
7 mitigating evidence as well?

8 A. Yes.

9 Q. So it's safe to assume that by knowing that
10 Mr. Bennett has already been convicted of the murder that you
11 have not formed an opinion as to what you think the
12 appropriate sentence is?

13 A. No, I have no knowledge or anything of this.

14 Q. The Judge will instruct the jury that, as he told
15 you earlier, that before you could even consider the death
16 penalty, you must first find that there's some type of
17 aggravating circumstance that exists; you understand that?

18 A. Yes.

19 Q. And he will tell you that even if you find that
20 there's an aggravating circumstance, you could still return a
21 verdict for life; you understand that?

22 A. Yes.

23 Q. The Judge would never tell the jury that you should
24 return a verdict of death, understand?

25 A. Yes.

1 Q. You understand that each juror must make his own
2 decision as to what he believes the appropriate punishment
3 is?

4 A. Yes.

5 Q. If in making your decision you believe that the
6 punishment is either life or death, would you be able to vote
7 the way that you feel?

8 A. Yes.

9 MR. YOUNG: Thank you. That's all we ask.

10 THE COURT: Anything else, Mr. Myers?

11 MR. MYERS: No, sir.

12 THE COURT: Let me ask if you would step back
13 outside the door just one second, okay.

14 (WHEREUPON, Juror Taylor leaves the
15 courtroom.)

16 THE COURT: What's the State's position on this
17 juror?

18 MR. MYERS: Submit he's qualified.

19 THE COURT: Defense?

20 MR. YOUNG: Qualified, Your Honor.

21 THE COURT: I find he is qualified.

22 (WHEREUPON, Juror Taylor enters the
23 courtroom.)

24 THE COURT: Mr. Taylor, I've determined you would
25 be qualified to sit on the jury in this case if you were

1 drawn. So what I'll do is ask you to come back tomorrow
2 morning, that's Wednesday morning, tomorrow, at nine o'clock,
3 okay. If you would, have bags packed for as much as a week
4 in a motel. The jury will be sequestered. And just leave
5 the bags in your car. If you do wind up on the jury somebody
6 will take care of the bags and get them to the motel for you.

7 Now, I'm also going to ask again that you be sure
8 not to talk to anybody about the case. You certainly want to
9 tell your family where you are, but don't talk with them in
10 any detail about the case itself. And stay away from any
11 sort of news; no newspapers, no radio, television news or
12 anything like that.

13 MR. TAYLOR: Yes, sir.

14 THE COURT: With that in mind, we'll see you
15 tomorrow morning at nine o'clock. When you come in, just
16 come to this middle section of the courtroom, sit in there.
17 You'll be there with about 35 or 40 people. We'll draw the
18 jury from that group, okay? See you in the morning at nine.
19 Thank you.

20 (WHEREUPON, Juror Taylor leaves the
21 courtroom.)

22 (WHEREUPON, Juror Number 91, Sheri A. Crafton,
23 a white female, enters the courtroom.)

24 SHERI A. CRAFTON, after having been duly
25 sworn, testified as follows:

VOIR DIRE EXAMINATION

BY THE COURT:

Q. Ms. Crafton, is that correct?

A. Yes, uh-huh.

Q. I want you to just relax, okay. Nobody is going to give you a hard time.

A. Okay. You can kill me, but you can't eat me.

Q. Wouldn't even do that. If you'd be sure and talk into that microphone there so they can pick you up.

A. Okay. Got you.

Q. Ms. Crafton, you understand in this case, as I told you yesterday, the State has charged the defendant, Mr. Johnny Bennett, with murder and is asking for the death penalty; do you recall that?

A. Yes.

Q. And you recall that I told you then that one jury has already heard this case, at least the first part, and they've determined that Mr. Bennett was guilty of murder; do you understand that?

A. Yes.

Q. Do you recall that?

A. Yes, I understand.

Q. And, of course, that's why we're drawing this jury now is to determine the appropriate sentence. And the only sentences available would be life in prison or the death

1 penalty; do you understand that?

2 A. I do.

3 Q. And I want to be sure you understand that when we
4 say murder what we mean. First of all, in South Carolina
5 murder is defined as the unlawful killing of another human
6 being with malice aforethought. Now, malice aforethought
7 means this. Malice means an evil intent, and aforethought
8 means that, in essence, it was at the time of the murder or
9 before it; you understand that?

10 A. Uh-huh.

11 Q. So, in essence, a jury has convicted Mr. Bennett of
12 killing another person with an evil intent at the time that
13 he did it; you understand that?

14 A. Right.

15 Q. Now, let me tell you this, too. The law says that
16 that is not enough to give the death penalty. That you can
17 -- the death penalty can only be given if there is an
18 aggravating circumstance along with the murder; you
19 understand that?

20 A. Yes, sir.

21 Q. Now, in essence, what happens is this. When we
22 draw the jury for the second phase, like we're doing, then,
23 in essence, the State has to prove beyond a reasonable doubt
24 that there was another aggravating circumstance. You
25 understand, they have the duty to prove that?

1 A. Yes, sir.

2 Q. And during that part, the jury would hear evidence
3 of aggravating circumstances, in other words, which are
4 circumstances which make it worse, which aggravate the
5 murder. And they would also hear evidence of mitigating
6 circumstances. Those are circumstances which reduce or
7 lessen the impact of the murder, you understand?

8 A. Yes.

9 Q. So, in essence, aggravating circumstances are the
10 things that would be very negative about Mr. Bennett,
11 mitigating circumstances would be very positive about
12 Mr. Bennett; you understand that so far?

13 A. Yes, yes.

14 Q. And at the end of that phase of the trial then I,
15 as the Judge, would give the jury an instruction. In other
16 words, I tell you what the law of the case is and the jury
17 would then make a decision from there; you understand that?

18 A. Yes, uh-huh.

19 Q. Now, understanding that, have you had a chance to
20 look at the sheet that we gave you that described the three
21 types of jurors in a death penalty case?

22 A. Yes, sir, I have.

23 Q. And do you feel that one of those would apply to
24 you?

25 A. Yes.

1 Q. And which is that?

2 A. I would have to know all the circumstances before
3 making a decision.

4 Q. Okay. That sounds like the third one; is that
5 right?

6 A. Yes.

7 Q. And let me go over it with you just to be sure
8 we're talking about the same thing, okay? In essence, the
9 third type of juror is a juror who says that even though the
10 defendant's been found guilty of murder, in other words, as
11 in this case, even though the defendant has already been
12 found guilty of killing someone with an evil intent when he
13 did it that I still would not have my mind made up; is that
14 correct?

15 A. Right.

16 Q. This juror goes on and says this. That I would
17 want to hear all those aggravating circumstances, I would
18 want to hear all of those mitigating circumstances, I want
19 the judge to tell me the law, and then after I've heard all
20 of that and I've heard the law, then and only then, could I
21 make a decision as to the appropriate sentence.

22 A. Right.

23 Q. This juror also says this. Says that if the facts
24 justify a life sentence I could give a life sentence, and if
25 they justify a death sentence I could give a death sentence.

1 It would depend on the circumstances; is that correct?

2 A. Yes.

3 Q. And, of course, basically what this juror, in
4 essence, is saying is this. That I could give either a life
5 or death sentence depending on the circumstances. I'm not
6 tied in ahead of time, I'm going to wait until I hear
7 everything. And depending on those circumstances, I could
8 give either life or death?

9 A. Yes.

10 Q. Now, in South Carolina the law says this. Says
11 that if a jury gives a death sentence all jurors must sign a
12 form. There's a form that says we have agreed to give the
13 death sentence. Now, if you were sitting on the jury and had
14 given a death sentence, would you be able to sign your name
15 to that form?

16 A. Yes.

17 Q. Okay. Have you heard anything about this case
18 before?

19 A. No.

20 Q. Never heard about it?

21 A. No.

22 Q. And let me introduce some of the folks involved and
23 see if you know any of them, okay. This is the Solicitor,
24 Mr. Donnie Myers, who will be prosecuting the case. With him
25 are Mr. Dayton Riddle and Mr. Shawn Graham. These are the

1 prosecutors in the case. Do you know or know of any of these
2 gentlemen?

3 A. Mr. Myers.

4 Q. And how do you know Mr. Myers?

5 A. TV.

6 Q. Okay.

7 A. I believe I saw his wife, too, at the Bonwit Teller
8 getting her hair done years ago, and he was there to pick her
9 up.

10 Q. And would any of that give you any problem in
11 giving both sides a fair trial in this case?

12 A. No, sir.

13 Q. In other words, that wouldn't sway you at all?

14 A. No, I don't know Mr. Myers personally.

15 Q. Now, have you ever had any dealings or any
16 relationship with the Solicitor's Office at all?

17 A. No, sir.

18 Q. Now, this is Mr. Bennett. Mr. Bennett is right
19 over here. Do you know Mr. Bennett or know of Mr. Bennett?

20 A. No, sir.

21 Q. And he's represented by Mr. Hervery Young, right
22 here in the middle, and Mr. Wayne Floyd. Do you know or know
23 of either of these gentlemen?

24 A. No, sir.

25 Q. So as I understand then, you don't know anything

1 about the case and don't know anybody involved; is that
2 right?

3 A. That's right.

4 Q. You start with a clean slate?

5 A. Exactly.

6 Q. Now, as I told you, the victim in this case, the
7 man killed was a man named Benton Darrell Smith. Did you
8 know Mr. Smith or know of him?

9 A. No, sir.

10 Q. Also, we gave you a witness list. Did you get a
11 chance to look over this list?

12 A. Yes, sir, I did.

13 Q. Did you recognize any names on there?

14 A. None, no.

15 Q. You don't know anything about it then, do you?

16 A. I just don't know a thing.

17 Q. You do start clean. Understanding everything that
18 I've asked you then, do you feel like you could give both
19 sides a fair trial?

20 A. Yes, sir.

21 Q. In a case such as this the attorneys ask questions
22 of the jurors, too, they're required to do so. So let me
23 just ask you to answer any of their questions, okay.

24 A. Sure.

25 THE COURT: Mr. Myers or Mr. Riddle?

VOIR DIRE EXAMINATION

1

2 BY MR. RIDDLE:

3 Q. How are you doing, Ms. Crafton?

4 A. Fine, thank you, sir.

5 Q. Have you ever served on a jury before?

6 A. No, sir.

7 Q. All this is kind of new?

8 A. Yeah, that's why I'm nervous.

9 Q. Don't be, all right?

10 A. All right.

11 Q. All we're trying to do is find out what your
12 beliefs are. There's not going to be any arguing with you,
13 any fussing, carrying on.

14 A. Oh, good. That's a relief.

15 Q. We just want to learn a little bit more about you,
16 okay?

17 A. Sure.

18 Q. I'm going to tell you a couple of things to find
19 out if you actually knew some of the things about the
20 procedures and the laws in this state as well as we go
21 through this a little bit. Since you've never served on a
22 jury before, you may or may not know, I don't know, are you
23 aware that the foreman or foreperson normally speaks on
24 behalf of the jury, that the jury will designate someone to
25 kind of act as their spokesman?

1 A. Uh-huh.

2 Q. And that's the case in almost all cases. But in a
3 death penalty case it's little bit different, and I'm going
4 to get more to that in just a minute. Normally, in a
5 criminal case, you know, the State will present evidence
6 trying to prove somebody guilty, and the issue that the jury
7 has to decide is guilty or not guilty; you understand that?

8 A. Yes.

9 Q. And in a normal criminal case if a jury has found
10 somebody guilty then their job is ordinarily finished, once
11 they've made that finding of guilt, and it would be the
12 judge's responsibility to impose a sentence in a normal
13 criminal case; you understand that?

14 A. Uh-huh.

15 Q. And when the judge gets to the time when he needs
16 to impose a sentence he might say to me or whoever is
17 prosecuting the case, bring that fellow around, solicitor,
18 tell me something about him. And I may tell the judge some
19 more things about the crime that didn't come out during the
20 trial.

21 A. I see.

22 Q. Or I may tell the judge about his prior record,
23 prior conduct of the defendant, and things that would
24 generally tend to make the severity of the crime worse or
25 aggravate the sentence that should be imposed; you understand

1 that?

2 A. Yes.

3 Q. And the judge might also say, Mr. Defense Lawyer,
4 how about you tell me something about this fellow. And the
5 defense lawyer would probably tell the judge some good things
6 about the defendant and things that would generally tend to
7 make the judge want to give a lesser sentence, mitigating
8 things; you understand that?

9 A. Uh-huh.

10 Q. In a death penalty case, our law says that the
11 judge does not impose the sentence, that that's up to 12 men
12 and women, you understand that?

13 A. Yes.

14 Q. And we've had one trial in this case where a jury
15 found Mr. Bennett guilty of murder. So now we're going to
16 have the second part where a jury has to determine what the
17 appropriate sentence is. And the process we go through is a
18 little bit more formal but it's the same basic thing as when
19 the judge does his sentencing.

20 The State will present evidence, testimony, things
21 for y'all to hear that tend to aggravate the crime and make
22 the sentence that should be imposed more severe. And
23 likewise, the defense would tend to present evidence that
24 would mitigate or make the jury tend to give a life sentence;
25 you understand that?

1 A. Yes.

2 Q. And the same type of evidence really would come out
3 that we would tell a judge. The State may present things
4 about the defendant's background, bad acts that he may have
5 committed in the past, prior record, more circumstances about
6 the crime; you understand that?

7 A. Yes.

8 Q. Of course, the defense would present evidence that
9 would tend to mitigate. Would you be willing to listen to
10 all of that evidence before you made up your mind?

11 A. Yes.

12 Q. The aggravating and the mitigating, the good and
13 the bad?

14 A. Yes.

15 Q. Now, you know the Judge already knows the law so he
16 knows what type of sentence to impose, but in a death penalty
17 case he would need to instruct y'all as to the law and the
18 types of things that y'all are supposed to consider in
19 deciding the sentence. And he would give you the law and he
20 would define for you very well, and he'd actually do it in
21 writing, aggravating circumstances. And he would give you a
22 very detailed definition of what that means. Would you
23 accept that definition from the Judge?

24 A. Yes.

25 Q. And likewise, in writing, he would define for you

1 mitigating circumstances, and he would tell you what those
2 are and define them in a lot of detail, give it to you in
3 writing. And you would be able to accept those from the
4 Judge as well?

5 A. Yes.

6 Q. After you have heard all the evidence and all the
7 law, would you be able to go back and fairly and justly
8 determine what the appropriate sentence is?

9 A. I believe so.

10 Q. And you're a category three juror; is that right,
11 you need to hear everything?

12 A. Yeah.

13 Q. So I take it that as you sit right there in that
14 chair today you can't tell us what you would decide if you
15 were on the jury in this case because you don't know
16 anything?

17 A. Right, I don't know anything.

18 Q. So you would keep a fair and open mind throughout
19 all of the evidence, both the aggravation and the mitigation?

20 A. Yes.

21 Q. And wait and make up your mind after the Judge
22 charges you the law and tells you to start deliberating; is
23 that correct?

24 A. Uh-huh.

25 Q. Just one last question. Is there anything about

1 your background, your upbringing, beliefs, you know, the
2 things that make you who you are that would prevent you from
3 being fair and impartial to both sides?

4 A. I don't think so.

5 MR. RIDDLE: Thank you, ma'am. That's exactly what
6 we're looking for.

7 THE COURT: All right. Defense?

8 MR. FLOYD: Thank you, Your Honor.

9 VOIR DIRE EXAMINATION

10 BY MR. FLOYD:

11 Q. Good afternoon, Ms. Crafton.

12 A. How are you doing?

13 Q. My name is Wayne Floyd, and I and Hervery Young
14 represent Mr. Bennett. I just have a few questions for you.

15 A. Sure.

16 Q. Can you tell me what your opinion is about the
17 death penalty?

18 A. I don't like it. I mean, it's serious business,
19 you know. I don't know how to explain. Both life and death
20 are serious business as far as I'm concerned. And I was kind
21 of hoping you all had found as many as you needed.

22 Q. Well, we can appreciate that. Have you ever
23 discussed the death penalty with your family, co-workers,
24 friends in the past?

25 A. No, I would have no reason to, sir.

1 Q. You understand that Mr. Bennett has already been
2 convicted of murder by another jury?

3 A. Yes, sir.

4 Q. With that in mind, could you listen to all the
5 evidence that will come out in this case and still render a
6 life verdict if you felt that was proper?

7 A. I should think so.

8 Q. So you don't feel that he should automatically get
9 the death penalty simply because he's been --

10 A. No.

11 Q. -- convicted?

12 A. No.

13 MR. FLOYD: Thank you, Ms. Crafton. I have no
14 further questions.

15 THE COURT: Anything else, Mr. Riddle?

16 MR. RIDDLE: No, sir.

17 THE COURT: Ms. Crafton, let me ask if you'll just
18 step just outside the door for a second, okay.

19 MS. CRAFTON: Be glad to.

20 (WHEREUPON, Juror Crafton leaves the
21 courtroom.)

22 THE COURT: What's the State's position?

23 MR. RIDDLE: Submit he's qualified, Your Honor.

24 THE COURT: Defense?

25 MR. FLOYD: Qualified, Your Honor.

1 THE COURT: I find she is qualified.

2 (WHEREUPON, Juror Crafton enters the
3 courtroom.)

4 THE COURT: Ms. Crafton, I've determined that you
5 would be qualified to sit on a jury in this case if you were
6 drawn. So what I'll ask you to do is come back tomorrow
7 morning at nine o'clock, okay? And come back here in this
8 courtroom and just sit right back there in that middle
9 section back there.

10 MS. CRAFTON: Okay.

11 THE COURT: Now, what I'm going to ask you to do is
12 bring bags packed for as much as a week in a motel. The jury
13 will be sequestered during the trial, and you just need to
14 have your bags with you. Just leave them in the car. And
15 what will happen is if you are picked on the jury someone
16 will get them for you and get them to the motel for you.

17 Now, it's very important, still, you remember I
18 told you not to talk with anybody about the case. It's very
19 important that you still not talk with anybody about the
20 case. Now, certainly, you do want to let your family know
21 where you're going to be and what's going to happen, but you
22 need to also be sure not to talk with them about the details
23 of the case at all. And if you would, stay away from any
24 news, any newspapers, television, radio, anything like that,
25 okay?

1 MS. CRAFTON: Sure.

2 THE COURT: See you in the morning at nine o'clock.

3 MS. CRAFTON: Thank you, sir.

4 THE COURT: Thank you.

5 (WHEREUPON, Juror Crafton leaves the
6 courtroom.)

7 (WHEREUPON, Juror Number 339, Anna B.
8 Stanberry, a white female, entered the courtroom.)

9 ANNA B. STANBERRY, after having been duly
10 sworn, testified as follows:

11 VOIR DIRE EXAMINATION

12 BY THE COURT:

13 Q. Ms. Stanberry?

14 A. Yes, sir.

15 Q. Ms. Stanberry, why don't you just relax and take it
16 easy, okay. Nobody is going to give you a hard time, we're
17 just going to chat a little bit.

18 You recall that yesterday I told you that the State
19 has charged Mr. Bennett, Mr. Johnny Bennett with murder and
20 they've asked for the death penalty; do you remember that?

21 A. Yes, sir.

22 Q. And you remember that I told you that a jury has
23 heard the first part of this. They've heard the murder
24 charge and they've found Mr. Bennett guilty of murder; you
25 understand that?

1 A. Yes, sir.

2 Q. And that's why we now move to the second part to
3 determine the appropriate sentence. And you understand that
4 in this case the jury will decide the sentence, life
5 imprisonment or the death penalty. Those are the only two
6 sentences, and the jury is going to decide that; you
7 understand that?

8 A. Yes, sir.

9 Q. Now, let me be sure you understand when we say
10 murder what we mean, okay. In South Carolina, murder is
11 defined as the unlawful killing of another human being with
12 what is called malice aforethought. Now, malice afore --
13 malice means that it was with an evil intent. And
14 aforethought means that it was at the same time or before the
15 actual killing; you understand that? So, in essence, the
16 jury has convicted Mr. Bennett of killing another person with
17 an evil intent when he did it; you understand that?

18 A. Yes, sir.

19 Q. All right. Now, given that, I want to be sure and
20 tell you this, that the law says that is not enough for the
21 death penalty. That that alone does not justify the death
22 penalty; you understand that?

23 A. Uh-huh.

24 Q. In fact, what the law says is this. That in order
25 to give the death penalty there must be -- in addition to the

1 murder, there must be what is called an aggravating
2 circumstance. Okay. The murder and the aggravating
3 circumstance must be present; do you understand that?

4 A. Yes, sir.

5 Q. And the law says, of course, that it is up to the
6 solicitor to prove -- they must prove beyond a reasonable
7 doubt that there was an aggravating circumstance; do you
8 understand that?

9 A. Uh-huh.

10 Q. And, of course, if the jury seeks to give a death
11 sentence they can only do so if there is an aggravating
12 circumstance; you understand that?

13 A. Yes, sir.

14 Q. All right. With that in mind, let me ask you if
15 you've had a chance to look over this sheet that I gave you
16 that describes the three types of jurors?

17 A. Yes, sir.

18 Q. Have you looked it over?

19 A. Yes, sir.

20 Q. You notice there were three categories. Do you
21 feel like you fit within one of those categories?

22 A. The last one.

23 Q. The third. And let me go over this -- well, let's
24 go over all these, okay. First of all, the first juror is a
25 juror who says that if somebody has been found guilty of

1 murder all I'm going to give is the death penalty, that's all
2 I'm going to do. I'm not even going to think about anything
3 else, just the death penalty. As I understand it, you're
4 saying that's not you; is that correct?

5 A. No.

6 Q. The second juror is a juror who says that I could
7 never give the death penalty. It doesn't matter what
8 somebody did, I'm never going to give the death penalty. And
9 I gather you're saying that's not you either; is that right?

10 A. Yes, sir.

11 Q. So, in essence, you're saying you're the third
12 juror. Now, this is a juror who says that I'm not just
13 locked in to one of these other two, I've got my mind open.
14 I'm going to wait until I hear everything. I want to hear
15 all of those aggravating circumstances, I want to hear all
16 those mitigating circumstances, I want the judge to tell me
17 the law, and once I've heard all of that, then I'll be ready
18 to decide the appropriate sentence, but not before. Is that
19 what you're saying?

20 A. Yes, sir.

21 Q. Okay. Now, this juror also says this, says that if
22 I hear this and I determine that a life sentence is
23 appropriate I can give a life sentence, and if I hear it and
24 determine that a death sentence is appropriate I can give a
25 death sentence. It's just going to depend on the

1 circumstances. Is that your situation?

2 A. (Nodded.)

3 Q. So, in other words, this juror says I can give
4 either life or death depending on the circumstances; is that
5 right?

6 A. Yes, sir.

7 Q. Okay. Now, our law in South Carolina say this. It
8 says that if a jury gives a death sentence that each juror
9 must sign a form. There's a form that says, in essence, we
10 have agreed to give a death sentence. If you were on the
11 jury and had determined that a death sentence was
12 appropriate, had given a death sentence, would you be able to
13 sign that form?

14 A. Yes, sir.

15 Q. Now, have you heard anything about this case
16 before?

17 A. No, sir.

18 Q. Haven't heard anything. And I'm going to ask you
19 if you know any of these folks involved in the case, okay.
20 This is the Solicitor, Mr. Donnie Myers, who'll be
21 prosecuting the case. With him, Mr. Dayton Riddle and
22 Mr. Shawn Graham. Do you know any of these or know of any of
23 these gentlemen?

24 A. No, sir.

25 Q. And have you ever had any dealings with the

1. Solicitor's Office at all?

2. A. No, sir.

3. Q. Now, this is Mr. Bennett, Mr. Bennett right there,
4. Mr. Johnny Bennett. Do you know Mr. Bennett or know of
5. Mr. Bennett?

6. A. No, sir.

7. Q. Mr. Bennett is represented by his two attorneys
8. here, Mr. Wayne Floyd and Mr. Hervery Young. Do you know or
9. know of either of these gentlemen?

10. A. No, sir.

11. Q. So as I understand what you're saying at this point
12. is that you've never heard anything about this case and
13. you've never heard of these people?

14. A. No, sir.

15. Q. Is that right?

16. A. Yes, sir.

17. Q. Now, let me also tell you that the victim in the
18. case, the man who was killed, was a man named Benton Darrell
19. Smith. Did you know Mr. Smith or know of him?

20. A. No.

21. Q. And also we gave you a witness list. Did you get a
22. chance to look that over?

23. A. Yes, sir.

24. Q. Did you recognize any names on there?

25. A. No, sir, not a one.

1 Q. So you truly have come into this with a totally
2 clean slate; is that right?

3 A. Yeah.

4 Q. Do you know of any reason why you could not give
5 both sides a fair trial?

6 A. No, sir.

7 THE COURT: In a case like this the law says that
8 the attorneys also have to ask you some questions. So let me
9 ask you if you'll answer any of their questions, okay.

10 Mr. Riddle?

11 VOIR DIRE EXAMINATION

12 BY MR. RIDDLE:

13 Q. Good afternoon, Ms. Stanberry. I just have a
14 couple of questions to ask you. Nobody is picking on you,
15 I'm certainly not, okay. Have you ever served on a jury
16 before?

17 A. No, sir.

18 Q. You're familiar a little bit with the jury process,
19 though?

20 A. Yes, sir.

21 Q. And you know that when a jury serves in a criminal
22 case ordinarily what a jury decides is whether somebody is
23 not guilty or guilty?

24 A. Yes, sir.

25 Q. And are you aware that if a jury finds somebody

1 guilty in an ordinary criminal case that then the judge would
2 do the sentencing in that case?

3 A. Yes, sir.

4 Q. And normally what a judge would do is say bring
5 them around and tell me something about them. And, you know,
6 the judge would hear some good stuff and some bad stuff.
7 Some stuff would tend to make the judge want to give a
8 harsher sentence, some stuff would tend to make the judge
9 want to go lighter on him; you understand that?

10 A. Yes, sir.

11 Q. But after the judge has heard all that, he'll do
12 whatever he thinks is just and fair, right?

13 A. Yes, sir.

14 Q. A death penalty case is a little bit different.
15 And it's different in this sense, instead of the judge
16 sentencing, the jury actually does the sentencing in that
17 case. And that's the purpose of getting the jury together in
18 this particular matter. Because as you know, Mr. Bennett has
19 already been convicted of murder; do you understand that?

20 A. Yes, sir.

21 Q. And what we're trying to do is get a jury that will
22 decide what the appropriate punishment is. And so what we'll
23 do is we'll present evidence to the jury called aggravating
24 evidence. That evidence will tend to show past conduct of
25 the defendant and it will be some circumstances about the

1 crime and how the crime took place and that type of
2 information. Of course, the defense would present evidence
3 to you about Mr. Bennett and Mr. Bennett's character and
4 background and that kind of thing, and then the judge would
5 tell you the law; you understand all that?

6 A. Yes, sir.

7 Q. I take it from your responses to the Judge, you
8 said you were a category three juror, you would need to hear
9 all of that information before you could decide anything
10 about this case?

11 A. Yeah.

12 Q. As you sit here today you can't tell anybody how
13 you would vote on this case because you don't know anything
14 about it; is that right?

15 A. That's right.

16 Q. And it would only be after you heard all of that
17 aggravating evidence and all of that mitigating evidence and
18 heard what the Judge said about the law that you could decide
19 anything; is that correct?

20 A. Yes, sir.

21 Q. There was three categories of jurors. The first
22 category, I think, is somebody that says because somebody has
23 been convicted of murder they are always going to vote for
24 the death penalty, no matter what. You're not one of those
25 people?

1 A. No.

2 Q. And then there's another category of juror that
3 says no matter how bad the crime is, no matter how bad the
4 person is, I will never ever give a death sentence in any
5 case. You're not that type of person?

6 A. No, sir.

7 Q. Your sentence will depend on the facts and
8 circumstances?

9 A. Yes, sir.

10 Q. Characteristics of the crime, the character of the
11 defendant, all of the aggravation and all of the mitigation;
12 is that correct?

13 A. Yes, sir.

14 Q. And before you made up your mind, would you be
15 willing, ma'am, to listen to and consider all of that
16 aggravation and all of that mitigation?

17 A. Yes, sir.

18 Q. Now, the Judge mentioned one other thing to you.
19 You know, ordinarily, the jury will have a foreperson or
20 foreman, forelady that is sort of the spokesman for the jury.
21 And they normally sign anything that needs signing, that kind
22 of thing. In a death penalty case, our law has kind of a
23 unique feature. The death penalty verdict form has 12
24 signature lines because it has to be a unanimous verdict.
25 And so there's a space for each one of the 12 jurors to sign.

1 I ask you this question, and it may seem to you
2 like a silly question, but it's one we have to ask. You may
3 know some folks like this. You know, there's people out in
4 this world that they'll tell you what they think about
5 anything, you know that, and they'll act on what they think
6 and what they believe, but if you ask them to write down what
7 they believe and sign their name to it, they don't want any
8 part of that. I take it based on your responses to the Judge
9 that you're not in that kind of person?

10 A. No.

11 Q. If you thought the death penalty was appropriate
12 given the facts and circumstances of this case and had voted
13 for the death penalty, you could sign your name saying that
14 that was what your decision was?

15 A. If that's my decision, yes, sir.

16 Q. Yes, ma'am. Sure. It's got to be your decision
17 first?

18 A. Yeah.

19 Q. And if it was your decision, the fact that you
20 would have to sign your name would not interfere with that?

21 A. No, sir.

22 Q. You know of any reason why you can't be fair and
23 impartial to everybody involved in this?

24 A. No, sir.

25 MR. RIDDLE: Thank you, ma'am. That's exactly what

1 we're looking for.

2 THE COURT: Mr. Young?

3 VOIR DIRE EXAMINATION

4 BY MR. YOUNG:

5 Q. How are you doing?

6 A. Fine, how are you?

7 Q. Before you came up to jury duty yesterday, had you
8 ever talked about the death penalty with anyone?

9 A. No, sir.

10 Q. Never discussed it with any friends or family or
11 anything?

12 A. No.

13 Q. Have you ever given any thought as to how you feel
14 about the death penalty personally?

15 A. Well, not right off. I have back, but not right
16 now.

17 Q. Right, right. This was sometime in the past?

18 A. Yeah.

19 Q. Could you tell us how you felt about the death
20 penalty when you thought about it?

21 A. Well, it's according about the crime that's been
22 committed.

23 Q. So some crimes you think that the death penalty is
24 appropriate and some --

25 A. Aren't.

1 Q. Is not appropriate?

2 A. Yeah.

3 Q. You understand that each juror will be entitled to
4 make their own decision as to what is the appropriate
5 punishment. Then they would deliberate with the other jurors
6 and come out with a verdict or a decision of the jury;
7 understand that?

8 A. Yes, sir.

9 Q. Understand that the Judge will instruct that you
10 can't even consider the death penalty until you find that
11 there is some type of aggravating circumstance; you
12 understand?

13 A. Yes, sir.

14 Q. And that's something that tends to make the crime
15 worse, understand?

16 A. Yes, sir.

17 Q. Now, you haven't already formed an opinion as to
18 what the appropriate punishment should be now, have you?

19 A. No, sir.

20 Q. And that's because you would want to hear both the
21 aggravating and the mitigating?

22 A. Yes, sir.

23 Q. You want to hear it all, the good and the bad.
24 Upon hearing all of the evidence, good and the bad, stuff
25 involved with the case, then and only then could you make

1 your decision?

2 A. Yes, sir.

3 Q. And if your decision is life or death, would you be
4 able to vote the way that you've decided?

5 A. Yes, sir.

6 Q. As to what is the appropriate punishment?

7 A. Yes, sir.

8 MR. YOUNG: Thank you, that's all we ask.

9 THE COURT: Anything else, Mr. Riddle?

10 MR. RIDDLE: No, sir.

11 THE COURT: Let me ask if you'd step just outside
12 the door.

13 (WHEREUPON, Juror Stanberry leaves the
14 courtroom.)

15 THE COURT: What's the State's position on this
16 juror?

17 MR. RIDDLE: We submit she's qualified, Your Honor.

18 THE COURT: Defense?

19 MR. FLOYD: Qualified, Your Honor.

20 THE COURT: I find that she's qualified.

21 (WHEREUPON, Juror Stanberry enters the
22 courtroom.)

23 THE COURT: Ms. Stanberry, I've determined that you
24 would be qualified to sit on the jury if you are selected.

25 So what I'm going to ask you to do is come back tomorrow

1 morning at nine o'clock, okay. Just come right here in the
2 courtroom and sit in this middle section. And you'll be
3 there with about 35 or 40 people, and we'll draw a jury from
4 that group there.

5 If you would, bring bags packed for as much as a
6 week in a motel because the jury will be sequestered during
7 the trial. And leave the bags in your car. If you do end up
8 on the jury someone will get your bags and take them for you.

9 MS. STANBERRY: Okay, sir.

10 THE COURT: It's also very important that you not
11 talk with anyone about the case. Stay away from any news on
12 television, radio, newspaper, all of that, okay?

13 MS. STANBERRY: All right, sir.

14 THE COURT: With that in mind, we'll see you in the
15 morning at nine o'clock. Thank you, ma'am.

16 (WHEREUPON, Juror Stanberry leaves the
17 courtroom.)

18 THE COURT: Counsel, we have 35. I think what we
19 need to do is just go ahead and push on and get this last
20 panel. And I think hopefully that will give us enough to be
21 ready to go at nine in the morning. Any problem with that?

22 MR. RIDDLE: No problem.

23 THE COURT: Any problem, defense?

24 MR. FLOYD: No problem.

25 THE COURT: We'll go ahead and go on and then. If

1 she's able to go we'll go.

2 (WHEREUPON, Juror Number 136, Ronald E. Gates,
3 a black male, enters the courtroom.)

4 RONALD E. GATES, after having been duly sworn,
5 testified as follows:

6 VOIR DIRE EXAMINATION

7 BY THE COURT:

8 Q. Mr. Gates, how are you doing today?

9 A. Doing fine.

10 Q. Good. Mr. Gates, I want you to just relax, okay.

11 A. Okay.

12 Q. We're just going to talk, just chat a little bit
13 here. Mr. Gates, do you recall yesterday that I told you
14 that in this case the State has charged Mr. Johnny Bennett
15 with murder and have asked for the death penalty; you
16 understand that?

17 A. Yes, sir.

18 Q. And do you recall that I told you that a jury, one
19 jury has already found Mr. Bennett guilty of murder; you
20 understand that?

21 A. Right.

22 Q. And, in essence, that's why we're drawing this
23 second jury, so that we can let this jury determine the
24 appropriate sentence; you understand?

25 A. Yes, sir.

1 Q. And there are only two possible sentences, life in
2 prison or the death penalty. Either one of those two; you
3 understand that?

4 A. Yes, sir.

5 Q. Now, let me be sure and tell you what we mean when
6 we say murder, okay. In South Carolina, murder is defined as
7 the unlawful killing of another human being with what is
8 called malice aforethought. Malice means an evil intent, a
9 depraved heart. And aforethought means that that evil intent
10 existed either before or at the time of the killing; you
11 understand that?

12 A. Right.

13 Q. So then, in this case a jury has found Mr. Bennett
14 guilty of killing another person with evil intent at the time
15 that he did it; you understand that?

16 A. Yes, sir.

17 Q. Now, the law says, however, that that's not enough
18 to give someone the death penalty?

19 A. Okay.

20 Q. That in itself is not enough. The law says this,
21 it says that before someone -- before a jury, in fact, can
22 even consider the death penalty, they must first find that
23 there has been proven an aggravating circumstance. So in
24 other words, the law says that before there can be a death
25 sentence, there must be a murder conviction and an

1 aggravating circumstance proven; you understand that?

2 A. Okay. Yes, sir.

3 Q. And so that's what the jury does. Before they can
4 do anything, they have to first determine if the State has
5 proven -- and the State has the burden of prove, but they
6 must determine if the State has proven that there was an
7 aggravating circumstance.

8 A. Okay.

9 Q. Then they can consider the death penalty. But
10 they're not required to do so, but they can consider it; do
11 you understand?

12 A. Yes, sir.

13 Q. Now, given that, did you get a chance to look over
14 this sheet that we gave you that described three types of
15 jurors?

16 A. Yes, I did.

17 Q. Did you feel like one of these applied to you?

18 A. Yes, sir.

19 Q. Which is that?

20 A. The last one.

21 Q. The third?

22 A. The third.

23 Q. And let's be sure we go over -- I'll, in fact, go
24 over with you roughly all three, okay?

25 A. Okay.

1 Q. The first juror is a juror that says that if
2 somebody has been convicted of murder, in other words,
3 killing another person with an evil intent, that if somebody
4 has been convicted of murder I would always give the death
5 penalty. I don't want to hear anything else, I'm just going
6 to give them the death penalty. As I understand, you're
7 saying that's not you?

8 A. That's not me, no.

9 Q. Juror says that if the second -- the second juror
10 says that it doesn't matter how serious it was, doesn't
11 matter how bad, I could just never give anybody the death
12 penalty. And that's a juror, again, who says I am never
13 going to give the death penalty. As I understand, you're
14 saying that's not you either?

15 A. That's not me.

16 Q. And the third juror is basically a juror who says I
17 could give either life or death depending on the
18 circumstances, but either way, whichever one I think is
19 appropriate, I can do it; Is that right?

20 A. Yes. Yes, sir.

21 Q. Now, in a little more detail, this juror says this.
22 It says that in that second part of trial, which is where we
23 are, that I want to hear all those aggravating circumstances.
24 I want to hear all that. And I want to hear what are called
25 mitigating circumstances.

1 Now, aggravating circumstances are circumstances
2 that would be negative or not so positive about Mr. Bennett,
3 and maybe about the murder that took place. Mitigating
4 circumstances would be some more positive things about
5 Mr. Bennett, in other words, things in his favor. And as I
6 understand, this third juror says I want to hear all of
7 those. I want to hear the good and the bad; is that correct?

8 A. That's correct.

9 Q. And this juror also says this. I want to hear the
10 judge -- I want the judge to tell me the law. I want to know
11 the law before I go and make a decision. So I've heard all
12 those aggravating and mitigating circumstances, I want the
13 judge to tell me the law, and then I'm going to be ready to
14 decide the appropriate sentence after I've heard everything.
15 Now, is that what you're saying is where you are?

16 A. Yes, sir.

17 Q. Now, this juror also says this. That if the facts
18 of the case justify a life sentence I can give a life
19 sentence; is that right?

20 A. Yes, that's correct.

21 Q. And the juror says that if the facts of the case
22 justify a death sentence I can give the death sentence; is
23 that right?

24 A. It will be hard, but yes.

25 Q. Okay. What do you mean that it would be hard?

1 A. Well, I'm saying I hope that would not have to be
2 the case, that's what I'm saying. I can make that decision,
3 but, of course, you know.

4 Q. In other words, it would be hard to do it, but if
5 the facts justified a death sentence you could give a death
6 sentence; is that correct?

7 A. Yes, that's correct.

8 Q. And you understand the law also says that if a jury
9 gives a death sentence that all 12 jurors must sign a form.
10 In essence, sign a paper saying I have agreed to give the
11 death sentence. Now, if you were sitting on a jury and had
12 felt the death sentence was appropriate and given a death
13 sentence, could you sign your name to that paper saying I
14 have given -- I have agreed to give a death sentence?

15 A. Yes, I could.

16 Q. Now, have you heard anything about this case
17 before?

18 A. Not at all.

19 Q. Nothing, never heard about it?

20 A. Never heard about it.

21 Q. Okay. I'm going to introduce you to some folks
22 involved and let me ask you if you know them, okay. First of
23 all, Mr. Donnie Myers, the empty chair there is where
24 Mr. Myers is sitting. He stepped out for a few minutes. But
25 Mr. Donnie Myers is the Solicitor. This is Mr. Dayton Riddle

1 and Mr. Shawn Graham who will be prosecuting the case. Do
2 you know or know of any of those gentlemen?

3 A. No, I don't.

4 Q. Now, this is Mr. Bennett right here. Do you know
5 Mr. Bennett or know of Mr. Bennett?

6 A. No, can't say that I do, no.

7 Q. And his attorneys are Mr. Hervery Young and
8 Mr. Wayne Floyd. Do you know or know of either of those
9 gentlemen?

10 A. No, I don't recall.

11 Q. Now, the gentlemen who was killed in this case was
12 Mr. Benton Smith. His full name was Benton Darrell Smith.
13 Did you know Mr. Smith or know of him?

14 A. No.

15 Q. So you've pretty well got a clean slate. You don't
16 know any of these folks and don't know anything about the
17 case; is that right?

18 A. No, I don't.

19 Q. We also gave you a witness list to look over. Did
20 you look over the witness list?

21 A. Yes, I did.

22 Q. Did you recognize any of those names? And if you
23 do, don't tell me the name, just give me the number.

24 A. Well, they are common names, so it may be someone
25 different, but 53, 54.

1 Q. Okay. And on 53, now, how do you know this
2 gentleman?

3 A. If it's the gentleman that I'm thinking of, I went
4 to high school with him.

5 Q. At which high school?

6 A. Lexington.

7 Q. At Lexington High School? All right. I don't know
8 if it is or not, but if that gentleman were to testify, would
9 that give you any problem giving both sides a fair trial?

10 A. No.

11 Q. In other words, his testimony wouldn't sway you
12 either way; is that right?

13 A. No.

14 Q. And number 54, how do you know him?

15 A. Same situation.

16 Q. Okay. And the same thing, if he testified would
17 that sway you in any way?

18 A. No.

19 Q. Do you know anybody else on the list?

20 A. 94.

21 Q. All right. And how do you know her?

22 A. High school, high school and college.

23 Q. Again, if she testified would that tend to sway you
24 as a juror?

25 A. No.

1 Q. Anyone else?

2 A. That's it.

3 Q. All right. Understanding everything that I've
4 asked then, do you feel that you could give both sides a fair
5 trial in this case?

6 A. Yes.

7 Q. Okay.

8 THE COURT: Now, the attorneys have some questions.
9 Let me ask you if you'll answer any of their questions, okay.

10 The State, Mr. Riddle?

11 VOIR DIRE EXAMINATION

12 BY MR. RIDDLE:

13 Q. How you doing, Mr. Gates?

14 A. I'm doing fine.

15 Q. I don't know whether you remember or not, you
16 remember the Judge said when we first started to go through
17 this process we were going to speak to the jurors
18 individually. And I think he told everybody that basically
19 what we were just trying to do is get to know y'all a little
20 bit, find out some of your thoughts, find out what your
21 opinions are and just kind of see where you stand on issues.
22 So I'm going to try to ask you some open-ended questions. I
23 don't want to lead you down any road. I want you to tell me,
24 I don't want me to tell you. You follow what I'm saying?

25 A. Right, okay.

1 Q. The Judge asked you and I believe you indicated
2 that you were a category three juror?

3 A. That's correct.

4 Q. And I believe you said that you could vote for life
5 imprisonment?

6 A. That's correct.

7 Q. And he asked you if you could vote for the death
8 penalty, and I think your response was it would be hard?

9 A. Yes, it would.

10 Q. And this is where I'm going to ask the open-ended
11 question for you.

12 A. Okay.

13 Q. Can you just tell me kind of what you mean by that,
14 what your feelings are about the death penalty. In general,
15 not as it relates to this case, but just kind of in general.

16 A. Well, probably the reason why I say it was hard
17 because, you know, you hear in the news about death penalties
18 and if there was a mistake made, you know, there's no
19 reconciling the death penalty, but there would be for a life
20 penalty. So it would be hard. It would have to be no doubt
21 at all in my mind for me to agree on the death penalty.

22 Q. Okay. So I take it -- or let me ask you this and
23 you tell me if this is fair, okay? Do I understand your
24 hesitation as regards to the death penalty to be sort of an
25 issue that relates to you want to make sure he's guilty; is

1 that correct?

2 A. That's correct.

3 Q. And what I guess I'm trying to distinguish that
4 from is do you have a philosophical opposition to the death
5 penalty itself? In other words, let's assume -- let me ask
6 you this scenario. Let's assume that there's a guy that you
7 know is guilty beyond all doubt --

8 MR. YOUNG: Objection, Your Honor, he's asking a
9 hypothetical.

10 THE COURT: Well, the hypothetical is accurate
11 here, was that not correct?

12 MR. RIDDLE: I was just making the guy as guilty
13 without a doubt and trying to get to his thoughts about the
14 death penalty in general.

15 THE COURT: Okay. Well, I'm going to let him ask
16 that question in that framework, okay.

17 Go ahead.

18 BY MR. RIDDLE:

19 Q. You want me to repeat it?

20 A. Yes, go ahead.

21 Q. Let's start with the position that we've got, a man
22 that is guilty, no question about it.

23 A. Okay.

24 Q. You had previously indicated that you wanted to
25 make sure in the death penalty scenario that guilt was fully

1 established, right?

2 A. That's correct, right.

3 Q. And I guess my question is, if we assume that guilt
4 is fully established do you have any leanings one way or the
5 other as to the death penalty? Would you tend to lean
6 towards one penalty versus the other, life versus death?

7 A. Well, of course, life would be my first option and
8 then, of course, death would be if it's suitable.

9 Q. Okay. All right. So you don't have any, I
10 guess --

11 A. What I'm saying, I would not go into thinking death
12 and then life if not death, but the opposite, life, if not
13 death.

14 Q. Right. Say that one more time for me.

15 A. What I'm saying is, if I had to make a decision
16 life would be the first decision, death would be a decision I
17 would make if it warranted death.

18 Q. Okay. All right. I'm with you on that. Did I ask
19 you whether you had ever served on a jury before?

20 A. No, you didn't.

21 Q. Have you? I'm trying not to repeat myself, but
22 we've talked to a number of jurors today is why I had to ask
23 you that question.

24 A. I remember when I was in college around the 70's,
25 middle part of the 70's.

1 Q. You were on a jury?

2 A. Yes.

3 Q. And was that here or was that --

4 A. In Lexington County.

5 Q. It was in Lexington County?

6 A. Right.

7 Q. Do you remember whether it was a civil jury for
8 money or criminal jury?

9 A. I believe it was reckless homicide.

10 Q. Okay. Criminal jury?

11 A. Criminal, yes.

12 Q. Was it in this courtroom?

13 A. I think it was, it was so long ago.

14 Q. Welcome back. When you served on that jury, the
15 question before the 12 of you all that were on that jury was
16 guilty or not guilty; you understand that?

17 A. Right.

18 Q. And once you all finished -- and I don't know
19 whether you found him guilty or not guilty, but if you had
20 found him guilty that person would be sentenced by the judge;
21 you understand that?

22 A. Right.

23 Q. And the jury's duty would have been over in that
24 kind of case. And the judge would have brought the fellow
25 around and he would have said, all right, tell me something

1 about this guy so I know what kind of sentence to give him.
2 And there's probably some good stuff and some bad stuff that
3 would be told to the judge. And the judge would try to
4 impose a sentence that he thought was fair and just; you
5 understand that?

6 A. Right.

7 Q. In death penalty cases, it's a little bit
8 different. And the reason it's a little bit different is
9 because the jury actually does the sentencing. It's the only
10 kind of case we have where a jury hands down the sentence;
11 you understand that?

12 A. That's correct.

13 Q. And you know as you sit here now that Mr. Bennett
14 has been found guilty of murder. And so you know that what
15 we're doing is putting a jury together that's going to decide
16 the appropriate punishment, correct?

17 A. That's correct.

18 Q. And in putting that jury together, we would seat
19 them in the box, 12 jurors and a couple of alternates in case
20 somebody gets sick or what have you, and then we would have,
21 in effect, what amounts to a trial. And during that trial,
22 evidence would be presented and there would be some stuff
23 about the crime, you understand that?

24 A. Uh-huh.

25 Q. And how the crime was committed. And there would

1 be some stuff about past conduct of the defendant; you
2 understand that?

3 A. (Nodded.)

4 Q. And there would be some kind of aggravating-type
5 evidence, evidence that would tend to make the jury think
6 that a more severe sentence was warranted.

7 A. Right.

8 Q. You understand that?

9 A. Right.

10 Q. And the Judge is going to tell you what an
11 aggravating circumstance is, but just in real simple terms,
12 because he's going to give you a good definition, aggravating
13 circumstances are things that tend to make a more severe
14 sentence appropriate. And on the other hand, mitigating
15 circumstances are things which would tend to make a lesser
16 severe sentence appropriate.

17 A. Right.

18 Q. And believe me, the Judge will give you very good
19 definitions of that. But you would hear evidence of
20 aggravation and, likewise, you would hear evidence of
21 mitigation. You'd hear the good and the bad. Now, I
22 understood you to tell the Judge you were a category three
23 juror; is that correct?

24 A. That's correct.

25 Q. And you would want to hear all of that evidence

1 before you made up your mind; is that correct?

2 A. Yes, yes.

3 Q. And as I told you, the Judge would give you some
4 instructions. As a matter of fact, some of them would be in
5 writing about aggravating evidence and mitigating evidence;
6 you understand that?

7 A. Yes.

8 Q. And what you would be asked to do is to follow the
9 law in the case and follow your oath as a juror; to consider
10 all of the aggravating evidence, consider all of mitigating
11 evidence and reach a conclusion as to what you thought the
12 appropriate sentence was. Do you think you could do that?

13 A. Yes.

14 Q. I'm sorry, it's been a long day. I've lost my
15 train of thought. Ordinarily, and in the reckless homicide
16 case that you served on, y'all had a foreman, foreperson that
17 kind of spoke on behalf of the jury.

18 A. Yes.

19 Q. And was that you?

20 A. No, no.

21 Q. But, I mean, you know that if they had a question
22 for the judge or whatever, the foreperson would ask it, or
23 when they reached a verdict, the foreperson signed it and
24 everything. And that's normally how things work. In a death
25 penalty case, the law requires that every juror sign a death

1 penalty verdict.

2 And so if the jury decided that the death penalty
3 was appropriate, then the verdict form has 12 lines on that
4 verdict form and each juror would have to sign it. And what
5 I just need to know from you is if you thought you could sign
6 your name to the form that condemned a man to death?

7 A. Could I do it?

8 Q. Could you do that, yes, sir?

9 A. Yes, sir, I could do it.

10 Q. I'm sorry, I didn't hear the last part?

11 A. I said yes, sir, I could do it.

12 Q. Let me ask you one last question and I'm going to
13 leave you alone, okay. Do you know of any reason why you
14 can't be fair and impartial to everybody involved in this
15 thing?

16 A. No reason, no.

17 MR. RIDDLE: Thank you, sir. That's exactly what
18 we're looking for.

19 THE COURT: Defense?

20 VOIR DIRE EXAMINATION

21 BY MR. YOUNG:

22 Q. Mr. Gates, you're not the type of person that
23 believes that anybody convicted of murder should always get
24 the death penalty?

25 A. No.

1 Q. And you're not the type of person that believes
2 that someone who's convicted of murder should always receive
3 life in prison?

4 A. No, no.

5 Q. I believe you told Judge Westbrook that in order
6 for you to make the decision of life and death that you would
7 have to listen to everything in the case to make that
8 decision?

9 A. That's correct, uh-huh.

10 Q. I believe you stated that you could follow the
11 Court's instructions as far as the law is concerned and
12 consider both the aggravation and the mitigation in order to
13 make your decision?

14 A. Yes.

15 Q. And that if you felt that life was the appropriate
16 sentence, you could vote for life?

17 A. Yes.

18 Q. And that although it would be hard for you to
19 decide, that if you felt that death was the appropriate
20 sentence that you could vote for death?

21 A. Yes.

22 Q. And that whichever way you vote, whichever way you
23 believe is the appropriate sentence, that is the way that you
24 would vote?

25 A. That's correct.

1 MR. YOUNG: Thank you, that's all we ask.

2 THE COURT: Anything else from, Mr. Riddle?

3 MR. RIDDLE: No, sir.

4 THE COURT: All right. Mr. Gates, let me ask you
5 to step just outside the door for a minute, okay.

6 (WHEREUPON, Juror Gates leaves the courtroom.)

7 THE COURT: What's the State's position on this
8 juror?

9 MR. RIDDLE: Qualified, Your Honor.

10 THE COURT: Defense?

11 MR. YOUNG: Qualified, Your Honor.

12 THE COURT: I find he is qualified.

13 (WHEREUPON Juror Gates enters the courtroom.)

14 THE COURT: Mr. Gates, I've determined you'd be
15 qualified to sit as a juror in this case if you're picked.
16 So let me ask you if you'll come back tomorrow morning at
17 nine o'clock, okay. That's Wednesday, tomorrow, nine. Bring
18 bags packed for as much as a week in a motel. The jury will
19 be sequestered during that time. Just leave the bags in the
20 car, and if you do wind up on the jury somebody will get the
21 bags for you and take them to the motel for you.

22 Now, until that time, until tomorrow morning it's
23 also still very important that you not talk with anybody
24 about the case. Stay away from any kind of news on the
25 television, on the radio. Stay away from any newspapers,

1 also, okay?

2 MR. GATES: Okay.

3 THE COURT: Now, when you come in the morning, if
4 you would, just come to this middle section here. And there
5 will be 35 or 40 people there with you, and we'll draw the
6 jury from that group. All right?

7 With that in mind, we'll see you in the morning at
8 nine o'clock with your bags packed.

9 (WHEREUPON, Juror Gates leaves the courtroom.)

10 (WHEREUPON, Juror Number 208, Janet W. Lee, a
11 white female, enters the courtroom.)

12 JANET W. LEE, after having been duly sworn,
13 testified as follows:

14 VOIR DIRE EXAMINATION

15 BY THE COURT:

16 Q. Ms. Lee, let me ask you to just have a seat and
17 relax, okay. Nobody's going to give you a hard time now.

18 A. Okay.

19 Q. First of all, you recall yesterday I told you that
20 in this case the State have charged Mr. Johnny Bennett with
21 murder and they're asking for the death penalty; you remember
22 that?

23 A. Yes, sir.

24 Q. You remember that I also told you that a previous
25 jury has found Mr. Bennett guilty of murder and that's why we

1 now come to this point where we're going to have another jury
2 that's going to determine the appropriate sentence; you
3 understand?

4 A. Yes.

5 Q. Only two sentences available, life in prison or the
6 death penalty.

7 A. Yes, sir.

8 Q. You understand that?

9 A. Yes, sir.

10 Q. And this jury is going to decide that. Now, you
11 understand when we say murder, now, let me tell you what we
12 mean by that. Murder in South Carolina is defined as the
13 unlawful killing of another human being with malice
14 aforethought.

15 Now, malice aforethought basically means -- malice
16 means an evil intent. And aforethought means either at the
17 time of or before the killing. So, in essence, the jury has
18 convicted Mr. Bennett of killing another human being with an
19 evil intent when he did it; you understand?

20 A. Yes.

21 Q. Now, the law say this. The law says that is not
22 enough to give someone the death penalty. In order -- before
23 the jury can even consider the death penalty, they must first
24 find that not only has there been a murder, which the jury
25 has found here, but there's also been an aggravating

1 circumstance with it.

2 A. Yes.

3 Q. And the State has to prove that aggravating
4 circumstance. They have to prove it beyond a reasonable
5 doubt; you understand that?

6 A. Yes, sir.

7 Q. Now, they may prove more than one, but there's got
8 to be at least one; you understand that?

9 A. Yes, sir.

10 Q. Now, understanding that then, did you get a chance
11 to look over this sheet describing the three types of jurors?

12 A. Yes, sir, I did.

13 Q. And do you feel that one of these categories
14 applies to you?

15 A. Yes, sir.

16 Q. Which is that?

17 A. The third one.

18 Q. Third. Now, this is a juror who says -- first,
19 let's go over all three to be sure. The first juror is a
20 jury who says if somebody has been convicted of murder, I'm
21 going to always give them the death penalty. Don't want to
22 hear anything else, I'm just going to give the death penalty.
23 As I understand, you're saying that's not you; is that right?

24 A. No, sir.

25 Q. The second juror says that under no circumstances

1 could I ever give the death penalty. I understand you're
2 saying that's not you?

3 A. No, sir.

4 Q. So you're saying now that you are the third one; is
5 that right?

6 A. Yes, sir.

7 Q. So in other words, even though a person has been
8 found guilty of murder, in other words, has killed someone
9 with an evil intent, that I'm still not going make up my mind
10 as to the proper sentence; is that correct?

11 A. Yes.

12 Q. This juror says I want to hear all of those
13 aggravating circumstances. I also want to hear mitigating
14 circumstances. In other words, besides the aggravating
15 circumstances, which are some -- maybe some bad things about
16 Mr. Bennett and some other things about the murder, I want to
17 hear some good things about Mr. Bennett. And I want to hear
18 some other things that tend to reduce the murder; is that
19 correct, you want to hear both sides of that?

20 A. Yes, sir.

21 Q. And this juror says that after I've heard all that,
22 then I want the judge to tell me what the law is. And then,
23 and, of course, only then would I be ready to decide the
24 proper sentence. Is that what you're saying?

25 A. Yes, sir.

1 Q. Now, this juror says that if the facts justify a
2 life sentence I could give life. If the facts justify death
3 I can give death.

4 A. Yes, sir.

5 Q. Now, there's another thing in our law that says
6 this. It says that if a jury gives a death sentence all 12
7 jurors must sign a form that says we have given a death
8 sentence. Now, if you were on the jury and had given the
9 death sentence, would you be able to sign that form?

10 A. Yes, sir.

11 Q. Now, have you heard anything about this case
12 before?

13 A. No, sir, I haven't.

14 Q. Let me introduce you to some of the folks involved
15 and see if you know any of them. This is Mr. Bennett right
16 over here, Mr. Johnny Bennett. Do you know Mr. Bennett or
17 know of him?

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

19 Q. He's represented by Mr. Hervery Young and Mr. Wayne
20 Floyd. Do you know or know of either of those gentlemen?

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

22 Q. Now, the State will be represented by the
23 Solicitor, Mr. Donnie Myers, who is not in here at this
24 point. He normally sits where that empty chair is. He had
25 to step out for a few minutes, he'll probably be back later.

1 And also by Mr. Dayton Riddle and Mr. Shawn Graham. Now, do
2 you know of or know any of those gentlemen?

3 A. No, sir.

4 Q. And the man killed in this case was Mr. Benton
5 Smith, Benton Darrell Smith. Did you know Mr. Smith or know
6 of him in any way?

7 A. No, sir.

8 Q. And also, we gave you a witness list. Did you look
9 over the witness list?

10 A. Yes, sir, I did.

11 Q. Did you recognize any names on it?

12 A. No, sir, I did not.

13 Q. So basically, as I understand it, you have a clean
14 slate. You've never heard of the case, don't know any of
15 these people, don't know any of the witnesses; is that right?

16 A. Yes, sir.

17 Q. Now, do you know of any reason -- now, of course,
18 when I give the law in the case, would you be able to follow
19 the law as I give it to you?

20 A. Yes, sir.

21 Q. You know of any reason then why you could not give
22 both sides a fair trial?

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

24 THE COURT: Any questions from the State?

25 MR. RIDDLE: Mr. Graham does.

1 THE COURT: Mr. Graham?

2 VOIR DIRE EXAMINATION

3 BY MR. GRAHAM:

4 Q. Ms. Lee, my name is Shawn Graham. I'm with the
5 Solicitor's Office. I just have a couple questions I need to
6 talk to you about. You've lived in Lexington County most of
7 your life?

8 A. All my life.

9 Q. Have you ever had the occasion to come up to this
10 courtroom before?

11 A. I've had jury duty before, but I was not chosen for
12 a jury.

13 Q. Do you remember whether or not that was a criminal
14 case or a civil case?

15 A. I think it was general sessions.

16 Q. Would be a criminal case. You understand that in a
17 normal criminal case that the jury decides the guilt or
18 innocence. And once that happened, the judge would be the
19 one that imposed the sentence; did you know that?

20 A. Yes.

21 Q. And I guess you figured out in a case where the
22 State is seeking the death penalty it's a little bit
23 different?

24 A. Yes.

25 Q. In that case, the jury would determine first, the

1 guilt or innocence, and then later, another jury will come
2 back and determine what the sentence would be. So you know
3 in this case that there are two sentences, either a life
4 sentence or a sentence of death?

5 A. Yes.

6 Q. And you know that the defendant has already been
7 found guilty of murder?

8 A. Yes.

9 Q. And do you have any problem accepting that as a
10 starting point if you were picked on a jury to serve?

11 A. No.

12 Q. Sitting there right now, I think you said you were
13 a category three?

14 A. Yes.

15 Q. That right now, you don't know enough about it to
16 make up your mind?

17 A. Right.

18 Q. That you would want to hear a little bit about the
19 crime, a little bit about the defendant, aggravating
20 circumstances, mitigating circumstances and listen to the
21 judge and let him tell you what the law is?

22 A. Yes.

23 Q. So sitting there right now, you can't come to a
24 decision yet as to whether it's a life sentence or a death
25 sentence; is that true?

1 A. No.

2 Q. And would you agree with me when I would say that
3 in some circumstances a murder would warrant the death
4 sentence?

5 A. Yes.

6 Q. And in other circumstances, on the other hand, a
7 murder could warrant a life sentence?

8 A. Right.

9 Q. Would you agree with that?

10 A. Yes.

11 Q. And I don't remember whether the Judge asked you or
12 not, but in South Carolina if the jury decided that the death
13 penalty was the appropriate sentence, there are 12 spaces on
14 the form that each juror must sign saying that they agree
15 that it's a death sentence.

16 A. Yes.

17 Q. I have no reason to think that you wouldn't sign
18 that, but I'm going to ask you. Would you be willing to sign
19 that if you thought that the case was appropriate for a death
20 sentence?

21 A. Yes.

22 Q. And is there anything about your background,
23 religious beliefs or anything in your upbringing that would
24 stop you from giving a fair trial to both the State and the
25 defendant?

1 A. No.

2 MR. GRAHAM: Thank you very much.

3 VOIR DIRE EXAMINATION

4 BY MR. YOUNG:

5 Q. Ms. Lee, have you had the opportunity prior to
6 yesterday to ever discuss your views or values regarding the
7 death penalty?

8 A. No, sir.

9 Q. Have you ever given it any thought of how you felt
10 or what your opinions would be on the death penalty?

11 A. To myself. I have not voiced them to other people.

12 Q. Well, I hate to break your tradition, but do you
13 mind sharing with us what your feelings are about the death
14 penalty?

15 A. I feel like everybody should be given a fair chance
16 because a murder has been committed. There are certain
17 circumstances that may make me lean towards a death sentence
18 where, otherwise, I would lean towards life imprisonment.

19 Q. So there are situations where you could see where
20 the death penalty is appropriate?

21 A. Yes, sir.

22 Q. And there are those cases that you see that the
23 life sentence is appropriate?

24 A. Yes, sir.

25 Q. And by choosing -- saying that you are the juror

1 type number three, you would have to hear all of the evidence
2 before you could make your decision?

3 A. Yes, sir.

4 Q. And that would include the good and bad,
5 aggravation and mitigation?

6 A. Right.

7 Q. And you understand that each juror will make their
8 individual decision as to what they believe the appropriate
9 punishment is?

10 A. Right.

11 Q. And then you would deliberate with the other jurors
12 and return a verdict to the Court; you understand that?

13 A. Yes.

14 Q. If your decision guilty -- I mean, life or death,
15 if that is your decision as to the appropriate punishment,
16 would you be able to vote what your decision is?

17 A. Yes.

18 Q. I noticed on your questionnaire, and I will ask the
19 Court to inquire about this, that you have two children that
20 are under minor age.

21 A. Yes, sir.

22 MR. YOUNG: I would ask the Court if he would ask
23 you some questions regarding that.

24 THE COURT: Ms. Lee, how old are your children?

25 MS. LEE: 10 and 12.

1 THE COURT: Now, the jury in this case will be
2 sequestered. In other words, they will be in a motel during
3 the trial.

4 MS. LEE: Yes, sir.

5 THE COURT: If you are in a motel during the trial,
6 will you have anyone who will be able to take care of the
7 children for possibly as much as a week?

8 MS. LEE: My mother can.

9 THE COURT: You're pretty sure she'd be able to do
10 it; is that correct?

11 MS. LEE: Yes, sir.

12 THE COURT: No question in your mind?

13 MS. LEE: No, sir.

14 THE COURT: Does your mother live with you?

15 MS. LEE: No, she lives approximately five miles
16 from me, but she lives in Lexington County.

17 THE COURT: Right. But she would be able to take
18 the children during that time?

19 MS. LEE: Yes, sir.

20 THE COURT: And would she be able to care for them
21 so that you wouldn't be worried about them and you would be
22 able to concentrate on what you're doing here?

23 MS. LEE: Yes, sir.

24 THE COURT: Okay. Go ahead, Mr. Young.

25 MR. YOUNG: Thank you, Your Honor.

1 BY MR. YOUNG:

2 Q. Ms. Lee, based on everything that we've talked
3 about here today, it's my understanding that you have not
4 formed any opinions as to what the appropriate punishment
5 should be?

6 A. No, sir, I haven't.

7 Q. You would have to hear all of the evidence?

8 A. Yes, sir.

9 Q. The good and the bad?

10 A. Right.

11 Q. Before you can make your individual decision,
12 correct?

13 A. Right.

14 MR. YOUNG: Thank you very much.

15 THE COURT: Anything else, Mr. Graham?

16 MR. GRAHAM: No, sir. Thank you.

17 THE COURT: Let me ask if you'll step outside the
18 door just one second, okay.

19 (WHEREUPON, Juror Lee leaves the courtroom.)

20 THE COURT: All right, Mr. Graham, what's your
21 State's position on this juror?

22 MR. GRAHAM: She's qualified, Your Honor.

23 THE COURT: Mr. Young?

24 MR. YOUNG: Qualified, Your Honor.

25 THE COURT: I find the juror is qualified.

1 (WHEREUPON, Juror Lee enters the courtroom.)

2 THE COURT: Ms. Lee, I've determined you would be
3 qualified to sit as a juror in this case if you were picked.
4 So what I'm going to do is ask you to come back in the
5 morning, okay? And what you'll do is there's a middle
6 section here you notice, so I'll ask you to sit in that
7 section. There will be about 35 or 40 of you there, and
8 we'll draw the jury from that group.

9 MS. LEE: Okay.

10 THE COURT: Now, as I said, bring bags packed for
11 as much as a week in the motel. Leave the bags in your car.
12 And if you do end up on the jury someone will get the bag for
13 you and take them to the motel for you.

14 MS. LEE: Okay.

15 THE COURT: Also, I'm going to ask you be sure not
16 to talk with anybody about the case tonight or tomorrow.
17 Stay away from any sort of news, radio, television,
18 newspapers. Otherwise, just be sure you're not exposed to
19 the case at all, okay?

20 MS. LEE: Okay.

21 THE COURT: With that in mind, we'll see you in the
22 morning at nine o'clock with your bags packed. Thank you,
23 ma'am

24 (WHEREUPON, Juror Lee leaves the courtroom.)

25 THE COURT: Counsel, let's take a short break at

1 this point, okay?

2 (WHEREUPON, a short break was taken.)

3 (WHEREUPON, Juror Number 93, Anthony D.

4 Crawford, Jr., a white male, enters the courtroom.)

5 ANTHONY D. CRAWFORD, JR., after having been

6 duly sworn, testified as follows:

7 VOIR DIRE EXAMINATION

8 BY THE COURT:

9 Q. Mr. Crawford, why don't you just have a seat and
10 relax, okay. Nobody is going to give you a hard time.

11 A. All right.

12 Q. You remember we told you in this case that the
13 State has charged Mr. Johnny Bennett with murder and has
14 asked for the death penalty; you remember?

15 A. Yes, sir.

16 Q. And you recall that we told you that a jury has
17 already found him guilty of murder, so this jury is only
18 going to determine the sentence; remember that?

19 A. Yes, sir.

20 Q. Now, did you get a chance to look at this sheet
21 that we gave you that described three types of jurors?

22 A. Yes, sir.

23 Q. Do you feel like you fit within one of those
24 categories?

25 A. The third one.

1 Q. The third one. That's a juror who says that even
2 though somebody been found guilty of murder I would not have
3 my mind made up as to the sentence. I would want to hear all
4 of the aggravating circumstances and I would want to hear all
5 of the mitigating circumstances, I would want the judge tell
6 me the law, and then I would be ready to make a decision; is
7 that right?

8 A. Correct.

9 Q. Now, this juror also says that if the facts
10 justified a life sentence I could give a life sentence. If
11 it justified a death sentence I could give a death sentence,
12 it just depends on the facts; is that right?

13 A. Right.

14 Q. Now, the law also says that if a jury gives a death
15 sentence that each juror must sign a form saying that we have
16 given a death sentence. If you are on the jury and had given
17 the death sentence, would you be able to sign that form?

18 A. Yes, sir.

19 Q. Have you ever hear about this case before, ever
20 heard anything about this case?

21 A. No.

22 Q. Let me introduce you to some of the folks involved
23 in it, okay?

24 A. Okay.

25 Q. This is Mr. Bennett over here. Do you know

1 Mr. Bennett or know of him?

2 A. No.

3 Q. He's represented by Mr. Hervery Young here in the
4 middle and Mr. Wayne Floyd. Do you know or know of either of
5 these gentlemen?

6 A. I know Mr. Wayne Floyd.

7 Q. You know Mr. Wayne Floyd?

8 A. Yes, sir.

9 Q. How do you know him?

10 A. He represents my father.

11 Q. Okay. Is he representing him now?

12 A. I don't know, you'd have to ask him that.

13 Q. Does he represent you in any way?

14 A. No.

15 Q. Would that affect your ability to give both sides a
16 fair trial?

17 A. No, sir.

18 Q. You could still give a fair trial; is that right?

19 A. (Nodded.)

20 Q. The State would be represented by the Solicitor's
21 Office, and the Solicitor is Mr. Donnie Myers who's not here.
22 He just stepped out a few minutes ago. He'll be back in a
23 few minutes, probably. Also, Mr. Dayton Riddle and Mr. Shawn
24 Graham. Do you know or know of any of these gentlemen?

25 A. No, sir.

1 Q. Have you ever had any dealing with the Solicitor's
2 Office in any way?

3 A. No, sir.

4 Q. We also gave you a witness list, did you look that
5 over?

6 A. Yes, sir.

7 Q. Did you recognize any of those names?

8 A. Not really.

9 Q. And if you do, just give me a number instead of a
10 name, okay?

11 A. Not a person.

12 Q. You didn't know any?

13 A. No.

14 Q. Also, the gentleman who was killed in this matter
15 was Mr. Benton Darrell Smith. Did you know Mr. Smith or know
16 of him in any way?

17 A. No, sir.

18 Q. Understanding everything that I've asked, do you
19 feel like you could give both sides a fair trial?

20 A. Yes, sir.

21 THE COURT: All right. Any questions, Mr. Riddle.

22 MR. RIDDLE: Yes, sir.

23 VOIR DIRE EXAMINATION

24 BY MR. RIDDLE:

25 Q. How you doing, Mr. Crawford?

1 A. Fine.

2 Q. You're 19 years old?

3 A. Yes, sir.

4 Q. I noticed you said you lived in Lexington about two
5 years, but you were born in West Columbia. Did you live
6 here, move away and come back?

7 A. Yeah, I lived in Atlanta.

8 Q. In Atlanta for awhile?

9 A. Yes, sir.

10 Q. About how long?

11 A. About six years.

12 Q. Did you graduate from school here or down there?

13 A. Here.

14 Q. So you've been back for what?

15 A. A little over two years.

16 Q. And you indicated Mr. Floyd represents your dad?

17 A. Yes, sir.

18 Q. Was that in a divorce, civil matter, what kind of
19 case was that?

20 A. Divorce, child support.

21 Q. Child support case. Have you ever been in this
22 courtroom before?

23 A. Never seen it besides yesterday.

24 Q. Yeah, yesterday doesn't count, but before then?

25 A. No, sir.

1 Q. You understand that what we're going to do is put a
2 jury in the jury box to decide the appropriate sentence in
3 this case?

4 A. Yes, sir.

5 Q. Because another jury has already found Mr. Bennett
6 guilty of murder.

7 A. Okay.

8 Q. I believe you told the Judge you could vote either
9 way, life or death?

10 A. As long as I heard both stories.

11 Q. As long as you heard it all first. You'd want to
12 know everything about it before you made up your mind?

13 A. (Nodded.)

14 Q. And as you sit here today, you don't know how you'd
15 vote because you don't know anything about this case; is that
16 right?

17 A. Yes, sir.

18 Q. The Judge asked you about signing a form. It's a
19 little unusual in our law. In South Carolina if the jury
20 thinks the death penalty is appropriate they don't let the
21 foreman speak for the jury like they ordinarily do, each
22 juror has to speak for themselves; you understand that?

23 A. Uh-huh.

24 Q. If you thought the death penalty was the
25 appropriate verdict, would you be able to sign the form?

1 A. Yes, sir.

2 Q. You wouldn't have any problem putting your name to
3 what you thought?

4 A. No.

5 Q. Any reason why you can't be fair to both the State
6 and the defense in this case?

7 A. No, sir.

8 Q. Thank you, that's all we're looking for.

9 A. Okay.

10 THE COURT: Mr. Young?

11 VOIR DIRE EXAMINATION

12 BY MR. YOUNG:

13 Q. Mr. Crawford, you mentioned that Mr. Floyd
14 represented your father in a child support matter?

15 A. Yes, sir.

16 Q. Was that child support for your benefit?

17 A. Yeah, it was going towards me.

18 Q. Anything about him representing your father in a
19 matter that would have affected you, does that have any
20 affect on your ability to --

21 A. Would you say that again?

22 Q. Kind of twisted, wasn't it? Is there anything
23 about Mr. Floyd representing your father, do you have any
24 type of animosity or anything --

25 A. No, I wouldn't hold that against him or anything.

1 Q. Okay. So you're able to be a fair and impartial
2 juror for both sides?

3 A. Yes, sir.

4 Q. And I believe you stated you were a third type
5 juror?

6 A. Yes, sir.

7 Q. My understanding is that you have to hear all of
8 the evidence before you make a decision?

9 A. Yes, sir.

10 Q. Have you ever talked with anybody about how you
11 felt about the death penalty?

12 A. If I did, I don't recall it.

13 Q. Have you ever thought about it before yesterday?

14 A. Well, yeah, like watching movies about it and
15 stuff.

16 Q. And tell us what you think about the death penalty?

17 A. Only if it's fair. I mean, it depends on -- if
18 it's a murder case, you got to know how the person was
19 murdered, how they died, what that other person -- if they
20 were related or whatever, what their reasons were or what you
21 all think the reasons were. You just have to know.

22 Q. Okay. So you have to know everything before you
23 can make your decision?

24 A. Yes, sir.

25 Q. And once you make your decision, regardless of

1 whether it's life or death, you can vote that way?

2 A. Yes, sir.

3 Q. So you can cast your vote for life in prison?

4 A. Yes, sir.

5 Q. Or you can cast your vote for death penalty?

6 A. Right.

7 MR. YOUNG: Thank you. I have no further
8 questions.

9 THE COURT: Anything else, Mr. Riddle?

10 MR. RIDDLE: No, sir.

11 THE COURT: All right. Mr. Crawford, let me ask
12 you to step outside just for a minute, okay.

13 (WHEREUPON, Juror Crawford leaves the
14 courtroom.)

15 THE COURT: What's the State's position?

16 MR. RIDDLE: Your Honor, I would submit he's
17 probably qualified based on his responses, although I know
18 his responses were not entirely accurate.

19 THE COURT: Okay. Did you want to put anything on
20 the record about that?

21 MR. RIDDLE: Your Honor, his father was Anthony
22 Dale Crawford who was tried in this courtroom by Solicitor
23 McMahon when he was here. Mr. Floyd represented him. It was
24 a very highly publicized marital rape case where there was
25 videotaped evidence of the offense. Mr. Crawford was

1 subsequently acquitted in that proceeding. I can't tell Your
2 Honor exactly when it was, but there was certainly more to it
3 than just a child support matter as he indicated on the
4 record.

5 THE COURT: I recall the case. It was about the
6 time that I came on to circuit court or shortly before.

7 MR. RIDDLE: I don't recall whether Your Honor
8 tried that or not.

9 THE COURT: I did not.

10 MR. RIDDLE: Okay.

11 THE COURT: What's the defense's position?

12 MR. YOUNG: Your Honor, while his answers to the
13 questions may have qualified him, we're of the opinion also
14 that his answers may not have been as truthful as they should
15 have been. From talking with Mr. Floyd when we noticed his
16 name on there, there actually may be some indications of some
17 animosity that this young man may have towards Mr. Floyd
18 relating to his representation of his father.

19 THE COURT: All right. Counsel, given that, that
20 the juror may have given some misleading answers to the
21 Court, I'm a little reluctant to qualify him at this point.
22 I think what I'm going to do is I'm going to find him not
23 qualified to serve at this time. I'm going to excuse him.

24 MR. YOUNG: Thank you, Your Honor.

25 THE COURT: Let's don't take a chance.

1 Let's ask him to step in.

2 (WHEREUPON, Juror Crawford enters the
3 courtroom.)

4 THE COURT: Mr. Crawford, I'm going to excuse you
5 from having to sit on this case. We appreciate you being
6 with us, and you're free to go. Thank you, sir.

7 (WHEREUPON, Juror Crawford was excused.)

8 (WHEREUPON, Sherry A. Wyatt, a white female,
9 entered the courtroom.)

10 SHERRY A. WYATT, after having been duly sworn,
11 testified as follows:

12 VOIR DIRE EXAMINATION

13 BY THE COURT:

14 Q. All right, is this Ms. Wyatt?

15 A. Yes, sir.

16 Q. Ms. Wyatt, just relax. Nobody is going to give you
17 a hard time, okay. We're just going to chat with you a
18 little bit.

19 Ms. Wyatt, you recall I told you yesterday in this
20 case that the State has charged Mr. Johnny Bennett with
21 murder and that they have asked for the death penalty; do you
22 remember that?

23 A. Yes, sir.

24 Q. You remember I told you also that a jury has
25 already found Mr. Bennett guilty of murder, so we're drawing

1 a jury now only to decide the sentence in this case; you
2 understand?

3 A. Uh-huh.

4 Q. And the sentence -- the only possible sentences are
5 life imprisonment or the death penalty; you understand?

6 A. Yes, sir.

7 Q. Did you get a chance to look over the sheet that we
8 gave you to look over?

9 A. Yes, sir.

10 Q. And did you have time to think about it?

11 A. Yes, sir.

12 Q. And you noticed there are three categories of
13 jurors. Do you feel like one of those categories would apply
14 to you?

15 A. Yes, sir.

16 Q. And which is that?

17 A. I cannot give a death penalty to anyone.

18 Q. Okay. Now, that's the second type of juror, and
19 let's be sure that we understand that we're talking about the
20 same thing. This is a juror who says that under no
21 circumstances could I ever give the death penalty.

22 A. No, sir.

23 Q. Now, you understand that a person may be qualified
24 to serve as a juror if they could give the death penalty
25 under appropriate circumstances. But are you telling me that

1 there are no circumstances -- that you could never give the
2 death penalty?

3 A. No, sir, I couldn't take somebody else's life.

4 THE COURT: Okay.

5 Any questions from the State?

6 MR. RIDDLE: Your Honor, I just didn't hear the
7 response.

8 THE COURT: The last answer was she said she could
9 not take somebody else's life.

10 MR. RIDDLE: We don't have any questions at this
11 time, Your Honor.

12 THE COURT: Defense?

13 MR. YOUNG: No questions.

14 THE COURT: We'll excuse you from having to serve,
15 and you're free to go. Thank you, ma'am.

16 (WHEREUPON, Juror Wyatt was excused.)

17 THE COURT: I believe this will be the last one for
18 this evening, Counsel.

19 (WHEREUPON, Juror Number 389, John A. Willis,
20 a black male, entered the courtroom.)

21 JOHN A. WILLIS, after having been duly sworn,
22 testified as follows:

23 VOIR DIRE EXAMINATION

24 BY THE COURT:

25 Q. Mr. Willis, have a seat, please, sir, just relax.

1 Nobody is going to give you a hard time. You remember that
2 we told you yesterday that in this case the State has charged
3 Mr. Johnny Bennett with murder and they've asked for the
4 death penalty?

5 A. Yes, sir.

6 Q. Do you recall that I told you that a jury has
7 already found Mr. Bennett guilty of murder and that, in
8 essence, that this jury we're now picking is going to decide
9 the sentence?

10 A. Yes, sir.

11 Q. And the sentence can only be life in prison or the
12 death penalty.

13 A. Yes, sir.

14 Q. Do you understand that?

15 A. Yes, sir.

16 Q. Did you get a chance to look over this sheet that
17 we gave you?

18 A. I surely did.

19 Q. Do you feel like one of these categories of jurors
20 applies to you?

21 A. Yes, sir.

22 Q. And which is that?

23 A. Number three.

24 Q. All right. Now, that is a juror who says that even
25 though a defendant may have been committed murder that I

1 would not have my mind made up as to the appropriate
2 sentence. That I would want to hear all the aggravating
3 circumstances, I would want to hear all the mitigating
4 circumstances, and then and only then could I decide the
5 appropriate sentence; is that correct?

6 A. That is correct.

7 Q. It says also, before I decide I want the judge to
8 tell me what the law is in the case and I want to know that
9 too; is that right?

10 A. Yes, sir.

11 Q. And if you were sitting on a jury, would you be
12 able to follow the law as I instructed you?

13 A. Yes, sir.

14 Q. Now, this juror also says that if the facts of the
15 case justify it I could give a life sentence, and if the
16 facts of the case justify it I could give a death sentence.
17 It would just depend on the circumstances of the case.

18 A. Yes, sir.

19 Q. Is that what you're saying?

20 A. That's exactly what I'm saying.

21 Q. Now, there's also another provision in our law that
22 says this, that if a jury gives a death sentence each juror
23 must sign a form saying I have agreed to give the death
24 sentence. Understanding that, would you be able to sign that
25 form if you had given a death sentence?

1 A. Gees. Yes, I would, reluctantly.

2 Q. I understand. But you understand that --

3 A. I would have to sign.

4 Q. -- under your oath you would be expected to sign it
5 if you gave the death sentence; do you understand that?

6 A. Yes, sir.

7 Q. And would that prevent you from giving a death
8 sentence for any reason, just merely the fact that you would
9 have to sign that form?

10 A. No, it would not.

11 Q. Now, have you heard anything about the case before?

12 A. No, not prior to coming to court yesterday.

13 Q. Never heard about it until yesterday?

14 A. That is correct.

15 Q. Let me introduce you to some folks here. This is
16 Mr. Bennett right here, Johnny Bennett. Do you know
17 Mr. Bennett or know of Mr. Bennett in any way?

18 A. No, first time I saw him was yesterday.

19 Q. These are his attorneys, Mr. Hervery Young, in the
20 middle, and Mr. Wayne Floyd?

21 A. Right.

22 Q. Do you know or know of Mr. Young or Mr. Floyd?

23 A. Once again, I saw them in court yesterday.

24 Q. Now, the State will be represented by the
25 Solicitor's Office here. Have you ever had any dealings with

1 the Solicitor's Office?

2 A. None whatsoever.

3 Q. Okay. And, of course, in the Solicitor's Office,
4 Mr. Donnie Myers is the Solicitor. He's not here right now,
5 he stepped out for a few minutes. And also with him,
6 Mr. Dayton Riddle and Mr. Shawn Graham. Now, do you know or
7 know of any of these gentlemen at all?

8 A. On TV, that's about it.

9 Q. And is there anything that you've seen about them
10 on TV that would cause you to have any sort of pro or con
11 feelings about them at all?

12 A. No, sir.

13 Q. Wouldn't affect your ability to serve as juror; is
14 that right?

15 A. That is correct.

16 Q. We gave you a witness list. Did you get a chance
17 to look that over, the witness list?

18 A. I recognized some last names only because I'm an
19 instructor at school and some of my students have the same
20 last names.

21 Q. Did you recognize anyone particular?

22 A. No, sir.

23 Q. No particular person?

24 A. Uh-uh.

25 Q. Also, the victim in this case, the man who was

1 killed was a man named Benton Darrell Smith. Did you know
2 Mr. Smith or know of him in any way?

3 A. Sure don't.

4 Q. And do you know of any reason why you could not
5 give both sides a fair trial in this case?

6 A. No, sir, I do not.

7 Q. Let me ask if you'll answer any questions they
8 have.

9 A. Absolutely.

10 Q. The attorneys may have some questions.

11 A. Certainly.

12 VOIR DIRE EXAMINATION

13 BY MR. RIDDLE:

14 Q. Good afternoon, Mr. Willis.

15 A. Sir.

16 Q. My name is Dayton Riddle. I'm Deputy Solicitor
17 here in Lexington. I've just got a couple questions for you.

18 A. Certainly.

19 Q. You're the Air Force ROTC instructor at Dutch Fork?

20 A. That is correct, sir.

21 Q. And I saw on your jury form that you're retired out
22 of the Air Force?

23 A. That's correct.

24 Q. And how long ago did you retire?

25 A. May of '92, 1 May of 1992.

1 Q. And I guess -- I think you were in there your full
2 career?

3 A. 30 years and 18 days.

4 Q. How many?

5 A. 30 years and 18 days.

6 Q. Okay. Counting them down to the end. Where was
7 the last place you served?

8 A. Denver, Colorado, Lowry Air Force Base. Denver
9 Colorado.

10 Q. What all did you do with the Air Force?

11 A. The majority of my time I was a dental laboratory
12 technician, made dental prostheses. For five years, I taught
13 professional military education to young staff sergeants and
14 sergeants.

15 Q. Okay. And the Air Force instructor at Dutch Fork,
16 are you still with the Air Force --

17 A. No, I'm retired --

18 Q. -- or are you with the school district?

19 A. Right, I'm with Lexington 5.

20 Q. All right. I just didn't know exactly how that
21 worked. The Judge asked you about your views regarding the
22 death penalty, and I think you indicated that you were a
23 category three juror?

24 A. Yes, sir.

25 Q. And I take that to mean that you would want to hear

1 all of the evidence in the case and then you would decide
2 what the appropriate sentence is in a particular case?

3 A. Absolutely.

4 Q. And as a juror, if you were on this case, you know
5 that the Judge would be telling the jury what the law is?

6 A. Yes, sir.

7 Q. And he would tell you about the law as it relates
8 -- and I know you've heard this term before, and I can tell
9 you the Judge is going to give you a much better definition
10 than I can, but he'll talk about aggravating circumstances
11 and mitigating circumstances. And, of course, you know that
12 aggravating circumstance is something which makes the crime
13 worse or bad things about the defendant, something that would
14 tend to make the jury give a more severe sentence.

15 A. Right.

16 Q. And exactly the opposite for mitigating
17 circumstance. It's something that would tend to make the
18 jury give a less severe sentence.

19 A. I understand.

20 Q. And as a category three juror, you would want to
21 hear all of that, the good and the bad, before you made up
22 your mind; is that right?

23 A. Yes, sir.

24 Q. And as you sit here today, you can't tell us what
25 you would do because you don't know any of that; is that

1 correct?

2 A. That's correct. That's correct.

3 Q. It will be fair to say that you're going into this
4 with an open mind?

5 A. With an open mind.

6 Q. And you don't have any, I guess for lack of a
7 better way to put it, like a predisposition one way or the
8 other?

9 A. No, I don't.

10 Q. So as you go in, really, you don't favor one versus
11 the other?

12 A. No, I do not.

13 Q. You could follow the law that the Judge gives you?

14 A. Yes.

15 Q. And you could apply that evidence that you would
16 hear from the witness stand and reach a proper sentence?

17 A. I believe so, yes, sir.

18 Q. Have you ever been on a jury before?

19 A. Yes, I have.

20 Q. Do you recall whether that was civil or criminal
21 type?

22 A. Civil. It was civil.

23 Q. Money matter?

24 A. Yes.

25 Q. In that case, you know that the foreman spoke on

1 behalf -- I assume foreman, it could have been a forelady,
2 spoke on behalf of the jury --

3 A. Right, right.

4 Q. -- and signed everything that needed signing and
5 whatnot?

6 A. Right.

7 Q. In a death penalty case, let's assume that the jury
8 decides that the death penalty is the appropriate verdict.
9 You, of course, know that the verdict would have to be
10 unanimous?

11 A. Yes, sir.

12 Q. But in our state, the law doesn't allow a
13 foreperson or a foreman to speak on behalf of the jury if the
14 jury thinks the death penalty appropriate. Did you know
15 that?

16 A. No, I did not.

17 Q. So all the forms that you would see that relate to
18 a life sentence have one line on it for the foreman to sign.
19 But the forms that relate to the death penalty, they have 12
20 lines on there to indicate that everybody is in agreement
21 with that.

22 A. Right.

23 Q. And sometimes when the judge and the witness is
24 talking, you all talk quietly and I can't hear very well any
25 way, but I didn't quite hear what your responses were when

1 the Judge was asking you about signing that form, which is
2 why I'm bringing it up. Did I understand -- well, just tell
3 me what you told the Judge. That might be a better way to do
4 ask it.

5 A. I think it would be an eerie feeling. I thought
6 about it, and I said it's kind of eerie, but I could do that.

7 Q. And if you thought that was the right thing to do,
8 signing your name --

9 A. Absolutely.

10 Q. You don't have any problem with that?

11 A. No.

12 Q. Do you know -- last question, do you know of any
13 reason why you couldn't be fair to everybody involved in this
14 case?

15 A. No, I do not.

16 MR. RIDDLE: Thank you, sir. That's exactly what
17 we're looking for.

18 VOIR DIRE EXAMINATION

19 BY MR. YOUNG:

20 Q. Mr. Willis, how are you doing?

21 A. I'm doing great, and you?

22 Q. All right. Have you ever had an opportunity to
23 think about your feelings or your opinions on the death
24 penalty?

25 A. Yes, on the way home yesterday.

1 Q. What was running through your mind? What are your
2 opinions on the death penalty?

3 A. Well, I believe in the death penalty. After
4 hearing the case, quite naturally, I'd make up my mind. By
5 the same token, I think being a human-type individual, if it
6 happen to someone, you know, near and dear to me, I'd be
7 ranting and raving, the guy needs to go, the person needs to
8 go. But at this point in time, I think I would be more
9 objective and see how it goes.

10 Q. So if I understand, you will have to hear both the
11 aggravation and the mitigation?

12 A. Yes, sir, more surely. Yes, sir.

13 Q. Each juror will have the right to make their own
14 decision as to what they believe is the appropriate
15 punishment in this case; you understand that?

16 A. Yes, sir, sure do.

17 Q. And they won't have to deal with the issue of
18 whether or not he's guilty or not guilty because another jury
19 has already found that he is, in fact, guilty.

20 A. Absolutely.

21 Q. And you understand that the only decision that you
22 would make would be whether he receives life or death?

23 A. One or the other, yes, sir.

24 Q. And understand that the Court will inform you that
25 -- or instruct you that in order to consider the death

1 penalty that you must first find that some type of
2 aggravating circumstance exists?

3 A. Yes.

4 Q. Then and only then could you even decide or even
5 discuss the death penalty.

6 A. Absolutely.

7 Q. The Judge would never tell a jury that you have to
8 find for the death penalty; you understand that?

9 A. I understand that, sir.

10 Q. The Judge will instruct you that you could -- even
11 if you find an aggravating circumstance that you could return
12 a verdict of life, if that's what you believe is the
13 appropriate punishment; you understand that?

14 A. I understand that.

15 Q. Likewise, you could return a verdict of life for no
16 reason at all; you understand that?

17 A. I understand that, yeah, but there would be some
18 reason in my mind anyway.

19 Q. Right. If it is your decision that that's the
20 appropriate punishment.

21 A. Right.

22 Q. Regardless of what you decide is the appropriate
23 punishment, life or death, whatever you decide, will you be
24 able to vote what you decide?

25 A. Yes, sir, most assuredly

1. MR. YOUNG: Thank you, that's all we ask.

2. THE COURT: Anything else, Mr. Riddle?

3. MR. RIDDLE: No, sir. Thank you, Mr. Willis.

4. THE COURT: Mr. Willis, let me ask if you'll step
5 just outside the door for a second, okay.

6 (WHEREUPON, Juror Willis leaves the
7 courtroom.)

8 THE COURT: What's the State's position on this
9 juror?

10 MR. RIDDLE: Qualified.

11 THE COURT: Defense?

12 MR. YOUNG: Qualified, Your Honor.

13 THE COURT: I find he is qualified.

14 (WHEREUPON, Juror Willis enters the
15 courtroom.)

16 THE COURT: Mr. Willis, I've determined you would
17 be qualified to sit as a juror in this case if you're called.
18 So I'm going to ask you to come back, if you would, tomorrow
19 morning at nine o'clock.

20 MR. WILLIS: Yes, sir.

21 THE COURT: Now, have your bags packed for as much
22 as a week in a motel. The jury will be sequestered during
23 the trial. And just when you come, leave your bags in the
24 car. If you do end up on the jury somebody will take care of
25 the bags and get them to the motel for you.

1 MR. WILLIS: Okay, sir.

2 THE COURT: Now, until that time, it's very
3 important that you not talk about the case in any way with
4 anybody. Stay away from any kind of news; no television, or
5 radio, no newspaper, anything like that, okay?

6 MR. WILLIS: Yes, sir.

7 THE COURT: Now, when you come in the morning, if
8 you would, come back to this courtroom and just sit right out
9 here in the middle section. You'll be there with about 35 or
10 40 people, and we're going to pick the jury from there, okay?

11 MR. WILLIS: Okay, sir.

12 THE COURT: With that in mind, we'll see you in the
13 morning at nine with your bags packed.

14 MR. WILLIS: Thank you, sir. Have a good evening.

15 (WHEREUPON, Juror Willis leaves the
16 courtroom.)

17 THE COURT: All right. Counsel, that concludes
18 that panel and all the panels for the first two days. We
19 have at this time 38 jurors qualified. As you know, we need
20 a minimum of 35 to go forward. So we do have enough to go
21 ahead and begin picking the jury in the morning at nine
22 o'clock.

23 Now, what we'll do is this. We have another panel
24 to come at nine. We'll let them come on at nine o'clock, and
25 if something should happen that we go beyond this 38, then

1 we'll start taking them in the same order that they're here.
2 And, in essence, what we'll do is we'll strike as we go, if
3 it comes to that. It shouldn't happen. I don't anticipate
4 that happening, but we'll be prepared to do that if
5 necessary.

6 At this time, are there any other motions regarding
7 the jury selection process from the State?

8 MR. RIDDLE: No, sir.

9 THE COURT: Defense? Did you want to put on the
10 record your objections to particular jurors?

11 MR. FLOYD: No motions at this time, Your Honor,
12 but please note, of course, the objections were made as we
13 went along on each juror. We renew those objections.

14 THE COURT: Do you remember the juror numbers by
15 any chance? You don't have to if you don't want to. You
16 just want to renew the motions -- the objections?

17 MR. FLOYD: Yes, Your Honor. If you'd like for us
18 to be more specific perhaps tonight we can go back through
19 the list and pull out the ones we'd like to make --

20 THE COURT: That's fine. You don't have to. Now,
21 let me note -- just tell you this, too, Counsel. According
22 to my notes, the first ten jurors that we qualified did not
23 look at this witness list. So what I'm going to do is --
24 particularly those ten, I'm going to give out copies to them
25 in the morning and have them look over the list and we'll

1 take them one at a time, if we have to. I'm going to ask
2 them as a whole if any of them know anyone on this list, and
3 if they do I'll bring them up here one at a time and let them
4 answer the question who they may or may not know. But we do
5 need to take up that particular issue.

6 And also, I recall that early on there were some
7 jurors that I did not ask about the victim in this case,
8 Mr. Smith. I will ask again the entire group if any of them
9 knew or know Mr. Benton Darrell Smith. With that in mind, I
10 would think we will have the jury drawn at -- get started at
11 nine, somewhere around ninish. As you know, it takes a few
12 minutes sometimes to get them organized and everything set
13 up. We will strike in the order that they were qualified, so
14 that both of you can go ahead and prepare this evening and
15 know kind of in what order we're going.

16 And then once that's done, as you recall, Judge
17 Lever's funeral is tomorrow. We will try to hopefully get
18 through in time to be able to get away and go to attend his
19 funeral. At which time, the Court will not tell the jury
20 that, but we will let them go ahead and go to the motel and
21 get settled in and then come back after a lunch break. I
22 anticipate probably 12:30 or 1:00 or so, and go ahead and get
23 started with the case, have opening statements at that time.

24 MR. RIDDLE: Your Honor, if it please the Court,
25 the Solicitor asked me if we could strike the jury at 9:00

1 and then start up at 2 p.m.?

2 THE COURT: That's okay.

3 Any problem with that, Counsel?

4 MR. FLOYD: No, Your Honor. There will be -- and I
5 don't know how you want to do it. We'll go by Your Honor's
6 desire. There will be a Jackson Denno hearing. I don't know
7 whether you just want to take that up as it comes up or do it
8 before we get started.

9 THE COURT: How do you want to do that?

10 MR. RIDDLE: Your Honor, it's our understanding --
11 my understanding -- and I might let Mr. Graham argue this
12 because he did the research on this issue, but it's my
13 understanding that if the evidence was admissible in the
14 first trial it's admissible in this trial without the need of
15 going through a Jackson V. Denno hearing again.

16 THE COURT: Well, if it was not, obviously, a
17 subject of appeal and was not reversed by the Supreme Court,
18 and I assume that issue was not reversed by the Supreme
19 Court, correct?

20 MR. RIDDLE: That's correct.

21 THE COURT: What about that, Counsel?

22 MR. FLOYD: Your Honor, two things. First, we've
23 been provided some additional statements. And I don't know
24 what they're going to do -- you know, if they're going to try
25 to use those statements, we need to have a hearing on those.

1 Secondly, Your Honor, we feel that we have a right
2 to have a new hearing on Jackson V. Denno. This is a new
3 sentencing procedure. Residual doubt is an issue in
4 connection with a sentencing procedure. There may be some
5 new evidence on that point.

6 THE COURT: I believe the Supreme Court has said
7 residual doubt is not an issue, that you cannot use that in a
8 sentencing procedure. Is that not correct?

9 MR. FLOYD: Your Honor, I don't know of any
10 authority that would prohibit us from using that.

11 THE COURT: I'll double check on that. I'll find
12 the case. I'm pretty sure there's some cases that have said
13 that you cannot use residual doubt during the sentencing
14 procedure. What we may do -- it may be appropriate, though,
15 Mr. Riddle, to go ahead and have the Jackson V. Denno hearing
16 just to be sure and just to have it on the record anyway. If
17 we do that, how many witnesses would you have in the hearing?

18 MR. RIDDLE: Your Honor, I don't know because I'm
19 not handling that part of the trial. Perhaps what we could
20 do is strike the jury and then have a kind of a scheduling
21 conference and hear these kinds of motions and issues in the
22 morning about what we need to have and what we don't need to
23 have and we can sort of schedule from there.

24 THE COURT: Right. And again, if Mr. Graham going
25 to handle the Jackson V. Denno hearing --

1 MR. RIDDLE: Actually, Mr. Myers is, Your Honor.

2 THE COURT: Okay. We can do that at whatever --

3 MR. FLOYD: If they have some authority saying we
4 don't get such a hearing, you know, we'll have to try to
5 review that tonight and respond to it because we have several
6 witnesses that we'd be lining up for that hearing.

7 THE COURT: Okay. What about that?

8 MR. RIDDLE: Your Honor, it's my understanding
9 there's authority out there, but I'm -- and we'll have that
10 in the morning. My question I guess that I need to ask
11 Mr. Floyd is does he want the Jackson V. Denno hearing on all
12 the statements that were made to, and in particular to
13 Detective Hamer with the Sheriff's Department, or is he
14 asking for Jackson V. Denno on the new stuff that has
15 recently been provided that --

16 MR. FLOYD: Yes, I understand. We're contending
17 that we should be allowed a Jackson V. Denno hearing on all
18 the statements, including the ones that were introduced at
19 the first trial. And, of course, certainly, on the ones that
20 are new.

21 THE COURT: Well, obviously, probably the best way
22 to handle it, and depending on when you're going to have the
23 officers testify, is to wait until the end of the day
24 tomorrow, once we've let the jury go, then we can do the
25 Jackson V. Denno hearing after that in the evening. What

1 about that?

2 MR. FLOYD: Yes, sir, as long as we just do it.

3 And, Your Honor, also, while we're at it, there was a motion
4 made at the first trial under Youngblood V. Arizona, a motion
5 to dismiss under equitable estoppel theories. We do plan to
6 argue that motion again unless we're told we can't. And
7 that's an evidentiary matter, also.

8 THE COURT: I assume, that's equitable estoppel as
9 it relates to some sort of promises or something?

10 MR. FLOYD: Your Honor, under Youngblood V. Arizona
11 doctrine, if there is a prosecutorial -- doesn't necessarily
12 have to rise to the level of misconduct, some type of
13 prosecutorial error made, there can be -- the State can be
14 equitably estopped from prosecuting the defendant and
15 therefore a motion for dismissal or for at least no death
16 penalty in the case. And we made this same argument at the
17 first trial, which was denied at that time, but we feel we're
18 entitled to bring it up again.

19 THE COURT: Let me note, and I'm sure there's just
20 a miscommunication, but I understood last week that we had
21 all the motions taken care of. The reason that we didn't do
22 it, I assume, is we thought -- I thought we had everything
23 done and we were going to get right into the case.

24 MR. FLOYD: We had all the pretrial motions, but
25 those are motions that -- both Jackson Denno and the

1 Youngblood Arizona motions, in our opinion, are ones you make
2 after the jury is sworn so that jeopardy would attach.

3 THE COURT: Anything else on that, Mr. Riddle?

4 MR. RIDDLE: Your Honor, in reference to the
5 Youngblood motion, I didn't participate in the first trial of
6 this case. If I remember correctly from my review of the
7 transcript, I think it involves a tape or an alleged tape
8 that was attempted to be made, but didn't turn out. It just
9 -- it didn't pick up, is what happened, or my understanding
10 what happened. And I believe they made a motion in reference
11 to that because that tape was not retained.

12 The officer testified, as I understand it, that
13 there was nothing on the tape to retain. But I'm really not
14 in the position to argue that because I wasn't present at the
15 first trial and I don't really know anything about it and
16 it's the witness that I'm not handling in this case.

17 MR. FLOYD: I think that's a fair characterization
18 of the main thrust of the motion. And there was -- it would
19 involve several Lexington County deputies' testimony.

20 MR. RIDDLE: The long and short of it is I prefer
21 to defer to Solicitor Myers on that because he is familiar
22 with that issue and I'm not.

23 THE COURT: Okay. Well, why don't you just talk to
24 him and see what he wants to do and we'll talk about it in
25 the morning, okay?

1 MR. RIDDLE: Yes, sir.

2 THE COURT: But we need to do those either late in
3 the evening or early in the morning at some point because I
4 certainly don't want to -- once we've got this jury impaneled
5 and they're in a motel we want to move on and don't hold them
6 any longer than we have to.

7 MR. FLOYD: Thank you, Your Honor.

8 THE COURT: Anything else?

9 MR. RIDDLE: Nothing from the State, Your Honor.

10 THE COURT: We'll stand in recess until nine
11 o'clock in the morning.

12 (WHEREUPON, the trial of this case was
13 recessed for the evening.)

14

15 ** END OF VOLUME II **

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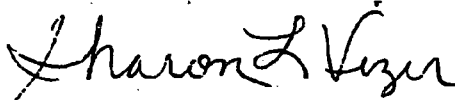
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C E R T I F I C A T E

I, Sharon L. Vizer, Official Court Reporter for the
11th Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete transcript of record of all the proceedings had and
the evidence introduced in the trial of the captioned case in
Circuit Court on the 11th day of July 2000.

I do further certify that I am neither of kin,
counsel nor have an interest to any party hereto.

May 19, 2004


SHARON L. VIZER

CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON) 11TH JUDICIAL CIRCUIT

THE STATE) TRANSCRIPT OF RECORD
-VS-) 93-GS-32-2354
JOHNNY O. BENNETT,) ** VOLUME III **
DEFENDANT.)

JULY 12, 2000

LEXINGTON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE MARC H. WESTBROOK, JUDGE.

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

DONNIE MYERS, SOLICITOR

DAYTON RIDDLE, DEPUTY SOLICITOR

SHAWN GRAHAM, ASSISTANT SOLICITOR

ATTORNEYS FOR THE STATE

WAYNE FLOYD, ESQUIRE

HERVERY YOUNG, ASSISTANT PUBLIC DEFENDER

ATTORNEYS FOR THE DEFENDANT

SHARON L. VIZER

CIRCUIT COURT REPORTER

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(SW) - DENOTES STATE'S WITNESS

(DW) - DENOTES DEFENSE WITNESS

(IC) - DENOTES IN CAMERA

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CERTIFICATE OF REPORTER

1057

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NO.	DESCRIPTION	ID.	EV.
<u>FOR THE COURT:</u>			
1	- LETTER ABOUT DR. AIKEN AND REPORT	-1056	
2	- WITNESS LIST	-1056	
3	- 911 TAPE	-1816	
4	- INVESTIGATION REPORT	-1817	
5	- NOTE FROM JURY REQUESTING AN EASEL	-2142	
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1	- CERTIFICATE		-1104
2	- STATEMENT	-1252	
3	- STATEMENT	-1252	
4	- STATEMENT	-1252	
5	- CLIMATOLOGY DATA		-1829
6	- OWENS STEEL APPLICATION		-1829
7	- PHOTOGRAPH		-2027
8	- PHOTOGRAPH		-2027
9	- PHOTOGRAPH		-2027
10	- PHOTOGRAPH		-2027
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NO.	DESCRIPTION	ID.	EV.
<u>FOR THE STATE:</u>			
1	SUMMARY CHART		--925
2	SUMMARY CHART		--952
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4	MAP		--987
5	LARGE PHOTOGRAPH		-1015
6	SENTENCE SHEET		-1029
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8	DOCUMENT - EXTENSION LETTER		-1089
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10	CERTIFICATE OF RELEASE		-1108
11	MAP		-1109
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20	FLOOR MAT		-1141
21	FLOOR MAT		-1141
22	SHAVING CASE		-1142

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NO.	DESCRIPTION	ID.	EV.
<u>FOR THE STATE:</u>			
23	- CANE WITH BRASS DUCK HEAD		-1144
24	- COPY OF CHECK		-1172
25	- COPY OF CHECKS		-1177
26	- CAMERA		-1233
27	- STATEMENT/RECEIPT		-1242
28	- BENCH WARRANT		-1272
29	- MAP		-1290
30	- MAP		-1298
31	- STATEMENT		-1304
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33	- HANDWRITTEN STATEMENT		-1317
34	- STATEMENT		-1321
35	- AUDIOTAPE		-1321
36	- MESSAGE/NOTE		-1328
37	- MESSAGE/NOTE		-1328
38	- PHOTOGRAPH		-1443
39	- PHOTOGRAPH		-1443
40	- PHOTOGRAPH		-1448
41	- PHOTOGRAPH		-1448
42	- PHOTOGRAPH		-1448
43	- FINGERPRINT CARD		-1454
44	- PHOTOGRAPH		-1458

E X H I B I T S

NO.	DESCRIPTION	ID.	EV.
<u>FOR THE STATE:</u>			
45 -	PHOTOGRAPH		-1 458
46 -	PHOTOGRAPH		-1 458
47 -	PHOTOGRAPH		-1 458
48 -	PHOTOGRAPH		-1 458
49 -	PHOTOGRAPH		-1 458
50 -	KEYCASE		-1 461
51 -	SCREWDRIVER		-1 464
52 -	PHOTOGRAPH		-1 466
53 -	PHOTOGRAPH		-1 466
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56 -	SHIRT		-1 471
57 -	CHART		-1 499
58 -	MEMO NOTICE/LETTER		-1554
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60 -	MEMO NOTICE/LETTER		-1559
61 -	MEMO NOTICE/LETTER		-1560
62 -	LETTER		-1564
63 -	STATEMENT		-1626
64 -	REQUEST LETTER		-1628
65 -	REQUEST LETTER		-1632
66 -	REQUEST LETTER		-1644

E X H I B I T S

NO.	DESCRIPTION	ID.	EV.
<u>FOR THE STATE:</u>			
67	- REQUEST LETTER		-1648
68	- LETTER		-1660
69	- LETTER		-1660
70	- LETTER		-1662
71	- LETTER		-1663
72	- PHOTOGRAPH		-1668
73	- PHOTOGRAPH		-1668
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75	- PHOTOGRAPH		-1683
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79	- PHOTOGRAPH		-1683
80	- PHOTOGRAPH		-1683
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82	- PHOTOGRAPH		-1683
83	- CHART/DIAGRAM OF WOUNDS		-1714
84	- AUTOPSY DIAGRAM		-1716
85	- PHOTOGRAPH		-1741
86	- AWARD		-1745
87	- CERTIFICATE		-1745
88	- PHOTOGRAPH		-1748

E X H I B I T S

NO.	DESCRIPTION	ID.	EV.
<u>FOR THE STATE:</u>			
89	- PHOTOGRAPH		-1748
90	- BOOKING PHOTOGRAPH		-2004

1 Wednesday, July 12, 2000

2 (WHEREUPON, the following took place
3 in-chambers with Juror Number 258, Wilson T. Outlaw, III.)

4 THE COURT: In the State versus Bennett, back on
5 the record. This is Juror 258, Mr. Outlaw.

6 MR. YOUNG: The defendant wants to be present.

7 THE COURT: All right.

8 (WHEREUPON, the defendant enters the Judge's
9 Chambers.)

10 THE COURT: Back on the record in the State versus
11 Bennett. This is Juror 258, Mr. Outlaw.

12 Mr. Outlaw, you indicated this morning to me that
13 you have some other problems that you had not discussed
14 yesterday; was that correct?

15 MR. OUTLAW: Yes, sir.

16 THE COURT: Can you just very briefly tell me what
17 the situation is?

18 MR. OUTLAW: I have schizophrenia and I have high
19 blood pressure.

20 THE COURT: Okay. Have you been to a doctor for
21 these before?

22 MR. OUTLAW: Yes, sir. I've been in therapy for
23 about 15 years, ever since I was 15.

24 THE COURT: Who is your doctor?

25 MR. OUTLAW: Dr. David Downing.

1 THE COURT: And have you talked to the doctor about
2 giving you a statement?

3 MR. OUTLAW: Yes, sir.

4 THE COURT: And what has he indicated?

5 MR. OUTLAW: Said there's no problem.

6 THE COURT: All right. Now, has your doctor given
7 any indications as to whether he feels that you should be on
8 a jury or not?

9 MR. OUTLAW: Yes, he said it would be too stressful
10 for me to be on a jury.

11 THE COURT: Okay. Have you ever been hospitalized
12 for this condition at all?

13 MR. OUTLAW: Yes, sir, I've been hospitalized at
14 least six or seven times.

15 THE COURT: And this is a condition you've had for
16 about 15 years you say?

17 MR. OUTLAW: Yes, sir. Yes, sir.

18 THE COURT: And, in essence, I don't know that you
19 directly said this, I guess I assumed, are you saying you
20 want to be excused from the jury for this reason?

21 MR. OUTLAW: Yes, sir.

22 THE COURT: What about the blood pressure
23 situation? Tell me about that.

24 MR. OUTLAW: I just got on blood pressure medicine.

25 THE COURT: Right.

1 MR. OUTLAW: I take a half a pill every morning.

2 THE COURT: Yes, sir. Have you -- since you've
3 been involved in this have you noticed any of the symptoms of
4 blood pressure increase at all?

5 MR. OUTLAW: No, sir, not an increase.

6 THE COURT: You feel like you'll be able to handle
7 that I guess then; is that right?

8 MR. OUTLAW: Yes, sir.

9 THE COURT: But I gather the schizophrenia
10 situation is the problem; is that right?

11 MR. OUTLAW: Yes, sir.

12 THE COURT: And you're asking to be excused from
13 the jury for that reason?

14 MR. OUTLAW: Yes, sir.

15 THE COURT: Okay. When will you be able to get a
16 doctor's statement to us?

17 MR. OUTLAW: They open at 10:00, so just as soon as
18 he comes in I'll be able to get one.

19 THE COURT: Okay. Any questions from the State?

20 MR. MYERS: No, sir.

21 THE COURT: Defense?

22 MR. FLOYD: No questions, Your Honor.

23 THE COURT: All right. Why don't you step back
24 outside just a minute, okay, like we did yesterday.

25 MR. OUTLAW: Okay.

1 (WHEREUPON, Juror Outlaw leaves the Judge's
2 Chambers.)

3 THE COURT: What's the State's position?

4 MR. MYERS: Judge's discretion, just to be
5 consistent.

6 THE COURT: Defense's position?

7 MR. FLOYD: Your Honor, there is no doctor's note
8 yet. We would object to his excuse pending a doctor's
9 excuse.

10 THE COURT: I'm going to excuse the juror based on
11 what he's told me. Of course, his testimony was sworn as it
12 was the other day. He indicates that he's had this condition
13 for 15 years. He's been hospitalized for six or seven times
14 with it. He has been in therapy for this period of time.
15 Unquestionably, that's a legitimate reason and that's
16 consistent with the other jurors we've had in that situation.
17 So we'll excuse the juror.

18 Ask him to step back in.

19 (WHEREUPON, Juror Outlaw enters the Judge's
20 Chambers.)

21 THE COURT: Mr. Outlaw, we'll excuse you from
22 having to sit as a juror. And you need to go directly to
23 your doctor's office and bring that statement right back to
24 us right away, okay?

25 MR. OUTLAW: Thank you, sir. I appreciate it.

1 THE COURT: Yes, sir.

2 (WHEREUPON, Juror Outlaw was excused.)

3 THE COURT: Anything else then before we go out and
4 draw the jury? Have we heard from Ms. Smith?

5 THE CLERK: No, sir, we got the deputies out.

6 THE COURT: Okay.

7 Let me note for the record, Mr. Bennett was present
8 for these proceedings with the juror.

9 Well, all we can do it wait on her, right. While
10 we're waiting on her, let's wait until the jurors come back
11 that we gave the witness list to and let me just take them
12 one at a time and they can tell me about that.

13 (WHEREUPON, Juror Number 133, Jennifer M.
14 Garrett, enters the Judge's Chambers.)

15 THE COURT: This is Ms. Garrett.

16 Ms. Garrett, I apologize for not giving this to you
17 when you came in before. Did you look over the witness list
18 that we gave you?

19 MS. GARRETT: Yes, sir.

20 THE COURT: Did you recognize any names on that?
21 And without giving me any names, just tell me first yes or
22 not, did you recognize any names?

23 MS. GARRETT: Yes.

24 THE COURT: Do you know by number which ones? You
25 don't know by number because you don't have the list.

1 MS. GARRETT: It was 50.

2 THE COURT: Number 50?

3 MS. GARRETT: I believe so.

4 THE COURT: Okay. Why don't you look at my list
5 and tell me and make sure it's the right one, okay.

6 MS. GARRETT: Uh-huh.

7 THE COURT: Number 50, how do you know this
8 gentleman?

9 MS. GARRETT: If it's the same gentleman my little
10 brother used to play softball with him.

11 THE COURT: By the fact that you know him, if he
12 testified, would that cause you -- sway you at all as a juror
13 if he were a witness in the case?

14 MS. GARRETT: No, sir.

15 THE COURT: Anybody else you recognize?

16 MS. GARRETT: Uh-uh.

17 THE COURT: Okay. Thank you, ma'am.

18 (WHEREUPON, Juror Garrett leaves the Judge's
19 Chambers.)

20 (WHEREUPON, Juror Number 54, Thomas William
21 Brown, enters the Judge's Chambers.)

22 THE COURT: What was your name and number, please?

23 MR. BROWN: Thomas Brown, 54.

24 THE COURT: All right, Mr. Brown, just tell me
25 first yes or no; do you recall that you recognize anyone on

1 this witness list?

2 MR. BROWN: I recognize a name, yes, sir.

3 THE COURT: Now, I want you to look on the list and
4 tell me what number. Don't give me the name just tell me the
5 number.

6 MR. BROWN: The number is three.

7 THE COURT: Let me look at your list. And how do
8 you know this man?

9 MR. BROWN: I know the family. If it's the same
10 person, I think I know the family and the particular area
11 that they live in.

12 THE COURT: What area is that?

13 MR. BROWN: If I'm not mistaken, the Gaston area.

14 THE COURT: And you know the family?

15 MR. BROWN: Yes, sir.

16 THE COURT: How do you know the family?

17 MR. BROWN: I pretty much grew up in the area, Your
18 Honor, Gaston, Dixiana area.

19 THE COURT: Okay.

20 MR. BROWN: If I'm not mistaken it's the same
21 family, and I know some of the family members, went to school
22 with some of them.

23 THE COURT: Okay. If this juror [sic] testified
24 would that sway you as a witness at all? Would that have any
25 affect on you?

1 MR. BROWN: I don't feel like it would, but the
2 outcome will make me uncomfortable as being a juror, to be
3 honest with you, being that I do know him.

4 THE COURT: Okay, if he testified?

5 MR. BROWN: Yes, sir. And then number, I think it
6 was 116.

7 THE COURT: 116?

8 MR. BROWN: I think.

9 THE COURT: And how did you know this witness?

10 MR. BROWN: Same principle, I went to school with
11 him and his family. I worked with him.

12 THE COURT: If he testified, would that give you
13 any problem as a juror giving both sides a fair trial?

14 MR. BROWN: It would make me uncomfortable, Your
15 Honor, knowing that they know me.

16 THE COURT: Yes, sir. Well, now, you understand,
17 uncomfortable is one thing, but if it would affect you as a
18 juror is another thing. If it would keep you from carrying
19 out your duty as a juror to give both sides a fair and
20 impartial trial, that's the issue.

21 MR. BROWN: No, sir, I would have to be fair.

22 THE COURT: I'm sorry?

23 MR. BROWN: I would have to be fair.

24 THE COURT: Okay. But are you saying you could
25 give both sides a fair and impartial trial if these witnesses

1 testified?

2 MR. BROWN: Yes, sir, I guess I -- I would have to,
3 Your Honor.

4 THE COURT: You can? Are you saying you can?

5 MR. BROWN: Yes, sir.

6 THE COURT: Now, one thing I didn't mention too, I
7 think to some of these others, I didn't ask them if they knew
8 the victim in the case. But the victim in the case, the man
9 killed was Mr. Benton Smith, Benton Darrell Smith was his
10 full name. Did you know Mr. Smith or know of him at all?

11 MR. BROWN: I don't think that I know him.

12 THE COURT: Okay. All right. You can go ahead and
13 go back.

14 (WHEREUPON, Juror Brown leaves the Judge's
15 Chambers.)

16 THE COURT: Did either of you have any questions of
17 this witness, the last witness, Mr. Brown?

18 MR. MYERS: No, sir.

19 MR. FLOYD: No, Your Honor.

20 THE COURT: What's your position on this witness at
21 this point? Does this change your position as to his ability
22 to sit as a juror, the State?

23 MR. MYERS: Court's discretion.

24 MR. FLOYD: We think he's still qualified.

25 THE COURT: I'll find that he still can sit as a

1 juror. The way he gave his answers, it was close, but I
2 think he was just being vague more than anything.

3 (WHEREUPON, Juror Number 88, Robert L. Corley,
4 Jr., enters the Judge's Chambers.)

5 THE COURT: What's your name and number?

6 MR. CORLEY: Robert Corley.

7 THE COURT: Okay. Mr. Corley, tell me first of all
8 again with just a yes or no, did you recognize any names on
9 this witness list?

10 MR. CORLEY: I think so.

11 THE COURT: Can you give me the number?

12 MR. CORLEY: Yes, sir. I'll have a question, but
13 it's 125.

14 THE COURT: All right. And how do you think you
15 know this juror?

16 MR. CORLEY: Is that Dr. Stephen Soltis?

17 THE COURT: I don't know. There's a lawyer. Is
18 this is a doctor or a lawyer?

19 MR. FLOYD: A lawyer.

20 THE COURT: It's the lawyer Stephen Soltis.

21 MR. CORLEY: I don't know him.

22 THE COURT: Anyone else you recognize?

23 MR. CORLEY: No.

24 THE COURT: All right. Thank you, sir.

25 (WHEREUPON, Juror Corley leaves the Judge's

1 Chambers.)

2 THE COURT: Is there anybody else back there?

3 THE CLERK: No, sir, only three.

4 THE COURT: What we'll do when we go in is I'll
5 just ask again as an entire group if any of them knew
6 Mr. Smith because I think some I asked and some I didn't,
7 quite frankly.

8 Have we heard from Fances Smith?

9 THE CLERK: She worked at J. B. Martin the other
10 day.

11 THE COURT: Counsel, you still want to wait until
12 she gets here? I anticipated if they go get her it's going
13 to take 30 minutes once they find her and get her here.

14 THE CLERK: At least that, because if her husband
15 didn't give her the message she may not be packed yet.

16 MR. FLOYD: Judge, we just suggest go ahead and go
17 forward.

18 MR. MYERS: Let's go ahead out here and deal with
19 the jury, get everything squared away. Once that's squared
20 away, give us a final report.

21 THE COURT: Okay.

22 (WHEREUPON, the in-chambers hearing was
23 concluded and the following took place in open-court.)

24 THE COURT: Ladies and gentlemen of the jury
25 venire, let me thank you again for being patient with us. I

1 particularly want to thank you for moving your time schedule
2 up to be with us this morning. We're very, very fortunate in
3 that jury selection went better than I had anticipated it
4 would go, much better than I have had occur in the past. And
5 I think, frankly, that we owe that to all of you, the fact
6 that you were so cooperative with us.

7 And believe me, I will tell you, I've done death
8 penalties in several other counties and in those cases you'd
9 be amazed how uncooperative some jurors can be. But because
10 you've been so cooperative, so easy to deal with, frankly, we
11 have been able to move along faster than we thought we would.
12 So we thank you for that.

13 Let me apologize, first of all, with this first
14 question. I need to ask a question. I did not ask it to all
15 of you, I did ask it to some of you. So I will ask it to you
16 as a group just to be sure.

17 And by the way, let me confirm, as I understand,
18 Madam Clerk, all jurors are here except one, and there was
19 apparently a problem with notification. I understand it was
20 not her fault; is that correct?

21 THE CLERK: That's correct, Judge, and she is in
22 route.

23 THE COURT: Okay. Any idea how long it will take
24 her to get here?

25 THE CLERK: She's coming from Leesville. Maybe 20,

1 25 minutes.

2 THE COURT: She is on the road, though; is that
3 right?

4 THE CLERK: Yes, sir.

5 THE COURT: Ladies and gentlemen, as we told you in
6 this case, Mr. Bennett was previously found guilty of murder
7 by a previous jury. And I didn't ask all of you this, I
8 asked some of you, but let me ask this. The victim in this
9 case, the man who was killed was Mr. Benton Darrell Smith. I
10 think he goes by Benton Smith. Apparently lived around the
11 Gaston community.

12 Is that correct, Counsel?

13 MR. MYERS: Outside of Swansea.

14 THE COURT: Okay. Outside of Swansea. Did any
15 member of the jury venire know Mr. Smith or know of Mr. Smith
16 in any way? Anybody recognize that name?

17 (There was no response.)

18 THE COURT: Okay. Let me note for the record that
19 none of the jurors indicate they recognize the name of
20 Mr. Smith.

21 Counsel, what's your pleasure as to the juror that
22 we have missing? Do you want to wait just a few minutes
23 since she's on the way? Do you want to go ahead and wait a
24 few minutes until she can get here or go ahead and include
25 her in the draw?

1 MR. MYERS: Let's just include her in the draw and
2 go on and then we can take it up when she gets here.

3 THE COURT: What about the defense?

4 MR. FLOYD: Your Honor, we would like to go ahead
5 and proceed. But we would suggest that we just move her back
6 in the list until she gets here. You know, just bypass her
7 if she's not here by the time we get to her, and if she gets
8 here we'll put her in --

9 THE COURT: I think I need to leave her in the list
10 where she is because my standard procedure has always been to
11 draw them as they are. We do know that she's on the way. If
12 there is a problem for any reason we can certainly take the
13 problem up when she gets here.

14 And, Madam Clerk, let me be sure. From what you
15 gathered, I assume there are no problems with her; is that
16 correct?

17 THE CLERK: I think there was just a problem with
18 her getting the message, Judge, to be here earlier. She was
19 originally told 2:30, and there was just some
20 miscommunication about her getting here at 9:00.

21 THE COURT: Her husband didn't give her the
22 message, I think.

23 THE CLERK: Well, you know how husbands are.

24 THE COURT: We'll probably want to keep that
25 husband in our prayers, too. But anyway, she will be on the

1 way then.

2 Counsel, at this time, we're going to go ahead and
3 swear the sequestration team first, but before I do that is
4 the State ready to begin with drawing the jury?

5 MR. MYERS: We will be after you take care of the
6 sequestration team.

7 THE COURT: Is the defense ready?

8 MR. FLOYD: Yes, Your Honor.

9 THE COURT: Can you ask Agent Jacobs to bring her
10 team around, please.

11 Ladies and gentlemen of the jury, the folks
12 standing in front of me now are the team who will sequester
13 you during the trial. As I told you, the jury will be
14 sequestered in a motel. You will stay together at all times.
15 These are the folks who will basically live with you for the
16 next few days. They'll take care of all your needs, and I
17 guess one of the perks of this job is these folks will be
18 taking care of your meals and everything that you need. So I
19 can assure you you'll be well taken care of. And I'm going
20 to give you a further charge on this a little bit later on.

21 But, at this time, let me ask if each member of the
22 team, starting down here on my left, will identify yourselves
23 for the record, please, so we know who we are dealing with,
24 okay?

25 AGENT MCDERMOTT: My name is Richard E. McDermott,

1 AGENT JACOBS: Genie Jacobs.

2 AGENT WICKER: Thomas Wicker.

3 AGENT COCKRELL: Buck Cockrell.

4 AGENT AYCOCK: Ken Aycock.

5 AGENT ATENCIO: Paul Atencio.

6 THE COURT: Agent Jacobs, I believe you're going to
7 be the head of team; is that correct?

8 AGENT JACOBS: Yes, sir.

9 THE COURT: All right. Are all of you ready to be
10 sworn?

11 Madam Clerk, will you put the team under oath for
12 me, please.

13 (WHEREUPON, the sequestration team was given
14 their oath.)

15 THE COURT: Thank you, I appreciate it.

16 Ladies and gentlemen, we're going to go through the
17 procedure now with drawing the jury. And let me tell you
18 that as we're drawing if you are selected and once you're in
19 the jury box you will be under the supervision of this SLED
20 team. So be prepared to do anything that they need you to do
21 during the trial.

22 With that in mind, is the State ready to draw?

23 MR. MYERS: The State is ready, Your Honor.

24 THE COURT: The defense ready?

25 MR. FLOYD: The defense is ready, Your Honor.

1 THE COURT: All right. Madam Clerk, I'm going to
2 turn them over to you.

3 THE CLERK: Thank you, Judge.

4 As your name is called if you will please come
5 forward. Come all the way up here to the front, turn around
6 and face back out to the audience and remain standing until
7 we either direct you to the jury box or back to your seat.

8 Number 88, Robert Corley.

9 (A white male came forward.)

10 THE CLERK: What say you for the State?

11 MR. MYERS: Present Mr. Corley.

12 THE CLERK: The defense?

13 MR. FLOYD: Excuse Mr. Corley, please.

14 THE CLERK: Go back and have your seat, sir.

15 Number 30, Ann Bedenbaugh.

16 (A white female came forward.)

17 THE COURT: Let me note for the record, the State
18 has five strikes, the defense has ten strikes.

19 THE CLERK: What say you for the State?

20 MR. MYERS: Present Ms. Bedenbaugh.

21 THE CLERK: The defense?

22 MR. FLOYD: Present Ms. Bedenbaugh.

23 THE CLERK: Have a seat in the jury box.

24 Number 348, Nidsa Stokes.

25 (A white female came forward.)

1 THE CLERK: What say you for the State?

2 MR. MYERS: Excuse Ms. Stokes.

3 THE CLERK: Go back and have your seat, ma'am.

4 Number 305, Shirlie Sands.

5 (A black female came forward.)

6 THE CLERK: What say you for the State?

7 MR. MYERS: Excuse Ms. Sands.

8 THE CLERK: Go back and have your seat, ma'am.

9 Number 133, Jennifer Garrett.

10 (A white female came forward.)

11 THE CLERK: What say you for the State?

12 MR. MYERS: Present Ms. Garrett.

13 THE CLERK: The defense?

14 MR. FLOYD: Present Ms. Garrett.

15 THE CLERK: Have a seat in the jury box.

16 Number 54, Thomas Brown.

17 (A black male came forward.)

18 THE CLERK: What say you for the State?

19 MR. MYERS: Present Mr. Brown.

20 THE CLERK: The defense?

21 MR. FLOYD: Present Mr. Brown.

22 THE CLERK: Have a seat in the jury box.

23 Number 327, Frances Smith.

24 (A white female came forward.)

25 THE CLERK: What say you for the State?

1 MR. MYERS: Present Ms. Smith.

2 THE CLERK: For the defense?

3 MR. FLOYD: Present Ms. Smith.

4 THE COURT: Ms. Smith, as we indicated, was not
5 here at this point, is on the way. Let's be sure and have a
6 bailiff, if we could, have a bailiff or someone be at the
7 door to meet Ms. Smith when she gets here. Be sure that
8 nobody in the courthouse talks to her, okay. Escort her
9 immediately to the jury room. Do not let anybody talk to
10 her. Thank you, sir.

11 THE CLERK: Number 284, Ashley Ray.

12 (A white female came forward.)

13 THE CLERK: What say you for the State?

14 MR. MYERS: Present Ms. Ray.

15 THE CLERK: The defense?

16 MR. FLOYD: Present Ms. Ray.

17 THE CLERK: Have a seat in the jury box.

18 Number 210, Kay Locklair.

19 (A white female came forward.)

20 THE CLERK: What say you for the State?

21 MR. MYERS: Present Ms. Locklair.

22 THE CLERK: The defense?

23 MR. FLOYD: Present Ms. Locklair.

24 THE CLERK: Have a seat in the jury box.

25 Number 274, Elizabeth Porter.

1 (A white female came forward.)

2 THE CLERK: What say you for the State?

3 MR. MYERS: Present Ms. Porter.

4 THE CLERK: The defense?

5 MR. FLOYD: Excuse Ms. Porter.

6 THE CLERK: Go back and have your seat, ma'am.

7 Number 161, Stephanie Harris.

8 (A white female came forward.)

9 THE CLERK: What say you for the State?

10 MR. MYERS: Excuse Ms. Harris.

11 THE CLERK: Go back and have your seat, ma'am.

12 Number 119, Joan Follmer.

13 (A white female came forward.)

14 THE CLERK: What say you for the State?

15 MR. MYERS: Present Ms. Follmer.

16 THE CLERK: For the defense?

17 MR. FLOYD: Present Ms. Follmer.

18 THE CLERK: Have a seat in the jury box.

19 Number 381, Robert Wicker.

20 (A white male came forward.)

21 THE CLERK: What say you for the State?

22 MR. MYERS: Present Mr. Wicker.

23 THE CLERK: For the defense?

24 MR. FLOYD: Excuse Mr. Wicker.

25 THE CLERK: Go back and have your seat, sir.

1 Number 280, Brenda Quaethem.

2 (A white female came forward.)

3 THE CLERK: What say you for the State?

4 MR. MYERS: Present Ms. Quaethem.

5 THE CLERK: Defense?

6 MR. FLOYD: Present Ms. Quaethem.

7 THE CLERK: Have a seat in the jury box.

8 Number 175, Eddy Huckabee.

9 (A white male came forward.)

10 THE CLERK: What say you for the State?

11 MR. MYERS: Present Mr. Huckabee.

12 THE CLERK: The defense?

13 MR. FLOYD: Excuse Mr. Huckabee.

14 THE CLERK: Go back and have your seat, sir.

15 Number 123, Lynda Franklin.

16 (A white female came forward.)

17 THE CLERK: What say you for the State?

18 MR. MYERS: Excuse Ms. Franklin.

19 THE CLERK: Go back and have a seat, ma'am.

20 Number 322, Clifton Simmons.

21 (A white male came forward.)

22 THE CLERK: What say you for the State?

23 MR. MYERS: Present Mr. Simmons.

24 THE CLERK: For the defense?

25 MR. FLOYD: Present Mr. Simmons.

1 THE CLERK: Have a seat in the jury box.

2 Number 239, Jerry Miller.

3 (A white male came forward.)

4 THE CLERK: What say you for the State?

5 MR. MYERS: Present Mr. Miller.

6 THE CLERK: For the defense?

7 MR. FLOYD: Excuse Mr. Miller, please.

8 THE CLERK: Go back and have your seat, sir.

9 Number 362, John Teague.

10 (A white male came forward.)

11 THE CLERK: What say you for the State?

12 MR. MYERS: Present Mr. Teague.

13 THE CLERK: The defense?

14 MR. FLOYD: Excuse Mr. Teague, please.

15 THE CLERK: Go back and have your seat, sir.

16 Number 51, Gwendolen Brown.

17 (A white female came forward.)

18 THE CLERK: What say you for the State?

19 MR. MYERS: Present Ms. Brown.

20 THE CLERK: The defense?

21 MR. FLOYD: Present Ms. Brown.

22 THE CLERK: Have a seat in the jury box.

23 Number 53, Michael Brown.

24 (A white male came forward.)

25 THE CLERK: What say you for the State?

1 MR. MYERS: Present Mr. Brown.

2 THE CLERK: The defense?

3 MR. FLOYD: Excuse Mr. Brown, please.

4 THE CLERK: Go back and have your seat, sir.

5 Number 112, Jimmy Elmore.

6 (A white male came forward.)

7 THE CLERK: What say you for the State?

8 MR. MYERS: Present Mr. Elmore.

9 THE CLERK: The defense?

10 MR. FLOYD: Present Mr. Elmore.

11 THE CLERK: Have a seat in the jury box.

12 Number 135, Caroline Gaskin.

13 (A white female came forward.)

14 THE CLERK: What say you for the State?

15 MR. MYERS: Present Ms. Gaskin.

16 THE CLERK: The defense?

17 MR. FLOYD: Excuse Ms. Gaskin, please.

18 THE CLERK: Go back and have your seat, ma'am.

19 Number 39, Julian Blake.

20 (A white male came forward.)

21 THE CLERK: What say you for the State?

22 MR. MYERS: Present Mr. Blake.

23 THE CLERK: The defense?

24 THE COURT: Let me note, we have 11 jurors at this
25 point, is that correct, counting Ms. Smith?

1 THE CLERK: That's correct.

2 MS. FLOYD: Oh, we've got 11 jurors then.

3 THE CLERK: Right, the one missing juror.

4 MR. FLOYD: Excuse Mr. Blake, please.

5 THE CLERK: Go back and have your seat, sir.

6 Number 334, Wally Sox.

7 (A white male came forward.)

8 THE CLERK: What say you for the State?

9 MR. MYERS: Present Mr. Sox.

10 THE CLERK: The defense?

11 MR. FLOYD: Present Mr. Sox.

12 THE CLERK: Have a seat in the jury box.

13 THE COURT: Counsel, we will proceed to draw

14 alternates. As you know, we will draw two alternates. As to

15 each alternate position, the State will have one strike and

16 the defense will have two.

17 Madam Clerk.

18 THE CLERK: Number 229, David McNinch.

19 (A white male came forward.)

20 THE CLERK: What say you for the State?

21 MR. MYERS: Excuse Mr. McNinch.

22 THE CLERK: Go back and have a seat, sir.

23 260, Patricia Padgett.

24 (A white female came forward.)

25 THE CLERK: What say you for the State?

1 MR. MYERS: Present Ms. Padgett.

2 THE CLERK: Defense?

3 MR. FLOYD: Excuse Ms. Padgett.

4 THE CLERK: Go back and have your seat, ma'am.

5 Number 49, Karen Brenneke.

6 (A white female came forward.)

7 THE CLERK: What say you for the State?

8 MR. MYERS: Present Ms. Brenneke.

9 THE CLERK: The defense?

10 MR. FLOYD: Excuse Ms. Brenneke, please.

11 THE CLERK: Go back and have your seat, ma'am.

12 Number 177, Adam Humphrey.

13 (A white male came forward.)

14 THE CLERK: What say you for the State?

15 MR. MYERS: Present Mr. Humphrey.

16 THE CLERK: The defense?

17 MR. FLOYD: Present Mr. Humphrey.

18 THE COURT: Have a seat in the jury box.

19 This is alternate two. Number 12, Iry Austin.

20 (A white male came forward.)

21 THE CLERK: What say you for the State?

22 MR. MYERS: Present Mr. Austin.

23 THE CLERK: The defense?

24 MR. FLOYD: Excuse Mr. Austin, please.

25 THE CLERK: Go back and have your seat, sir.

1 Number 370, Ronald Turner.

2 (A white male came forward.)

3 THE CLERK: What say you for the State?

4 MR. MYERS: Excuse Mr. Turner.

5 THE CLERK: Go back and have your seat, sir.

6 Number 361, William Taylor.

7 (A white male came forward.)

8 THE CLERK: What say you for the State?

9 MR. MYERS: Present Mr. Taylor.

10 THE CLERK: The defense?

11 MR. FLOYD: Present Mr. Taylor.

12 THE CLERK: Have a seat in the jury box.

13 THE COURT: For the record, we now have 12 jurors
14 selected and two alternates.

15 Ladies and gentlemen, what I'm going to do is ask
16 you to step to the jury room at this time. Now, when you do,
17 it is very, very important, and I will give you some more
18 detail on this later, but it is very important that you not
19 talk about the case in any way, not talk about this case, any
20 case like it, not even talk about anything regarding the
21 court system in any way. From this point on you will be
22 asked to concentrate on what takes place in the courtroom,
23 and that's where it should be, and we certainly don't want
24 you talking about anything else right now.

25 So with that in mind, I'll ask you to step to the

1 jury room for a moment. Just follow the bailiffs, and we'll
2 bring you back in a second.

3 (WHEREUPON, the jury leaves the courtroom at
4 approximately 10:30 a.m.)

5 THE COURT: Counsel, let me ask you to approach, if
6 you would, please.

7 (WHEREUPON, the following side-bar was
8 reported.)

9 THE COURT: All attorneys and Mr. Bennett are
10 present. Are there any motions under Batson versus Kentucky?

11 MR. FLOYD: Yes, Your Honor. We object to the
12 State striking Juror Shirlye Sands.

13 THE COURT: We probably need to do this in
14 chambers.

15 MR. MYERS: The State would also move for a Batson
16 hearing.

17 THE COURT: Okay. Let's just do it back in
18 chambers then.

19 (WHEREUPON, the side-bar was concluded.)

20 THE COURT: Ladies and gentlemen of the jury, I've
21 got a couple of matters that I have to take up with the
22 attorneys. Just remain right where you are. Now, we're not
23 through with the jury selection process so it's still
24 important that you also not talk about the case in any way,
25 please, okay. If you'll just be patient with us we'll be

1 back in a few minutes.

2 Counsel, let's just step back in chambers.

3 (WHEREUPON, the following took place in
4 chambers.)

5 THE COURT: First of all, as we indicated, this is
6 a matter -- hearing regarding Batson or J. E. B. motions.
7 Let me ask defense, I understand you had some motions first;
8 is that correct? Which jurors?

9 MR. FLOYD: Yes, Your Honor, as to juror number --
10 well, 4 in the pool, Juror 305 overall, Shirlye Sands.

11 THE COURT: All right. That's Ms. Sands. She was
12 the 4th one qualified and she was the 4th one called. I
13 understand that was the second strike of the State, and she
14 is a black female.

15 MR. FLOYD: That's correct, Your Honor.

16 THE COURT: All right. Mr. Myers, what is the
17 reason for striking Ms. Sands?

18 MR. MYERS: Any other challenges by the defense,
19 Your Honor, other than 305?

20 THE COURT: That's fine. You want to tell me which
21 other ones you have?

22 MR. FLOYD: Also, juror number 3 on the list, 348
23 in the overall pool.

24 THE COURT: Ms. Stokes?

25 MR. FLOYD: Ms. Stokes.

1 THE COURT: Okay. Any others?

2 MR. FLOYD: Those would be the only ones.

3 THE COURT: Okay. All right. Mr. Myers, you want
4 to give me the reasons for striking those jurors.

5 MR. MYERS: That would be Stokes, 348?

6 THE COURT: Yes, sir, and Sands.

7 MR. MYERS: Yes, sir.

8 THE COURT: Okay. Mr. Myers, go ahead.

9 MR. MYERS: First juror that was called was Robert
10 Corley, Jr. He was a white male. The State presented him,
11 the defense struck him. The second juror called was Ann
12 Bedenbaugh, a white female. The State presented her with all
13 of its five strikes remaining. The defense accepted her as
14 she is a member of the jury.

15 Number three was Nidsa Stokes, S-t-o-k-e-s. She's
16 a white female, and that was the State's first strike. Very
17 frankly felt that the defense probably would have stricken
18 her but couldn't take that chance because when she testified
19 I thought that she probably would have been a good juror for
20 the State but she started to get emotional, nearly started
21 crying one time.

22 Our team has talked with people where she works.
23 She went through a divorce that was not pleasant, her
24 ex-husband was in law enforcement. He was assigned to
25 Governor Riley's team, security officer. I was told that

1 there was some resentment to law enforcement because of that
2 divorce, but mostly, partly I'm told that she has emotional
3 problems, emotional problems which was demonstrated by her in
4 the voir dire when she teared up a few times, which I thought
5 she was going to cry there.

6 Even though I thought she may have been favorable
7 to the State I couldn't chance having someone of an emotional
8 state on the jury in a death penalty case that may not only
9 impair her abilities to rationally reason out a death
10 sentence but would also affect the remaining jurors. That is
11 the reason we struck Ms. Stokes.

12 THE COURT: Okay. You want to respond to that?

13 MR. FLOYD: Your Honor, we, of course, didn't see
14 -- she seemed to be a well-balanced juror, thoughtful juror.
15 We have no information that would make her unfit to serve as
16 a death penalty juror, and we feel that she was -- the only
17 reason she was struck was because she does seem to have some
18 foreign extraction or at least -- and we feel that's the
19 reason that she was struck.

20 THE COURT: Counsel, I'm going to find the
21 explanation given by the State is a gender neutral
22 explanation. I assume it's based on her gender not her race.
23 I don't know if -- the Supreme Court has not recognized
24 anything regarding ethnic background at this point, but just
25 for the record, even if there were I find that it would also

1 be ethnic neutral. I don't know -- of course, obviously, any
2 time any attorney puts something on the record we certainly
3 give them room for their strategy reasoning.

4 I don't know anything about her background, her
5 personal background, but let me note that in making the
6 ruling I did note a little emotion on her part when I saw her
7 too. She was probably three or four feet from me, I think,
8 and I noticed a little bit of tearing a couple times by the
9 juror. I didn't know if it was excessive but there was some
10 tearing by her when she testified. So I find then that the
11 explanation given is gender neutral, ethnic neutral by the
12 Solicitor and I deny that motion.

13 Solicitor?

14 MR. MYERS: Additional sustaining grounds to that,
15 Your Honor. The Batson case by the South Carolina Supreme
16 Court and the Court of Appeals holds that the composition of
17 the jury is a relevant factor. I would like to point out
18 that on the jury selected there are one, two, three, four,
19 five, six, seven, eight females on the jury. Eight out of 12
20 are female. The State only used four strikes. If I had
21 wanted to strike all the females I would have used my fifth
22 strike on one of these eight who sat. Also, I assume that
23 the jury questionnaires in the Clerk's Office are a matter of
24 public record.

25 THE COURT: That's correct.

1 MR. MYERS: Number 16, the answer by Ms. Stokes,
2 number 16, the question; has any member of your family ever
3 worked for any law enforcement agency, prison, jail or
4 correctional institution? She put yes. Where? Her
5 ex-husband before divorce worked as a security agent for
6 former Governor Riley. This further substantiates some of
7 our background explanation.

8 THE COURT: You want to respond to the next juror,
9 Ms. Sands?

10 MR. MYERS: Yes, sir. Now, Ms. Stokes was the
11 third juror that was called. We struck her. The next juror,
12 the fourth juror, was Ms. Sands. Ms. Sands is a black
13 female. That was the second strike we used. Is this
14 challenged by the defense based on Batson or J. E. B.? Can I
15 ask that?

16 THE COURT: Sure. What's your challenge?

17 MR. FLOYD: We challenge on both, Your Honor.

18 THE COURT: Okay. Both.

19 MR. MYERS: As to both, the same grounds as
20 Ms. Stokes, as stated. There are eight females on the jury
21 panel. I could have used the fifth strike, I only used four,
22 if I wanted to strike females, but I didn't use a fifth
23 strike.

24 As a matter of fact, our only two strikes on the
25 alternate was we struck males. That was McNinch,

1 M-c-N-i-n-c-h, a white male; and Ronald Turner, a white male.
2 So if we wanted to strike all females, then the State would
3 have used all five of its main strikes for females. We only
4 used four. And for our two alternates we would have struck
5 females, but we didn't, we struck males, and females were
6 called.

7 Patricia Padgett was called. She was a white
8 female and was struck by the defense. We presented. Karen
9 Brenneke, a white female, she was called. She was struck by
10 the defense. We presented. So the State did not base its
11 strikes on gender in any way whatsoever.

12 Ms. Sands. Ms. Sands is employed in the public
13 school system in Lexington County. Her reputation in the
14 school system in Lexington County, Ms. Sands, is that she
15 resents authority. She is extremely confrontational, and
16 that she is difficult to get along with.

17 And as to resisting authority, I've got in my notes
18 on Ms. Sands, in my limited vernacular, that about the second
19 or third question that I asked her about the death penalty
20 I've got in quotations, she bowed up at me about the death
21 penalty position, in which she came forward, and I have kind
22 of challenged me.

23 Another thing about her, about every juror that
24 Your Honor questioned, you had to remind them to look forward
25 and speak into the microphone. Ms. Sands, I didn't see her

1 -- and I've got in my notes, didn't even acknowledge the
2 Judge, looked straight forward during questioning.

3 Furthermore, she is the only juror in the entire
4 qualification pool that is employed by the Lexington school
5 system. The defendant's mother was employed in the Lexington
6 school system. There's going to be educators on both sides
7 testifying. I didn't want to take the chance of some
8 connection in the school system.

9 But more importantly, the information that I got on
10 her is she resents authority. Her actions of not
11 acknowledging Your Honor when she was being voir dired by the
12 Court, her confrontational actions toward me when bowing up
13 when I was asking her about the position on the death
14 penalty, it caused me enough concern for me to make a note of
15 it. I couldn't have anybody on that jury disrespect our
16 information. And our position is that she would be a problem
17 in the jury room, along with the school system connection.
18 And those are the reasons we struck Ms. Sands.

19 Now, for the record, after Ms. Sands, the next
20 juror, number five, was Jennifer Garrett, a female. The
21 State accepted her. The defense accepted her. So a female
22 went up directly after Ms. Sands, and the State still had
23 three strikes left.

24 Then the next juror after Ms. Garrett was Thomas
25 Brown. Thomas Brown is a black male. With the State still

1 having three strikes left, the State presented Thomas Brown,
2 a black male. The defense accepted him. He was the only
3 other black member called for presentation. The State
4 accepted him with three strikes left. If we had had some
5 discriminatory intent based on race we would have stricken
6 Mr. Thomas Brown, a black male, because we still had three
7 strikes left. We did not do that.

8 Furthermore, race played no basis in this because
9 the victim, Benton Smith, in this case, is a black male. Our
10 two investigating officers in this case were Charlie Jones
11 and Freddie Hamer, black men. Freddie Hamer will be our
12 chief investigating officer.

13 Assisting us in the trial of this case is a black
14 officer. And he also was the one I relied on probably as
15 much as anyone in deciding who we accept on the jury, who we
16 would reject on the jury. A large number of our witnesses
17 will be black folks. Therefore, neither gender nor race
18 played any basis whatsoever in the excusing of Ms. Sands.

19 THE COURT: Anything else, Mr. Myers?

20 MR. MYERS: No, sir.

21 THE COURT: All right. Mr. Floyd?

22 MR. FLOYD: Your Honor, first of all, the State
23 exercised four strikes. They were all females. Secondly,
24 there were two blacks that were available. The defendant had
25 struck one of them, 50 percent of the blacks -- I mean, the

1 State did. They struck a lady that's well educated and
2 strong-willed because they wanted to isolate the one
3 remaining black juror and because they were concerned that
4 she would speak up on behalf of the defendant who is black.
5 It doesn't matter that the victim is black or the officers
6 are black. The only person who's going to be affected by the
7 decision of the jury is Johnny Bennett, who is a black man.

8 Now, as a result, we've got one black on the jury,
9 one out of 12, and the State, in our opinion, exercised this
10 strike on Ms. Sands solely because she is black and because
11 she'll speak up for what she thinks is right.

12 We didn't see any bucking up of her. We didn't see
13 any disrespect of her. What we saw was a woman who was
14 straightforward and expressed her opinions intelligently and
15 forthright, and that's why they didn't want her on there.
16 They don't want her, an intelligent, forthright,
17 strong-willed black woman on the jury because they're
18 concerned that somehow she'll speak up for and stand up for
19 this black man, who is on trial for his life.

20 And so we feel that all these explanations the
21 State has given on this matter are purely pretense to cover
22 up the real motive, which was to eliminate as many blacks as
23 they could. The only reason they didn't strike the black man
24 too is because there's no way they could defend there's two
25 blacks and they strike both of them. They know there's no

1 way to defend that. So they do the best they can and they
2 pick out the strongest one, the one with the most education,
3 the one maybe with the most backbone, and they take her out.
4 So we feel it is a Batson violation.

5 MR. MYERS: As to Mr. Thomas Brown, the sixth juror
6 called, a black male, he was -- Ms. Sands, black female;
7 Ms. Garrett, a white female; then it was Mr. Brown, a black
8 male, number six. I still had three strikes left.

9 Mr. Brown said on voir dire he's a licensed
10 minister. I imagine if someone is going to speak up for the
11 defendant, Mr. Brown probably would speak up for him as much
12 as anybody else, if the defense's position is that only black
13 folks will speak up for black folks.

14 If my intent has been to go on speculation, like
15 the defense alleges, who's going to speak up in the jury
16 room, and that's a crystal ball type of statement, I would
17 have stricken Mr. Brown. I did not strike Mr. Brown because
18 of race. It was not a factor.

19 THE COURT: Anything else?

20 MR. FLOYD: Your Honor, also as far as the school
21 connection goes, Mr. Bennett's mother works in the cafeteria
22 in School District Four. Ms. Sands is a teacher in School
23 District Two. They have no contact. And so I just wanted to
24 bring that to Your Honor's attention too.

25 MR. MYERS: I'd like the defense to point out any

1 other jurors presented by the State who were connected with
2 the Lexington County School District other than Ms. Sands.

3 THE COURT: Do you know of any similarly situated
4 jurors?

5 MR. FLOYD: No. We do not know of any others who
6 are school district employees.

7 THE COURT: Counsel, I'm going to also find that
8 the explanation given by the State is gender neutral and race
9 neutral. I will note in doing so that I guess each person
10 takes anything for how they interpret it in light of their
11 case.

12 I did note that Ms. Sands never did look at me
13 during the time, she always looked forward and she always
14 seemed to be hunched forward. Again, I make no particular
15 interpretation of that, but I do note that that was her state
16 during the time that she was testifying. So I'll also deny
17 the motion as to that juror.

18 MR. MYERS: As on the demeanor issue we argued,
19 Your Honor, further, and would like the record to reflect,
20 that the defense only used nine strikes. They did not
21 exhaust their peremptory challenges. They did not use ten
22 strikes.

23 MR. FLOYD: That's correct, Your Honor. And the
24 reason we did not use ten is because the only way we could
25 use ten strikes was to allow the State to present on the jury

1 Patricia Padgett, who, as you recall, was married to a man
2 who was formerly a Lexington County Sheriff's Department
3 employee and jailer and who worked in the jail on a contract
4 basis with the phone system while Johnny Bennett was in the
5 jail; who's husband worked for Adrian Bost who is going to be
6 a very strong State witness against Mr. Bennett, who visited
7 Mr. Padgett and the juror in their home and in the hospital;
8 and we made a strenuous objection to her being approved. The
9 Court, over our objection, approved her. Effectively because
10 of her placement in the jury panel listing it prevented us
11 from exercising ten strikes. We lost a strike, because she
12 was juror 27. So if we took ten strikes.

13 THE COURT: 28 --

14 MR. FLOYD: No, because Mr. Outlaw was --

15 THE COURT: Mr. McNinch was ahead of her.

16 MR. FLOYD: I know but --

17 THE COURT: He would have been next.

18 MR. FLOYD: No, Mr. -- see she was number 27, as it
19 went today.

20 THE COURT: Right.

21 MR. FLOYD: So if we took our ten strikes and their
22 12 jurors that's 22. So all the State had to do was take
23 their five strikes and we could have not prevented
24 Ms. Padgett from being on the jury. So we had to purposely
25 not use one of our strikes just so we could keep her off of

1 the jury.

2 THE COURT: Actually, that's not correct, and I
3 don't get into either side on this because I want to protect
4 the record. I can see something coming for appeals purposes,
5 I want to be sure to get this right. Your ninth strike was
6 Mr. Julian Blake. Had you struck Mr. Wally Sox, who actually
7 was the juror seated, then the next pick would have been
8 David McNinch.

9 MR. FLOYD: Which the State could have then used
10 their fifth strike.

11 THE COURT: Right, right.

12 MR. FLOYD: Then the 12th juror would have been
13 Patricia Padgett.

14 THE COURT: Right. But what I'm telling you is the
15 next one available, I don't know if you knew the State was
16 going to strike him or not.

17 MR. FLOYD: Well, we felt comfortable they were
18 going to exercise their fifth strike to get Ms. Padgett on
19 there and we couldn't take that chance because we effectively
20 -- we lost ten percent of our strikes because of the way the
21 panel was situated here and because Ms. Padgett was placed in
22 the jury panel.

23 THE COURT: I understand. Well, the fact remains,
24 and I think the Supreme Court still is obvious about it, as
25 you know, whether you use all of your strikes or not is a

1 fact that they take into account.

2 MR. FLOYD: I'm sure we really got put in a bad
3 position, Judge, and we're just hoping they will make some
4 new law here. Because if we took our ten strikes we had to
5 poison the jury panel with Ms. Padgett, and that was our only
6 choice we had, to take nine strikes or poison the jury panel.

7 THE COURT: Okay. All right. Anything else,
8 Mr. Floyd?

9 (There was no response.)

10 THE COURT: Mr. Myers, anything else on that?

11 MR. MYERS: No, sir, I think we got everything we
12 need on the record.

13 THE COURT: All right. You indicated you had some
14 Batson or J. E. B. motions.

15 MR. MYERS: Yes, sir. I'd like the record to
16 reflect that the defendant used nine strikes for the original
17 panel, seven of those were used against males. We think we
18 could make a valid J. E. B. challenge of the defense
19 overloading the jury with females. There are eight on there,
20 and they did so by excusing seven out of their nine strikes
21 to strike males. But in the sake of time, we'll withdraw
22 that.

23 THE COURT: Let me also note. I told you also,
24 Mr. Floyd, I was going to give you a chance to renew your
25 objections on the jurors, and I apologize, that's my fault, I

1 didn't do that ahead of time. But before we finalize this,
2 let me give you a chance to renew those and let me rule on
3 them, okay? Which ones did you object to?

4 MR. FLOYD: We renew our objection to the Court's
5 release from the panel of the first juror drawn, who was
6 Juror Number 259, Owensby. I'm sure Your Honor will recall
7 she was a Lutheran minister.

8 THE COURT: She asked to be excused; is that right?

9 MR. FLOYD: Well, what she said was she had a
10 problem and that she was supposed to be covering for three
11 Lutheran ministers who were on vacation, covering at the
12 hospital in case some of their parishioners needed
13 assistance. And we asked Your Honor to see if she could call
14 the senate, because she said that's who assigned her as this
15 backup, to see if they could assign someone else this week
16 for her which would free her up. Your Honor went ahead and
17 released her without having her check that out to see if
18 somebody could cover for her.

19 THE COURT: Okay. What other objections did you
20 have?

21 MR. FLOYD: As to Porter, Panel Number 10, Juror
22 Number 274, she's the lady whose sister was murdered some
23 years ago. She was a witness in the murder. The Solicitor's
24 Office, Mr. -- it was an assistant for Mr. Myers at the time
25 who handled it, but Mr. Myers was the Solicitor at the time.

1 We objected to her inclusion in the panel, which the Court
2 overruled. We renew that objection.

3 THE COURT: Who else?

4 MR. FLOYD: Padgett, Number 28. On the initial
5 panel, 260, in the entire panel. Her husband was a former
6 Lexington County Sheriff's Department employee, we just went
7 through that. Your Honor's inclusion of her. Because of
8 where she was chosen in the panel, then because of
9 Mr. Outlaw's release this morning made her Juror Number 27,
10 which meant we could only keep her off the jury panel by only
11 using nine of our strikes, rather than ten. So we lost the
12 strike in order to keep her off the panel. We renew our
13 objection to her inclusion in the panel.

14 Juror Number 15, Eddy Huckabee, 175 in the entire
15 panel. He's the one who was in the Rotary with the Solicitor
16 for 20 years, and also the veterinarian who has some
17 reservations about whether or not the fact that he had
18 euthanized over several hundred animals over his life might
19 somehow lessen the impact of death to him, and we felt there
20 was some ambivalence there and would object to his inclusion
21 to the panel.

22 The next was 23, Gaskin, entire panel 135. On
23 three different occasions she said that if a murder was done
24 with malice the death penalty was the appropriate punishment.
25 On three different occasions she was asked that and we

1 objected to her inclusion. We renew our objection to her
2 inclusion.

3 Next was the juror this morning, Mr. Outlaw. He
4 was excused this morning. We objected. There was no
5 doctor's excuse for his excusal. By excusing him at that
6 time that put Ms. Padgett into the number 27 position which
7 meant we had to lose one of our strikes in order to keep her
8 off the jury panel.

9 THE COURT: Okay. None of the jurors to whom
10 you've objected, as I understand, are on the panel; is that
11 correct?

12 MR. FLOYD: No. We struck them.

13 THE COURT: Okay.

14 MR. FLOYD: Well, except for Ms. Owensby, who we
15 would have liked to have on the panel.

16 THE COURT: Right. But as you know, the Supreme
17 Court has ruled that you don't have a right to a particular
18 kind of jury panel, just 12 fair and impartial jurors. And
19 noting that none of them on the panel have been objected to,
20 again, I would deny the motions.

21 All right. Anything else?

22 MR. MYERS: Nothing from the State.

23 (WHEREUPON, the in-chambers hearing was
24 concluded and court reconvened in the courtroom.)

25 THE COURT: Let me note that all the remaining

1 jurors are with us at this time.

2 Ladies and gentlemen, as you gathered, we have just
3 selected a jury for the case that we're about to begin. That
4 means that we're not going to have to inconvenience you any
5 longer. I appreciate all of you being patient with us in the
6 way that you have. You've been very good to work with, and
7 certainly want to apologize to you for any inconvenience.
8 There's some things we have to do and we have to do them in a
9 certain way. And that's why sometimes it's inconvenient but
10 it has to be done to protect everybody's rights in this
11 court.

12 With that in mind, we're going to release you in
13 just a moment. You won't have to come back and your jury
14 duty is done for this. But again, we're very grateful for
15 your participation and particularly for your patience with
16 us. With that in mind, you are excused from your jury
17 service and you're free to go. Thank you very much.

18 (WHEREUPON, the jury venire was excused.)

19 THE COURT: Counsel, as I understand it, what we
20 discussed earlier is that with scheduling we will, at this
21 point, I'm going to bring the jury in, give them a
22 sequestration charge and let them go ahead and go on back to
23 the motel now with the SLED agents and get settled in, then
24 we'll start back at two o'clock.

25 Any problem with that from the State?

1 MR. MYERS: No problem from the State. Just for
2 scheduling purposes on our part, when do you want to take up
3 these other motions?

4 THE COURT: What other motions are there, besides
5 the Jackson V. Denno?

6 MR. FLOYD: The equitable estoppel and then the
7 Jackson Denno.

8 THE COURT: Okay. Why don't we let the jury go
9 ahead and go back and we can do it now, if you want to. Any
10 problem with that?

11 MR. MYERS: We need about a five minute break.

12 THE COURT: Or we could come back before two
13 o'clock, come back at 1:00 or 1:30, what about that?

14 MR. MYERS: Whatever the Court desires.

15 THE COURT: Okay. Why don't we come back at 1:30.
16 It shouldn't take long to do these, I don't think, should it?

17 MR. MYERS: One other thing, Your Honor. We
18 haven't received the expert reports from the defense yet.

19 THE COURT: You have not received them?

20 MR. MYERS: No.

21 THE COURT: All right. Counsel?

22 MR. YOUNG: Your Honor, it's my understanding when
23 I called the office during the break that there is a report
24 that came through the fax this morning from our expert. As
25 soon as I can get over across the street I will have it

1 delivered to the Solicitor.

2 THE COURT: Yes, sir. Let's please go ahead and
3 get them. Because, again, frankly, I understand how the
4 experts can be. I know they've got demands like we have but
5 there's no reason why these folks can't get a written -- some
6 statement on what their report is going to be. Go ahead and
7 get it to them right away, please.

8 MR. YOUNG: Yes, sir.

9 THE COURT: Anything else for me to decide before
10 we bring the jury back in?

11 MR. MYERS: Not from the State.

12 THE COURT: The defense?

13 MR. FLOYD: Not from the defense, Your Honor.

14 THE COURT: All right. Let's bring the jury in.

15 Counsel, any objections to waiting to swearing the
16 jury until we start back at 2:00?

17 MR. MYERS: No objection.

18 MR. FLOYD: None from the defense.

19 (WHEREUPON, the jury enters the courtroom at
20 approximately 11:16 a.m.)

21 THE COURT: All parties and attorneys are in the
22 courtroom and all jurors have now returned.

23 Ladies and gentlemen, at this time what we're going
24 to do is to let you go ahead and take a few minutes to get
25 settled into the motel and get a lunch break. You will find

1 that your sequestration team has very good taste in selecting
2 your dining localities. You will eat well over the next few
3 days, I can guarantee that, if you want to.

4 I have a brief charge to give you. I wanted to
5 introduce to you Agent Genie Jacobs, who will be the head of
6 the team. There's one person who is designated the head of
7 the team, and she's the person that you would go to if you
8 have any particular problems around your living quarters over
9 the next few days. And as soon as she's here, we'll
10 introduce her.

11 Now, she is the head of the team, and these other
12 folks that you saw up here are the sequestration team. Their
13 duty will be to keep you together over the next few days.
14 They'll take you to lunch, they'll take you to evening meals,
15 they'll take you to breakfast, they will keep you together in
16 the motel. This is Agent Jacobs, Genie Jacobs. She will be
17 in charge of the team, and if you have any problems this is
18 the lady to whom you will go.

19 Now, you will find that this team will treat you in
20 a very cordial fashion. They have a job to do, please be
21 sure to remember that. They have to do their job. So when
22 they ask you to do something you need to be sure to do it. I
23 know that sometimes people will have individual problems and
24 you certainly -- they'll work with you on those as much as
25 you can. But their job is to keep you together as much as

1 possible and see that you're not subject to any sort of
2 outside influence.

3 Now, in just a moment they're going to take you to
4 a restaurant.

5 Which restaurant are they going to go to today?

6 THE CLERK: The Flight Deck.

7 THE COURT: You're going to go to Flight Deck for
8 lunch today.

9 And, Counsel, as Counsel knows, be sure and stay
10 away from there.

11 But they will take you to the restaurant and handle
12 your meals with you. Again, we know that it's very
13 inconvenient for you to do this. The next few days will keep
14 you away from your homes and your families. And we know
15 we've caused you some inconvenience, but certainly they'll do
16 everything they can to work with you.

17 You know, I used to tell jurors to be sure when you
18 went to the restaurant to go ahead and get dessert because
19 that was all you would get, but I had one time in a case
20 awhile back I had to go by the motel to take Agent McCloud,
21 who we all know, a document, and they had more candy and
22 goodies there than I've ever seen in one place in my life.
23 So they'll take good care of you.

24 Now, again, there are some rules that we'll have to
25 certainly go by and have to work with. If you want

1 cigarettes or to smoke, certainly you'll have to provide your
2 own cigarettes, but they'll give you a place and a time to
3 get away to smoke if you need to. And certainly, do not just
4 simply go out somewhere and smoke. What you'll need to do is
5 check with Agent Jacobs and they'll have a member of the team
6 who will go with you if you go somewhere to smoke.

7 When you go to the meals, certainly, if you wish to
8 have alcohol, if any of you drink alcohol, you may do so.
9 You'd have to certainly pay for it yourself, and our limit is
10 that you can have one drink, one beer or one mixed drink.
11 And, of course, you'd have to pay for it yourself, and that's
12 all we want you to have at this time. Now, if your neighbor
13 doesn't get theirs that doesn't mean you get theirs too, but
14 you only get one drink while you're there.

15 Now, they are going to be taking you to the motel
16 in a few minutes.

17 Agent Jacobs, have you met with them yet?

18 AGENT JACOBS: Yes, sir, I've already talked with
19 them, and they know what to do.

20 THE COURT: They know what they're going to do in
21 terms of badges and so forth, okay. She's told you that.
22 Does anybody have any questions of any of that as to what
23 you're going to do in the next few minutes?

24 (There was no response.)

25 THE COURT: Okay. All seem to know it pretty well.

1 We will try to have regular hours if we can. We will try to
2 start in the morning at 9:00 or 9:30 and go to about 6:00 in
3 the evening, somewhere along those lines.

4 Now, we know that you are away from your families
5 and we certainly want to use long enough hours to be sure to
6 get you back and run court efficiently to get you back when
7 we can. But we have to also balance that by the fact that we
8 don't want you to get so tired out that you can't concentrate
9 on what's going on.

10 So that's a balancing job that I try to do, and
11 certainly, if any of you have problems with those things be
12 sure and talk with the agent. She's going to have my home
13 telephone number and if there's a problem even in the middle
14 of the night she can get in touch with me, if she needs to.

15 So that basically is where we are at this point.
16 We'll try to be as fair and evenly balanced as we can on
17 these matters. If you have any special problems take them up
18 with Agent Jacobs and she'll take them up with me.

19 Now, she will report each morning at court, she'll
20 give us just a short and brief report as to how things go
21 with the jury the evening before. So we certainly will be
22 aware of how things are going with you.

23 Now, it's very important, as I told you before, not
24 to talk about the case in any fashion in any way whatsoever,
25 and I'm going to tell you more about it later. But

1 obviously, the main problem with it is that if you start to
2 talk about the case then you're going to -- first thing
3 you're going to do, that's going to cause you to form some
4 opinion, and you never know what's the most important
5 evidence in the case. It may be in the first, it may be in
6 the middle, may be at the end, but you don't know that. So
7 you don't want to start forming opinions and you don't want
8 to talk about the case.

9 And let me tell you this now. If any of you -- and
10 you're going to be with these SLED agents the whole time that
11 you're together, and if they hear you talking about the case
12 they're going to tell me. And what I'm going to do is ask
13 you to come in to account for yourself if you do that. So it
14 is extremely important that you understand that.

15 Now, they don't want to be snitches but they have
16 to do that. They are required by that, and if somebody talks
17 about the case and they don't tell me then the first thing
18 I'm going to do is hold a contempt hearing with them. So if
19 you talk about the case or you even get close to it the first
20 thing they're going to do is they're stop you, they're going
21 to warn you. But if you keep doing it they are going to come
22 back and tell me and then we're going to ask you to account
23 for that.

24 We don't want to give anybody a hard time on that
25 but you can understand it is just important that you not do

1 that right now. There will be a time when you go in the jury
2 room at the end of the case and begin deliberations when you
3 will talk about the case. That is the appropriate time to do
4 it, not beforehand. So that is extremely important that you
5 keep that in mind.

6 With that in mind, we're going to excuse you now
7 until two o'clock. We're going to give you a little bit of
8 extra lunch hour. We're going to come back at two. Let you
9 get settled in, go get some lunch, then we'll go from there.

10 Agent Jacobs, do you need anything at all?

11 AGENT JACOBS: No, sir, we're just fine.

12 THE COURT: You never do. You're always in good
13 shape with them. I'll let you take them at this time. Thank
14 you, ma'am.

15 (WHEREUPON, the jury leaves the courtroom at
16 approximately 11:25).

17 THE COURT: All right. The jury is secured.
18 Anything before we break, from the State?

19 MR. MYERS: Nothing from the State.

20 THE COURT: The defense?

21 MR. FLOYD: Nothing, Your Honor.

22 THE COURT: Okay. We'll see you back at 2 -- 1:30,
23 I'm sorry. I'll see you at 1:30.

24 (WHEREUPON, a lunch break was taken.)

25 THE COURT: Now, let me tell you first I am advised

1 that we have a problem with one juror who has indicated
2 something to one of the SLED agents. Mr. Brown, I believe
3 his name was. It's Mr. Brown. And my understanding is he's
4 indicated to the SLED agents that he saw some of the family
5 members, maybe the family minister, told him that he knew
6 them, and that he had a problem with that. What I'm going to
7 do is let's bring him in and we'll let him testify and see
8 what he says, okay.

9 Let's bring in Mr. Brown, please.

10 (WHEREUPON, Juror Number 54, Thomas Brown,
11 enters the courtroom.)

12 EXAMINATION

13 BY THE COURT:

14 Q. Mr. Brown, just come sit right here in the witness
15 chair, okay.

16 A. (Mr. Brown complied.)

17 Q. Mr. Brown, as I understand, one of the members of
18 sequestration team tells me that just before you went to
19 lunch that you indicated you had some problem; is that right?

20 A. Yes, sir.

21 Q. Can you tell me basically what the problem is?

22 A. Well, basically, the problem, Your Honor, when you
23 first asked us did we recognize the victim name I did not.

24 Q. Yes, sir. In fact, I believe I asked, in fact,
25 this morning again, did I not?

1 A. Yes, sir.

2 Q. And you said you didn't know, didn't recognize him?

3 A. Yes, sir, I did not. I recognized some members of
4 that family sitting in the courtroom.

5 Q. Okay.

6 A. And I'm pretty sure that -- of course, I know the
7 area and know the family pretty well.

8 Q. Yes, sir. You know them pretty well?

9 A. Yes, sir.

10 Q. Now, I guess the issue though is, is that going to
11 give you any problem though in carrying out your oath as a
12 juror? In other words, could you still be fair and impartial
13 to both sides?

14 A. Your Honor, I would have to do my best to be fair
15 and impartial.

16 Q. That's not answering the question.

17 A. Yeah.

18 Q. And let me tell you, I know this is difficult for
19 you, but you need to -- you have to give me an answer. As
20 you understand, as a juror you're going to take an oath. And
21 if you stay on the jury you're going to take an oath in just
22 a few minutes to be fair and impartial to both sides in the
23 case if you sit on it. Certainly, if you can't take that
24 oath you need to let me know at this time. But again, you
25 understand, I'm not suggesting. It's up to you to tell me

1 what you feel, what you think about it.

2 A. Your Honor, I have to be honest with you, just like
3 you said. I've known the family for quite awhile, for some
4 years. I would like to say that it would not sway me. I
5 would like to say that as a person I could, I just don't feel
6 that I could just sit and be impartial. Maybe that's my
7 failing, but I just know them.

8 Q. That's certainly not a failing, certainly not a
9 failing. I want you to understand that.

10 A. I just want to be honest with you all.

11 THE COURT: Let me ask if you'll answer any
12 questions the lawyers might have, okay.

13 Mr. Myers, do you have any questions?

14 MR. MYERS: No questions.

15 THE COURT: Any from the defense?

16 EXAMINATION

17 BY MR. FLOYD:

18 Q. How are you doing, Mr. Brown?

19 A. Fine, and you?

20 Q. Mr. Brown, I understand that you have -- you're a
21 minister and a member of the community?

22 A. Yes, sir.

23 Q. You understand that as a juror what you have to be
24 able to do is to be fair and impartial to all sides?

25 A. Yes, sir.

1 Q. And that is okay if you know some of the people
2 involved as long as you're able to set that aside and be fair
3 and impartial to all sides; you understand that?

4 A. Yes, sir, I understand that.

5 Q. And you understand that, of course, your
6 participation is important both to the State and to the
7 defense?

8 A. Yes, sir.

9 Q. You understand that both the State and the defense
10 have gone through the selection process and both sides have
11 selected you as a potential juror in this case?

12 A. Yes, sir, I understand that.

13 Q. And you understand that it's an important case
14 because Mr. Bennett's life is on the line in this case?

15 A. Certainly.

16 Q. Mr. Brown, do you think you could search your heart
17 and set aside whatever relationships that you have with
18 members of the community and render a fair and impartial
19 verdict on Johnny?

20 A. There again I would like to be able to tell you
21 that I probably could but I just don't know, to be honest
22 with you.

23 Q. Mr. Brown, I'm sure you've noticed that you're the
24 only black member of this jury?

25 MR. MYERS: Objection.

1 THE COURT: Sustained.

2 MR. MYERS: That's not proper.

3 THE COURT: Sustained.

4 BY MR. FLOYD:

5 Q. I think in your -- when we talked to you about
6 being on the jury you mentioned that as a minister in your
7 church you had to follow the law of the land?

8 A. Certainly, the order.

9 Q. And you understand that the law of the land would
10 require you as a juror to be fair and impartial to all
11 parties? Do you think that you could follow the law of the
12 land in this case and be fair and impartial to all the
13 parties?

14 A. There again, sir, I would like to tell you I could.
15 I'm trying to be as open and honest with you as I can. I
16 would like to be fair to him and fair to the family and say
17 that I could not be swayed. There again, when it comes right
18 down to it I just don't know. I'll be honest with you.

19 Q. Mr. Brown, do you feel that your relationship with
20 members of the community that have interest in this case
21 would interfere with your ability to perform your duties as a
22 juror in this case?

23 A. Yes, sir.

24 Q. Do you feel like you would be able to set those
25 feelings aside and serve as an impartial juror in this

1 matter?

2 A. There again, sir, respectively, I would have to
3 tell you the same thing. I would like to say I could. When
4 it comes down to it I don't know if I would be able to or
5 not.

6 MR. FLOYD: Thank you, Mr. Brown.

7 THE COURT: Any questions from the State?

8 MR. MYERS: No, sir.

9 THE COURT: All right. Mr. Brown, let me ask if
10 you'll step back to the back. Let me ask if you'll step back
11 to the grand jury room right behind here, and just one
12 second, okay, and we'll bring you back out in just a minute.

13 Mr. Bailiff, would one of you go with him, please,
14 sir.

15 (WHEREUPON, Juror Brown leaves the courtroom.)

16 THE COURT: What's the State's position on this
17 juror?

18 MR. MYERS: Kind of a mixture. When we argued back
19 in chambers why we took him, we took him because I thought he
20 would be a dog-gone good juror. I thought he would be for
21 us. I think he is. But here is the predicament that I'm in.
22 He has just directly told Mr. Floyd his relationship with the
23 family members would prevent him from performing his duties
24 as an impartial juror. That's directly in violation of the
25 law. Wainwright vs. Whitt is directly on point.

1 Now, the defense may argue he should be kept on the
2 jury, and I don't blame them. But here's what's going to
3 happen, because I've run into this too many times over the
4 last 25 years. If he's convicted and gets the death penalty
5 and the Supreme Court affirms it, then a whole batch of
6 another lawyers from Columbia are going to come in here, and
7 I know who they are, because they attack me every chance they
8 get, they are attacking me now.

9 And not only that, they are going to attack
10 Mr. Floyd and Mr. Young on a PCR, saying that they were
11 ineffective by not moving to exclude a juror who told them
12 that their relationship with the victim's family would
13 prevent him from being a fair and impartial juror, and that
14 the death penalty should be overturned on PCR. I know that's
15 coming because it came in a bunch of other cases.

16 And I know there ain't a death penalty crowd in
17 Columbia that hate my guts and they're going to hate
18 Mr. Floyd's guts if it goes through with that. And I'm not
19 saying anything derogatory, you understand, I'm just telling
20 you the position and the statis of what will happen, because
21 it's happened before. So I reluctantly have to move that he
22 be disqualified, even though I don't want to. But under the
23 law, I don't see how he can be seated. Because years on down
24 the road that's going to be the first issue raised.

25 THE COURT: Mr. Floyd?

1 MR. FLOYD: Your Honor, it does put us in a
2 difficult position. We, however, would ask Your Honor to
3 keep him as a juror, because we're faced with the prospect of
4 this black man's life being determined by an all-white jury.

5 And, you know, of course, we objected to the
6 Solicitor's striking of the other -- we only had two possible
7 black members of the community serve on this jury, and only
8 two of them came before the selection process this morning.
9 And, of course, we objected when the State struck one of them
10 because it took away 50 percent of them and we only ended up
11 with one of 12.

12 And although he says that he has feelings for these
13 members of the community which may affect his ability to
14 serve, he's been perfectly honest with us, we still feel that
15 he would give this matter his heartfelt consideration, and
16 he'll be the only member of the jury who will know what it's
17 like to be a black man. So he's the only chance we've got
18 for somebody in the jury to know what it's like to be a black
19 man in Lexington County. So we ask that he be retained.

20 THE COURT: Counsel, I certainly understand the
21 predicament that both sides are in, and I frankly understand
22 the predicament that this juror is in, and I think it's
23 unquestionable that this juror is struggling.

24 I appreciate, frankly, the candor that he has shown
25 in coming forward in the fashion that he has. Because I'm

1 sure it's difficult for him to come in and say, well, I know
2 members of this family, it's giving me a problem, and
3 understanding that he later somewhere in the community, on
4 the street or somewhere will have to run into members of this
5 family and perhaps explain to them why he got off of a jury
6 that involved the death of their loved one.

7 So, unquestionably, that's a difficult problem for
8 him. And if anything, I've tried to make a point of not
9 being too hard on him because it put us in a spot, frankly,
10 because if he's excused that puts us down the 13 jurors, with
11 only one alternate instead of two. And as you know, in these
12 cases we tend to lose jurors from time to time.

13 So while it's put us in a spot I can't be too hard
14 on him because I appreciate the fact that he has shown the
15 candor that he has shown. And, in fact, I think it's taken
16 quite a bit of intestinal fortitude for him to do and say
17 what he has done. The easier route for him would have been
18 just to stay quiet and go through the whole process.

19 But he's come forward, he's said that it's a
20 difficult position for him, and he has said that it would
21 keep him from carrying out his oath as a juror. And as you
22 know, for my purpose in terms of the trial of the case that's
23 what I've got to look at in terms of jurors, how any
24 relationship or any situation affects his carrying out his
25 oath. He has said -- the gist of what he has said is that he

1 cannot carry out his oath as a juror having seen these family
2 members.

3 I take into account, and I certainly understand
4 that the racial issue is an important one to consider, but I
5 take into the account the fact that the defendant is
6 African-American, the victim was African-American, the juror
7 is African-American, and the folks who are members of the
8 family of the victim, the loved ones of Mr. Smith who are
9 sitting out here are African-American. So I think it really
10 is not a racial issue.

11 Now, I know that -- I would address this issues,
12 and I understand the situation it puts you in, Mr. Floyd, as
13 counsel for the defendant is that there sometimes is a
14 general thought that it's important to have an
15 African-American on the jury and there are some folks who
16 hold with the attitude that an African-American is more
17 likely to give a life sentence than a Caucasian would.

18 In all truthfulness, that has not always been my
19 experience. I've tried -- been involved in some 16 or 17 of
20 these cases. I think, I guess, 8 or 9 have had death
21 sentences, results about half of them had death sentences
22 resulting, and almost all of those juries, if not all of
23 them, have had at least a couple, two or three
24 African-Americans on them. So I note for the record that I
25 don't think the fact that this juror is African-American

1 would automatically ensure that he would vote for a life
2 sentence.

3 Again, I applaud him, frankly, his candor, his
4 forthrightness in doing what he's done. I know he struggled
5 with this. It's been difficult, I imagine, the last couple
6 of hours during the lunch break. It's probably been a couple
7 of the longest hours of his life because I'm sure he's had a
8 rough time with it.

9 And we occasionally have jurors that get into this
10 situation and sometimes maybe don't see the full reality of
11 what they are doing, and with all jurors a lot of times they
12 don't realize until they really get into the trial. And
13 sometimes they realize that they are just in too deep, and
14 perhaps this juror got into that same situation.

15 The gist of all this is that I have to accept what
16 he said at face value. I don't think there's any question
17 I'm going to have to excuse the juror and move one of the
18 alternates into the position of a regular juror.

19 What's your position of moving the -- we have two
20 alternates. What's your position on that? What's the
21 State's position? We can simply take alternate number one or
22 we can put the two of them in a hat.

23 MR. MYERS: Your Honor, very frankly, I don't know
24 what the law is. They've changed the law several times, and
25 I've always heard that you put them in the order they were

1 drawn. Somebody said the law one time was you put them in a
2 box and draw names. I really don't know what the law is
3 because that's the judge's job, not mine. So whatever you
4 decide is fine with us.

5 THE COURT: Okay. What's the defense's position?

6 MR. FLOYD: Your Honor, we're just going to need a
7 moment to confer on that.

8 THE COURT: Sure.

9 MR. FLOYD: While we're doing that, may I bring
10 another motion to Your Honor's attention?

11 THE COURT: Yes, sir.

12 MR. FLOYD: Your Honor, the question of the racial
13 composition of the jury goes beyond the fact that we have a
14 black victim, and the victim's family and friends are black,
15 and a black defendant. What it goes to is I think we have to
16 look at it in the historical context of racism that has
17 existed in this State and this Country. The question is, are
18 there some people who are white or Caucasian who do not place
19 as much value on the life of a black man?

20 Now, I would agree with Your Honor that at times
21 there are black members of the jury and they don't have any
22 qualms about voting for the death penalty for a black
23 defendant. But what that means is that that verdict is not
24 the result of racism because those black members of the
25 community who sat in that jury, listened to the evidence and

1 participated in the deliberation made sure that what
2 everybody on that jury was voting on was the facts themselves
3 and that particular defendant deserved to die.

4 What we don't have, is we don't have that safety
5 catch. We don't have that protection with this jury panel.
6 All we have are 12 white people, and we did not explore their
7 racial attitudes because we knew there were blacks that would
8 probably get into the panel. Because we knew we had a
9 couple, we had two, so we felt for sure the system wasn't
10 going to strike both of them because of potential Batson
11 problems. And so we knew that if we had one in there he
12 would be our protection, he would be our assurance that that
13 verdict would be the product of the facts of this case and
14 not the racial attitudes.

15 Because even though we have a black victim, the
16 only person that's going to be affected by the verdict of
17 those 12 white jurors is this black man here. Because he's
18 the one that they are going to decide whether he lives or
19 whether he dies. And with the make-up we have of this jury
20 there is no way that we can ever say that it's not the
21 product of their racial attitudes.

22 And I think in this case there's going to probably
23 be even some other evidence that I think Your Honor knows
24 that may come out in this case that may even have greater
25 impact concerning the racial attitudes of this jury. We

1 don't feel that this man can get a fair trial with an
2 all-white jury. We think fundamental fairness dictates that
3 Your Honor continue this matter and that we go through
4 another jury selection process.

5 You know, it's supposed to be a jury of his peers.
6 Now, that doesn't mean we expect to have all black people on
7 the jury, but that jury should at least reflect the racial
8 composition of the community, and it's zero there. And I
9 believe that the statistics will show that we must have, I
10 don't know, 9 to 11 percent blacks in this community,
11 something in that area.

12 Now, I don't know -- that's an estimate, Judge, I
13 don't know that that's accurate, but I would suggest it's
14 somewhere in there. We don't have that anymore. And I think
15 any verdict that comes out of this jury, if it is, in fact,
16 that he should die, will be tainted and will violate his
17 fundamental fairness. And we respectfully request that it be
18 continued and that we select another jury.

19 THE COURT: You wish to respond to that, Mr. Myers?

20 MR. MYERS: I should, but I won't.

21 THE COURT: All right. I'm going to deny the
22 motion, Mr. Floyd. Again, frankly, until this point the
23 specter of race has not come into play in this matter. This
24 is really the first time that I've noted that it's come into
25 this particular case. And I have no reason to have any idea

1 that these jurors would be influenced by that in any way. So
2 I would have to deny the motion.

3 Have you had a chance to confer on the other
4 matter?

5 MR. FLOYD: Your Honor, we would then ask that we
6 be allowed to voir dire the juror -- remaining jurors on
7 their racial attitudes and see if we might have some type of
8 motion we might make to strike some of those jurors if they,
9 in fact, exhibit racism which may impact upon the verdict in
10 this case.

11 THE COURT: What's the State's position on that?

12 MR. MYERS: The only person that has injected
13 anything of this nature in the case is Mr. Floyd. And the
14 jury has been qualified. The law doesn't provide it. Turner
15 vs. Murray doesn't demand it. He just doesn't like the jury
16 he's got. I don't like some of the jurors I've got.
17 Mr. Brown's been excused. Mr. Brown was for me. But all I
18 can say is we've got a jury and the more he talks the more
19 people from Columbia not involved in this case are going to
20 get involved on a PCR. We've got a jury. The law is with
21 us. You have ruled. I move that we proceed.

22 THE COURT: Anything else, Mr. Floyd?

23 MR. FLOYD: Your Honor, we don't think we were the
24 first ones to inject racism into this case. We think racism
25 was injected into this case when the Solicitor struck the

1 other black juror, potential juror, Ms. Sands, who's a fine
2 member of this community, a teacher, well educated, and he
3 struck her. Of course, we objected to it. Racism was
4 injected then into this case, not now. We are just now
5 having to live with the product of it, and Mr. Bennett is the
6 one who will suffer. And we respectfully renew our motions.

7 THE COURT: Certainly I understand the motion, and
8 the motion is denied. What about on the issue now of the --
9 do you have a preference as to how we select the next
10 alternate to become a juror?

11 MR. FLOYD: We're not sure of the law on it, but I
12 think they've normally done it in order, and that would be
13 fine with us.

14 THE COURT: Okay. The Solicitor, I think, has sort
15 of defaulted to your position more than anything. To my
16 position, and basically given that, and your position, we'll
17 just take the next juror, the next alternate first off and
18 allow him or her to step -- who was the first alternate?

19 THE CLERK: Adam Humphrey, Juror Number 177.

20 THE COURT: Mr. Humphrey. Okay. Mr. Humphrey
21 then, Juror 177, will become a regular juror.

22 Counsel, we have some other motions, I believe, we
23 need to take up; is that correct, Mr. Floyd?

24 MR. FLOYD: Yes, Your Honor, I didn't know what
25 Your Honor's ruling was going to be on --

1 THE COURT: I just realized, let me bring Mr. Brown
2 back in.

3 Ask Mr. Brown to step in.

4 (WHEREUPON, Juror Brown enters the courtroom.)

5 THE COURT: Mr. Brown, let me tell you first that
6 -- and I told these folks just a moment ago, that I, for one,
7 appreciate the, for lack of a better word, the guts that you
8 showed in telling us what you did. I know that was difficult
9 for you and I know you struggled with that.

10 MR. BROWN: Yes, sir.

11 THE COURT: Because it's hard to face folks and
12 tell them that you can't sit on a jury and make a decision,
13 but it also takes a great deal of honesty and candor to do
14 and say what you did and what you said.

15 Based on what you told me though, we'll have to
16 excuse you as a juror. We appreciate you being with us. We
17 appreciate the patience that you showed us and certainly
18 appreciate you being forthright with us. But with that in
19 mind, however, you are excused and you're free to go. Are
20 your bags already at the motel?

21 MR. BROWN: Yes, sir.

22 THE COURT: Okay. Genie, you might want to have
23 somebody take him and go ahead and get his bags and let him
24 go back home.

25 You're excused and you're free to go. Thank you,

1 sir, we appreciate it.

2 (WHEREUPON, Juror Brown was excused.)

3 THE COURT: All right. I'm sorry, Mr. Floyd, I
4 didn't mean to interrupt you a moment ago.

5 MR. FLOYD: Your Honor, I'm not sure what your
6 ruling is going to be on these matters, but as to whether or
7 not your ruling is going to be that the order -- the rulings
8 made by the previous trial judge stand to be the law of the
9 case, but we would like to bring to Your Honor's attention
10 two motions that were made at the previous trial that we
11 would like to be reconsidered at this time.

12 One motion was in connection with the Jackson V.
13 Denno hearing that we had earlier. Part of the evidence that
14 the State will most likely introduce into this case consists
15 of several statements made by the defendant while he was
16 incarcerated, including one statement that is a confession.
17 It was our position at the first trial that these statements
18 were inadmissible in that they were in violation of his, as
19 we know, Miranda rights or constitutional rights as set forth
20 in Miranda.

21 Particularly in connection with those statements
22 was that when Mr. Bennett was being questioned by the
23 officers of the Lexington County Sheriff's Department, before
24 he made any confession he wrote them a note and said, I need
25 help. It was maybe, and I'm speaking a little from memory

1 here, 10, 15 minutes later that a confession was obtained.

2 Now, we moved -- at that time, it was our position
3 that when Johnny Bennett gave that statement to the officers
4 that he was requesting legal assistance, because that's what
5 was at stake was his freedom, and that's what that was, was a
6 request for an attorney. And that when they talked with him
7 shortly after that without obtaining him the services of an
8 attorney that statement then was in violation of his
9 constitutional rights as set forth in Miranda, and as such it
10 should have been excluded from consideration by the jury.

11 Now, we would like to renew that motion at this
12 trial, and I don't know whether you want to do that through
13 taking judicial notice of the transcript or if I've misstated
14 that, or how you want to handle that, Your Honor, but that's
15 one motion that we would like to make. Secondly --

16 THE COURT: Let's take that one first, okay.

17 Mr. Myers, what's your position on that?

18 MR. MYERS: On the transcript starting on page
19 1196, line 1, Judge Anderson said at the previous trial, Let
20 the record show we now hold a Jackson vs. Denno hearing as
21 mandated by the United States Supreme Court and decisions of
22 the South Carolina Supreme Court. That goes on for several
23 hundred pages in the transcript. Mr. Floyd argued the same
24 thing he has just argued to the Court.

25 After hearing various witnesses, on page 1306,

1 Judge Anderson started off by saying, as he usually did,
2 Order, and he says, The Court has conducted an in-camera
3 hearing pursuant to the mandate of Jackson vs. Denno.

4 He goes through, and it's a good many pages, Your
5 Honor. He cites a lot of South Carolina Supreme Court cases.
6 He cites a lot of United States Supreme Court cases. He
7 compares all of the testimony and applies it to the law.

8 And on page 1313 he says this, Based on the
9 foregoing conclusions it is ordered that the statements of
10 the defendant are admissible at trial with the caveat that
11 the jury will be instructed concerning this issue as to
12 mandate a finding by the jury beyond a reasonable doubt, and
13 it is so ordered.

14 We went through statements by the defendant from
15 November the 30th of 1990 through December the 12th of 1990,
16 including statements in which the defendant reinitiated
17 contact with police, under the Edwards case cited by Judge
18 Anderson. Judge Anderson ruled that all of those statements
19 Miranda was complied with, the law was complied with, and
20 they were freely and voluntarily given by the defendant.

21 Our South Carolina Supreme Court has said a
22 defendant may not relitigate the admissibility of his
23 statements in the retrial where those statements were
24 admitted in the first trial. State vs. Young, a 1995 case;
25 State vs. Truesdale, 1990; State vs. Stewart, 1985; and

1 several other cases, Your Honor, hold that you don't
2 relitigate and you can't relitigate the admissibility of the
3 defendant's statements when they were admitted in the first
4 trial, and that's the situation we have here.

5 THE COURT: Mr. Floyd, do you wish to respond?

6 MR. FLOYD: Your Honor, it's our feeling that these
7 confessions may -- alleged confession may well be the most
8 crucial piece of evidence in this case. You already
9 understand our feelings about the composition of the jury as
10 we stand now, and we ask that Your Honor reconsider the
11 admissibility of those confessions and allow us to have a
12 full-blown Jackson Denno hearing before these confessions are
13 submitted to the jury.

14 THE COURT: I certainly understand. I would have
15 to deny the motion, Mr. Floyd. The Supreme Court has been
16 very clear about that. As you know, I think it simply goes
17 back to the fact that once it's been decided in the first
18 part -- in the first case, rather, that it simply becomes the
19 law of the case.

20 The case was appealed, and the Supreme Court made
21 some determinations. Those determinations did not involve
22 the admissions of the statements. So the rulings of Judge
23 Anderson remain the law of the case in this matter. I'll
24 have to deny the motion then.

25 Any other motions?

1 MR. FLOYD: Yes, Your Honor. At the previous trial
2 in this matter the defense moved to estop the State from
3 seeking the death penalty and for such other relief as the
4 Court deemed just and equitable, to include dismissal of the
5 charge. This had to do with a piece of evidence that is
6 missing.

7 At some point in time -- and I want to say December
8 the 5th of 1990, is my recollection, Mr. Bennett was taken
9 from the jail -- and it maybe the 12th, because he went out
10 once on the 5th and once on the 12th, and at that time,
11 according to the evidence from the State, he showed them
12 where various items of evidence were.

13 At that time, this trip was recorded. They put --
14 they didn't tell Mr. Bennett they were going to record him,
15 but they secreted a microphone in the car in which he was
16 traveling, and it was followed by some other officers of the
17 Lexington County Sheriff's Department. And what they were
18 going to do on this trip was to make an audiotape or a
19 recording of everything that was said by Mr. Bennett on this
20 trip, and I assume to use against him in his trial.

21 Now, there was some dispute in the earlier trial as
22 to what went on in that trip. Mr. Bennett testified in that
23 earlier trial and indicated that on that trip he withdrew his
24 confession and that he did not show them where these items of
25 evidence were, but the State contends that the tape didn't

1 work. They contend that when they got back to the Sheriff's
2 Department they tried to play the tape and there wasn't
3 anything on it but noise, couldn't hear anything.

4 Instead of taking that tape somewhere to see if it
5 could have been enhanced in capturing whatever evidence was
6 on that tape, the tape was destroyed. When they destroyed
7 that tape they deprived the defendant of crucial evidence in
8 his case.

9 Now, there's a line of cases that we argued at that
10 time, beginning with Youngblood V. Arizona, that say that if
11 the State loses evidence -- now, Youngblood initially said it
12 had to be an intentional act, but other cases that followed
13 Youngblood said it doesn't have to be an intentional act,
14 including cases in South Carolina; State V. Jackson,
15 396 S.E.2d 101, where the Court ruled that a D. U. I.
16 conviction had to be thrown out because somebody accidentally
17 erased the videotape; State V. Mabe, 412 S.E.2d 386, South
18 Carolina case which considered Youngblood V. Arizona, and in
19 that case the State did not adopt the bad faith requirement
20 initially set forth in Youngblood V. Arizona.

21 So the question is not whether or not the State
22 intended to destroy the tape. The question is whether or not
23 Mr. Bennett's case, Mr. Bennett's rights, or whether or not
24 he's lost crucial evidence in his case. We think that
25 happened in this case. We made the motion at his earlier

1 trial that the State be estopped from seeking the death
2 penalty when crucial evidence is missing. We ask that the
3 case be dismissed because of that. We renew both of those
4 motions at this time.

5 THE COURT: Mr. Myers, do you wish to respond?

6 MR. MYERS: Yes, sir. Those motions filed by
7 Mr. Floyd and the motion that is titled notice and motion,
8 and motion to estop the State from seeking the death penalty
9 and for such other relief as the Court deems just and
10 equitable, that was filed by Mr. Floyd in a prior case in
11 1995. On page 93 of the transcript, that page starts off
12 with Mr. Floyd saying, Your Honor, you should have in the
13 file this motion.

14 The Court said, I have.

15 Mr. Floyd; there should also be a motion that the
16 State should be estopped from seeking the death penalty.
17 From 93 to page 204 various witnesses were put up by the
18 defense on this issue. The defendant did not testify in that
19 hearing.

20 On page 204 Judge Anderson's order reads as
21 follows: In regard to the estoppel issue, it is apodictic
22 that the leading case in the country concerning evidence and
23 the evidentiary issues is Arizona vs. Youngblood, 109 S.Ct.
24 333. An analysis of rights involved in an estoppel issue
25 analysis reveals there is no violation of the defendant's

1 rights which rise to the level of estoppel. This Court
2 denies the motion to estop the State from seeking the death
3 penalty, and it is so ordered. And he says, All right,
4 gentlemen, what's the next motion?

5 It's been ruled on, there's been testimony on it,
6 the issue has been denied, it's the law of the case.

7 THE COURT: Mr. Floyd, anything else?

8 MR. FLOYD: No, Your Honor. We just contend that
9 fundamental fairness, what we're dealing with with the
10 estoppel argument, dictates that we consider this matter at
11 this time, particularly in view of what's happened here with
12 our jury today, and that this Court should step in and
13 protect Mr. Bennett's rights and rule that the State cannot
14 seek the death penalty. And we would ask for a hearing on
15 the matter where we can develop all that testimony.

16 THE COURT: Again, Judge Anderson has ruled on that
17 in the first trial, the Supreme Court did not disturb that
18 ruling. Again, it is the law of the case so I'm bound by
19 that.

20 Any other motions, Mr. Floyd, at this time?

21 MR. FLOYD: None at this particular time.

22 THE COURT: Mr. Young, did you have anything else?

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

24 THE COURT: All right. Are we ready to begin with
25 opening statements? I will have, obviously, a fairly brief

1 opening charge. I'll do a little bit more in my opening
2 charge. I'll give the standard opening charge that I give in
3 most cases. However, what I will do is to define for them
4 aggravating and mitigating circumstances so they'll at least
5 know what they're dealing with in the case. It will not be a
6 full charge on those issues, obviously, just enough to
7 acquaint them with it. I assume you'll both want to make
8 opening statements at this point?

9 Is that correct, Mr. Myers?

10 MR. MYERS: The State would make one, yes, sir.

11 MR. FLOYD: The defense will make one.

12 THE COURT: Okay. We'll bring the jury in and
13 we'll swear the jury then go ahead and get started.

14 Let's bring them in, please.

15 Do we need a break before the jury comes in? I
16 know a couple people up here have indicated they needed a
17 short break.

18 Let's do this. Bailiffs, hold the jurors for about
19 five or ten minutes, okay. Tell them just five or ten
20 minutes. We're going to take a brief potty break and that's
21 all we'll do.

22 All right. We'll stand in recess for about ten
23 minutes. Ten minutes.

24 (WHEREUPON, a brief recess was taken.)

25 THE COURT: Is there anything from the State before

1 we begin?

2 MR. MYERS: No, sir.

3 THE COURT: The defense?

4 MR. FLOYD: No, Your Honor.

5 THE COURT: Let's bring the jury in, please.

6 (WHEREUPON, the jury enters the courtroom at
7 approximately 3:10 p.m.)

8 THE COURT: All parties and attorneys are in the
9 courtroom and all jurors have now joined us.

10 Ladies and gentlemen of the jury, let me apologize
11 to you first for being late getting started. We had a number
12 of matters that we had to take up, and we tried to give
13 enough time to start and we just weren't able to do so.

14 One of the matters that we had -- and sometimes we
15 have things that come up that we don't know are coming and we
16 just have to take them up at that time, and one of them was
17 that a juror realized just before we started that he had some
18 problems he had to deal with and requested to be excused, and
19 was excused. And I believe Mr. Humphrey, is this
20 Mr. Humphrey, has been moved to a regular juror.

21 With that in mind, at this time we are prepared to
22 swear the jury and begin the trial.

23 Madam Clerk, would you put the jury under oath for
24 me, please.

25 (WHEREUPON, the jury was sworn.)

1 THE COURT: Now, ladies and gentlemen, as we told
2 you earlier, this case is a little bit different than most
3 cases we normally try. This is a case that does not involve
4 the finding of guilt or innocence, rather this is a case in
5 which guilt has been determined. We have told you that
6 earlier. It is actually a case involving the sentencing.

7 Now, as we told you earlier, the State originally
8 brought this case against Mr. Johnny Bennett charging him
9 with murder, and what I will do is publish you very briefly
10 the indictment, portions of the indictment on which the
11 charge was brought.

12 It alleged that Johnny Olandis Bennett, Jr. in
13 Lexington County on or about November 27 of 1990 did
14 willfully, feloniously and with malice aforethought kill one
15 Benton Darrell Smith by stabbing the victim multiple times
16 about the head, face and body, and that the said Benton
17 Darrell Smith died as a proximate result thereof in Lexington
18 County on or about November 27, 1990.

19 As we told you earlier, we've told you all in the
20 process, a jury has previously found Mr. Bennett guilty of
21 the charge of murder. And as we told you earlier, guilt of
22 the charge of murder is not enough in itself to justify
23 seeking the death penalty. Rather there are certain things
24 called aggravating circumstances which must be proven in
25 order to justify the death sentence. And that is why you are

1 here today, to take part in that portion. You will decide
2 the sentence in this case. You will sentence the defendant
3 to life or you will sentence the defendant to death. You
4 will do the sentencing in this case.

5 Now, let's talk a little bit about your role first
6 and my role, then we're going to get back into some of these
7 issues in just a moment.

8 First of all, you sit as the finders of fact in the
9 case. It is your duty to make determinations of fact and no
10 one can tell you how to do that. I cannot, the lawyers
11 cannot, no one can. You must make your findings of fact as
12 you determine them to be from the evidence that comes into
13 the case. But that is a very wide discretion which is
14 accorded to you as the finders of fact.

15 Now, as finders of fact, you are the judges of the
16 credibility of the witnesses, and this is how you make your
17 determinations of the fact. You determine which witnesses
18 you will believe or which you will not believe. You decide
19 how much weight or credibility to give to the testimony of
20 each witness.

21 Now, you may believe all of what a witness says or
22 you may believe none of what a witness says, or you may
23 believe any part in between. It is up to you to determine
24 the weight and degree of credibility to give to the testimony
25 of each of the witnesses.

1 You may believe one witness against all the others
2 or vice versa. It is up to you to determine which witnesses
3 you will believe or will not believe. And when it comes time
4 for you to make a determination as to the proper sentence in
5 this case you must consider only the evidence which has come
6 into this courtroom.

7 And let me tell you what we mean by evidence. Very
8 simply, evidence is this. It is the testimony of the
9 witnesses who come to testify plus any exhibits that come in
10 through those witnesses. That's all the evidence is,
11 testimony of the witnesses and exhibits. Now, from time to
12 time the attorneys may stipulate as to facts, and if they do
13 that that would be considered the evidence also. But
14 generally, the evidence is testimony and exhibits.

15 So then what is not evidence? Well, first of all,
16 evidence is not anything you've heard outside of this
17 courtroom. It is not any concept you may have developed
18 about a case like this. Anything that you've heard or
19 developed outside of this courtroom is not considered to be
20 evidence and you must put it aside for purposes of this case.
21 Anything the lawyers say is not evidence.

22 Now, let's be sure and understand the distinction
23 on this. The lawyers will, of course, be deeply involved in
24 the case. They will give opening statements and they will
25 give closing statements, but those statements are only their

1 interpretation of the facts. But when it comes down to it,
2 remember that you are the ultimate finder of the fact.

3 But the lawyers do, however, have the opportunity
4 to give those statements, to give you their interpretation of
5 the facts, and you certainly can freely accept or reject
6 their interpretations of the facts.

7 The lawyers will also ask questions. Now, those
8 questions are designed to get the evidence from the mouth of
9 the witness. But remember that the lawyer's question is not
10 evidence. What comes from the mouth of the witness is what
11 is the evidence and what you must consider.

12 So if a lawyer gives a question and the witness
13 says no, then you must give no weight to that whatsoever
14 because the witness has said no to that. Remember again,
15 what the lawyers say is not evidence, it is what the
16 witnesses say.

17 And third, what I say is not evidence. Now, you'll
18 hear me talk probably more than you want to. You probably
19 already heard me talk more than you wanted to, but what I say
20 is never to be considered as evidence. In fact, I'm not even
21 allowed to comment on the evidence in any way.

22 And if I say anything or do anything, even by way
23 of facial gesture or movement that causes you to think that I
24 have some feeling about the evidence you must just simply
25 overlook that, ignore it and base your findings of the

1 evidence only as you perceive them.

2 So those are not evidence. Remember again,
3 evidence is only testimony of the witnesses and the exhibits
4 that come in through those witnesses, plus any stipulations,
5 if the attorneys stipulate to any facts.

6 What is my duty then? My duty is to sit as the
7 instructor of the law. It's my duty, as I've done a little
8 bit earlier with some of you in the trial, it's my duty to
9 tell you what the law is and to guide you through this
10 process. Now, you must accept the law as I give it to you.
11 You must accept it strictly and apply it to the facts as you
12 find them.

13 Now remember that I told you that you have very
14 wide discretion when it comes to the facts. You do not have
15 that discretion when it comes to the law. You must accept
16 the law as I give it to you strictly and accept it as such.

17 Now, if I'm wrong there is a time and place for it
18 to be corrected, but for today's purposes you must accept it
19 as correct. And it is not what you think the law should be
20 but it is, in fact, what I tell you that the law is.

21 Now, from time to time the attorneys are going to
22 have objections. Don't be offended if an attorney objects
23 more than you think he should. They simply have a job to do
24 and there are some times under our rules that they are
25 required to object.

1 The rules of evidence are almost sort of a language
2 in themselves. There are certain ways that we talk under the
3 rules of evidence and certain things that we do or we have to
4 do, so it will be difficult for you to try and figure out why
5 a lawyer may be objecting to something.

6 But just remember that there are times that they
7 have to do that. So just please accept my assertion to you
8 that you must not hold that against the lawyers and you
9 certainly must not hold that against the party if they object
10 more than you think they should.

11 Now, I told you that you must certainly not discuss
12 the case with each other or anybody else. Why? Why do we
13 not discuss the case? Well, as I told you and as I went
14 through with each of you during your earlier questioning,
15 you don't want to begin to decide the appropriate sentence
16 in this matter until you've heard everything. You want to
17 hear everything. You want to hear the aggravating
18 circumstances, you want to hear the mitigating circumstances,
19 you want to hear what the law is. Only then are you ready to
20 begin to decide.

21 Now, the problem is that if you talk with someone
22 else about the case, and even to the slightest detail, it
23 will cause you to, first of all, to begin to form opinions
24 about the case, and you don't want to do that. You don't
25 know which evidence is most important. It may be the first

1 thing that comes in, it may be the last thing that comes in,
2 it may be somewhere in the middle, but you don't know where
3 that's going to be until you've heard it all. And if you
4 begin to form opinions then you reduce the value of that
5 evidence, and you don't want to do that.

6 The other thing too is that you may get someone
7 else's idea, and as you will determine, it is the duty of
8 each of you to make your own findings of fact as to how you
9 view the evidence in this case.

10 You know, from time to time we have all seen on TV
11 a case and you'd say, well, how did that jury come up with
12 that verdict? Well, the reason for it very simply is this,
13 that those 12 jurors were the only 12 people in the world who
14 heard the appropriate evidence.

15 Now, you may have heard some things on TV that they
16 didn't hear, they may have heard some things that you didn't
17 hear, but they were the only 12 jurors who heard the
18 appropriate evidence and the appropriate law, and they based
19 their finding on that. And that's why our system works the
20 way it does, because jurors make those decisions on what they
21 hear. So that's why it's important that you not discuss the
22 case with anybody, not even with each other.

23 And as I told you earlier today, if any of you do
24 begin to broach the subject of the issues of the this case,
25 if any of the members of the sequestration team are around,

1 first of all they'll warn you, but if that doesn't do any
2 good then they'll report it to me. It is extremely important
3 that you not talk about the issues in this case.

4 Let's talk a little bit about what we're going to
5 deal with and what you're going to deal with. I'm just going
6 to give you an idea of the type of evidence that you're
7 dealing with. First of all, as I told you in this case, a
8 previous jury has found Mr. Bennett guilty of the charge of
9 murder. What do we mean by murder? In South Carolina,
10 murder is defined as the willful, felonious killing of a
11 human being by another human being with malice aforethought.

12 Now, malice in the law is a word suggesting
13 wickedness, hatred and a determination to do what one knows
14 to be wrong without just cause or legal excuse or legal
15 provocation. It has been said that malice is an evil intent,
16 and malice need not be in the mind of the one doing the
17 killing any particular length of time before the act of the
18 killing in order to make the killing murder. It may be only
19 a matter of a few seconds.

20 If malice is present in the mind of the one doing
21 the killing any length of time before the act then its
22 presence would be sufficient to make the killing a murder.
23 And as we told you, Mr. Bennett has been found guilty of
24 murder in this matter. And so that is why we move to this
25 phase of the case where you will decide the sentence.

1 Now, in order to determine the sentence, as I told
2 you earlier, before you can even consider the possibility of
3 a death sentence you must first determine whether the State
4 has proven to you beyond a reasonable doubt statutory
5 aggravating circumstances.

6 Now, what do we mean by those? I will tell you
7 that the law says that in order to justify a death sentence
8 in addition to the murder there must be at least one
9 statutory aggravating circumstance.

10 So what do we mean by a statutory aggravating
11 circumstance? Well, a statutory aggravating circumstance is
12 a fact, an incident, a detail or an occurrence which the
13 legislature of this State has declared by law would make
14 worse or aggravate the offense of murder when that fact,
15 incident, detail or occurrence accompanies the act of murder.
16 In other words, it increases the gravity of the offense, and
17 to the injurious consequences of the offense of murder.

18 Now, before you may impose a death sentence upon
19 the defendant all 12 of you must agree beyond every
20 reasonable doubt that the evidence reveals at least one
21 statutory aggravating circumstance.

22 Now, if you determine that there has been a
23 statutory aggravating circumstance proven then you may
24 consider that along with other evidence in determining
25 whether to give the death sentence.

1 What other evidence are we talking about? Well,
2 first of all, in terms of aggravating circumstances there are
3 two types of aggravating circumstances you may consider. I
4 just told you about one, statutory aggravating circumstance.
5 The other are basically general or nonstatutory aggravating
6 circumstances, sometimes called character evidence, and these
7 must be proven by the State beyond a reasonable doubt.

8 You must also consider two types of what are called
9 mitigating circumstances, and they are statutory mitigating
10 circumstances and nonstatutory or general mitigating
11 circumstances. So again, remember, you will consider two
12 types of aggravating circumstances, two types of mitigating
13 circumstance.

14 Now, I just defined for you statutory aggravating
15 circumstances, what was the other kind? It was nonstatutory.
16 In other words, character evidence. Now, what do we mean by
17 these? Now, these are generally presented in evidence as
18 evidence of other crimes or bad acts or rules infractions.
19 And again, these are referred to generally as character
20 evidence.

21 Now, listen very closely to this. Listen very
22 closely to this. These other crimes are bad acts or rules
23 infractions may not be used to prove a statutory aggravating
24 circumstances. Again, they may not be used to prove a
25 statutory aggravating circumstance. However, they may be

1 considered as evidence of a statutory aggravating
2 circumstance.

3 In other words, the evidence of other crimes or
4 rules infractions or bad acts should not be considered as
5 substantive evidence of an aggravating circumstance, but if
6 you are convinced beyond a reasonable doubt that the
7 defendant committed any of these other crimes or rules or
8 rules infractions of bad acts then you may consider them, as
9 they bear relevance to the crime itself and they need to be
10 considered along with all of the other evidence.

11 Okay. I told you that there were two types of
12 mitigating circumstances you will hear. First, a statutory
13 mitigating circumstances. And they are -- a statutory
14 mitigating circumstance, again, is a fact, a detail, an
15 incident or an occurrence which the legislature of this State
16 has said would render less severe. In other words, would
17 mitigate or lessen the offense of murder when it accompanies
18 the act of murder.

19 And there are also nonstatutory mitigating
20 circumstances. In other words, general mitigating
21 circumstances. And you also must consider them in any nature
22 as supported by the evidence, in addition to the statutory
23 mitigating circumstances.

24 Now, a nonstatutory, in other words, a general
25 mitigating circumstance, is one which in fairness and mercy

1 may be considered as extenuating. It's not justification or
2 excuse for murder it simply lessens the severity of the
3 punishment because of its existence.

4 So again, remember, you will consider statutory
5 aggravating circumstances and general aggravating
6 circumstances. You will also consider statutory mitigating
7 circumstances and general mitigating circumstances.

8 Now, this has just been designed to give you an
9 overview of the type of evidence which you will hear.
10 Remember again that at the end of the trial I will give you a
11 little bit more of a detailed explanation of these, but these
12 are designed only, again, to give you an idea of what you
13 will hear during this portion of the trial.

14 Now, at this time, we're going to have opening
15 statements by the attorneys, and then following the opening
16 statements we will go into the evidence. Once all of the
17 evidence is completed, we will then have closing statements
18 by the attorneys, I will charge you on the law, and once
19 that's done then we're going to turn the case over to you.
20 We anticipate, as we told you earlier, that will take a few
21 days to do all of that, but we certainly will move as
22 expeditiously as possible.

23 At this time, we're going to have opening
24 statements from the State and the defense. I will ask you to
25 give the attorneys your undivided attention, please.

1 Mr. Myers?

2 MR. MYERS: Ladies and gentlemen, you all have seen
3 the defendant, Johnny Bennett; huge, giant man, six-six,
4 six-seven, brutal monster size. And he uses that size and
5 power to intimidate, and in an evil murderous way. Benton
6 Smith was a little fragile fellow, about five-seven, thin as
7 a rail. Trusting soul who had the misfortune of trusting big
8 old brute, Johnny Bennett.

9 As a result, big old Johnny slaughtered him in an
10 inhumane way. You're going to have to hear about that,
11 folks. I apologize. I didn't cause it, Johnny Bennett did.
12 It's kind of unimaginable what he did to Benton. And it's
13 your duty now as 12 men and women of Lexington County to
14 sentence the defendant, life imprisonment or the death
15 penalty.

16 And as Judge Westbrook said, this part of the
17 trial, the law says basically two things. The crime and the
18 circumstances surrounding the crime and the character of the
19 defendant. The circumstances of the crime are despicable.
20 The character of Johnny Bennett is reprehensible. That's why
21 we're asking for the death penalty, because his evil, mean,
22 malicious acts warrant the death penalty.

23 Benton Smith was murdered on November the 27th of
24 1990, it was on Tuesday. You don't have to remember these
25 days because we'll have a calender up here for you to refer

1 to. But his disregard for a fellow human being, his
2 disrespect for the law, his total disobedience and disrespect
3 for good old human nature began way back, probably when he
4 was born. Because we're going to show you it started in the
5 fifth grade, character.

6 We're going to put up a lot of witnesses. Fifth
7 grade, disregard for teachers, disregard for authority,
8 disregard for the responsibility, don't care about rules,
9 don't care about laws, don't care about your fellow citizens.
10 Six grade, seventh grade, eighth grade, ninth grade, tenth
11 grade, eleventh grade, finally they kicked him out of school.
12 Assaults, disrespect, disruptive, disobedient. Because it's
13 Johnny's way or no way. Character.

14 In 1988 he nearly killed two young fellows. It
15 happened right up here at the Pizza Hut right here in
16 Lexington. He's from down in Swansea. Two boys were in a
17 coma, one for a couple of weeks. Life and death situations.
18 In didn't make any difference.

19 Sent to prison, didn't do any good. I don't have
20 to tell you what happened to him in prison. Disrespect,
21 disregard for rules and regulations, disobedient, assaults,
22 don't care about fellow citizens, human beings. It's big old
23 Johnny's way or no way. They let him out of prison. It
24 didn't do any good. He starts right back, disregard for the
25 law, disrespect.

1 Later on in 1990, November the 27th, Tuesday,
2 Benton Smith had the misfortune of getting with Johnny
3 Bennett. Benton was going to cash a check. Benton was kind
4 of a possessive fellow. He doesn't have many worldly goods,
5 but what he has is his and he's possessive of it. He doesn't
6 let people use his things.

7 And he kept a lot of things in his little blue car
8 that he drove around. He had some glasses, he had his
9 wallet, he had some little small wine glasses or drink
10 glasses, he had a little shaving kit that he kept some money
11 in. He had some pillows in the back, he had a cane with a
12 brass kind of duck head on it. He has a radar detector, he
13 had some speakers. He had other things in there you'll hear
14 about when he left his house that morning with Johnny Bennett
15 riding with him.

16 Benton Smith never was seen alive again by his
17 parents after that morning. By nightfall he was dead. He
18 was dead, murdered by Johnny Bennett. And, folks, you know
19 about 25 feet away from you in your presence is a murderer.
20 I hope you never have to live through this after this week,
21 being that close to a murderer.

22 You are going to see why we are asking for the
23 death penalty, because that same night guess who shows up in
24 Orangeburg, South Carolina driving Benton's little blue car?
25 Guess who is giving away Benton's possessions? Guess who the

1 next morning shows back up in Orangeburg in Benton's little
2 blue car, spending money on folks and giving away some of
3 Benton's possessions with scratches on his body, hands
4 wrapped up?

5 Benton's car is found that Wednesday night behind
6 the Swansea High School. Johnny Bennett, I guess, thought it
7 was too hot to be driving around town anymore on a Tuesday in
8 Orangeburg, on Tuesday or on Wednesday, because everybody
9 then was looking for Benton. He doesn't stay away from home.
10 You can call him kind of a momma's boy, he'd come home at
11 night. He didn't come home that Tuesday night, didn't come
12 home that Wednesday night. Everybody's looking for him.

13 Johnny Bennett is having a good time down in
14 Orangeburg. He even tries to go down to South Carolina State
15 College and sell Benton's camera to a student down there
16 who's from Swansea, a basketball player, nice guy, Jackie
17 Robinson. Of course, Benton is dead and cold by this time.
18 Nobody knows where his body is, but Johnny Bennett does.

19 He's still having a good time on Thursday.
20 Everybody is looking for him. Benton's father, this
21 gentleman here with the white hair seated right here with the
22 glasses, he's out looking for Benton. He knows that Johnny
23 Bennett left with his son. He's looking for Johnny Bennett.
24 Mr. Smith even goes down to Orangeburg because he hears
25 Johnny Bennett has been down there. And even traces down

1 some girls who has some of his son's belongings that Johnny
2 Bennett has given to them.

3 Mr. Smith even corners Johnny Bennett. Now, this
4 elderly frail man corners big old bear of a fellow, Johnny
5 Bennett, at a gas station in Swansea. Still in the station,
6 you will hear about that. And you know what Johnny Bennett
7 has in his hand? That walking cane of Benton Smith's with
8 the brass head. It's been cut off by this time. It used to
9 be longer.

10 And Mr. Smith says, Where's my son; what did you do
11 with my son? You know what Johnny Bennett says? I don't
12 know where he is, and I don't give a damn where he is. He
13 continues to lie and manipulate as he's done all his life,
14 knowing full well Benton is out in some woods dead and
15 buried.

16 Finally some officers start looking around, and
17 they find Johnny Bennett on Friday, this officer right here,
18 Freddie Hamer, this young man seated right here. He took
19 Johnny into jail on Friday because Johnny had gotten in some
20 trouble for stealing gas at Stillinger's. They had a bench
21 warrant for Johnny, and he didn't even show up for court down
22 there and the judge tried him in his absence, issued a
23 warrant for him.

24 Detective Hamer took Johnny to jail on that bench
25 warrant and says, Johnny, you the last one to see Benton

1 Smith, where is Benton?

2 Don't know where he is. Don't know nothing about
3 it.

4 They know he's lying. Well, will you help us find
5 him?

6 Yeah.

7 Well, Johnny Bennett gets out of jail on that
8 Saturday, December the 1st. Detective Hamer meets him there
9 when he's getting out of jail and says, you know you're going
10 to help up, so how about where is Benton?

11 Well, Johnny told the stories on Friday, now he's
12 changed a little bit on Saturday but still, don't know where
13 he is. Don't have any idea. Lying still, disrespect.

14 So Saturday night in Swansea the officers are still
15 looking all over everywhere for little Benton. They get up
16 with Johnny Bennett again. He says, now, I'll tell you what,
17 you ought to look at these other fellows down here at the
18 club, they probably know something about Benton. Now he's
19 gone to blaming other people for his murderous act.

20 The officer said, Okay, let's go find him. They
21 take Johnny to a club called Reeds club. It's out on
22 St. Mathews Highway outside of Swansea. One of these other
23 guys that Johnny is trying to blame, they talk with him.
24 Come back and said, Johnny, things don't add up, what's
25 happening? But, you know, Johnny, the family here really

1 would like to find out where their son is. He's been missing
2 now Tuesday, Wednesday, Thursday, Friday, and it's Saturday
3 night. We need to get him home because those folks are
4 worried a good bit.

5 Johnny says, Drive the car. You know where he
6 takes them? Back down in Happy Town, a little area you'll
7 hear about where Benton Smith is from, where Johnny Bennett
8 is from, where Johnny Bennett's sister lived. And he takes
9 them down a dirt road into a driveway where a trailer is.

10 The officer said, Johnny, whose trailer is this, we
11 better tell these people.

12 He says, Don't worry about it. And he takes them
13 past that trailer, it's about 11 o'clock at night, through
14 some woods. Can't see too good down in there. Back on down
15 into some woods. Look over there where Johnny Bennett had
16 buried Benton Smith and left him for five days.

17 Turns out that trailer was Johnny Bennett's
18 sister's trailer. And there's Benton Smith in the woods
19 behind his own sister's trailer. And even taking them to the
20 body, even then knowing that Johnny Bennett had Benton's
21 possessions, even knowing he had been driving Benton's car,
22 even knowing that he's given away Benton's stuff and spending
23 money he's still blaming other people. Well, blame the
24 others. Lying. That was up into Sunday morning and Sunday.

25 And then on Monday the officers go down to

1 Orangeburg, Detective Hamer and others. They talk to these
2 girls that Johnny Bennett has been seeing down there, buying
3 things for, giving things too, and the girls tell him what's
4 going on. And they come back and said, Now, Johnny, things
5 aren't adding up what you told us.

6 Well, he's trying to blame these other people
7 again. They say, Wait a minute, Johnny, ain't no reason for
8 you to lie to us anymore, we don't believe that. Then
9 finally almost a week later he confesses of killing, not
10 killing, slaughtering Benton Smith. Because the first thing
11 he did was to knock him out. Big old bear of a fist coming
12 into poor old Benton. The doctor is going to tell you about
13 that, kind of like a heavy-weight fighter hitting somebody, a
14 lot of damage.

15 That's not enough. He takes a Phillips head
16 screwdriver and again just a stabs Benton Smith in the arms,
17 in the neck, in the head. The pathologist couldn't even tell
18 how many times. He said at least 64, 65, into 70. Could
19 have been more. You see why we're seeking the death penalty
20 now, don't you?

21 But, you know, it doesn't stop there, because he's
22 put back in the jail. He's kept in Lexington County jail,
23 kept at the Department of Corrections. Disregard for rules
24 and regulations, disregard for authority, disobedience,
25 assaults, having shanks in jail, disrespect, disruptive,

1 disobedient, evil, mean, manipulative, malicious. That's
2 what we're dealing with, folks.

3 We've got to prove to you one aggravating
4 circumstance for you to consider the death penalty. We're
5 going to prove more than one. Because you say, first of all,
6 Johnny Bennett kidnapped Benton Smith, and he did. Number
7 two, surrounding the murder Johnny Bennett robbed Benton
8 Smith with the use of a deadly weapon, and he did, because
9 you better believe that Phillips head screwdriver was a
10 deadly weapon.

11 And he took items from him. We're going to show
12 you how many items. The truth is we don't know how many
13 items he did take from Benton. All we know is that when that
14 car came back, ain't nothing in it. His wallet is gone, his
15 money is gone, his possessions gone and his life's gone.

16 We're going to prove to you that it was larceny
17 with the use of a deadly weapon, because he took his car away
18 too, along with other stuff. And torture. When you see
19 these wounds, when you see the result of the handy work of
20 Johnny Bennett, poor little body of Benton Smith, you won't
21 need anybody to tell you he was tortured. You'll know.

22 All we've got to do is prove one. You're going to
23 find more than one. The circumstances of the crime; you're
24 going to hear and see the circumstances of the crime. The
25 character of Johnny Bennett; you will hear and see the

1 character of Johnny Bennett.

2 And after you've heard everything, the Judge will
3 tell you what the law is, and then it's your duty to go to
4 the jury room and come back with the sentence and the
5 punishment that fits the crime. And when you come back you
6 will know why we're asking for the death penalty, because
7 that is the punishment warranted for Johnny Bennett for the
8 murder of Benton Smith. And it's Johnny's way or no way.
9 His way is to death row.

10 When I sit down and the defense attorneys speak to
11 you we're going to start putting up some witnesses. And
12 they're going to start off with the fifth grade, and then
13 we're going to bring you farther. We hope we can put up
14 about 13 witnesses this evening. We're going to put up
15 witnesses all day tomorrow. We hope that we can get all of
16 our witnesses in by the middle of Friday, maybe a good many
17 of them.

18 And when you've heard those witnesses, folks, and
19 you've heard all the testimony, when you've heard the law,
20 you will find enough aggravation that will be spilling over
21 this jury box. All we ask you is to return the punishment
22 that fits the crime in this evil, manipulating, malicious
23 murdering defendant.

24 THE COURT: Mr. Floyd?

25 MR. FLOYD: Thank you, Your Honor.

1 Ladies and gentlemen of the jury, I stand here
2 behind Johnny Olandis Bennett. He is the defendant in this
3 case, and he is the man by whom you're going to make the most
4 important decision that you can ever make about somebody,
5 because you will decide, each and every one of you,
6 individually, whether or not he should be put to death.

7 Now, each one of you were chosen by both the State
8 and the defendant because each one of you assured both sides
9 that you could consider all of the evidence that would be
10 presented to you, and that you could consider and determine
11 that Johnny Bennett should not be put to death simply because
12 he is guilty of murder.

13 As you all have already been told, another jury has
14 convicted Johnny Bennett of the murder of Benton Smith. And
15 we do not on his behalf stand up here and say to you that he
16 didn't do it because a jury has said that he did. Nor do we
17 say to you that this was not a gruesome and senseless murder.
18 But what we do say to you is that Johnny Bennett should not
19 now be put to death.

20 You know it is now the year 2000. This terrible
21 incident occurred in the year 1990. Johnny Bennett had just
22 turned 20 years of age. Johnny Bennett is now 29 years of
23 age, and Johnny Bennett is not today the same person that he
24 was in 1990.

25 You know, when I go to say to you what evidence

1 would show to you, I want you to understand something. The
2 defense never has the burden of proving things to you. It is
3 up to the State to prove to you that the death penalty is
4 what is appropriate.

5 But I would suggest to you that you will hear
6 evidence in the case that will show you that there is good in
7 Johnny Bennett, that Johnny Bennett contributes to society.
8 Now, it's very limited because of where he is and where he
9 will remain, because he is incarcerated.

10 And, you know, your only choice is whether he gets
11 life imprisonment or death. But we think you will see and
12 you will hear that he does the best with where he is and what
13 he has, that he spends his life now trying to help other
14 people, and that he does not deserve to be put to death.

15 Now, the way this system works is that the State
16 goes first. All we ask is that you keep an open mind until
17 you hear everything that is said, because as the State is
18 going to be presenting to you many witnesses, once they
19 finish then we will have the opportunity to present witnesses
20 to you also.

21 And we think if you keep an open mind and not make
22 it up until you hear everything that's presented to you that
23 you will conclude that there's good in this man, that this
24 man has matured, that this man has become a responsible
25 member of his community who contributes to others, therefore

1 that means he should not be killed.

2 Now, you have met already Hervery Young, who sits
3 next to me, and he is co-counsel with me. And he will also
4 be appearing in front of you on Johnny's behalf. On his
5 behalf, I welcome you also and thank you for your
6 participation.

7 Now, I'm going to mention a personal thing that I'm
8 going to apologize for it if it happens. I have in the last
9 few weeks gotten false teeth. I'm having trouble learning to
10 speak with them. And sometimes when I get excited I do lose
11 them a little bit. And all I ask is you bear with me while I
12 try to deal with it and not hold it against my client.

13 We very much appreciate your presence here. You
14 know, the way our law is, see, the Judge, nor the Solicitor,
15 they can't sentence Johnny Bennett to death, only members of
16 his community, his peers, after careful consideration of all
17 the evidence, can he be sentenced to death, and it requires
18 the unanimous vote of each and every one of you.

19 You all were asked that. You have to sign on the
20 line, because that's what our law says. Unless all 12 of
21 those people who sit in judgment of him find that he should
22 be put to death, then and only then can that happen. And so
23 we very much appreciate your presence here and we recognize
24 the awesome responsibility upon you.

25 All we can ask is that you give us your close

1 attention, which we know you will. Keep that mind open until
2 you hear everything, because we think if you'll do that
3 you'll conclude that there's good here, there's potential
4 here, and that death is not the appropriate punishment.

5 Thank you very much. And I'll also get to speak
6 with you at the conclusion of the evidence, and I look
7 forward to that also. Thank you very much.

8 THE COURT: Ladies and gentlemen, while we're
9 calling the first witness, again, if you'd like to stand and
10 stretch where you are, feel free to do so. We will take a
11 break after this witness testifies, but if you want to stand
12 and stretch right now you can.

13 MR. RIDDLE: Please the Court, Your Honor?

14 THE COURT: Yes, sir, call your first witness,
15 please.

16 MR. RIDDLE: The State calls Cecil McClary to the
17 stand.

18 CECIL LAVERNE MCCLARY, after having been duly
19 sworn, testified as follows:

20 THE CLERK: Have a seat in the witness box. State
21 your full name for the record, please.

22 THE WITNESS: My name is Cecil Laverne McClary.

23 DIRECT EXAMINATION

24 BY MR. RIDDLE:

25 Q. Mr. McClary, what do you do for a living?

1 A. I'm currently director of personnel for Lexington
2 School District Four.

3 Q. And Lexington School District Four is in what part
4 of the county?

5 A. That's the Gaston-Swansea attendance area.

6 Q. And can you tell the jury what schools make up that
7 district?

8 A. Currently?

9 Q. Yes, sir.

10 A. We have Frances Mack Elementary School, we have
11 Sand Hills Middle School, and then we have Swansea High
12 School, and Swansea Elementary School.

13 Q. And have you always held the job that you currently
14 hold with them?

15 A. No, sir.

16 Q. Okay. How long have you been in the school
17 district there?

18 A. This fall will be 30 years.

19 Q. 30 years. All right. Tell the jury some of the
20 previous jobs that you had with the school district.

21 A. I was principal at -- used to be Gaston Elementary
22 School. I was the principal at Swansea Elementary School,
23 Swansea Intermediate School, and also Swansea Middle School.

24 Q. Let me talk to you, if I could, about Swansea
25 Intermediate School. Were you principal there in 1980 and

1 1981?

2 A. Yes, sir.

3 Q. And back in 1980 and 1981, Mr. McClary, how was
4 Swansea School District set up? Which grades went to which
5 schools?

6 A. One through four was Swansea Elementary School, I
7 believe, then the five and six was intermediate school.
8 Seven and eight was a middle school, then grades nine through
9 twelve was Swansea High School.

10 Q. And I believe you indicated that you were the
11 principal of the intermediate school in 1980 and also in
12 1981?

13 A. Yes, sir.

14 Q. And during that time, Mr. McClary, was Johnny
15 Bennett a student at your school?

16 A. Yes, he was.

17 Q. And did you have any dealings with Mr. Bennett
18 during those school years?

19 A. Yes, sir.

20 Q. And as a result of your dealings, let's start with
21 the 1980, 1981 school year, was Mr. Bennett in the fifth
22 grade at that time?

23 A. Yes, sir.

24 Q. And did you have an occasion during that fifth
25 grade year to have to take some disciplinary action against

1 Mr. Bennett?

2 A. Yes, I did.

3 Q. I believe that you wrote a letter explaining your
4 disciplinary action in that particular case?

5 A. Yes, sir, that was in October of 1980.

6 Q. Who did you send that letter to?

7 A. To Ms. Louise Bennett.

8 Q. And that's the defendant's mother?

9 A. That's correct.

10 Q. And you indicated October of 1980, specifically
11 what date was it?

12 A. The 29th.

13 Q. Of 1980?

14 A. That's correct.

15 Q. And what type of disciplinary action did you have
16 to take?

17 A. That was then to notify Ms. Bennett that he was
18 being suspended from school for three days.

19 Q. And what was that suspension for?

20 A. That was for -- he had been reported for fighting
21 on the school bus. And prior to that, from my letter, I'd
22 already spoken to Johnny about some things that he needed to
23 do to listen and be a better student. And apparently, that
24 had not been done because this was another issue now that he
25 had also been reported for fighting on the school bus, and it

1 was a combination of things that I was writing her about.

2 Q. And can you just read to the jury the letter that
3 you sent to Ms. Bennett at that time.

4 A. Yes, sir. It says, Dear, Ms. Bennett; I have
5 talked to Johnny, tried every way I know to get him to behave
6 at school and complete his assignments. Johnny refused to
7 cooperate today and was reported for fighting on the school
8 bus. Johnny is suspended from school Friday, October 31st;
9 Monday, November 3rd; and Wednesday, November 5th. Please
10 contact me at 568-2359 if you wish to discuss this further.
11 And sincerely, and my name.

12 Q. So you had tried to work with Mr. Bennett prior to
13 suspending him in October of 1990?

14 A. Yes. Yes, sir. A principal's job is to work with
15 all students, and he was one that I had to work with
16 frequently as far as improving behavior.

17 Q. Now, sir, let me show you this and ask you if this
18 is correct; Johnny O. Bennnett at the top, Swansea
19 Intermediate School, fifth grade, October 29, 1980, fighting
20 on the school bus, suspended three days?

21 A. That's correct.

22 MR. RIDDLE: Your Honor, at this time, we have a
23 summary chart under Rule 1006 that we would propose to offer
24 into evidence, and I would like to uncover the testimony that
25 he just gave.

1 THE COURT: Any objection?

2 MR. YOUNG: No objection, Your Honor.

3 THE COURT: Without objection.

4 THE COURT: Let me ask, just for the record
5 purposes, is this going to be demonstrative or will you
6 introduce it?

7 MR. RIDDLE: No, I'm introducing it, Your Honor.

8 THE COURT: Okay. Any objection to it being
9 introduced as evidence?

10 MR. YOUNG: No, sir, Your Honor.

11 THE COURT: All right. Without objection.

12 (WHEREUPON, State's Exhibit No. 1, a Summary
13 Chart, was marked and admitted into evidence.)

14 BY MR. RIDDLE:

15 Q. Now, Mr. McClary, you were principal at Swansea
16 Intermediate School during the 1981, '82 school year as well?

17 A. That's correct.

18 Q. And did you likewise have an opportunity or an
19 occasion where you had to discipline Mr. Bennett that year?

20 A. Yes, I did.

21 Q. And did you also write a letter in connection with
22 that disciplinary action?

23 A. That's correct, and we write letters any time a
24 child is suspended. So that was normal that we would write a
25 letter and put a copy in the permanent record.

1 Q. I'm sorry, if you could just speak up just a shade.
2 I didn't hear that.

3 A. I said that's normal procedure when a child is
4 suspended from school that we wrote a letter to the parent
5 and we kept a copy and put it in the student's permanent
6 record.

7 THE COURT: Is that better?

8 MR. RIDDLE: Yes, sir.

9 THE COURT: That was my fault. I had the sound
10 system off. I'm sorry.

11 MR. RIDDLE: That makes it a little bit tougher.

12 THE COURT: Jurors, I'm always forgetting that. If
13 anybody can't hear just say so, okay. It's very important
14 that you hear. If you have trouble just let us know, and it
15 may be that I've turned it off for some reason.

16 Go ahead.

17 BY MR. RIDDLE:

18 Q. And, Mr. McClary, when did that disciplinary take
19 place during the '81 school year?

20 A. On October 7th, 1981.

21 Q. And you wrote a letter to Ms. Bennett again?

22 A. Yes, I did.

23 Q. And could you tell the jury what you said to
24 Ms. Bennett at that time.

25 A. The letter was addressed to Ms. Bennett. It says

1 Johnny was in a fight in the bus loading area shortly before
2 the end of school Tuesday. Johnny is suspended from school
3 Thursday, October 8th and Friday, October 9th. If you wish
4 to discuss this further please contact me at school between
5 8:00 a.m. and 2:30 p.m. each weekday by calling 568-2359.
6 Sincerely, Cecil L. McClary.

7 Q. Now, let me show you this and ask you if this is
8 correct, Mr. McClary; Swansea Elementary -- excuse me.
9 Swansea Intermediate School, sixth grade, October 7, 1981,
10 fighting at bus loading area, suspended two days?

11 A. That's correct.

12 MR. RIDDLE: Your Honor, I would uncover the second
13 line on State's Exhibit Number 1.

14 THE COURT: Yes, sir. And, again, I assume,
15 Counsel, there's no need to ask, I assume you have no
16 objection to the entire document being introduced; is that
17 correct?

18 MR. YOUNG: We have no objection as to it being
19 uncovered because we do not know what every one will be.

20 THE COURT: Okay. Is there any objection to this
21 item then?

22 MR. YOUNG: No, sir.

23 THE COURT: All right. Without objection.
24 Go ahead.

25 By the way, has this item been marked by the court

1 reporter?

2 MR. RIDDLE: Yes, sir.

3 THE COURT: Okay. What number is it?

4 MR. RIDDLE: State's Number 1, Your Honor.

5 THE COURT: State's Number 1. Go ahead.

6 MR. RIDDLE: Thank you, Mr. McClary. Please answer
7 any of defense's questions.

8 THE COURT: Cross?

9 CROSS-EXAMINATION

10 BY MR. YOUNG:

11 Q. Mr. McClary, at this school that you were a
12 principal at, at the time, Swansea Intermediate School, did
13 it cover the fifth, sixth and seventh grade?

14 A. Just fifth and sixth.

15 Q. Just fifth and sixth grade?

16 A. Seventh and eighth grade was Swansea Middle School.

17 Q. Okay. And the school year started sometime in
18 August?

19 A. That's correct.

20 Q. Between August and October 28th, 1980, what dates
21 was it that you met with Mr. Bennett and discussed any
22 behavior with him?

23 A. I don't have specific dates. What we normally do
24 when a child is reported for any type of misconduct, first
25 thing I do is ask him to come and sit down, and talk to him.

1 I didn't document that. That may have been in the records,
2 but I don't have his permanent record of -- have the record
3 of it, but just as a normal thing we talk to the child
4 whenever they're reported for any type misconduct. Then if
5 that didn't solve the problem then they would be recess --
6 loss of recess or lunch detention or something like that, but
7 I don't have documentation for it --

8 Q. So if there would have been any incidents between
9 the time school started and October the 28th, 1980 that were
10 serious enough you would have written them up, correct?

11 A. If there was suspension there would have been a
12 letter sent to the parent. If it was just a conference and I
13 felt that the student was going to try to improve, not
14 necessary every time I spoke with him.

15 Q. Did you personally observe this fight on the school
16 bus on October the 28th, 1980?

17 A. No, sir, I did not.

18 Q. Did you conduct any type of investigation into that
19 incident?

20 A. As to the best of my recollection the way procedure
21 -- if they are fighting on the school bus, there's a bus
22 supervisor and they just -- the bus driver or the supervisor
23 sends a note to the principal; so and so was throwing paper
24 on the bus, so and so was fighting on the school bus. You
25 call the student in, tell me what happened? We got in an

1 argument, we did this or whatever. Then I decide whether the
2 child is suspended, what actions are taken based on after
3 talking to the students involved.

4 Q. Do you have any records regarding what the bus
5 driver would have informed you as to this incident?

6 A. No, sir, I don't. That was 20 years ago.

7 Q. So you are unable to tell us here today whether
8 Mr. Bennett started this fight or was defending himself,
9 correct?

10 A. That's correct.

11 Q. October 7, 1981, did you investigate that accident?

12 A. Yes.

13 Q. You did?

14 A. That happened in the bus loading area, which would
15 have been on campus.

16 Q. And you would have been present when that incident
17 took place?

18 A. I would have been on school grounds. Yes, I would
19 have gone to the sight, separated them, or teachers would
20 have brought him to me or something of that nature. It was
21 actually on sight.

22 Q. Based on your recollection of that incident, were
23 you present when this incident took place or were you at
24 another location on the school grounds?

25 A. To the best of my recollection, at the end of the

1 day every bus -- when the buses were loading I was either
2 outside with the buses or right there close to where they
3 were. But, you know, you could have a phone call, could have
4 been in the office, but normally the principal and two or
5 three teachers on bus duty. So we're always there when there
6 is a large number of students gathered around getting on
7 buses.

8 Q. Well, let me just ask you this. To the best of
9 your recollection, did you visibly observe this incident?

10 A. No, sir.

11 Q. So you are unable to tell us here today whether or
12 not Mr. Bennett started that fight or whether or not he was
13 defending himself, correct?

14 A. That's correct. But in the school district
15 regardless of who started the fight both students were
16 disciplined, they were suspended.

17 Q. So Mr. Bennett wasn't the only one who got
18 suspended on that day?

19 A. If there was a fight between two students they both
20 were suspended.

21 Q. So you treated everybody the same?

22 A. Yes, sir.

23 Q. You didn't isolate a bad one or a good one, did
24 you?

25 A. We just took the situation, and if both kids were

1 fighting we suspended both of them.

2 MR. YOUNG: Thank you. That's all the questions I
3 have.

4 THE COURT: Any redirect?

5 MR. RIDDLE: No, sir.

6 Thank you, Mr. McClary.

7 May he be excused, Your Honor?

8 THE COURT: Yes, sir.

9 MR. YOUNG: No objection.

10 THE COURT: Counsel, I assume, unless there's any
11 objection to a witness leaving, I'm just going to just let
12 them leave normally, okay?

13 MR. YOUNG: Yes, sir, Your Honor.

14 THE COURT: Counsel, let's take about a ten minute
15 break at this point, give the jury a chance to move around.

16 Ladies and gentlemen, we'll take a short break.

17 Let me ask you to step to the jury room. Now, while you're
18 there, remember, very important, you're going to hear this a
19 lot over the next few days, and you'll get tired of it but
20 I'm going to tell you every time, don't talk about the case
21 in any way.

22 And if you need refreshments or anything let the
23 bailiffs know. These are great folks. They'll take good
24 care of you.

25 (WHEREUPON, the jury leaves the courtroom at

1 approximately 4:15 p.m.)

2 THE COURT: Counsel, we'll stand in recess.

3 (WHEREUPON, a brief recess was taken.)

4 THE COURT: Let's bring the jury in, please.

5 (WHEREUPON, the jury enters the courtroom at
6 approximately 4:30 p.m.)

7 THE COURT: All parties and attorneys are in the
8 courtroom and all jurors have returned.

9 Counsel, call your next witness, please.

10 MR. RIDDLE: The State calls Robert Maddox to the
11 stand, Your Honor.

12 ROBERT EARL MADDOX, after having been duly
13 sworn, testified as follows:

14 THE CLERK: Have a seat, please. State your full
15 name for the record and spell your last name for us, please.

16 THE WITNESS: Robert Earl Maddox, M-a-d-d-o-x.

17 DIRECT EXAMINATION

18 BY MR. RIDDLE:

19 Q. Introduce yourself to the jury, please, sir.

20 A. I'm Robert Maddox.

21 Q. Mr. Maddox, where are you employed?

22 A. I'm retired at the present time. I was employed
23 for the last 20 years by Lexington School District Four.

24 Q. And that's the school district down in the Swansea
25 area of the county?

1 A. Yes, it is.

2 Q. You had a number of positions with the school
3 district, did you not?

4 A. I did.

5 Q. And you were there for what period of time?

6 A. 20 years.

7 Q. 20 years, okay. Let me ask you this. Were you
8 employed by the school district back in 1982 and 1983?

9 A. Yes, I was.

10 Q. And during those time periods were you the
11 principal at the middle school there?

12 A. Yes.

13 Q. And that middle school, that was known at that time
14 as Monroe Pinkney Middle School?

15 A. I've forgotten exactly when it became Monroe
16 Pinkney. I think it was Swansea Middle School at the time I
17 was there.

18 Q. It's Monroe Pinkney at this time?

19 A. It was later but, no, it's -- we have a new middle
20 school now.

21 Q. All right. Now, Mr. Maddox, back in 1982 you were
22 the principal at the middle school?

23 A. Yes.

24 Q. And was Mr. Bennett a student there?

25 A. Yes, he was.

1 Q. And that would have been his seventh grade year; is
2 that correct?

3 A. That's correct.

4 Q. And did you during that time period have to take
5 some disciplinary actions against Mr. Bennett?

6 A. I did.

7 Q. And was the first such occasion, Mr. Maddox, on
8 October 1st of 1982?

9 A. Yes, it was.

10 Q. And what type of disciplinary action did you have
11 to take against Mr. Bennett?

12 A. I suspended Johnny from school for pushing a
13 student over a desk.

14 Q. And do you normally inform the parents of those
15 actions?

16 A. Yes. We wrote out discipline notices and forwarded
17 them to the parents.

18 Q. You send the discipline notice to the parent?

19 A. Yes.

20 Q. And I believe in that case the discipline notice
21 indicated that Mr. Bennett had assaulted a student; is that
22 correct?

23 A. Yes.

24 Q. And that was on October the 1st of 1992?

25 A. Yes, it was.

1 Q. And was he suspended?

2 A. Yes, he was.

3 Q. For how long?

4 A. For one day.

5 Q. Let me show you this and ask you if this was
6 correct; October 1, 1982, assaulting a student, suspended one
7 day?

8 A. Yes, sir.

9 Q. And that's at Swansea Middle School, seventh grade?

10 A. Correct.

11 THE COURT: Again, any objection from the defense?

12 MR. YOUNG: No objections, Your Honor.

13 THE COURT: Without objection.

14 BY MR. RIDDLE:

15 Q. Now, did there come another time later during that
16 school year where you had to discipline Mr. Bennett again?

17 A. Yes, there was.

18 Q. Was that on October the 6th, 1982?

19 A. Yes.

20 Q. And tell this jury what happened on that particular
21 occasion, why you had to discipline him.

22 A. Johnny wrote a dirty note to a girl. And when I
23 questioned him about it he told a story to begin with and
24 then later recanted.

25 Q. What disciplinary action did you take in that

1 particular occasion?

2 A. I suspended Johnny two days for writing the note
3 and one day for telling the story about it.

4 Q. Let me show you this and ask you if this is
5 correct, sir. October 6th, 1982, wrote dirty note to a girl,
6 suspended for two days; lied about it when confronted,
7 suspended one day?

8 A. Yes.

9 Q. Did there come a time on January the 7th of 1983
10 when you had to discipline Mr. Bennett again?

11 A. Yes.

12 Q. And what was that discipline imposed for?

13 A. Fighting on the school bus.

14 Q. And what discipline or what action did you take as
15 a result of that?

16 A. I suspended Johnny from school for three days.

17 Q. All right. Let me show you this and ask you if
18 this is correct. January 7, 1983, fighting on school bus,
19 suspended three days?

20 A. Correct.

21 THE COURT: Again, any objections?

22 MR. YOUNG: No objections, Your Honor.

23 BY MR. RIDDLE:

24 Q. Now, that was not the last time during that school
25 year that you had to discipline, was it?

1 A. No.

2 Q. As a matter of fact, was that the last time in
3 January that you had to discipline Mr. Bennett?

4 A. I'm sorry?

5 Q. Was that the last time in January that you had to
6 discipline him, or was there another occasion?

7 A. No, there was another incident on January 25th.

8 Q. And on January 25th, why did you have to take the
9 disciplinary action in that case?

10 A. Johnny was fighting in school.

11 Q. And in particular where was he fighting?

12 A. In the classroom.

13 Q. And what action did you take against Mr. Bennett at
14 that time?

15 A. I suspended Johnny from school for three days.

16 Q. Let me ask you if this is correct. January 25,
17 1983, fighting in class, suspended three days?

18 A. Yes.

19 MR. RIDDLE: Your Honor, I'd move to uncover this
20 at this time.

21 THE COURT: Any objection?

22 MR. YOUNG: No objections.

23 THE COURT: Without objection.

24 BY MR. RIDDLE:

25 Q. Did there come a time in May that you had to

1 discipline Mr. Bennett?

2 A. Yes.

3 Q. And that was on May the 11th of 1983?

4 A. Yes, it was.

5 Q. And was that one incident or two incidents,
6 Mr. Maddox?

7 A. There were two incidents on that date.

8 Q. Tell the jury when, approximately what time of the
9 day the first incident took place.

10 A. The first incident was about 8:30 in the morning.
11 Johnny was fighting in the classroom. The second incident
12 occurred about 9:10. And in that incident, Johnny would not
13 follow instructions; was asked to stay in the library and
14 walked outside the library. When told to go to the library
15 he said he was not going to the office and he was very
16 disrespectful to the teacher.

17 Q. So let me show you these and ask you if this
18 information is correct. Well, let me ask you this. In
19 regards to the fighting in class that took place on May the
20 11th, what disciplinary action did you take in that
21 situation?

22 A. I suspended Johnny from school until May the 17th.

23 Q. And in regards to the disrespect incident, what
24 action did you take against Mr. Bennett?

25 A. I had added a conference with the parents to that

1 where he was suspended until May the 17th and -- well,
2 suspended for May 17th and May 18th.

3 Q. So he was given a choice at that time?

4 A. Yes.

5 Q. And the choice was what?

6 A. Was have a parent conference or two additional
7 days.

8 Q. Let me show you these two lines here and ask you if
9 this is correct. May 11th, 1983, 8:30 a.m., fighting in
10 class, suspended until May 17, 1983?

11 A. Yes.

12 Q. And then also on May 11th of '83, 9:10 a.m.,
13 disrespect to teacher, parent conference or suspended two
14 days?

15 A. Yes.

16 MR. RIDDLE: Your Honor, I would move to uncover
17 the next two lines on the board.

18 MR. YOUNG: No objections.

19 THE COURT: Without objection.

20 BY MR. RIDDLE:

21 Q. Now, Mr. Maddox, you were also the principal of
22 Swansea Middle School in the 1983, '84 school year; is that
23 correct?

24 A. Yes, I was.

25 Q. And that year Mr. Bennett was in the eighth grade;

1 is that correct?

2 A. That's correct.

3 Q. And did you have to take some disciplinary action
4 against him that year?

5 A. Yes, I did.

6 Q. And what was that -- or what date did that take
7 place on?

8 A. October 11th.

9 Q. Of 1983?

10 A. Of 1983.

11 Q. And why did you take the disciplinary action in
12 that case?

13 A. Johnny was scuffling, fighting in the classroom.

14 Q. And what action did you take?

15 A. I suspended Johnny from school for two days.

16 Q. Let me show you this. Swansea Middle School,
17 eighth grade, October 11, 1983, fighting in class, suspended
18 two days?

19 A. Correct.

20 MR. RIDDLE: Your Honor, I'd uncover the next line.

21 MR. YOUNG: No objections.

22 BY MR. RIDDLE:

23 Q. You had a number of dealings with Mr. Bennett
24 during your time as principal --

25 A. Yes, sir.

1 Q. -- at the middle school? Can you tell this jury
2 what kind of student Johnny Bennett was, his behavior.

3 A. Johnny was a very bright, handsome young man. He
4 was large. As best I remember, was probably the biggest
5 child in the school, and as such, for early adolescence, was
6 intimidating the other students and on occasion he could use
7 that size to bully other students.

8 Q. He would bully other students around?

9 A. Yes.

10 MR. RIDDLE: Thank you, sir. Please answer any of
11 their questions.

12 CROSS-EXAMINATION

13 BY MR. YOUNG:

14 Q. Mr. Maddox, when Mr. Bennett was in the seventh
15 grade approximately how old would he have been?

16 A. About 13.

17 Q. About 13?

18 A. Yes, sir.

19 Q. Would you agree with me that sometime in that time
20 frame that puberty kind of sits in?

21 A. Absolutely.

22 Q. Young boys start to have interest in young girls,
23 correct?

24 A. Yes, sir.

25 Q. Young boys tend to play games with little girls,

1 correct?

2 A. Absolutely.

3 Q. They pat them and they pat back, correct?

4 A. Correct.

5 Q. So when Mr. Bennett wrote this note, it was nothing
6 unusual about that, was it?

7 A. It was not an unusual incident but still an
8 incident that you want to correct so that you guide these
9 young folks in the right direction.

10 Q. Because we don't want any inappropriate behavior
11 going on, correct?

12 A. That's correct.

13 Q. And you would agree with me, 13-year-old man, young
14 man who had gotten caught passing a note to a young lady that
15 he may, like, could be embarrassed, correct?

16 A. Correct.

17 Q. Could not want to own up to it, correct?

18 A. Correct.

19 Q. Because usually at that age, a 13-year-old, is not
20 really aware of how to respond to being caught in those
21 situations, correct?

22 A. Well, I don't know that I agree with that. I think
23 probably they know better, but I admit to the fact that
24 children get in trouble and we correct them and that's the
25 way they learn and become useful citizens.

1 Q. And at that age they are learning about sexuality
2 and life in other people of other sexes, correct?

3 A. Yes.

4 Q. You mentioned the October 1st, 1982 incident. That
5 was during the period of time when the school were taking
6 tests, correct?

7 A. Yes.

8 Q. And I believe you testified that he pushed a
9 student over a fence?

10 A. Over some desks.

11 Q. Over some desks. Do you know why he pushed those
12 students over the desk?

13 A. No.

14 Q. Student could have said something derogatory to
15 him, correct?

16 A. Possibly.

17 Q. Student could have pushed him first, correct?

18 A. Possibly, although I doubt it. Not many students
19 would go push Johnny.

20 Q. But didn't you tell us you didn't know what caused
21 him to do it?

22 A. But you asked me for an explanation.

23 Q. Do you know for sure why Mr. Bennett pushed that
24 student?

25 A. I have no idea.

1 Q. You mentioned January 7th, 1983, fight on the
2 school bus. Did you rely on the bus driver when you received
3 that report?

4 A. I'm sure I did.

5 Q. Did that bus driver tell you how that fight
6 started?

7 A. Possibly did, but as Mr. McClary stated earlier,
8 any students that hit each other were both held responsible.

9 Q. They were both held responsible, correct?

10 A. Correct.

11 Q. So both students would have been suspended,
12 correct?

13 A. Correct.

14 Q. The incident that occurred on May 11th, 1983, the
15 fight and this disrespecting this teacher all occurred within
16 a 20, 30 minute time frame of each other, correct?

17 A. Correct.

18 Q. At that point in time, both students were dealt
19 with accordingly, correct?

20 A. Correct.

21 Q. On the fights that occur when Mr. Bennett was in
22 the eighth grade, I believe it was October 11th, 1983,
23 correct, he was cited for a fight?

24 A. Yes.

25 Q. That was the only incident he had that year, was it

1 not?

2 A. The only one that I was aware of, yes.

3 Q. At no other time did you have to sanction
4 Mr. Bennett, did you?

5 A. No.

6 Q. There was nothing unusual with a student getting
7 into a fight?

8 A. No. Now, it wasn't the norm, but it occurred with
9 a good deal of frequency.

10 Q. You testified earlier that Mr. Bennett was probably
11 the largest student in school, correct?

12 A. Correct.

13 Q. You also said there wasn't too many students going
14 to push him, correct?

15 A. Correct.

16 Q. That didn't stop any students from possibly
17 taunting him, did it?

18 A. No, it wouldn't do that. Well, I don't know about
19 that. They probably wouldn't taunt Johnny too much.

20 Q. It's possible that students across the room would
21 say something to him?

22 A. It's possible.

23 Q. Would you agree with me that a student that feels a
24 little different than the rest of the students usually tends
25 to be a little vulnerable feelings-wise, correct?

1 A. That's probably true.

2 Q. And it's not your testimony here today that Johnny
3 Bennett was the only bad student at Swansea Middle School --

4 A. No.

5 Q. -- in 1983 and '84? Are you saying that?

6 A. I'm agreeing with you. He was not the only student
7 that got into trouble, no.

8 MR. YOUNG: Thank you. I have no further
9 questions.

10 THE COURT: Any redirect?

11 MR. RIDDLE: No, sir. The State calls Bob James.

12 THE COURT: You can step down. Thank you, sir.

13 And you're free to go at this time.

14 ROBERT M. JAMES, after having been duly sworn,
15 testified as follows:

16 THE CLERK: Have a seat in the witness box and
17 state your full name for the record, please

18 THE WITNESS: My name is Robert M. James.

19 DIRECT EXAMINATION

20 BY MR. RIDDLE:

21 Q. Mr. James, where are you employed?

22 A. I'm employed with the Will Lou Gray Opportunity
23 School.

24 Q. And how long have you been with them?

25 A. Been there 12 years.

1 Q. And prior to that, were you in the educational
2 field?

3 A. Yes, I was.

4 Q. Where were you employed then?

5 A. I was the principal at Swansea High School for 14
6 years.

7 Q. For how long?

8 A. 14.

9 Q. Were you the principal of Swansea High School when
10 the defendant, Johnny Bennett, was a student there?

11 A. Yes, I was.

12 Q. And did you have some dealings with Mr. Bennett
13 while you were the principal of that high school?

14 A. Yes, I did.

15 Q. And what type of dealings did you have with
16 Mr. Bennett during that time?

17 A. Mostly disciplinary problems.

18 Q. Would he cause a number of types of problems at the
19 school?

20 A. Yes, he did.

21 Q. And as principal, was it your job to take
22 disciplinary action against him?

23 A. Yes, either I or either of the assistant principals
24 that I had.

25 Q. Now, let me ask you this. At Swansea High School,

1 that's comprised of what grades?

2 A. It was grades nine through twelve.

3 Q. And Mr. Bennett started in Swansea High School in
4 1984, '85 school year?

5 A. That's correct.

6 Q. He would have been in the ninth grade?

7 A. That's correct, yes.

8 Q. Back in November of 1984, did you have an occasion
9 to take disciplinary action against Mr. Bennett?

10 A. Yes, I did. Johnny was suspended from school for
11 three days for fighting.

12 Q. And what date did that take place on?

13 A. That was on November the 9th.

14 Q. Of 1984?

15 A. Yes, sir.

16 Q. Let me ask you this, if this information is
17 correct. Swansea High School, ninth grade, November 9, 1984,
18 fighting, suspended three days?

19 A. That's correct.

20 MR. RIDDLE: Your Honor, I would uncover the next
21 line on the board.

22 MR. YOUNG: No objections.

23 BY MR. RIDDLE:

24 Q. Did you also have to take disciplinary action
25 against Mr. Bennett in December of 1984?

1 A. Yes, I did.

2 Q. And what disciplinary action did you have to take
3 against him at that time?

4 A. Johnny was again suspended for three days for
5 fighting in the classroom.

6 Q. And what date did that take place?

7 A. That occurred on December the 5th.

8 Q. Of 1984?

9 A. 1984, yes.

10 Q. Is this correct, sir; December 5, 1984, fighting in
11 class, suspended three days?

12 A. That's correct.

13 MR. RIDDLE: Your Honor, I would uncover the next
14 line on the chart.

15 MR. YOUNG: No objections.

16 BY MR. RIDDLE:

17 Q. Now, during that same school year but moving into
18 1985, did you have to take some additional disciplinary
19 action against Mr. Bennett?

20 A. Yes, I did.

21 Q. And what type of disciplinary action did you take
22 against Mr. Bennett?

23 A. Johnny was suspended from school for three days for
24 continually disrupting classroom activities.

25 Q. And what date did that take place?

1 A. That took place on February 27th.

2 Q. 1985?

3 A. 1985.

4 Q. Is this correct, sir; February 27, 1985,
5 continuously disrupting class, suspended three days?

6 A. That's correct.

7 MR. RIDDLE: Your Honor, I'd uncover the next one
8 on the board.

9 MR. YOUNG: No objections.

10 BY MR. RIDDLE:

11 Q. Now, in March of 1985, did you have to take some
12 disciplinary action against Mr. Bennett at that time?

13 A. Yes, I did.

14 Q. And would that have been on March the 15th of '85?

15 A. That's correct.

16 Q. And what was that action taken?

17 A. He was suspended for three days for disturbing
18 class, getting out of his seat, talking, raising his voice,
19 bothering other students.

20 Q. Did that also involve pushing a young lady?

21 A. Yes, it did.

22 Q. Let me ask you if this is correct. March the 15th,
23 1985, suspended three days for disrupting class and he pushed
24 a girl?

25 A. That's correct.

1 MR. RIDDLE: Your Honor, I'd move to uncover the
2 next line.

3 MR. YOUNG: No objections.

4 BY MR. RIDDLE:

5 Q. Now, Mr. Bennett was enrolled at Swansea High
6 School again the following year; is that correct?

7 A. That's correct.

8 Q. And were you still the principal at that time?

9 A. Yes, I was.

10 MR. RIDDLE: Your Honor, I have a continuation of
11 this board to this summary. I'd like to mark it as State's
12 Number 2.

13 MR. YOUNG: No objections.

14 THE COURT: All right.

15 (WHEREUPON, State's Exhibit No. 2, a Summary
16 Chart, was marked and admitted into evidence.)

17 BY MR. RIDDLE:

18 Q. Now, while you were the principal in the 1985, '86
19 school year did you have to take a number of disciplinary
20 actions against Mr. Bennett?

21 A. Yes, I did.

22 Q. And was Mr. Bennett again in the ninth grade that
23 year?

24 A. Yes, he was.

25 Q. Speaking specifically of October 15th, 1985, did

1 you have to take some disciplinary action against
2 Mr. Bennett?

3 A. Yes, I did. Johnny was suspended for three days.

4 Q. And what was that for?

5 A. For disrupting class, being disrespectful to the
6 teacher, refusing to do what he was told to do in school.

7 Q. All right. Let me ask you if this is correct.

8 October 15, 1985, disrespectful to a teacher, suspended three
9 days?

10 A. That's correct.

11 MR. RIDDLE: Your Honor, I'd move to uncover the
12 next line on this chart.

13 MR. YOUNG: No objections.

14 BY MR. RIDDLE:

15 Q. Mr. James, in November of 1985 did you have to
16 take some disciplinary action against Mr. Bennett?

17 A. Yes, I did.

18 Q. And what type of action did you take?

19 A. Johnny was again suspended for three days.

20 Q. And what was that disciplinary action taken for?

21 A. It grew out of an argument between two students in
22 the classroom, Johnny and another student, that they carried
23 on into the rest room and it became a fight.

24 Q. All right. So what was he suspended for?

25 A. He was suspended for arguing and fighting.

1 Q. Is this correct; November 5, '85, arguing in class,
2 fighting in rest room, suspended three days?

3 A. That's correct.

4 MR. RIDDLE: Your Honor, I'd move to uncover the
5 next line.

6 BY MR. RIDDLE:

7 Q. Again in November of that year, Mr. James, did you
8 have to take some disciplinary action against Mr. Bennett?

9 A. Yes, I did.

10 Q. And when was that taken?

11 A. November 15th, disturbing class during a test.

12 Q. All right. That's correct. And what action did
13 you take?

14 A. He was suspended from school for three days.

15 Q. Is this correct, sir; November 15th, 1985,
16 disrupting a class during test, suspended three days?

17 A. That's correct.

18 Q. Let's move to December of that year, if we could.
19 Was there an action taken on December 12th, 1985?

20 A. Yes, there was.

21 Q. And what was that for?

22 A. Johnny was suspended for three days for disrupting
23 class.

24 Q. And is this correct; December 12, '85, suspended
25 three days, disrupting class?

1 A. That's correct.

2 Q. Now, January of 1986, that's the same school year,
3 is it not?

4 A. That's correct.

5 Q. Just after the Christmas break?

6 A. Right.

7 Q. Did you have to take some disciplinary action
8 against Mr. Bennett on January the 21st?

9 A. Yes, I did.

10 Q. And what was that for?

11 A. For possession of fire crackers in a classroom.

12 Q. And what action did you take?

13 A. He was placed in the in-school suspension program
14 for a period of three days.

15 Q. Is this correct; January 21st, 1986 --

16 A. Suspended from class.

17 Q. Three days?

18 A. Three days.

19 Q. And that was for having fireworks in class?

20 A. Having fire crackers, yes.

21 Q. January 31st, did you have to take more
22 disciplinary action against Mr. Bennett?

23 A. Yes, I did.

24 Q. What was that for?

25 A. That was for harassing a student and yelling at a

1 teacher, basically disrespectful behavior.

2 Q. And what action was taken?

3 A. He was suspended from school for three days.

4 Q. Is this correct; January 31, '86, harassing a
5 student, yelling at teacher, three days suspension?

6 A. That's correct.

7 Q. February 12 of 1986, did you have to take some
8 action against him?

9 A. Yes, I did.

10 Q. What was that for, sir?

11 A. That was for disrupting class and disobeying a
12 teacher.

13 Q. And what action was taken on that occasion?

14 A. He was placed in the in-school suspension program
15 for a period of three days, suspended from class and placed
16 in that program.

17 Q. And is this correct; February 12th, 1986,
18 disrupting class, disobeying teacher?

19 A. That's correct.

20 Q. Suspended three days?

21 A. Yes.

22 Q. March 5th, 1986, another disciplinary action?

23 A. That's correct.

24 Q. And what was that for, sir?

25 A. That is for arguing with a student, continually

1 disrupting class by these arguments.

2 Q. And what action was taken?

3 A. Suspended from school three days.

4 Q. Is this correct; March 5, '86, disrupting class
5 arguing with a student, three-day suspension?

6 A. That's correct.

7 Q. March 28th, sir?

8 A. Yes.

9 Q. Another disciplinary?

10 A. Suspended for three days.

11 Q. For what type of behavior?

12 A. Disruptive behavior, specifically picking on other
13 students, constantly picks on other students, won't keep his
14 hands to himself.

15 Q. Did he also disobey a teacher at that time?

16 A. Yes, he did.

17 Q. Is this information correct; March 28, '86,
18 disruptive behavior, disobeying a teacher, three-day
19 suspension?

20 A. That's correct.

21 Q. Did you have to take further disciplinary action
22 against him that same school year on May the 1st?

23 A. Yes, I did.

24 Q. And what type of action was taken?

25 A. He was suspended for three days.

1 Q. And what was that for?

2 A. Cutting class. He left class under false pretenses
3 and never returned.

4 Q. Is that correct; May 1, '86, cutting class,
5 three-day suspension?

6 A. That's correct.

7 Q. May 12th of 1986, sir, did you have to discipline
8 Mr. Bennett again?

9 A. Yes, I did.

10 Q. And what was that for?

11 A. That was for being disrespectful to a teacher and
12 disrupting class.

13 Q. And at that time was he suspended for one day and
14 given four days of in-school suspension?

15 A. Yes, he was.

16 Q. Is this information correct; May 12, '86,
17 disrupting class, disrespectful to a teacher, suspended one
18 day and four days in-school suspension?

19 A. That's correct.

20 Q. Again, May the 19th of 1986, more disciplinary
21 action?

22 A. Yes.

23 Q. And what was that for, sir?

24 A. That was for pulling a chair out from under another
25 student.

1 Q. And what type of sanctions was he given at that
2 time?

3 A. He was suspended at home for one day and placed in
4 in-school suspension program for two additional days.

5 Q. Is this correct; May 19 of '86, suspended one day
6 and two days in-school suspension?

7 A. That's correct.

8 Q. Pulled a chair out from another student?

9 Now, Mr. James, the 1986, '87 school year, were you
10 still at Swansea High School?

11 A. Yes, I was.

12 Q. And still the principal there?

13 A. That's correct.

14 Q. And did you have to take some disciplinary action
15 against Mr. Bennett that school year?

16 A. Yes, I did.

17 Q. The first incident took place on October 15th of
18 1986; is that correct?

19 A. That's correct.

20 Q. And what was that for?

21 A. That was for disrespectful behavior towards two
22 different teachers, failing to follow teacher's instructions.

23 Q. And what type of action did you take?

24 A. He was suspended from school for three days.

25 Q. Let me show you this line and ask you if that's

1 correct information, sir?

2 A. Yes, that's correct.

3 Q. October 15, '86, disrespectful to two teachers,
4 suspended three days. And that was during Mr. Bennett's
5 tenth grade year in high school; is that correct?

6 A. That's correct.

7 Q. November 13, 1986, did you have to take
8 disciplinary action against Mr. Bennett yet again?

9 A. Yes.

10 Q. And what was that for?

11 A. That was for arguing, being disrespectful to the
12 teacher, refusing to do was he was told to do in class.

13 Q. And what type of sanctions did you impose on
14 Mr. Bennett that time?

15 A. Placed in in-school suspension for three days.

16 Q. Is this information correct; November 13, '86,
17 disrespectful to a teacher, three days in-school suspension?

18 A. That's correct.

19 Q. Mr. James, did there come another time on March
20 4th, 1987 where you have to take disciplinary action against
21 Mr. Bennett?

22 A. Yes, I did.

23 Q. What type of actions did you take?

24 A. Johnny was suspended from school three days.

25 Q... And why did you take that action against him?

1 A. He slapped another student.

2 Q. Let me ask you if this is correct. March 4, '87,
3 slapped a student, suspended three days?

4 A. That's correct.

5 Q. Again in March of 1987, sir, did you have to take
6 some disciplinary action against Mr. Bennett?

7 A. Yes, I did.

8 Q. And what type of action did you take against
9 Mr. Bennett?

10 A. He was placed in in-school suspension for four
11 days.

12 Q. And what type of conduct did Mr. Bennett show?

13 A. It was classroom discipline. He was told to move a
14 chair and he refused to, was disruptive in the classroom.

15 Q. And was he disrespectful at that time?

16 A. Yes, he was.

17 Q. Let me ask you if this is correct. March 12, 1987,
18 disrespectful to a teacher, four days in the in-school
19 suspension?

20 A. That's correct.

21 MR. RIDDLE: Your Honor, I have a continuation of
22 this same chart that I would like to mark as State's Exhibit
23 Number 3 at this time.

24 THE COURT: Any objection?

25 MR. YOUNG: No objections.

1 (WHEREUPON, State's Exhibit No. 3, a Summary
2 Chart, was marked and admitted into evidence.)

3 BY MR. RIDDLE:

4 Q. Now, this is still during Mr. Bennett's tenth grade
5 school year, is it not, the same '86, '87 school year?

6 A. That's correct.

7 Q. Now, on March the 25th, some two weeks after the
8 last one, did you have to discipline him again?

9 A. Yes, I did.

10 Q. And what was that for?

11 A. That was for not doing what a teacher told him to
12 do, disrupting class, being disrespectful.

13 Q. And what type of sanction?

14 A. He was placed in in-school suspension for five
15 days.

16 Q. And let me ask you if this is correct information.
17 March 25, '87, disrupting class, five days in-school
18 suspension?

19 A. That's correct.

20 Q. Approximately ten days or two weeks later on April
21 7th, did you have to discipline Mr. Bennett again?

22 A. Yes, I did.

23 Q. And what was he disciplined for?

24 A. Disruption of class, disrespectful behavior, not
25 doing what he was told in class.

1 Q. And what type of action did you have to take?

2 A. He was placed in in-school suspension for two days.

3 Q. Let me ask you if this is correct, sir. April 7 of
4 '87, disrupting class, two days in-school suspension?

5 A. That's correct.

6 Q. On May the 15th, sir, 1987, did you have to take
7 more disciplinary action against Mr. Bennett?

8 A. Yes, I did.

9 Q. And what type of behavior prompted that action?

10 A. The behavior was refusing to be quiet in a
11 classroom, not doing what he was told to do, basic classroom
12 disruption and disrespect.

13 Q. And what type of sanction did you impose?

14 A. Johnny was suspended from school for three days.

15 Q. Let me ask you if this is correct. May 15th, 1987,
16 disrupting class, suspended three days?

17 A. Yes.

18 Q. Mr. James, the 1987, '88 school year, was
19 Mr. Bennett again a student at Swansea High School?

20 A. Yes, he was.

21 Q. And were you, likewise, the principal at Swansea
22 High School?

23 A. Yes, I was.

24 Q. And did you take disciplinary action against
25 Mr. Bennett at that time?

1 A. Yes, I did.

2 Q. And what date? Is that on September 3rd of 1987?

3 A. Yes.

4 Q. And what action did you take against Mr. Bennett at
5 that time?

6 A. An incident that had occurred the day before, I
7 suspended Johnny from school for ten days and recommended to
8 the board of trustees that he be expelled for the remainder
9 of the year.

10 Q. Now, that was on September 3rd. Tell the jury what
11 the incident was or what the actions were that caused you to
12 take a ten-day suspension and recommendation of expulsion.

13 A. Okay. During the first two weeks of any school
14 year there's a lot of shifting that has to go on with buses,
15 particularly in a small school district so you get the loads
16 evened up, you don't have 100 people on one bus and 30 on
17 another. So what you have to do is look at those every day
18 and make changes during the day and impose those changes in
19 the afternoon.

20 That afternoon it was determined that Johnny and
21 some other folks would have to change buses. Johnny refused
22 to get off the bus. The bus driver told him to get off,
23 which he has a legal right to do. This was in the parking
24 lot, by the way. Johnny refused.

25 The bus supervisor was called. He told Johnny he

1 had to get off the bus. Johnny refused, told him he would
2 not get off the bus. The assistant principal was called.
3 The assistant principal told Johnny that the police would be
4 called and he would be arrested if he didn't get off the bus.

5 Q. Now, who was the assistant principal?

6 A. Mr. Rudy Cooper.

7 Q. And he's seated out in the courtroom now, is he
8 not?

9 A. Yes, he is.

10 Q. And even when the assistant principal came he would
11 not get off the bus?

12 A. No, he was threatened with the police before he
13 would ever move.

14 Q. Now, as a result of that incident, did you send a
15 letter to Mrs. Bennett?

16 A. Yes, I did.

17 Q. Or actually to both Mr. and Mrs. Bennett; is that
18 correct?

19 A. That's correct.

20 Q. And could you tell the jury the contents of that
21 letter.

22 A. Do you want me to read it?

23 Q. Yes, sir.

24 A. Dear Mr. and Mrs. Bennett; as you know, on
25 Wednesday, September 2nd, Johnny was told that he had to

1 change buses due to the fact that the bus he was on was
2 overloaded. Johnny refused to leave the bus he was on. And
3 when the bus driver told him, he refused to leave the bus he
4 was on. When Mr. Batson told him to do so --

5 Q. And Mr. Batson was who?

6 A. Mr. Batson was the bus supervisor.

7 Q. All right.

8 A. And he refused to leave the bus when Mr. Cooper
9 told him to do so. Johnny left the bus only after he was
10 informed that the police had been called and he would be
11 arrested if he did not leave the bus.

12 As of this point, Johnny has violated two state
13 laws; number one, state law requires that a student follow
14 the orders of a bus driver, and number two, state law makes
15 it illegal to interfere with the normal operation of a school
16 bus. Johnny's actions caused two buses to be approximately
17 45 minutes late in leaving the school.

18 I am suspending Johnny until September 16th and
19 will recommend to the board of trustees that he not be
20 allowed to return to school. You will be notified as to the
21 time and place of the board meeting for this matter.

22 Q. Now, let me ask you this. Is this correct
23 information; September 3rd, 1987, refused to leave the school
24 bus as instructed three times until told police had been
25 called, and the sanctions, suspended until September 16, 1987

1 with recommendation to expel?

2 A. That's correct.

3 Q. Subsequent to that recommendation to expel
4 Mr. Bennett, was a hearing held before the Lexington Four
5 School Board?

6 A. Yes. A hearing was held September 14th.

7 Q. Of 1987?

8 A. Of 1987.

9 Q. And what was the result of that hearing?

10 A. Johnny was expelled from school.

11 Q. For the remainder of that school year?

12 A. For the remainder of that school year.

13 Q. Is this information correct; September 14, 1987,
14 expelled for the remainder of the school year?

15 A. That's correct.

16 Q. Mr. James, you were the principal at Swansea High
17 School for what period of time?

18 A. Went there in 1988 and served there -- I'm sorry,
19 went there in 1974, and left there in 1988, 14 years.

20 Q. And Mr. Bennett was a student there a number of
21 years?

22 A. Yes.

23 Q. Tell the jury what kind of a student Mr. Bennett
24 was in terms of his behavior and ability to get along with
25 other students at school.

1 A. Mr. Bennett was a bright young man. He had a lot
2 of potential but could not get along with other people. He
3 was disruptive in classes, he was disruptive with other
4 students, he was an intimidating factor with other students.
5 Totally disrespectful of any authority and totally
6 disrespectful of any rules or regulations.

7 MR. RIDDLE: Thank you, sir. Please answer any of
8 the defense's questions.

9 CROSS-EXAMINATION

10 BY MR. YOUNG:

11 Q. Mr. James, during the year 1984 and 1985, how many
12 times did you have a parent conference with Mr. Bennett's
13 parents?

14 A. I can't answer on formal conferences, but I can
15 tell you that Mr. Bennett's mother was employed at the school
16 as a food service worker and I talked to her daily.

17 Q. You talked to her while she was at work?

18 A. Yes. I'd go to her or she would come to my office.

19 Q. You described Mr. Bennett as a bright young man
20 with a lot of potential?

21 A. That's correct.

22 Q. However, he couldn't get along with others?

23 A. That's correct.

24 Q. You stated that he couldn't follow rules?

25 A. That's correct -- no, I didn't say he couldn't. I

1 stated that he wouldn't.

2 Q. Wouldn't follow rules?

3 A. Wouldn't follow rules.

4 Q. Very disrespectful?

5 A. Yes.

6 Q. Disruptive of the process?

7 A. That's correct.

8 Q. You were the principal, correct?

9 A. That's correct.

10 Q. You've been through a number of years of education,
11 correct?

12 A. That's correct.

13 Q. In order to become a principal, correct?

14 A. I'm not sure that's correct, but I became a
15 principal.

16 Q. Part of your training in becoming a principal is
17 knowing how to deal with students, correct?

18 A. Yes.

19 Q. Knowing how to be able to identify issues that may
20 be going on with the child, correct?

21 A. No, not correct.

22 Q. So your job is if you see any problems with a
23 student you ignore it?

24 A. No, my child -- my job was to deal with the
25 problems I saw with the student. My job was not to try to

1 determine what issues might be causing that.

2 Q. But if you saw a student that you thought had a lot
3 of potential, that something may be going wrong with him, you
4 just deal with it?

5 A. I'm not sure that I ever thought something was
6 going wrong. What I thought was Johnny won't behave himself.

7 Q. Did you ever refer Mr. Bennett to any type of
8 programs that the school may have offered dealing with
9 monitoring?

10 A. Mr. Bennett was referred to the counseling program
11 which was the only program we offered at that time.

12 Q. And what is the counseling program?

13 A. The guidance counselors.

14 Q. How many guidance counselors were at Swansea High
15 School?

16 A. I think I had one at that point.

17 Q. How many students did you have?

18 A. Approximately 600.

19 Q. So you had one counselor?

20 A. We had what was required by the State.

21 Q. For 600 students?

22 A. Yes.

23 Q. And that one counselor was to deal with problems
24 that were referred to him or her?

25 A. That's correct.

1 Q. You were not present in the year of '84 to '85 of
2 any of these incidents involving Mr. Bennett?

3 A. I don't know if I was or not. I can't tell you
4 that.

5 Q. Well, you have records there with you.

6 A. These records don't indicate whether I was there or
7 not, no.

8 Q. Do you have any personal recollection of any of
9 these incidents in '84 and '85?

10 A. No.

11 Q. Can you tell us the source that led to these
12 problems?

13 A. Led to the problems?

14 Q. What caused them, what started the fights?

15 A. I have no idea. No idea.

16 Q. At your school if somebody got into a fight, were
17 both students dealt with accordingly?

18 A. Both students were dealt with accordingly, the one
19 difference being if it could be determined that there was a
20 definite aggressor and that the other party was simply trying
21 to defend themselves then they were dealt with differently,
22 but that's almost impossible to determine most of the time.

23 Q. So I take it from that that you were never able to
24 determine in this incident?

25 A. No, that isn't what I said.

1 Q. Were you able to determine it in this incident?

2 A. I don't remember any specifics on these cases from
3 16 years ago.

4 Q. Was Mr. Bennett the only student that you had to
5 discipline?

6 A. No.

7 Q. It was testified a couple of times that a few of
8 these were disrupting classes?

9 A. That's correct.

10 Q. Were any of those involving any type of violence?

11 A. The ones that involved violence, I stated those
12 involving violence.

13 Q. You referred to one of the incidents as picking on
14 other students and could not keep his hands to himself?

15 A. That's correct.

16 Q. What happened in that incident?

17 A. He was picking on other students and he wouldn't
18 keep his hands to himself. That's pretty self-explanatory.

19 Q. Was he hitting them? Was he tapping them on the
20 shoulder?

21 A. May have been some or all of that.

22 Q. But you can't say for sure?

23 A. No, I can't.

24 Q. Would you agree with me that the ninth grade was a
25 bad year for Mr. Bennett?

1 A. Yes.

2 Q. In fact, that was the year that you had the most
3 involvement with him?

4 A. I'd have to count them, but it may be.

5 Q. And at the end of his ninth grade year he actually
6 passed to the tenth grade, correct?

7 A. No. He repeated the ninth grade in 1985 and '86.

8 Q. And at the end of that year, he passed to the tenth
9 grade?

10 A. Yes. After two years in the ninth grade he passed
11 to the tenth, yes.

12 Q. And you were also present at Swansea High School in
13 1987, '88 school year, correct?

14 A. That's correct, yes.

15 Q. And at that point in time, Mr. Bennett passed to
16 the 11th grade, correct?

17 A. No, I think it was '86, '87 that he passed, and
18 '87 -- the beginning of the '87 year is when he was expelled.

19 Q. But he was in the 11th grade at that point?

20 A. He was starting the 11th grade, yes.

21 Q. Now, would you agree with me, by this point in time
22 you had had a lot of involvement with Johnny Bennett,
23 correct?

24 A. Correct.

25 Q. And is it safe to say that you had pretty much had

1 enough of Johnny Bennett?

2 A. No, that's not safe to say at all.

3 Q. Was this bus incident before or after school?

4 A. It was after school.

5 Q. It was after school?

6 A. At the end of the school day, yes.

7 Q. So this bus being 45 minutes late did not interfere
8 with school starting, correct?

9 A. That's correct. I don't think I ever stated that
10 it did.

11 Q. And there was never an attempt to require
12 Mr. Bennett to find another means of transportation to and
13 from school; is that correct?

14 A. That's absolutely correct, yes. At that point,
15 Mr. Bennett had violated two state laws and refused to do
16 what he was told to do by two school officials.

17 Q. Did you sign a petition charging Mr. Bennett with
18 any criminal charges?

19 A. No, I did not.

20 Q. At that time?

21 A. No, I didn't.

22 Q. Your only response was to suspend him for ten days
23 and ask that he be expelled?

24 A. And notify his parents of what he had done, yes.

25 Q. And this was the first time that you had wrote a

1 letter to his parents?

2 A. No.

3 Q. What other date did you write a letter to his
4 parents?

5 A. I had written two other -- well, I had written
6 letters on every one of these incidents. Every incident
7 that's on that board a letter went home to the parents of
8 this type right here. I wrote at least two other letters
9 informing them of his attendance problems, because he had
10 reached the limit on attendance days he can miss and still
11 get credit. I'll find those for you if you give me a moment.

12 [PAUSE.]

13 Okay. I wrote one on March 19th of 1985, which
14 said I would like to notify you that your son, Johnny, has
15 been absent from school one or more classes ten times. I
16 must advise you that if your son is absent more than ten
17 times from a class he will not receive credit for that class.
18 Please contact me as soon as possible concerning these
19 absences.

20 I wrote again on November the 6th concerning this
21 same matter --

22 Q. And would you agree with me that --

23 A. -- and again on the 19th.

24 Q. -- most of those absences were the result of him
25 being suspended from school?

1 A. No, those absences would not have been counted in
2 that time.

3 Q. There were three or four instances between March of
4 '97 -- of '87 and April of '87, I believe on direct
5 examination you stated that he would not do what the teacher
6 asked him to do?

7 A. Yes, sir.

8 Q. What did the teacher ask him to do?

9 A. Things like sit down, behave himself, sit up
10 straight and sing in a chorus class like he was supposed to.
11 Things like don't put your hands on other people. Typical
12 things that a classroom teacher will ask a student to do.

13 Q. And what was his reasoning for not doing it?

14 A. I have no idea.

15 Q. On September 3rd, 1987, this bus incident, what was
16 his reasoning for not getting off?

17 A. Actually, it occurred on September the 2nd, I
18 think, the incident itself.

19 Q. September the 2nd, 1987, what was Mr. Bennett's
20 reasoning for not wanting to get off of that bus?

21 A. He just didn't want to get off the bus. It was his
22 bus and he was going to stay on it, regardless. Nobody could
23 make him get off the bus if he didn't want to.

24 Q. Did Mr. Bennett hit anyone during that incident?

25 A. No.

1 Q. Was there anybody whatsoever?

2 A. No.

3 Q. In fact, isn't it true that when you said that you
4 were going to call the police he at that time got off of that
5 bus?

6 A. No. When he was told that the police had been
7 called and were on the way and that he would be arrested if
8 he was on the bus when they got there, that's when he got off
9 the bus.

10 Q. He got off that bus before the police arrived?

11 A. (Nodded).

12 MR. YOUNG: I have no further questions. Thank
13 you.

14 THE COURT: Any redirect?

15 MR. RIDDLE: No, sir.

16 THE COURT: You can step down, Mr. James. You're
17 free to go. Thank you.

18 MR. RIDDLE: The State would call Rudy Cooper to
19 the stand, Your Honor.

20 RUDOLPH ROBERT COOPER, JR., after having been
21 duly sworn, testified as follows:

22 THE CLERK: Have a seat and state your full name
23 for the record.

24 THE WITNESS: Rudolph Robert Cooper, Jr.

25 DIRECT EXAMINATION

1 BY MR. RIDDLE:

2 Q. Mr. Cooper, where do you work?

3 A. Lexington District One schools.

4 Q. And that's Lexington High School?

5 A. Lexington Middle School.

6 Q. Lexington Middle School. Previously, did you work
7 down in Lexington District Four?

8 A. Yes, I did.

9 Q. And that was in Swansea High School?

10 A. And at the middle school.

11 Q. How long have you been in the educational field,
12 sir?

13 A. Approximately 30 years.

14 Q. And were you working at Swansea High School during
15 the '87, '88 school year?

16 A. That's correct.

17 Q. Now, what was your job at the high school then?

18 A. I was assistant principal.

19 Q. Now, there's been some discussion already about the
20 incident where Mr. Bennett would not get off the bus. Were
21 you personally involved in that incident?

22 A. Yes, I was.

23 Q. Tell the jury how you became involved in that
24 incident, if you would.

25 A. I received a phone call stating that Mr. Bennett

1 wouldn't get off the bus, that they had a bus overload. I
2 went to the elementary school because the buses at that time
3 were instructed they start off at Swansea High School --
4 Swansea High School and go to each school to pick up. If
5 they have an overload before they go out on the route they
6 had been told to call or to fix the overload. They were
7 trying to do that.

8 Q. You all would have to adjust like neighborhoods
9 worth of children from one bus to another or something like
10 that?

11 A. Correct. Whatever it would take so that every kid
12 had a seat for safety reasons and because it's state law.

13 Q. Right.

14 A. And they called me, and I went there and was told
15 that the bus driver asked several students to move.
16 Everybody had moved but Johnny, and he wouldn't move. The
17 bus driver then called the bus supervisor. The bus
18 supervisor tried to get him to move and go on another bus.
19 He wouldn't go. At that time, they called me.

20 Q. And did you speak with Mr. Bennett at that time?

21 A. I did. I tried to talk him into getting on the
22 other bus and cooperating so we could move the buses and get
23 the kids home.

24 Q. And were you successful in that?

25 A. No, I was not.

1 Q. What did Mr. Bennett do when you asked him to get
2 off that bus and just take a seat on the other bus so you all
3 could get the kids home?

4 A. Said he wasn't going. And I told him he was in
5 violation of state law, that he had to go, that he had to
6 follow the instructions of the school bus driver, and that's
7 state law.

8 Q. Yes, sir. What was his response to that?

9 A. He wasn't getting off. I said, Well, if you don't
10 get off I'm going to call the police and you're going to be
11 arrested. At that time, he didn't get off again. So it was
12 only after I sent somebody from the school to the call, they
13 came back and said that the police were on the way. I went
14 back yet again and asked Mr. Bennett to get off the bus and
15 told him that the police were on the way and that if he
16 didn't get off the bus he would be arrested when they get
17 there. At that time, he got off the bus.

18 Q. Now, Mr. Cooper, approximately how many times did
19 you ask Mr. Bennett to get off the bus during that incident?

20 A. Approximately four, five times.

21 Q. Was that all like one right after the other?

22 A. No.

23 Q. Did you talk to him for a minute then leave and
24 come back and that kind of thing?

25 A. Right. I mean, I started off talking to him just

1 trying to get him to move so we didn't have a problem. But
2 it was over a period of time.

3 Q. And as a result of that was either one of the buses
4 that had these students on it able to leave?

5 A. No.

6 Q. And approximately how long did this incident go on?

7 A. 45 minutes to an hour. I'm not sure, but
8 approximately 45 minutes.

9 Q. Now, you were --

10 A. That's from the time I got there now.

11 Q. Right. Okay. And this would have been two full
12 bus loads of students?

13 A. Correct.

14 Q. Some of them little kids?

15 A. One bus load was overloaded, and we were trying to
16 balance it with the other school bus.

17 Q. And of the children that were there you had people
18 from Mr. Bennett's size and age all the way down to the
19 kindergarten kids?

20 A. Sure. They were picking up at Swansea Elementary.
21 So there were first grader and everybody else, trying to get
22 home.

23 Q. Now, you were at Swansea High School for what
24 period of time, sir?

25 A. Two different times. I was there in '74 and '75,

1 and I was there from '84 to '88, and then at Swansea Middle
2 School in '88, '89.

3 Q. So you were at the high school basically the whole
4 time Mr. Bennett was there?

5 A. His first three years.

6 Q. Okay. And during that time period, Mr. Cooper, did
7 you have a number of dealings with Mr. Bennett?

8 A. I had some, yes, sir.

9 Q. Can you tell this jury whether or not Mr. Bennett
10 had respect for the administration of that high school.

11 A. Well, my opinion?

12 Q. Yes, sir.

13 A. No, he was very disrespectful, and to teachers and
14 administration.

15 Q. And how about the rights of the other students, was
16 he sensitive to that?

17 A. He tended to be a bully.

18 Q. A bully?

19 A. Right. He was a capable student now, I mean, as
20 far as what I felt like his potential was, and he could have
21 done a lot better.

22 Q. He just wouldn't?

23 A. He wouldn't.

24 MR. RIDDLE: Thank you, sir. Please answer any
25 other questions.

1 THE COURT: Cross?

2 CROSS-EXAMINATION

3 BY MR. YOUNG:

4 Q. Mr. Cooper, this incident involving the bus as far
5 as Mr. Bennett refusing to get off, did you observe any type
6 of violence or anything towards either administration or any
7 other students?

8 A. With Johnny?

9 Q. Yes, sir.

10 A. I didn't see him put his hands on anybody, if
11 that's what you mean, or any physical violence, no, sir.

12 Q. He was just refusing to get off of the bus?

13 A. Right, correct.

14 Q. That was what he considered to be his regular bus?

15 A. I assume so.

16 Q. Did that bus let him off closer to his house than
17 the other bus would have?

18 A. No, sir, I don't think so.

19 Q. They were going in the same direction?

20 A. We were balancing the bus loads by state law and
21 they were both going in the same direction, it's just one bus
22 had an overload.

23 Q. So in order to balance the buses you would send two
24 buses in the same --

25 A. General direction, yes, sir.